



LAND TITLES OFFICE

Interpretative Bulletin 2009-01:

Requirement for Description of Common Elements in Declarations Submitted Under the *Condominium Act* (*Condominium Act*, R.S.Y. c. 36)

A. Background

The term condominium is not defined in the *Condominium Act* ("CA"). The ordinary definition of condominium is "a single real-estate unit in a multi-unit development in which a person has both a separate ownership of a unit and a common interest, along with the development's other owners, in the common areas".¹

A condominium is a form of ownership that creates both separate *and* common interests in one parcel of land.

To create a condominium, you must apply to register a Condominium Plan with the Land Titles Office (LTO) that meets the requirements as set out in section 6 of the CA. A Declaration in the approved form that meets the requirements set out in section 5 of the CA must also be registered.

B. Requirement for Specification of Common Elements in the Declaration

It has recently come to the Registrar's attention that some Declarations submitted for registration do not sufficiently describe the common elements of the proposed condominium property. Rather it appears that some Declarations have relied upon, and incorporated, the definition of common element from the CA. Other Declarations contain no description of the common elements but refer to a depiction of the common elements in the Plan submitted under section 6 of the CA.

Under Canadian law, property must be "definable [and] identifiable by third parties."³ In order to make sure that third parties can identify what is included in

¹ Black's Law Dictionary, 8th Edition, at page 314. ed., s.v. "condominium".

³ B. Ziff, *Principles of Property Law*, 3rd Edition (Toronto: Carswell, 2000) at 5.

any condominium property, the Registrar requires that the Declarations include an adequate and specific description of the common elements of such property. This description should include both the element (e.g. a fence, a shed or a wall) and its location (e.g. on the west side of the property) such that a third party can reasonably identify what and where the common elements are.

In order for a Declaration to be accepted and registered by the Registrar, the following is required pursuant to subsection 5(1)(c) of the CA:

1. A Declaration must include a detailed specification of the common elements of the property.
2. To be considered adequate, the Registrar must be satisfied that this description contains sufficient detail about the common elements in order for a third party to identify the common elements associated with the condominium property.
3. Any Declaration that fails to adopt this approach will be rejected for registration by the Registrar.

C. Existing Declarations with Inadequate Descriptions of Common Elements

If the Registrar discovers that a registered Declaration does not comply with the above instructions, the Register will require the Declaration to be amended by the relevant owners so that it conforms to the above criteria. Such an amendment will be required before any future transfers in relation to that property will be registered by the Registrar.

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Land Titles Office
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