

The Condominium Act Review

What We Heard Report

**Yukon Department of Justice
Fall, 2012**

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What We Heard Report

Yukon's *Condominium Act* contains provisions related to the creation of a condominium by registering the originating documents in the Land Titles Office, and provisions that deal with condominium development, governance, and legal organization. The Act came into force in 1977 and is extremely dated. Its provisions reflect the development models of that time but do not allow for development outside of that limited scope.

In particular, the requirements for condominium plans, which show the boundaries of the lot, the unit entitlements and the common areas, have been identified as inadequate by developers and owners alike. There are no provisions for phased condominium development which developers would like to be able to bring to Yukon, and provisions for bare land condominiums are inadequate for current practices. There is also a concern that the Act provides insufficient protection to condominium buyers and owners. Yukon has no requirement for condominiums to build up a reserve fund to pay for major renovation and repair, such as replacement of the roof, the heating system, windows, plumbing and electrical.

The Act's provisions that establish the structure and management of condo corporations are permissive rather than prescriptive. The requirements as to the information to be provided to prospective condominium buyers and to condominium owners are very minimal. Provisions relating to condominium governance and the need to ensure sufficient funds to protect owners' interests are not up to the standards adopted in other Canadian jurisdictions.

The Government of Yukon is committed to modernizing the *Condominium Act* and solicited input from stakeholders on the best way to do it. Department of Justice officials prepared a *Condominium Act Review Discussion Paper* that was posted on the department's public website and distributed at the Land titles Office. Department officials have been examining all aspects of condominiums and researching legislation and best practices in other jurisdiction. Consultation with key stakeholders has taken place in concurrently with consultation undertaken in respect of the modernization of the land titles system in Yukon and included officials writing to every condominium corporation in Yukon at the address listed for the corporation in the Land Titles Office to advise them of the modernization of the Condominium Act and to solicit their input. As well, a public, evening meeting was held for condominium owners, potential owners and members of condominium Boards of Directors, to ask for their input before any options or recommendations for new *Condominium Act* provisions are drafted.

This paper is a record of what we heard during that targeted consultation. The names of the organizations and individuals with whom we met are listed, along with the dates of the consultation meetings, at Appendix A to this paper.

Recommendations for modernization of the Condominium Act will be submitted to the Minister before December 31, 2012.

The discussion paper provided basic information on the legal structure of condominiums and the issues that have been identified in the present Act, and posed a series of 45 questions which might help to focus the responses of stakeholders. The review and the questions asked focus on four critical areas:

#1 The nature of condominiums and how they are created:

A condominium corporation comes into existence when a developer registers a declaration and plan in the Land Titles Office. The boundaries of the building and each unit are specified in the plan. The declaration may specify voting rights, election of the board of directors, occupation and use of the premises, duties and responsibilities of the board and members, and other essential elements. The review will examine what minimum information must be filed to bring a condominium into existence.

#2 The governance structure of condominiums, decision making and the rights of owners:

Condominiums are unique corporations: owners of the units are the members of the condominium corporation, and elect a board of directors from among their membership. The board is responsible for the operation of the condominium building and the corporation. The owners of the units agree to share ownership and maintenance of common areas, while keeping individual ownership of their own units. The review will examine whether additional requirements and protections for the board of directors are needed, and whether some major decisions should be required to be made by the entire membership.

#3 The information available to consumers:

A major issue to be examined is what information members are entitled to receive from the board. The review is also looking at whether certain information should be required to be provided to potential condominium purchasers from the developer, such as financial, structural and legal information.

#4 How a condominium corporation can ensure that it will be able to meet operating and maintenance expenses:

Other jurisdictions require both reserve funds and reserve fund studies, which assess the lifetime of major assets, the cost of replacing them and the contributions needed to meet those costs. This fund can be established separately from a maintenance fund for regular on-going expenses, to ensure that the condominium will have funds to pay for replacement of major capital items. A reserve fund must take into account the life expectancy of common elements and the cost to replace them over the life of the building. The review will examine whether reserve funds should be required for condominiums in Yukon, and if so, for all condominiums, or only for large developments or new developments, as well as other details of potential reserve fund requirements.

THEME 1: Creation of the Condominium.

Developers explained that their priorities are primarily speed and consistency. The costs are huge for the developer if a project is delayed. If they have to deal with delays, some kind of consistent understanding would help. The architectural stamp on surveys is also unnecessary in their point of view. They said that condominium issues and Land Titles Office issues overlap and create problems that lead to delays. They acknowledged that Yukon seems to be working towards the same goal, and they expressed appreciation for that.

It was the view of some that the complexity of some condominium legislation in other jurisdictions should be avoided, but consistency with at least one outside jurisdiction is desirable, because of Yukon's low level of case law interpreting issues that arise. In addition, other jurisdictions have established standards for condominium developments that would assist Yukon.

We heard the suggestion that the distinction and differences between residential and commercial condominiums needs to be reflected in the Act.

a. The Declaration

Condominium Boards advised that they are finding that an adequate turnout is difficult to obtain and this is a challenge where amendments to a declaration or any substantial change to common elements require the approval of a very high number of members.

Some boards said that they have encountered confusion about the allocation of voting rights and have been told that consent to a change is not required when made by the developer. We heard that at least one developer has relied on counting empty units or the voting shares as a means of meeting consent requirements and members of that condominium board were concerned at what they saw as a unilateral ability to change the declaration and thereby the community they had bought into.

It was suggested that a 90 percent threshold for substantive plan or declaration amendments may be appropriate.

b. The Plan

Stakeholders asked about the purpose of the requirement in the legislation that a structural plan be signed off by an architect: is there a broad consumer protection intention regarding "structural plans," other than preserving the potential to rebuild condominium units as they were in the event of destruction of the building. It was pointed out that, in that case, the corporation would likely prefer to collect the insurance and rebuild a more modern building up to current code. It was suggested that the Department determine and clarify what the provisions outlining requirement for structural plans are trying to achieve.

We heard from the Regional Surveyor Branch of NRCan that the procedures and approvals for processing plans, as outlined in the Land Titles Plans Regulations, are out-dated as a result of the new requirements outlined in the Subdivision and Municipal Acts (Subdivision Control Bylaws) and need to be up-dated. Sketches and plans of surveys are still being approved by the Commissioner as per the Regulations, which duplicates the planning authority approvals required under the Subdivision and Municipal Acts. We were advised that this duplication of administrative effort should be removed by up-dating the Regulations. Further procedural changes should also be made to delegate the Commissioner's approval of survey plans to the appropriate planning authority.

As mentioned above, the requirement for an architect to sign off plans was questioned by stakeholders. In particular, we heard that the architects certification and structural plans should not be required in all cases. Some stakeholders told us that they do not need an architect's plan approval because they hire engineers to do the measurements. Architects add a significant cost. Developers would prefer to see the current requirement for an architect to certify that the building built is in accordance with the design drawings be removed entirely, but retain the requirement for surveyors' plans for the reason that the current double requirement seems redundant to them. Officials were advised by an architect that architects do not have an interest in signing off plans either. For large developments, it was noted that an architect is usually leading the design team anyway.

The Regional Surveyor Branch of NRCan told us that the Act should specify that the Surveyor General rules for condominiums apply, similar to provisions already in place in the Land Titles Act, that not all corners need to be monumented by surveyors and that the clause disallowing any reference to a building for bare land condominium plans be changed.

We heard that having to obtain a Court Order for clerical corrections to plans that have been signed off by the Surveyor general is too onerous. Alberta's procedures for corrections to plans as set out in their Manual, based on sections 92 and 93 of their Act Manual were recommended.

We heard that the role of the Surveyor General in reviewing and approving survey plans, establishing survey standards and working with the Land Titles Office should also be reviewed and reflected in new provisions in the Land Titles Plans Regulations that reflect more appropriately the surveying practices for condominiums.

As with the declaration, some condominium board members requested that the requirement to obtain the written consent of all owners, as well as encumbrance holders, to make changes to the plan should be maintained. Their reasoning was that, when an owner purchases a condo, especially within a phased development, they are purchasing a vision of future as laid out in the Plan, with expectations around number of units, density of those units, amount of parking spaces, road access and other issues. If

that vision is going to be changed by amending the plan, it should be a requirement that the consent of all owners and encumbrance holders be obtained.

Other condominium owners expressed the view that the current requirement of 100% approval of members to changes the original property plan should be reduced to 80%

One stakeholder suggested that registration of the plan should not have to raise title, because the plan is not binding until there is a sale or action on that plan. Developers would prefer not to raise title before they begin developing the property, because to do so triggers a requirement to pay taxes.

The City of Whitehorse advised of its intention to make its requirements for development agreements more stringent so as to require that developers provide “as built diagrams and plans” so that purchasers will know where common elements are.

We heard from layers, surveyors and the City of Whitehorse that registering easements through an easement plan should be mandatory because there are now some bare land condominiums where the easements are in the declaration, with the result that no one knows where the pipes run. In one case, we were told that a building was put on top of the pipes. It was recommended that we look at the provisions in other jurisdictions’ legislation for guidance.

c. Phased Condominiums

Stakeholders were pleased to see the inclusion of phased condo developments in the discussion paper, and some lawyers recommended the *Alberta Condominium Act* provisions which they felt lay out phased condominium provisions nicely.

It was suggested that Alberta’s “Phased Development Disclosure Statement” is a good precedent for use in Yukon. It requires full disclosure by the developer, allows owners to be fully informed on what they are purchasing and the developer cannot change the phased development disclosure statement without the consent of 2/3 of the owners who are entitled to vote under the Act. While some small changes may be able to be made without the consents, such as for utility easement agreements, but these should not result in any significant change to the plan.

The City of Whitehorse deals with requirements in phased condominium development plans not being completed by developers. In particular, landscaping is usually the last item to be completed because it must wait until other infrastructure, paving, etc. to be completed. A yard has to survive 2 growing seasons to be sure that it will endure – thus, a developer may want to move on from a development once it is done, but yet has to make sure yard is maintained for 2 years. We heard that some developers have abandoned their deposit and walked away when the deposit required was just 50% of the costs of completion of hard surfacing and landscaping.

d. Bare Land Condominiums

We heard that inclusion of provisions for bare land condominiums are a necessity, but may come with a host of problems. Again, Alberta's provisions were recommended by several stakeholders. Stakeholders told us that there has been a recent change to survey standards for bare land condominiums, for Yukon.

Stakeholders told us that, where a multi unit structure gets built on a bare land condo, some developers are not revising the plan to include common elements, so many of what would normally be common elements are not showing on the plan. This results in future problems when pipes burst etc.

An issue for large bare land developments in Whitehorse are internal roads as common elements maintained by the condominium corporation. Bare land units have never been treated as if they were fee simple lot boundaries, but rather are something different. There is often insufficient information as to where infrastructure, such as electrical, piping or other common services, is located vis a vis the configuration of the lots.

We heard that common elements for bare land condominium development need to be clearly defined, particularly so that so that bare land unit boundaries cannot go through a wall (where common infrastructure such as wiring and pipes may be located) and there is a minimum 1.5 metre offset from boundary lines, to parallel the requirement for fee simple detached housing.

The question was raised by a developer whether it is the city's role to approve what happens within a bare land condominium development, in the sense that the condominium property is essentially private land. They also said that bare land condominiums are developed for detached housing because they are cheaper than developing a subdivision. We heard from a stakeholder that bare land condominium developments are important because they serve a need for affordable detached housing in Yukon.

Some stakeholders told us clearly that the bare land condominium developments that are currently being built in Whitehorse are compromising the integrity of the *Condominium Act* because the Act did not intend the type of development that we are seeing. We heard that, currently, townhouses, apartments, row housing and so on are being constructed using bare land provisions, when the legislation is not designed for these. The bare land provisions are being used for interconnected units at a lower cost than either fee simple lots or regular condominiums, because bare land condominiums do not require an architect's signature. One stakeholder suggested that the term "bare land" be changed to "land units" because bare land condominium units are being sold with building constructed on them and that the provision in the current Act disallowing any reference to a building on the survey plan for a bare land condominium be changed.

We were urged to increase the clarity for this type of condominium, but at the same time retain the role and nature of bare land condominiums.

Some stakeholders advised that they had been told that the *Condominium Act* requirement for the condominium board to obtain and maintain insurance coverage for the units and the common areas means that the board has a duty to insure buildings located on those individually titled units as well as buildings located on common areas. Purchasing insurance for the various sizes and types of buildings that may be built on a bare land unit is difficult, if not impossible, for a condominium corporation.

Bare land condominium unit owners requested clarity as to who bears the duty to insure the building on bare land condominium units, as well as certainty regarding whether the “unit” is comprised of only the portion of land titled to the owner, or whether the “unit” included any building located on it. In a bare land condominium, a building is not required to be on the unit when the condominium plan is filed with the Land Titles Office. Condominium owners said they had been told that the *Condominium Act* requirement for the condominium board to obtain and maintain insurance coverage for the units and the common areas means that the board has a duty to insure any buildings on bare land condominium units, the units, and the common areas.

e. Duplex Condominiums

Several stakeholders requested that we consider whether duplexes should continue to be allowed as condominiums. We were asked to consider whether the size of a condominium might be a factor in determining the number and complexity of *Condominium Act* provisions that its members must comply with. In particular, many stakeholders wondered whether side-by-side duplex condominiums should continue to be allowed under the Act, considering that it may not be appropriate to expect the owners in a two unit condominium corporation to take the time to understand and cope with all the requirements in the Act.

It was suggested that a provision for dispute resolution for those people who own two-unit duplex condominiums should be added to the Act. A common issue for existing duplex condominiums is that electrical, water and sewage services come in under one of the units, despite the fact that the services serve both units. An agreement or an easement is then needed so that those services can be accessed by the other owner. Usually, these services are not listed as common elements, with the result that, arguably, the portion of services under only one unit belong to that unit owner. The potential for disputes is not desirable.

Stakeholders told us that future side by side duplexes should not be permitted as condominiums under the Act, but that possibly existing duplex condominiums should be released from most of the requirements under the Act.

The issue of having a boundary through a common wall in which common services are located was raised as a problem. The solution would be ensure there are separate services to the each side of a duplex or any attached residential housing such as row houses. However, where there is existing attached housing being serviced by one

common service that serves several units (commonly water and sewer pipes but also sometimes electrical lines), it would require ripping up a street and sidewalk to install separate services to each unit. No one wants to pay for that.

f. Commercial Condominiums:

Some stakeholders recommended that new legislation should recognise commercial condominiums. Others said they would not like to see different legislation for residential and commercial condominiums.

g. Conversions and Older Buildings

We heard from stakeholders with regard to the conversion of older rental properties to condominiums. It was suggested that a bond might be posted by the developer to address the cost of anticipated future repairs, and the bond could be transferred to the condominium corporation. Criteria would have to be very clear as to how funds are used and the corporation could be audited. The bond could be rolled into a maintenance cash infusion from the developer. Condominium owners want to make sure that older buildings are protected as legislation changes. We heard that the developer should be transparent in regards to the changes in the buildings resulting from condominium conversion

Stakeholders generally said that there should be provisions governing the conversion of existing rental buildings to condominiums to protect tenants.

Some stakeholder recommended that current rentals should be kept as rentals, and not be permitted to convert to condominium developments, because Whitehorse has not had new rental housing of any size for 20 years. We heard that it would be a relief to many families worried about conversion.

h. Common Elements

We heard that “common elements” means something different to surveyors than to other stakeholders. Surveyor’s common elements are based on land. There have been inconsistencies with interpretations of provisions addressing common elements. We heard suggestions that a new Act clearly differentiate between common elements in terms of shared infrastructure and common areas.

We were advised that in the United States, the common elements are required to be 100 percent complete before the sale of units. Generally, all stakeholder wanted better definition of common elements.

i. Other

Unfinished Developments:

Some stakeholders wanted better protection for purchasers of condominium units where a condominium development is only partially completed before owners move in. There is a concern that a developer will walk away rather than completing it. Developers said that such a requirement was impractical and did not reflect the realities of a condominium development where sales had to be made in order to continue the project. The City of Whitehorse advised that it was now requiring a larger bond from developers to ensure that if the developer were to discontinue work, the City would have the funds to complete it

Builder's Liens:

We heard from surveyors that they don't usually put liens on developers' construction and that liens like that don't work well in Alberta because the developer will sue the surveyor for prohibiting sale. Water boundaries:

The issue is that water moves. Surveyors suggested for a working group to discuss how to deal with water boundaries and other natural boundary changes. We were told that the NWT legislation provides for water boundaries

Air Space Parcels:

Surveyors told us that this is an issue in southern jurisdictions that will come to Yukon. Air space parcels are created in condominiums to separate ground floor commercial space from upper floors' residential space. Another example of air space parcels is overhead walkways.

THEME 2: Governance of Condominiums.

a. Consumer awareness

We heard that, although the condominium corporation Board of Directors is elected by all members to represent them, any unit owners do not understand that and think the board is a separate or independent body. There needs to be more basic information and education about condominium corporations and responsibilities. Owners also forget that condominiums have shared common places.

Condominium owners and condominium corporation directors told us that at times it is hard for boards and members to make collective decisions. Stakeholders said that the details and structure of the process of electing a board has to be clear and buyers need to understand the structure and responsibilities of the elected board when they make their purchase.

b. Bylaws

Some stakeholders told us that the Board of Directors should have to hold a vote by homeowners in order to change any bylaws. The Act may be unclear about what should be in a plan, what should be in the bylaws, and what can be in the rules.

We heard that it can be difficult for the board to meet the requirement that a bylaw they propose must be approved by members owning two thirds of the common elements. This is particularly the case if there is a low voter turn-out.

A consideration of how voting rights are dispersed through the corporation was recommended. When voting rights are set out in the declaration that is drafted by the developer, voting rights can be consolidated within certain units that the developer retains, thereby ensuring control over management of the condominium. This scenario makes it difficult, for example, for an elected Board of Directors to vote in bylaws that may be in the best interests of all of the membership. One unit-one vote would be a more appropriate standard.

c. Enforcement of Bylaws and Rules

Another common issue identified by a number of stakeholders is the lack of enforcement mechanisms for breaches of bylaws and rules in bylaws. A standard complaint is that if a rule is breached, such as “no clotheslines”, all the board can do is send a letter, and if the breach is not corrected, nothing happens. Some condominium boards have, by by-law, made provision for fines, but it is not clear whether that is authorized. If a fine is not paid, it is unclear what the board can do. We heard that there is a general need to authorize fines and their collection as a special assessment. We were asked to look at other jurisdictions for enforcement options.

One condominium corporation board told us that a new Act should ensure that the Board has the power to levy fines because currently there is no formal process, outside of the lien process, to remedy bylaw violation other than notice letters. A lien may be out-of-proportion for minor violations, because it can cost a minimum of \$500 to register a lien for a small violation.

d. Corporate Records and Information to Owners

We were told by owners and by some corporation directors that the current provisions for corporate records and information about maintenance are minimal. Again, we were asked to review the requirements in other jurisdictions, and improve corporate record requirements. Stakeholders told us that some condominium boards have no minute book or other corporate records. It was suggested that board resolutions should be required to be in writing.

There was a consensus among stakeholders that corporate information, including financial records, contracts, information on debts, minutes, and so on, should be available to owners. Some owners report that they have experienced abuse after asking for corporate records.

e. Turn Over of the Corporation from the Developer to an Elected Board

We heard from condominium owners that there should be a clear turnover process with regard to passing along responsibilities to an elected Board of Directors. We heard that turnovers are currently a source of legal disputes and that many condominium developments are being turned over before they are effectively completed.

We heard that in many southern jurisdictions, common elements must be completed before units are transferred so that on turnover, the board does not have to deal with completing a condominium development that is not finished. In addition, there should be some provision to allow a board to terminate agreements made by the developer, as well as a requirement that adequate financial and other information be provided to the elected board and that a minimal initial reserve and operating fund be provided for the elected board on turn over.

The topic of incomplete common elements was discussed several times by several different stakeholders. Developers expressed their view that it is not practical to finishing things such as driveways and parking before people move in. Stakeholders expressed concern that new owners are getting stuck with debts incurred by the developer.

We heard that some buyers are surprised after buying a condominium that the small monthly maintenance fee they that they thought they took on was not applicable and that the fee had to be significantly raised because the original amount was insufficient for the condominium corporation to pay its expenses.

f. Eligibility to be a Director

Some stakeholders suggested term limits for board members because the board composition may not turn over as often as it should. Some boards operate without a quorum.

There was not much support for the idea of tenants being eligible to be elected as directors although an advisory role for tenants was identified as appropriate by two condominium boards. It was also thought that in some circumstances an elderly or infirm person might have a family member act as their proxy on the corporation board.

g. Duty of Care and Conflict of Interest; Liability and Indemnification

Stakeholders told us that there is a low level of awareness regarding the concept of liability of a board member. Many people do not fully understand their role and liability if the board makes a mistake. One condominium corporation director referred us to the Volunteer Bureau which he felt was very helpful in offering training.

Most stakeholders agreed that board members should be indemnified. As long as they are acting in good faith, do due diligence, declare conflict of interests, adhere to the appropriate duty of care and rely in good faith on a professional's opinion in carrying out

their duties, they should not be personally liable for loss or injury resulting from their decision.

We heard that a condominium corporation should be required to indemnify its directors and officers for any liability and costs incurred as a result of an action or proceeding respecting anything the director or officer did, omitted doing, or permitted, in carrying out his or her duties or functions, as long as the directors or officers was not acting in breach of them. We also heard that the condominium corporation should carry director's liability insurance although that is sometimes difficult to get.

h. Rights of Owners to Participate in Decision Making

Several condominium owners and corporation directors said that budgets should be required to be approved by unit owners, rather than by the board alone. Condominium owners said that owners should approve the annual overall budget, but fine tuning should be left to the board. Stakeholders said that any large amount being borrowed should also have to be approved by the membership.

We were cautioned by a member of the real estate bar to be careful about loosening the requirements in respect of the approvals needed for amending condominium declarations or plans. The requirement for full approval for amendments has been critical for financing, and also for protection of existing unit owners and their investment. Requiring a lower approval percentage than is the norm in other jurisdictions is very ill advised.

Some owners felt there should be vote of all owners, with a threshold of 80 percent approval, where substantial changes are considered to the "vision" and premise of the condominium, such as increased density, alterations to parking arrangements, road access, or fee structure.

i. Voting Rights

Stakeholders told us that they would like to see a limit on how many proxies one member can have. They agreed that tenants not be allowed a vote. We heard that proxy votes raise questions with regard to the board's liability because tenants do not have the same responsibilities or accountabilities: they do not have an investment in the condominium as owners do, so it does not make sense that they be able to make financial decisions.

Some stakeholders said that they would like to accommodate those who cannot come to the meetings if they are elderly or ill, but would like to be represented.

j. Remedies, Dispute Resolution and Liens

We heard that when some condominium owners don't pay their condo fees, it can take years for the corporation to get its money through a lien on the property. In the

meantime the other owners effectively support the delinquent's lifestyle. The modernized Act should make it easy and faster for the condominium board to force the sale of a condominium unit in these circumstances. Board members would like to have options beyond the lien system, and are open to other models.

Condominium owners and board directors agreed that boards need the power to levy fines for unpaid common expenses or reserve fund levies. Some said that unit owners in arrears should also lose their right to sit on the board or to vote until their contributions to common expenses are paid in full.

Condominium corporations and owners were very aware that other unit owners have to pay the debt for non-paying unit owners, and have to carry the responsibility for that person. One condominium board told us that they make it a priority to work with their unit owners when owners do not pay their maintenance fees or are in arrears. The board will write letters and start a payment plan with the owner. This condominium corporation board establishes direct withdrawal mechanisms for monthly condominium fee payments for many of the owners or tenants. Their experience is that disputes between neighbours or between owners and the board are infrequent. If the board provides all of the condominium information openly, they will be unlikely to have disputes regarding information sharing.

Nevertheless, condominium board members tended to like the concept of having an alternate dispute resolution in place in the event such a problem should arise and agreed with settlement mechanisms such as mediation and arbitration. One condominium corporation director suggested that this could be expanded and that other avenues of collection be included such as small claims court, collection agencies, etc., and that the government should offer templates and expert guidance for these situations.

One condominium board told us that because it does not have the power of eviction, there are currently 8 to 9 units in arrears, which costs the corporation thousands of dollars monthly. The corporation cannot garnish wages. Condominium owners and board members said that having large arrears could lower the value of all of the condominium units because investors would not want to buy into an unreliable condominium asset. Condominium boards pointed out that the interest payable and the cost of collecting the money for unpaid fees just increases the amount owing.

We were told that it is important that those working on the *Condominium Act* modernization we look at different means of collection. Some non-resident owners ignore the condominium fees completely.

With respect to liens for unpaid condominium fees, some stakeholders told us that the current structure works well and must be maintained; otherwise the viability of some condominium corporations is at risk. Others said that liens are not very effective for quick resolution of unpaid fees, but that sometimes unpaid fees are recovered after the units sells. We were told by condominium owners and directors that condominium liens should take priority over other types of interests or charges that can be registered

against a title, and ideally, a new Act should be clear that special assessments are also enforceable through liens.

k. Disclosure of Information and Cooling Off Period

Stakeholders agreed that a new Act should include a requirement for the developer and/or the Board of Directors to provide information to owners, prospective buyers or mortgagees, such as financial statement, 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 (if any), a copy of the minutes of meetings, and or a copy of any agreement for the use of the common property. We heard from owners that it should be mandatory so that each condominium unit buyer receive a package with information from the realtor, so that they know exactly what they are buying and what responsibilities they are taking on.

We heard from condominium owners that sometimes they do not receive the information that they would like to access. Some documents can be confidential and private so that has to be considered but stakeholders still recommended establishing a protocol for easier access to information for the condominium corporations. Some condominium directors pointed out that often sales are owner to owner and, if a private sale, no notice is given to the corporation when a sale has occurred.

Some stakeholders suggested that condominium purchasers should be entitled to receive an information package so they will have disclosure on what they are buying and what responsibilities they are taking on.

l. Insurance

Developers urged that a new Act must be similar to legislation in other jurisdictions to ensure that financing does not become an issue. We heard from other stakeholders that some condominium corporations are in breach of the insurance requirements in the current Act because can be challenging for the Board of Directors to get condominium insurance in some circumstances. One condominium corporation had to remove the wood fireplaces in all of the units in order to get insurance. We also heard from one condominium corporation that its insurance deductible is \$100,000.

Condominium corporations and owners question whether condominium corporations have the ability to insist that every property owner has condominium insurance. Some were advised that their corporation did not have the right to enforce this requirement and suggested that legislation should address the situation.

m. Other

Managers for Condominiums:

One stakeholder was of the opinion that a condominium manager should not be a unit owner in that condominium development, because the manager may spend the condominium fee money to address his or her own priorities without asking all the owners what they would like.

Using the Condominium Unit for Business:

The majority of stakeholders said they thought that using a residential unit for operating a business should not be allowed.

Affordable Housing:

One stakeholder recommended that we look for guidance to the municipality of Whistler which has a policy that a percentage of all new development must be affordable housing for permanent residents or seasonal workers.

Education:

Some stakeholders suggested that the newly-formed Yukon Condominium Owners Association be recognized in the Act with its main responsibility being to educate those interested in owning condominiums or those trying to set up a condominium. We heard from several more that there is a need for public consumer information programs to go along with new legislation and a capacity building plan for consumer education was recommended.

Rental Surcharge:

Some condominium corporations levy a surcharge for owners who are renting their units. This may take the form of a “moving in/moving out” fee, or a specific amount in addition to the owner’s usual monthly maintenance fee, to cover the increased wear and tear and maintenance of the common elements.

Retroactive Application of a new *Condominium Act*:

Stakeholders expressed strong feelings about the issue of retroactive application of any new legislation. Existing corporations were concerned that a new Act might create inconsistencies with their current declaration or bylaws, and suggested that new legislation should not be retroactive. A Representative of a developer, on the other hand, thought that new legislation should be retroactive so that the same rules apply to all. Otherwise new developments would not be competitive with those established before modernized legislation.

THEME 3: Reserve Fund and Reserve Fund Study

a. Reserve Funds:

All stakeholders told us that condominium developments should have a Reserve Fund to pay for the cost of major building repairs and replacements, and should contribute to it every year. The amount of contributions should be specific and mandatory. They agreed that condominium corporations should be required to maintain a reserve fund, but also suggested that:

- government provide a template and a formula for determining what size this fund should be, based on what is used in the rest of Canada,
- reasonable timelines for setting up a Reserve Fund should be provided;
- software programs that greatly simplify this exercise could be made available for condominium corporations to use, at government expense; and
- condominium corporations should earmark a percentage of monthly condominium fees for the Reserve Fund, whether or not this is a legislated requirement.

Some stakeholders were concerned about how costly a Reserve Fund would be for a small condominium group. Others felt the requirement would result in an unacceptable increase in cost for buyers.

Most, however, said that the cost would balance out in the long run, because if something needs repair in the future, owners would be better prepared financially. Some stakeholders mentioned that a Reserve Fund will only grow over the years, and may lower maintenance costs in the future; it should be viewed as an investment, rather than as an expense. Stakeholders who work with condominiums expressed concern about those that have no Reserve Fund.

We heard from some stakeholders that Reserve Funds should be made mandatory, and Manitoba's condominium legislation provisions regarding Reserve Funds and rules for managing them, as well as developers' contributions were recommended. We were also told that Reserve Funds should be kept in trust, and standards for those funds should be more important than anything else in a new Act. Stakeholders recommended that Reserve Fund must be secure and prescribed, rather than invested in the stock market. There should be realistic limits set on the levy for a Reserve Fund.

Some stakeholders were unclear about how much of the corporation's funds should be allocated to the Reserve Fund account and we heard that a minimum requirement should be part of a new Act rather than leaving it in the hands of condominium corporations. While some stakeholders suggested a flat levy of 10 percent of the corporation's monthly revenue, others said that their board tries to project what kind of work will be needed in the future and obtain cost estimates for that work. In the case of one corporation, from 10 to 15 percent of the condominium fee has been allocated to the corporation's reserve fund.

Some condominium corporations have borrowed money to grow their reserve fund, and questioned what rules should apply to those kinds of financial decisions. Currently, the Act is silent with regard to these topics.

We also heard that, because in a bare land condominium it is unclear what is included in the common elements, there is also no clear picture of what common

elements the corporation will be responsible for and how large the condominium Reserve Fund should be.

On the other hand, one stakeholder told us that there is no need to legislate requirements on such matters as minimum condominium fees; rather, the individuals who come together as shared owners of a condominium should be chiefly responsible for looking after their collective interests. That stakeholder suggested that there is ample opportunity for potential purchasers to speak to the condominium executive to find out financial information and insurance coverage to determine whether the infrastructure is sufficiently covered. It was suggested that a buyer's lawyer should automatically request information on the investments and insurance of the corporation. This person said that owners are interested in ensuring the value of their homes and they do this well. It is the responsibility of the condominium members, individually and collectively, to manage their affairs, and there is no reason for the state to tell them how to do this.

b. Reserve Fund Studies:

We heard that the cost of reserve studies is an issue. While Reserve Funds are clearly necessary in Yukon, a reserve fund study may be an excessive requirement for what are mostly small condominium developments here. In particular, smaller condominiums such as duplex condominiums will likely have difficulty sorting this out. Some stakeholders advocate that firm reserve processes and rules should be in place: condominium owners should be required to put money away into the reserve fund, and that developers have to be responsible until they sell the units.

There is a need for reliable professionals that condominium corporations can rely on to carry out these studies. Stakeholders questioned whether there is anyone in Yukon who is qualified to conduct a reserve fund study, particularly one who is affordable and located within reach of smaller corporations. We heard that finding professionals who can complete a reserve fund study will be tough.

One condominium board said that a strategic plan with Yukon Housing and Yukon College would be helpful in achieving a program to train people to do these studies. A condominium corporation currently has to hire people from outside the territory which is not cost effective.

Several stakeholders noted that major replacements and repairs to any building follow a predictable cycle and that updates to any reserve fund study should reflect this. Rather than update a reserve fund study every 5 years, as is required in some jurisdictions, every 7-10 years was suggested as more reasonable. Another suggestion was to consult with more experienced condominium boards to discuss how to estimate Reserve Fund fees as they could assist in listing the most common costs to be taken into account and make use of their experience. A condominium owner suggested the developer could use the fixed unit costs and information to determine the appropriate amount for a reserve fund and that the board could use the reserve fund study and the developer's initial payment amount to build upon in the future.

One condominium owner stated that he found it disturbing that local developers are doing the own reserve fund studies and are setting the condominium fees. This same owner explained that a condominium corporation in Ontario has a contingency fund as well as a reserve fund.

Other Issues raised not under purview of the *Condominium Act*:

Stakeholders raised other issues not under the purview of the *Condominium Act* or this review:

- Questions about whether a New Home Warranty Program could be established in Yukon;
- Questions about whether Yukon would tackle to topic of building standards, currently under the jurisdiction of the City of Whitehorse;
- Confusion about the 10% hold backs under the *Builder's Lien Act*.

**Appendix “A”
List of Stakeholders and Meetings**

July 30, 2012	Surveyor General Branch, Natural Resources Canada officials
Sept. 4, 2012	City of Whitehorse officials
Sept. 17, 2012	Land Titles and Survey Authority of B.C. officials (teleconference)
Sept. 26, 2012	Developers and Financial Institutions officials
Sept. 26, 2012	Law Society of Yukon representatives
Oct. 10, 2012	Public meeting on the <i>Condominium Act</i> , Town Hall, Gold Rush Inn
Oct. 16, 2012	Association of Canada Land Surveyors (ACLS) representatives
Oct. 22, 2012	Appraisers practicing in Yukon
Oct. 26, 2012	Yukon Electric officials
Oct. 29, 2012	Land Titles and Survey Authority of B.C. Site Visit
Oct. 31, 2012	Yukon Departments Working Group on Land Titles Modernization
Nov. 7, 2012	Alberta Land Titles Office, Service Alberta, Site Visit
Nov. 8, 2012	Saskatchewan Information Services Corporation (ISC) Site Visit
Nov. 13, 2012	Condominium Corporation #6 (written submission)
Nov. 20, 2012	Yukon Housing officials
Nov. 20, 2012	Condo Corporation #2
Nov. 22, 2012	Condo Corporation #95
Nov. 23, 2012	Land Titles Office members of staff
July 30 – Dec. 7	Email messages received at condoactreview@gov.yk.ca