

Creating a Condominium *Condominium Act, 2015* and Regulations



Presented by Leslie McRae,
Registrar of Land Titles





Purpose of presentation

- This presentation provides basic information about the new *Condominium Act, 2015* and its Regulations.
- This presentation is intended as a simplified general resource and is not to be considered legal advice or legal opinion. It is important that users do not rely on this presentation as a substitute for getting legal advice.



Presentation outline

- Condominium legislation
- Condominium types
- Creating a condominium
- Bylaws
- Sale of units by developer
- Reserve funds
- First directors
- First annual general meeting
- Developer's responsibility for expenses during the transition period
- Pre-existing condominiums



Legislation

- New regulations have been passed under the *Condominium Act, 2015*:
 - Condominium General Regulation;
 - Condominium Reserve Fund Regulation;
 - Bare Land Condominium Regulation;
 - Converted Building Condominium Regulation;
 - Condominiums on Leasehold Land Regulation; and
 - Phased Development Regulation.
- The *Condominium Act, 2015* and Regulations came into force on October 1, 2022.



Condominium types

The *Condominium Act, 2015* and Regulations define and create new rules for several types of condominium developments, such as:

- conventional building units;
- bare land units;
- phased developments;
- converted buildings;
- mixed use developments; and
- condominiums on leasehold land. This presentation will not deal with condominiums on leasehold land.



Creating a condominium

- Applications to create a condominium still require a condominium plan, a declaration and bylaws, but there are new and different concepts and requirements (sections 3 – 16).
- Condominium plan requirements (section 6)
 - Heading of the plan
 - Identification of the parcel
 - Boundaries of the parcel and the location of buildings
 - Define the boundaries of each unit and unit numbers
 - Approximate area of each unit
 - Unit entitlements
 - Boundaries of common property and common assets (if a unit or other real property)
 - Show boundaries on a separate drawing of any areas of common property that are for roads, guest parking, wheel-chair accessible parking, public utilities, recreation facilities, and suitable access and services to all units



Creating a condominium

- Declaration requirements
 - **New** - prescribed form
 - **New** - a schedule of unit entitlement, a schedule of voting rights and notice of directors
 - **Additional** requirements in Regulations depending on type of development, such as:
 - For bare land condominiums – a statement about types of units and information about managed real property
 - For phased developments – a detailed disclosure statement
 - For converted buildings – provisions dealing with tenants' rights, as well as the requirements for a building assessment report and reserve fund study



Creating a condominium

NEW

- Schedule of unit entitlement (section 10)
 - The unit entitlement allocates to each unit owner a fair portion of common expenses, common liabilities, common property and common assets, adjusted depending on factors like whether the unit has exclusive use of common property or common assets and other factors
 - Must be calculated in accordance with the method defined in section 5 of the *General Condominium Regulation*
- Schedule of voting rights (section 11)
 - Must set out the number of votes allocated to each unit
- Notice of address for service (section 12)
- Notice of first directors (section 13)
- Notice of bylaws (section 14)



Bylaws

- Many matters that were dealt with in the declaration under the former Act are now dealt with in Bylaws and the Act or Regulations.
- Bylaws (section 104) must include provisions for:
 - Control, management, maintenance, repair, use and enjoyment of the units, any common property and any common assets
 - Governance of the Board of Directors and administration of the condominium corporation
 - Insurance matters
 - The interest rate the condo corporation may charge on amounts owing to it



Bylaws

- Bylaws may include (section 104.01) provisions regarding other matters, such as:
 - Terms and conditions for exclusive use of common property or common assets
 - Sections (separate bylaws) for mixed use developments
 - Whether tie-breaking votes are permitted
 - Terms, conditions and amounts of fines payable by unit owners or tenants
 - Expenditures that are not included in the annual budget or approved by special resolution



Additional requirements

Converted Building Condominium Regulations

- A building assessment report – prepared by a person at arm’s length from the developer – which details defects and building code variances and includes survey results from occupants on observed problems in the building.
- A certificate from the approving authority approving the building assessment report must be filed with the application to create a converted building condominium.
- Confirmation that notices of conversion and conditional offers for sale (if necessary) have been given to the tenants at least six months before submitting the application to the Land Titles Office.
- If the converted building is more than two units, the developer must obtain a reserve fund study and provide a copy to any purchaser before the sale of any unit and tell the purchaser which deficiencies have not been and are unlikely to be addressed before the sale.



Additional requirements

Phased Development Regulations

- A phased development disclosure statement must be prepared by the developer including a detailed description of each phase of the development, including a contingency plan describing the consequences of a subsequent phase not proceeding.
- The elements of the disclosure statement for which the approving authority has legal authority must be approved by the approving authority.
- The developer must register an amended declaration and supplementary condominium plan, as well as (if necessary) an amended schedule of unit entitlements and amended schedule of voting rights, and an amended disclosure statement, in respect of each subsequent phase.
- A copy of the registered disclosure statement must be delivered to a purchaser.



Additional requirements

Bare Land Regulations

- The declaration must contain additional information related to attached buildings and whether or not any portion of a building is managed real property.
- A transfer of a bare land unit which is one of a series must not be registered unless the developer provides evidence to the Land Titles Office that the attached buildings are constructed within the boundaries of the bare land unit.

Condominiums on Leasehold Land Regulations

Leasehold condominiums may only be created by “public authorities” who are defined as Government of Yukon, a municipality or an eligible First Nation government. Since they are not expected to be common developments, information about leasehold condominiums is outside the scope of this presentation.



Sale of units by developer

NEW

- The developer must provide detailed disclosure documents to purchasers at various times, depending on the type of condominium development, the stage of construction and the time of creation of the condominium (section 54 – 60).
- Developers should ensure they understand their new legal obligations, consult with real estate professionals and obtain legal advice.
- Purchasers have the right to cancel an agreement of purchase and sale (sections 55 and 56).
 - The agreement must contain a clear and obvious statement of cancellation rights.
 - This does not apply to purchase agreements made before October 1, 2022.



Reserve funds

- At the time of the first conveyance of a unit by a developer to a purchaser, the developer must pay to the condominium corporation for deposit into the reserve fund an amount equal to 25 per cent of the reasonably estimated annual common expenses (Section 136).
- No additional amount is required to be paid for a converted building.
- In the case of a converted building that is three or more units, the developer must obtain a reserve fund study for the condominium from a qualified person before the sale of any unit shown on the condominium plan.



First directors

- The developer appoints the first directors and controls the corporation until first directors are replaced by an elected Board (section 76).
- The developer is responsible for the acts and omissions of the first directors; the first directors have the same powers, responsibilities and standard of care as elected directors.
- The first directors must pursue construction warrantees (section 77) and keep the corporation's financial records and transactions separately from the developer's records (section 79).
- The first directors must prepare an interim budget for the corporation for the 12 month period that starts on the first day of the transition period (section 137).
 - The transition period is triggered by conveyance of the first unit and starts on the 1st of the month following that sale.
 - The transition period ends on the last day of the month in which the first AGM is held.



First annual general meeting

- The first directors must convene the first AGM within six weeks once 50 per cent plus one of the units have been sold or within nine months of the sale of the first unit, whichever is sooner (section 80).
- The developer must ensure that the term of an insurance policy entered into by the first directors continues for at least four weeks after the first AGM (section 174).
- After the first AGM, the first directors must transfer control to the elected Board and must turn over key documents (such as building plans and permits, as-built drawings, contracts etc.) (section 84).
- If the first directors fail to convene the first AGM the developer must pay to the corporation the following amounts (section 80(3)(b)):
 - If the first AGM is convened 30 days or less after its due date, \$1000; or
 - If the first AGM is convened more than 30 days after its due date, \$1000 plus \$1000 for each additional seven-day period after the initial 30-day period until the meeting is convened.



Developer's responsibility for expenses

- If the actual common expenses reasonably incurred by a condominium corporation during the transition period exceed the estimated common expenses shown in the interim budget, the developer must pay the difference to the corporation within eight weeks after the first AGM (section 141(2)).
- Under the *Condominium General Regulations*, if the difference is greater than ten percent, then the developer must pay the following additional amount:
 - If the difference is greater than 10 per cent and less than 20 per cent, the difference; or
 - If the difference is greater than 20 per cent, two times the difference.



Pre-existing condominiums

- Section 239 of the *Condominium Act, 2015* sets out time periods to allow “pre-existing condominiums” to deal with new legislative requirements such as insurance, reserve funds, bylaws, etc.
- A “pre-existing condominium” is either
 - a condominium corporation that was created under the former Act before October 1, 2022, or
 - a condominium corporation whose creation under the former Act was substantially advanced on October 1, 2022, and
 - where the plan was filed for registration at the Land Titles Office before October 31, 2022; and
 - the developer gave notice to the Registrar of Land Titles – before submitting the plan and declaration – that the condominium is to be designated as a pre-existing condominium.

Change of control during transition period

| | | |
|---|---|--|
| <p>Time period 1 (before transition period begins)</p> | <p>From the date the condominium is registered in the Land Titles Office up to the day before the transition period begins (on the first of the month following sale of the first unit)</p> | <ul style="list-style-type: none"> • Developer appoints first directors • Developer pays all actual expenses but is not required to pay condo fees • Developer must keep financial records for this period and make records available to the board of directors for two years after the transition period ends |
| <p>Time period 2 (transition period)</p> | <p>Starts on the first of the month following sale of the first condominium unit and ends on the last day of the month following the first AGM</p> | <ul style="list-style-type: none"> • Developer pays 25 per cent of estimated annual common expenses into the reserve fund • First directors must prepare an interim budget for the 12 months starting on the first day of the transition period • Unit owners, including developer, pay condo fees based on interim budget • Condo corporation pays actual expenses • First directors prepare financial statements for transition period and proposed budget for year following to present at first AGM |
| <p>Time period 3 (post transition period)</p> | <p>Starts on the last day of the month following the first AGM</p> | <ul style="list-style-type: none"> • Developer must pay difference between estimated and actual expenses incurred during transition period • Unit owners, including developer, pay condo fees based on budget approved at AGM • First directors transfer control to elected Board |



More Information

- More information and all forms are available on the condominium website at www.yukoncondos.ca
- The website includes fact sheets on the following topics:

| | | |
|---------------------------------|--------------------------------------|--|
| Introduction to condominiums | Condominium reserve funds | Condominium insurance |
| Condominium bylaws | Meetings and voting rights | Purchasing and owning a condominium unit |
| Resolving condominium disputes | Condominium types | Bare land condominiums |
| Converted building condominiums | Condominiums on leasehold land | Phased development condominiums |
| Mixed use developments | Condominium Act, 2015: key timelines | |



Questions?