



Some Basic Considerations And New Developments When Creating Condominiums

Manitoba Bar Association Mid-Winter Real Property Section

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Types of Condominium Developments

- Standard Residential Apartment Style
 - This will be the primary focus of this presentation
- Bareland
- Phased
- Conversion
- Commercial vs. Residential vs. Mixed Use
 - Differences in negotiation and drafting
 - Negotiating strength of parties
 - Different uses

“Core” Documents

- Plan
- By-laws
- Declaration
- Other documents
 - Statutory Declaration
 - Conversion
 - Tenancy
 - Request
 - Surveyor’s Letter of Concordance

The Plan

- 3 Parts (s.15)
 - Part I (surveyor): the horizontal boundaries of the land and the buildings and survey monuments;
 - Part II (surveyor): the boundaries of
 - each unit by reference to the buildings, and
 - any common elements or parts of them that are described in the declaration for the use of the owner of a designated unit
 - Part III (architect): plans, exterior elevations and building sections required to convey the general building assemblies for each building in which one or more units are located
- Timing issues: Surveyor cannot start work until demising walls are up

By-laws and Rules

- S.167 of Act
- Considerations:
 - To what degree to do you restate what is in the Act (e.g. governance)?
 - Fining
 - Covers breaches of By-laws and Rules Only (s.218)
 - Overlap between By-laws, Declaration, and Rules
 - For example: s.167(1)(o): “governing the use and management of the common elements”
- Do not attach or file Rules
 - Process of approving By-laws in s.169 and s.170
 - Attaching to By-laws is a bad idea and now forbidden
 - Initial Rules do not need to be approved by Board and Unit Owners (s.64(2))

By-law Provisions Regarding General Meetings

- Directors:

- S.103(1)

- A board may provide for attendance at a meeting by telephone or another form of communications system that allows concurrent participation if
 - (a) authorized by the condominium corporation's by-laws to do so; or
 - (b) all the directors consent to doing so.

- Unit Owners:

- Health Care Directive expires March 31, 2021 (unless extended)

- S.119:

- 119(1): A condominium corporation may, by by-law, provide for attendance at a general meeting of unit owners by telephone or any other communication system that allows concurrent participation.
 - 119(2): A person who attends a meeting as described in subsection (1) is present in person at the meeting.

Declaration

- Using Rules to enforce?
- No 55+
 - Discrimination on the basis of age (and other things) will get your Declaration rejected
- Mandatory initial contributions to the reserve fund
 - No longer allowed in Declarations
 - You can, however, still put it in the Offers, Agreements of Purchase/Sale

Airbnb (Short Term Rentals)

- No minimum rental period allowed in Declaration
- Infringement of permitted use provisions of Declaration
 - Is Airbnb use a “single family residential purpose”?
 - If it is a commercial purpose, how do you enforce the Declaration’s use provisions?
 - Court?
 - Put into Rules?

Leasing Levy

- \$1500 maximum
- Cannot provide for collection as a common element
 - How does this affect filing a lien for corporations with leasing levy provisions allowing collection as a common expense filed previously?
 - Problems enforcing collection

Declarations

- S.13
- Common mistakes to look for (or at least the ones that have caught me in the past):
 - Is the name of the project on the Declaration and on the Plan the same?
 - Do the percentage of ownership of common elements and common expense contributions equal 100%?
 - Do you have the consent of encumbrancers?
 - other than holders of statutory easements & tenancy caveats
 - Party Wall/Easements not allowed in Declaration
 - Do not limit or control appearance or construction of improvements to units. This includes any requirement for the board to approve changes. As per s.169, these restrictions belong in the condo rules

Unit Descriptions

- “Standard Unit”
 - Review the Marketing Material
 - Will be the basis for determining insurance and repair after damage obligations
- Unit Descriptions:
 - Total number of units created upon registration, including all alphabetical phasing units
 - Each unit to be defined by type
 - Approximate area of each type
 - Number of each type
 - Description of boundaries?

Common Elements

- Check Marketing Materials
- Description of Common Elements must be included
- Exclusive Use Common Elements
 - Yards, balconies, patios, etc. must be on Plan
 - Corresponding reference in Declaration
 - Mixed use condominiums
 - Different types of residential units
 - Do townhomes have access to the apartment building, underground car washing station, etc.?

Conversions

- Has the building or property included residential rental units in the past 12 months
 - Rental provisions in s.26 of Act
 - Notice requirements
 - Tenure rights
 - Option to Purchase
 - Doesn't apply to commercial conversions
- Need to have reserve fund study done prior to registration (s.50)

Phasing

- S.13(6)
- Each Phase must be described
 - Number of buildings, its dimension, floors
 - Number of units
 - Types of Units
 - Description of Common Elements to be created
 - S.13(6)(e)

Phasing

- Must include a statement of the number of units that the property will comprise when each phase has been implemented
- Percentages must equal 100% after the implementation of each phase
- Can adjust after implementation of each phase (other than percentage of ownership of common elements)



Conclusion

Questions?