The Condominium Amendment Act, 2014, SA 2014, c 10 was passed in December 2014 and many of the long-awaited amendments have finally come into force as of January 1, 2018, with the remaining amendments coming into force on April 1, 2018. The amendments were divided into 3 categories: improving protections for condominium purchasers, improving day-to-day condominium operations, and establishing a condominium dispute resolution tribunal. The amendments impact both developers and condominium corporations and their boards of directors.

**Impacts on Condominium Corporations and Boards**

The Condominium Property Regulations, AR 168/2000, as amended AR 181/2017 (the “Regulations”) now provide that the condominium corporation may terminate an agreement within 1 year of the agreement having been entered into by the developer on behalf of the condominium corporation;[1] however, there are exceptions, including easements, restrictive covenants, exclusive possession agreements that are entered into pursuant to a bylaw, and certain agreements respecting alternative energy or the provision of electricity, natural gas or telecommunication services.[2] Management agreements that were entered into by the developer may also be terminated by the condominium corporation after one year from the date
the agreement was entered into, provided the condominium corporation provides 60 days’ notice to the property manager.[3]

The first annual general meeting of the condominium corporation must be convened no later than 12 months after the registration of the condominium plan,[4] and written notice of an annual general meeting must be provided no later than 14 days’ prior to the day the meeting will be held.[5] Special general meetings may also be convened, upon 14 days’ prior notice,[6] whenever the board of directors feels it necessary or upon receiving a request to do so from owners whose units represent 15% or more of the total unit factors of all the units.[7]

The condominium corporation must carry out a reserve fund study, report and plan in accordance with the regulations within 2 years of the condominium plan being registered.[8] If, however, each of the units are owned by the same owner or group of owners and the units are rented to individuals as tenants, then the requirement to carry out a reserve fund study and maintain a reserve fund is not required.[9]

An inspector may be appointed to investigate violations under the Condominium Property Act, RSA 2000, c C-22, as amended by SA 2014, c 10 (the “Act”) or Regulations.[10] Investigations may be conducted in response to a complaint or other concerns that a developer is contravening the Act or Regulations. If an investigation proves the developer has contravened the Act, an order[11] or an administrative penalty may be issued,[12] or an action in Court may be brought and maintained.[13] Notices of administrative penalties must contain prescribed information,[14] allow for payment in 30 days or such later period of time as set out in the notice,[15] and be served in the prescribed manner.[16] The Regulations also provide a process for administrative appeals,[17] detail the offence sections and limit the penalties that may be issued.[18]

Impacts on Developers

The Act and Regulations have enhanced the duties of the developer including new disclosure requirements for new condominiums. The developer must now deliver additional information and documents to the purchaser,[19] including, but not limited to, the annual budget or a proposed budget, which must contain the following: projected total revenue and expenses of the corporation; specific projected expenses such as maintenance and repairs, insurance, utilities; and projected payments into the reserve fund.[20] The developer will want to be as accurate as possible in preparing the proposed budget as the developer may incur liability if the actual expenses incurred by the condominium corporation in the first year are more than 15% over the projected total expenses.[21]
There is also now a mandatory disclosure by developers of an occupancy date, either fixed or a range of dates within which the developer will make the unit available to the purchaser. If the unit is not made available to the purchaser within 30 days of the final occupancy date, the purchaser may rescind the purchase agreement, and the developer shall refund to the purchaser all monies paid by the purchaser. There are, of course, legitimate causes for delay, such as natural disasters, that do not give rise to the right of recession or liability for damages.

The Act now clarifies a purchaser’s right to cancel a purchase agreement within 10 days of signing the agreement, or from the date the purchaser received all required disclosure documents, whichever is later.

Within 30 days of the condominium plan being registered, the developer shall appoint an interim board of directors for the condominium corporation. Once a new board is elected, the developer must provide the board with all documentations related to the property of the corporation, including, all warranties and guarantees, all drawings and specifications, any plans that show the location of underground service lines, all agreements to which the corporation is a party, all certificates, approvals or permits, the building assessment report and any reserve fund report.

Building assessment reports (conducted by a professional engineer, professional technologist or a registered architect) now apply to condominium conversions in respect of a building that is not subject to the New Home Buyer Protection Act. Further, if a unit is part of a condominium conversion, the developer’s disclosure must also include a summary of the deficiencies identified in the building assessment report, a description of the previous use of the building and a copy of the reserve fund study and report.

Requirements concerning the handling of deposits have also been implemented. Deposits will now be required to be held by a prescribed trustee, being an active member (or members if a law firm or partnership) of the Law Society of Alberta or a holder of a permit issued under the Legal Profession Act. Accordingly, developers will no longer be able to hold deposits themselves. Deposits must be deposited into the prescribed trustee’s trust account within 3 days of the developer having received it. The prescribed trustee then has 10 days to notify the purchaser that the deposit is being held in his or her trust account.

Tribunal

A last notable change resulting from the amendments is the creation of a dispute resolution tribunal to address matters arising under the Act and Regulations. The Act sets out the process
by which an interested party may apply to the tribunal, the nature of the proceedings and any order that may be granted, as well applications for judicial review. The tribunal may, among other things, grant restitution, nullify or grant a stay of a sanction imposed by a condominium corporation, require the production of specific documents, appoint an investigator, dismiss a dispute, or award damages, costs and/or interest. Tribunal officers, have the same power as vested in the Court for the trial of civil actions and can summon witnesses and compel witnesses to give evidence or produce records.

[4] Act, s 30(1)
[10] Act, s 78.01.
[11] Act, s 78.2
[12] Act, s 78.3.
[14] Regulations, s 73.1.
[15] Regulations, s 73.2.
[16] Regulations, s 73.3.
[17] Act, s 78.5.
[18] Act, s. 79.
[19] Regulations, s 20.01.
[20] Regulations, s 20.03.
[21] Regulations, s 20.04(1).
[22] Regulations, s 20.08(1).
[23] Regulations, s 20.09.
[24] Regulations, s 20.1(1),
[26] Act, s 10.1(1).
[27] Act, s 16.1.
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