TABLED DOCUMENT NO. 61 15 (4) TABLED ON OCT 2 5 2005



REVIEWING THE CONDOMINIUM ACT OF THE NORTHWEST TERRITORIES

A CONSULTATION PAPER

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October 2004



What is the Condominium Act?

The *Condominium Act* is the NWT law that allows property to be owned by a group of people. Some parts of it are owned by individuals, and some parts are owned and managed by the entire group. Many condominiums look like apartment buildings. The living spaces are owned by individual families, but the shared spaces (hallways, parking lot, playground, etc.) are owned by the entire group. Other examples could be:

- Commercial properties (like malls)
- Shared land (like some housing developments or trailer parks)
- Empty land units
- Townhouses

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This law sets out the things that condominium owners and boards of directors of condominiums have to do for each other. It also describes the rights of owners.

One of the main principles of this law is that property owners should be able to make decisions about their property – both their units and the parts that are owned by the group. When making changes to this law, it's important to remember this.

Any changes to this law will directly affect you if you are a:

- Condominium owner;
- Condominium purchaser; or
- Condominium developer.

Please tell us what you think of the changes we want to make. This paper talks about the main parts of condominium legislation, suggests changes, and asks questions.

So far, there haven't been big problems with the law. However, as more condominiums are set up in the NWT, it's important to make sure that our laws protect both owners and developers.

You can contact us in three ways:

- 1. Come to a public meeting and tell us what you think about this law.
- 2. Send an e-mail to communications_advisor@gov.nt.ca.
- 3. Send a letter to:

Director of Policy Department of Justice Government of the NWT PO Box 1320 Yellowknife, NT X1A 2L9

This paper is available on the Internet at <u>www.justice.gov.nt.ca</u>. You can also call 920-6418 to learn more.

What's the difference between condominiums and other types of property, like apartment buildings?

A condominium is a group of homeowners. An apartment building is owned by one person or company and is rented to people who do not own their units.

To create a condominium corporation, the owner/developer of the property registers a condominium plan and declaration at the Land Titles Office in Yellowknife.

The declaration is a formal document. It describes the basic rules that the condominium owners will follow, including the fees they will pay. It also establishes a "condominium corporation".

The condominium corporation includes all of the unit owners. Together, they set detailed and reasonable rules that they all agree to follow. They also elect a board of directors to carry out the corporation's responsibilities.

Once you purchase a condominium unit, you have to follow the corporation's bylaws.

The board of directors is responsible for things like:

- Making sure everyone follows the *Condominium Act*;
- Making sure everyone follows the property's rules;
- Maintaining the parts of the property that are shared;
- Collecting fees for shared expenses and keeping the corporation's finances in good shape;
- Preparing a yearly budget;
- Keeping insurance on the property;
- Keeping liability insurance for the board or corporation;
- Setting up and running a reserve fund for emergencies;
- Suggesting changes to the corporation's bylaws;
- Holding an annual general meeting and reporting to the unit owners; and
- Giving information to owners and people who want to buy units.

Your relationship with other unit owners is a big part of condominium ownership.

What's in condominium law in Canada?

Condominium legislation includes:

- The requirements for plans and paperwork to start a condominium;
- The powers and duties of the corporation;
- The unit owners' rights;
- The things the corporation is responsible for, and the things the unit owners are responsible for;
- Responsibility for financial matters
- The way to create, change and enforce bylaws;
- How a reserve fund is created;
- How shared expenses are paid;
- Requirements for insurance; and
- The process for ending or making major changes to the corporation.

Why should this law be reviewed?

The NWT's *Condominium Act* has not changed much since it came into force in 1969. Some parts of the law don't protect unit owners as much as they could. Similar laws in the rest of Canada require higher standards for developers. The NWT's law is also not very flexible – it does not allow phased developments or amalgamations.

This review is to make sure there is a balance between developers and unit owners' responsibilities and rights. For example:

- There should be enough money in the corporation's capital reserve fund to pay for emergency repairs;
- People who want to buy units should be able to get information from the board of directors, so they can make an informed decision;
- If an apartment building becomes a condominium, the change should be orderly and fair; and
- Boards of directors should be able to make changes that make sense for their condominiums.

One of the more common concerns with the law is that not all condominium corporations are keeping enough money in their reserve funds. This points out the need for more protection of unit owners.

Overall, the law seems to be working well, but it makes sense to review it to make sure that it is serving the needs of both developers and unit owners. One of the main principles of the law is that there should not be too much government regulation of people's private homes.

Condominiums are becoming more and more popular in the territory. Most NWT developers and owners are already following stricter requirements than are in the current law, but it makes sense to bring the NWT law in line with the rest of Canada. This will make sure that people are protected in the future.

1. Capital Reserve Funds

The Act currently requires that the condominium corporation establish a fund to which the owners contribute, and from which all common expenses are paid. This includes any major repairs that may arise. Most condominiums have established two funds, one to deal with expenses that arise each year and another one to provide for longer-term needs such as major repairs, improvements or replacement of common property.

Some condominiums do not set aside sufficient funds for unexpected major repairs nor do they attempt to forecast the likely need for such repairs in the foreseeable future. This is a significant matter to some owners and, in particular, prospective purchasers. A number of provinces have taken specific steps to address these concerns.

1(a) Separate capital reserve fund

Many jurisdictions require a mandatory capital reserve fund. The NWT could also require this. All condominium corporations would be required to set up a fund for common yearly expenses and another fund called a *capital reserve fund* to cover major repairs, improvements and replacement of common property.

OUR POSITION:

The Department believes that all condominiums should be required to have a separate capital reserve fund.

OUR QUESTION:

Should all condominiums be required to have a separate capital reserve fund?

1(b) Assessing amount of capital reserve fund

It's hard to be sure how much money should be in the capital reserve fund. That's why most provinces require all condominiums to hire professionals to find out how much money should be set aside for repairs.

This is an equally important issue for purchasers of a condominium unit. Unlike buyers of single-family dwellings, for example, it is not realistic for a purchaser of a unit in a multi-unit building to hire a professional to find out how much money should be set aside for repairs to the entire building.

OUR POSITION:

The Department suggests that condominiums be required to conduct a reserve fund study within 2 years of the construction of a new building. If an existing building is being converted to a condominium, this study should be done when the conversion is made. The Department also suggests that the study be repeated every 5 years. The reserve fund study must be available to owners, purchasers and anyone else acquiring an interest in the condominium.

OUR QUESTION:

Should condominiums be required to hire professionals to find out how much money should be set aside for repairs? How often should these studies be done?

1(c) Amount of money in the capital reserve fund

In some provinces, condominium corporations must make sure that their capital reserve fund has enough money to pay for the repairs shown in the reserve fund study. The corporations also have to report this to the government.

This requirement would be a significant departure from the principles underlying the condominium legislation in which decisions regarding the management of the condominium are left to the owners. This would also set condominium owners apart from the owners of other types of property who may choose to set aside funds for future repairs or pay those costs as they arise.

Such a requirement may also mean that some people wouldn't be able to purchase housing they could otherwise afford. For example, younger persons who may reasonably foresee higher salaries in future years may be unable to afford **a** condominium unit if they are required to pay for future repairs from their current salaries, in addition to the purchase price.

OUR POSITION:

The Department suggests that condominium owners should continue to decide how much money should be in the capital reserve fund. However, in order to highlight the importance of capital reserve fund, the Department recommends that the Act be amended to provide that:

- The amount of money in the reserve fund must be included on the agenda of the annual general meeting;
- Owners who don't keep up with their payments to the fund would have limited voting rights;
- Interest may be charged when owners don't keep up with their payments;
- If a unit owner with unpaid capital reserve payments is renting their unit, the condominium corporation may tell the tenant to pay their rent to the condominium corporation until the owner's payments are made;
- Capital reserve funds must be invested cautiously and the interest earned is part of the fund.

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OUR QUESTION: Should the owners decide the level of funding for the capital reserve fund? Should other steps be taken to protect the capital reserve fund?

2. Condominium Sales before Registration

Most provinces now provide purchasers with a measure of consumer protection in respect of sales agreements entered into before the registration of the property as a condominium. In many instances, sales agreements are made before construction has commenced.

The Department is not aware of major problems to date, as developers have generally acted responsibly in respect of their pre-registration sales activities. Many may have voluntarily complied with the more stringent requirements applicable in most provinces. However, a less responsible developer will one day come along and take advantage of the absence of consumer protection measures in the NWT legislation. The Department believes appropriate requirements should be in place before that day arrives.

2(a) Developer commitment to register condominiums

Laws in some provinces have requirements that make sure that developers who sell units before the property is built or registered as a condominium actually build the property and register it as a condominium.

OUR POSITION:

The Department believes that the Act should be amended to provide that:

- a developer must take all reasonable steps to complete the project, and provide the purchaser with a registerable transfer;
- a developer must hold purchase money in a separate trust account with a financial institution and pay interest on the money; and
- a purchaser may enforce these requirements through the Courts.

OUR QUESTION:

Do you think that the Condominium Act should be amended to make sure that developers who sell units before construction complete the project and that the purchaser's money is protected?

2(b) What developers must disclose to purchasers

Many provinces have laws that make sure purchasers have all of the information they need to decide if they want to buy a condominium. In general, purchasers must be provided with all plans, documents and information:

- showing the developer's plan for the property, such as the number of units that will be sold and the number that will be rented;
- allowing a purchaser to determine the costs of owning a unit, for example, budget projections for annual fees and the assumptions upon which the budget projections are made; and
- providing details of the way the condominium will be managed.

Usually, a purchaser is not bound by a purchase agreement until this information is provided. These plans, documents and information are generally already available to the developer so providing them to a purchaser should not be difficult for the developer.

OUR POSITION:

The Department suggests that the Act be amended to require developers to provide purchasers with all information reasonably necessary for the purchaser to make a fully informed decision to purchase. This information must be provided at least 10 days before a purchaser agreement is signed.

The Department also recommends that developers be required to provide purchasers with information about any change that would cause a reasonable purchaser to reconsider the purchase.

OUR QUESTION:

Do you think that developers should be required to provide information necessary for purchasers to make a decision to purchase? What information do you believe should be made available to purchasers?

2(c) Cancelling the purchase agreement

In most provinces, purchasers can cancel a purchase agreement in certain situations, for example,

- where the purchaser does not receive information quickly enough; or
- where there is a "material change" in the information received that would cause a reasonable purchaser to reconsider the purchase.

This right of cancellation recognizes that a purchaser has many more factors to consider when purchasing a condominium than they do when purchasing other types of real estate. This is particularly true when the development has not been completed.

In many provinces, purchasers have 10 days after signing or 10 days after a material change to cancel a purchase agreement. Any money paid must be returned with interest.

OUR POSITION:

The Department proposes that purchasers have the right to cancel the purchase agreement within 10 days after signing the purchase agreement, if they were not provided with the required information on time, and again within 10 days after finding out about a material change in this information.

The developer would have to give back any money paid by the purchaser, together with interest earned, within 10 days of the cancellation.

Do you think that purchasers should be allowed to cancel a purchase agreement 10 days after signing if they do not receive required information or if there is a material change? What kind of information should be required?

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3. New Condominiums

It is a fundamental principle of condominium ownership that an individual owner's say in the management of the condominium is proportional to his or her ownership interest. In new condominiums, this means that developers control the way the property is managed until at least half of the units have been sold.

Some provinces have adopted measures to protect people who own units in new condominiums during this transition period without undermining the ordinary ownership rights of the developer.

3(a) First meeting and board election

One way to protect new owners is to require that the first meeting of the condominium corporation be held soon after a certain percentage of the units have been sold. Another way is to give purchasers a position on the board of the corporation. This gives purchasers a voice on the board, although the developer would still have voting control until half of the units were sold.

OUR POSITION:

The Department proposes that the first meeting of the condominium corporation must be held once 20% of the units have been sold. Among the board members elected at that meeting, one may be elected by a vote of the minority owners.

OUR QUESTION:

Would it be a reasonable limitation on the rights of the developer to require a meeting of the owners when 20% of the units have been sold? Do you think that new owners should be guaranteed a voice on the condominium corporation at that time? Would a different percentage be better?

3(b) Turnover of design and construction documents to the corporation

Many provinces also require at an early point after the condominium has been registered, that the developer provide all building design and construction documents to the condominium corporation. They are also required to provide all other agreements that they have signed relating to the property.

OUR POSITION:

The Department suggests that the developer be required to provide all building design and construction documents to the condominium corporation at the first general meeting of the corporation. The developer must also turn over all agreements it has signed that relate to the property and other documents applicable to the management of the corporation.

Should developers be required to provide design and construction documents and agreements to the condominium corporation at the first meeting?

3(c) Management companies

The board of directors is responsible for the operation of the corporation, but many boards of directors hire management companies. The management company takes over the day-to-day operations of the corporation. In a new condominium, the developer can also hire a management company. Alberta, Saskatchewan and Ontario limit the ability of the developer to entrench a management company.

OUR POSITION:

The Department proposes that once the purchasers own most of the units, the board may vote to end the agreement between the developer and the management company. The management company must receive 60 days notice, but the agreement can't be ended less than a year after it was started, unless the original agreement allowed it to be ended early.

OUR QUESTION:

Do you think that a condominium board should be able to end an agreement with a management company that was entered into by the developer?

4. Tenants' Rights

Currently, under NWT legislation, tenants of a rental unit do not have specific protection when a rental unit is converted into a condominium. Also, in NWT legislation there is no attempt to balance the rights of new tenants in an established condominium with the collective rights of the unit owners.

4(a) Conversion of rental housing to a condominium

When an owner of a rental property wants to convert the property to a condominium and sell the units, most provinces provide some added protection for the current tenants. In some provinces, the developer must give extra notice to tenants since residential tenants can usually assume that they may continue to rent a unit indefinitely, as long as they behave. Conversion to a condominium is one of the rare situations in which this is not the case. In Ontario and Manitoba, a tenant is also provided with a chance to buy the rental property when it becomes a condominium unit.

OUR POSITION:

The Department proposes that tenants who have paid rent on time should have a minimum of six months notice and have a choice to buy the unit they live in once the property is converted to a condominium.

OUR QUESTION:

When an apartment is converted to a condominium, should the existing tenants receive extra notice? How much notice do you believe tenants should receive? Should they also have the choice to buy the unit?

4(b) Renting condominium units

Some unit owners want to rent out their units. This means that the tenant would have to follow the rules that the owner would normally follow. For example, tenants would not be allowed to damage the corporation's property or the shared property, and would have to follow the condominium's bylaws.

The unit owner would have the main responsibility for making sure that the tenant follows the bylaws, but some provinces protect the rights of other unit owners by allowing the corporation to enforce the unit owner's rights as a landlord. For example, if a tenant is damaging the common property but the owner/landlord is not taking appropriate steps to stop the tenant, the corporation can take steps to evict the tenant.

OUR POSITION:

The Department recommends that the following provisions be added to the law:

- Unit owners would have to tell the condominium corporation if a unit was being rented;
- Tenants would have to follow the Act, declaration and bylaws;

- The damage deposit could be paid to the corporation instead of the unit owner;
- If the unit owner owed money to the condominium corporation, the corporation could collect the rent and use it to pay off the unit owner's debt;
- The corporation could take steps to evict a tenant for failure to comply with the Act, declaration and bylaws or for damage to the common property.

Should the condominium corporation be allowed to evict tenants in order to protect the rights of other unit owners? Should the other amendments be made to help protect the rights of unit owners?

5. Running the Condominium Corporation

Right now, the NWT law gives owners the freedom to set rules about the way the condominium corporation will be run, such as:

- How to elect the board of directors;
- How and when to hold board meetings;
- How to keep financial records; and
- What the board's responsibilities are.

In some provinces, the law spells out more specific jobs for the board. In particular, the NWT law does not require the board to call an annual general meeting of the unit owners, although almost all condominiums require this in their bylaws. However, without a clear requirement in the Act, there is the possibility that a powerful board will take advantage of this to limit the ability of the unit owners to elect new members to the board.

OUR POSITION:

The Department proposes that the board be required to call an annual general meeting of owners to make sure that the owners take care of important business, such as electing board members, reviewing financial statements and making sure there is enough money in the capital reserve fund.

OUR QUESTION:

Do you think that the Act should require the board of the condominium corporation to call an annual general meeting? Do you think other specific responsibilities should be spelled out in the Legislation? If so, what are they?

6. Information the Condominium Corporation Must Provide

Under the current law, once a condominium has been established, the corporation must give owners or purchasers information such as the amount of any assessments for common expenses and the amount of money the owner still owes.

However, there is more information that an owner should be able to obtain and that is important to a purchaser or mortgagee's decision to buy or lend money, such as:

- The status of lawsuits or large claims against the corporation; and
- How much money is in the reserve fund.

OUR POSITION:

The Department proposes to expand the information that condominium corporations are required to provide to owners, purchasers and mortgagees to include such items as

- All financial statements, account balances and budgets
- A copy of the declaration, plan and bylaws
- Details of any lawsuits or other claims against the corporation
- Details of any management agreement
- A copy of the most recent reserve fund study
- A copy of the minutes of meetings
- A copy of any agreement for the use of the common property.

OUR QUESTION:

Should corporations make additional information available at the request of owners, purchasers and mortgagees?

7. Other Ways to Develop Condominiums

7(a) Phased developments

Some provinces allow condominiums to be built in stages instead of all at once. This gives developers another way to pay for new developments.

OUR POSITION:

The Department proposes to allow phased development of condominiums. This type of development would have to follow certain procedures and requirements that would be set out in regulations.

OUR QUESTION:

Should developers be allowed to build phased developments?

7(b) Amalgamation of condominiums

Combining two or more condominiums into one condominium is another way to develop a phased condominium or to allow several condominiums to share common facilities or property management services.

OUR POSITION:

The Department suggests that condominiums be allowed to amalgamate, following certain procedures and requirements set out in regulations.

OUR QUESTION:

Should two or more condominiums be allowed to amalgamate into one condominium?

7(c) Changing the condominium plan or declaration

Right now, the NWT law requires that everyone who owns a unit or has an interest in any of the units (for example, a tenant) must agree on any changes to the condominium plan or declaration.

This means that even one person who disagrees with the change can keep it from happening. It is hard to get everyone to agree, and most provinces don't require this.

OUR POSITION:

The Department suggests that the requirements for amendments be made simpler. In most cases, only 80% of the owners would have to agree on any changes.

Do you think that the agreement of 80% of owners is enough to make changes to a condominium plan? Are there any situations where everyone should agree on changes?

The Department believes that this rule would be reasonable most of the time, but there would still be cases where it wouldn't be fair. For example, in a four-unit condominium, all owners would still have to agree. It would also be possible for a large group of owners to vote for a change that had a harsh effect on a small group of owners.

OUR POSITION:

The Department proposes that unit owners be allowed to apply to a judge for a review of the decision.

OUR QUESTION:

Should unit owners be allowed to apply to a judge for a review of a decision? Is there a better way to make sure decisions are fair?

7(d) Subdivision or consolidation of units

A unit owner who wants to divide one unit into two units or combine two units into one unit must now follow the rules for changing the condominium plan and declaration.

Lowering the level of approval for making these changes would make it easier to divide units or combine them. However, some provinces have separate rules for doing this.

OUR POSITION:

The Department's proposed changes to the way plans are changed (see above) would make it easier for owners who want to divide units or consolidate units. The Department believes that if these changes are made, there is no need for an extra procedure for this.

OUR QUESTION:

Is there a need for a separate procedure for dividing units or consolidating units?

8. Other Changes

8(a) **Proxy Voting**

Many provinces allow proxy voting – owners who can't come to a meeting in person can still vote. The bylaws of almost all condominiums in the NWT now provide that persons may vote by proxy.

OUR POSITION:

The Department is recommending that the Act be amended to confirm that unit owners be allowed to vote by proxy.

OUR QUESTION:

Should owners be allowed to vote by proxy?

8(b) First bylaws

Several provinces set bylaws in regulations that are in place until the corporation replaces them. This makes sure that there are bylaws in place as soon as the corporation is set up. In the NWT, corporations almost always make their own bylaws when or soon after they are set up.

OUR POSITION:

The Department is recommending that the Act be amended to require that bylaws be submitted at the same time as the plan and declaration. This would make sure that bylaws are always in place without the need to set bylaws in regulations that are almost always immediately replaced.

OUR QUESTION:

Should we require that bylaws be submitted at the same time as the plan and declaration?

8(c) Conflicts of interest

The current law doesn't talk about what should happen if a board member has a conflict of interest. For example, a board member might own a company that provides services to the corporation. Most provinces require board members to state their conflicts. They also aren't allowed to discuss or vote on any matters they have conflicts in.

OUR POSITION:

The Department suggests that board members be required to state if they have a conflict of interest, and to not discuss or vote on these matters.

Should the Condominium Act be amended to require board members to state if they have a conflict of interest and not discuss or vote on this matter?

8(d) Selling or terminating a condominium

It now takes the approval of 2/3 of the owners to sell all of the condominium property or any portion of the common property or to terminate the entire condominium. This is less than the current or proposed requirement for changes to the plan or declaration. It is also less than the percentage of owners required to approve a sale or termination in most provinces.

OUR POSITION:

The Department suggests that a minimum of 80% of the owners should have to agree to sell or terminate the condominium.

The Department also suggests that if there is a serious disagreement between the owners, a judge could make the final decision.

OUR QUESTION:

Do you agree that 80% of the owners must agree to the sale of all of the condominium property or any part of the common property, or to terminate the condominium?

8(e) Penalties

Right now, the only way to enforce the bylaws is through the courts. Alberta allows the board to impose reasonable penalties on owners and tenants who do not comply with the bylaws. An example of this type of penalty would be a fine.

OUR POSITION:

The Department suggests that the board be allowed to fine owners and tenants who do not comply with the bylaws and impose any other reasonable penalty that would be appropriate in the circumstances. The corporation, owner and tenant would still be able to apply to the courts.

OUR QUESTION:

Do you think that boards should be allowed to fine owners and tenants who break bylaws? Is this a reasonable and effective way to make sure owners, tenants and corporations follow the law, declaration and bylaws?

8(f) Interest on late payment of shared expenses

In many provinces, the corporation can charge interest on late payments of common expenses. The interest rate is set in regulations.

OUR POSITION:

The Department is recommending that corporations be allowed to charge interest on late payments of common expenses. The interest rate would be set in regulations.

OUR QUESTION:

Do you think that corporations should be allowed to charge interest on late payment of common expenses?

8(g) Investing the corporation's money

The NWT law requires the condominium corporation to manage its money, but many provinces have more specific rules for the way that money should be invested. This makes sure that corporations don't make risky investments.

OUR POSITION:

The Department is recommending that the corporation be allowed to invest in accordance with rules set out in the regulations under the Act, intended to ensure that corporations have the ability to earn a reasonable return without unnecessary risk.

OUR QUESTION:

Should there be rules in the legislation for how corporations invest money?

8(h) Insurance

The NWT law requires that corporations have insurance to cover things like:

- Damage to the units;
- Damage to the shared property; and
- Anything else that the condominium has decided to put in the bylaws.

The unit owners can have their own insurance for things that aren't covered by the corporation's insurance.

In some provinces, condominiums have to have more insurance. This gives more coverage, but it also keeps unit owners from being able to decide how much insurance they need.

OUR POSITION:

The Department is recommending that the amount of insurance be left to the corporation and the owners to decide but the corporation would be required to review its insurance coverage each year at the annual general meeting.

Do you think that more comprehensive insurance requirements are needed in the legislation? Should owners be required by law to review insurance coverage for the condominium at the annual general meeting?

9. Anything Else?

OUR QUESTION:

Do you have any other comments on what should be in the NWT's condominium legislation? What should be changed? What should stay the same? Why is this important?

You can contact us in three ways:

- 1. Come to a public meeting and tell us what you think about this law.
- 2. Send an e-mail to communications_advisor@gov.nt.ca.
- 3. Send a letter to:

Director of Policy Department of Justice Government of the NWT PO Box 1320 Yellowknife, NT X1A 2L9

This paper is available on the Internet at <u>www.justice.gov.nt.ca</u>. You can also call 920-6418 to learn more.