

Government of Yukon

# Summary of a draft new Condominium Act

2014

Department of Justice

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# Summary of a draft new Condominium Act

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## Table of Contents

Background .....	4
New regulations .....	4
1 – INTERPRETATION .....	6
Bare land unit, conventional unit, phased development, mixed-use development .....	6
Common assets, common property, common expenses .....	6
Conventional building unit.....	6
The declaration .....	6
Eligible voter, transition period, ordinary and special resolutions.....	7
2 – CREATING A CONDOMINIUM.....	7
Effect of registration .....	7
The plan.....	7
The declaration .....	8
The index, the register, the corporate record folder, and titles.....	8
3 – CONDOMINIUM PROPERTY .....	8
3:1 Units, common property and exclusive use common property.....	8
Unit ownership.....	8
Common property ownership.....	9
Boundaries of conventional building units .....	9
Exclusive use common property .....	9
Property taxation, liability .....	9
3:2 – Implied Easements .....	9
3:3 – Other common assets .....	9
3:4 – Transfers and encumbrances of common property and common assets .....	10
3:5 – Repair and maintenance obligations .....	10
Repair of common property .....	10
Repair of units.....	10
3:6 – Work orders and builders’ liens.....	10
Work orders .....	10
Builders’ liens.....	11
4: SALE OF UNITS BY DEVELOPER .....	11
Duty of fairness, disclosure to purchaser .....	11
Right to cancel the agreement of purchase and sale .....	11
Occupancy.....	11
5: CONDOMINIUM GOVERNANCE .....	12
5:1 – The condominium corporation.....	12
5:2 – Board of directors.....	12
Eligibility to serve as director .....	12
Membership of board .....	12
Director’s standard of care .....	12
5:3 – Change of control from developer to elected board of directors.....	13
The first directors.....	13
First annual general meeting .....	13
5:4 – Meetings of unit owners and other eligible voters .....	14
Special general meetings .....	14
Quorum .....	14
5:5 – Voting Rights.....	15

## Summary of a draft new Condominium Act

---

Tenants and mortgagees .....	15
Proxy votes.....	15
Voting thresholds.....	15
Resolutions before the first annual general meeting.....	15
6: BYLAWS, RULES AND ENFORCMENT OF RIGHTS AND DUTIES.....	16
6:1 – <i>General</i> .....	16
Bylaws .....	16
Rules.....	16
6:2 – <i>Rentals</i> .....	16
Tenancy agreements.....	16
Long term tenants.....	16
6:3 – <i>Sections</i> .....	17
Mixed use development may have sections.....	17
6:4 – <i>Enforcement of rights and duties</i> .....	17
7: FINANCES .....	17
7:1 – <i>General</i> .....	17
Financial responsibility for common expenses.....	17
Reserve Fund.....	18
Fiscal year.....	18
7:2 – <i>Fees and expenses before transition period begins</i> .....	18
Time period 1 .....	18
7:3 – <i>Fees and expenses during transition period</i> .....	19
Time period 2 .....	19
7:4 – <i>Fees and expenses between first and second annual general meetings</i> .....	19
Time period 3 .....	19
7:5 – <i>Financial management after second annual general meeting</i> .....	19
Time period 4 .....	19
Budgets .....	19
Financial statement.....	20
Operating fund expenditures.....	20
Reserve fund expenditures .....	20
Special levies .....	20
7:6 – <i>Reserve fund study</i> .....	20
Qualified person.....	20
Exemptions .....	21
7:7 – <i>Collecting money owed to condominium corporation</i> .....	21
7:8 – <i>Insurance</i> .....	21
Insurance on bare land condominiums and managed areas.....	21
Liability insurance for directors .....	21
Duty to report on insurance .....	21
9: CONDOMINIUM MANAGEMENT .....	22
9:1 – <i>Records and Information Certificates</i> .....	22
Obligation to keep records .....	22
Information certificate.....	22
9:2 – <i>Contracts</i> .....	22
9:3 – <i>Methods for giving notice and providing information</i> .....	22
9:4 – <i>Corporate notices to be filed with registrar</i> .....	22

---

## Summary of a draft new Condominium Act

---

10: FUNDAMENTAL CHANGES .....	22
10:1 – Amending a condominium plan to change exclusive use designations .....	22
10:2 – Amendments to subdivide or consolidate common property or units .....	23
10:3 – Amalgamations .....	23
11: LEGAL PROCEEDINGS AND ARBITRATION .....	23
11:1 – General .....	23
Court ordered investigator .....	23
Arbitration, conciliation, mediation .....	23
Application to court .....	23
11:2 – Proceedings against a condominium corporation .....	24
11:3 – Proceedings by a condominium corporation .....	24
11:4 – Proceedings between a condominium corporation and a unit owner .....	24
12: TERMINATING A CONDOMINIUM.....	24
12:1 – General .....	24
12:2 – Voluntary termination without court order .....	24
12:3 – Court ordered termination .....	24
13: GENERAL .....	25
Offences .....	25
Authority for regulations, transitional provisions, coming into force date .....	25

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## Summary of a draft new Condominium Act

---

### Background

A condominium is a form of real property ownership where the owner has title to a specific dwelling unit, parcel of land and undivided interest in common areas. The owners agree to share ownership and maintenance of common areas, while keeping individual ownership of their own units. The condominium is a corporation under the *Condominium Act* and is run by a board of directors; however, it is not subject to the *Corporations Act*.

The rapid increase in condominium development in Yukon over the last few years has been a source of great public interest. Developers, owners and government recognize that the *Condominium Act* is out-of-date, and want to see modernized legislation that reflects the best practices of other Canadian jurisdictions.

In the fall of 2012, Justice, working with a Stakeholder Advisory Committee representing key interests, circulated a Condominium Act Review discussion paper and met with stakeholders who provided feedback about the main areas of condominium oversight, including:

- the nature of condominiums and how they are created;
- the governance of condominiums and the condominium corporation, requirements for decision-making and the rights of owners to participate in decision-making;
- access to information by the board of directors and owners; and
- how condominium corporations can ensure they will be able to meet the costs of repairs needed.

The Stakeholder Advisory Committee then made recommendations to government in respect to modernizing the condominium legislation in Yukon. Justice established a drafting advisory committee that included representatives of expert stakeholder groups, such as the Real Property Subsection of the Canadian Bar Association, Natural Resources Canada Surveyor General Branch and the Association of Canada Lands Surveyors. In addition, representatives of the Surveyor General Branch and Yukon's Land Titles Office met regularly and identified a number of issues to be addressed in the new legislation. If you would like more information, visit the Land Titles Modernization Project webpage at:

[http://www.justice.gov.yk.ca/prog/lis/lto/land\\_titles\\_modernization.html](http://www.justice.gov.yk.ca/prog/lis/lto/land_titles_modernization.html).

Justice will be continuing to work on the drafting of this bill throughout the consultation period.

### New regulations

Regulations that apply to the special circumstances of phased condominiums and bare land condominiums will be established under this new act. Justice will be further consulting with our stakeholders to discuss the contents of the regulations, once the act is finalized.

## Summary of a draft new Condominium Act

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### **Do you have any comments or questions about the proposal for new legislation?**

Please direct your comments and questions by email, telephone or mail to:

Email: [condoactreview@gov.yk.ca](mailto:condoactreview@gov.yk.ca)  
Telephone: 867-393-7081  
Fax: 867-667-5200  
Mail: Land Titles Modernization, Department of Justice, Government of Yukon,  
Box 2703 (J-1A), Whitehorse, Yukon, Y1A 2C6

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# Summary of a draft new Condominium Act

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## 1 – INTERPRETATION

The new act will update definitions in the current *Condominium Act*, and add new definitions for terms not previously defined in order to add clarity. Some new definitions cross-reference other legislation. Some of these are:

### **Bare land unit, conventional unit, phased development, mixed-use development**

The term “bare land unit” is defined to be consistent with other jurisdictions. In a bare land condominium, a unit is a portion of land whether there is a building on it or not, including all of the space vertically above and below the boundaries of that land. Similarly, the new term “phased development” is added to recognise that developers often choose not to build all units in a planned condominium development at once. Rather, they may build and sell units from the first phase of construction to fund construction of the second phase, and so on. The new term “mixed use development” defines condominiums in Yukon that have both commercial and residential units, with differing needs, in the same building.

### **Common assets, common property, common expenses**

The “common assets” of a condominium are assets owned by a condominium corporation on behalf of the unit owners, such as the lobby furniture, fitness or playground equipment, or facilities such as a fitness centre, or parking areas. On the other hand, the term “common property” (which replaces the former term “common elements”) covers common utilities such as electrical, plumbing, wires or cables, air ducts, water, sewage, garbage and drainage infrastructure, oil, gas and electricity, heating, cooling and fire suppression, etc. These are owned by the unit owners and shared in proportions equal to their unit entitlements. “Common expenses” are more explicitly defined than previously to eliminate as much as possible disputed interpretations.

### **Conventional building unit**

The term “conventional building unit” is introduced to distinguish the traditional stratified apartment-style type of condominium unit from bare land condominiums. The new term “converted building” recognises that existing apartment buildings in Yukon are being converted into condominiums. As older buildings, they may have particular structural and repair issues.

### **The declaration**

A new definition of “declaration” expands the formerly minimal requirements for a declaration. The declaration essentially “declares” the developer’s request to establish a legal condominium that is regulated under the rules established in the new legislation. The declaration would include newly required schedules: a schedule of unit entitlement and a schedule of voting rights. Registering a declaration together with a plan of survey in the Land Titles Office causes a condominium corporation to come into being. That corporation has the responsibility to manage the condominium and its property on behalf of and for the benefit of the unit owners.

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## Summary of a draft new Condominium Act

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### Eligible voter, transition period, ordinary and special resolutions

“Eligible voter” is a new term needed because voting rights and eligibility are being more thoroughly defined. New definitions help to define the change-over period from the developer to an elected board of directors. One such new definition is the term “transition period”, which is the period from the first conveyance of a unit by a developer to a purchaser up to the first annual general meeting.

An “ordinary resolution” is one that is passed at a general meeting by more than 50 percent of the votes cast by eligible voters who voted in respect of the resolution, or passed in a written resolution signed by more than 50 percent of all eligible voters. By contrast, a “special resolution” requires more than 66 2/3 percent of the votes cast at a general meeting, or a written resolution signed by more than 66 2/3 percent of eligible voters.

### 2 – CREATING A CONDOMINIUM

An application to create the condominium is submitted to the registrar of the Land Titles Office. It must include the declaration and the plan of survey. It must also include a notice of the bylaws that apply to the condominium corporation, a notice stating who the first directors are, an address for service on the condominium, and anything else required in regulations.

#### Effect of registration

Once the application has been registered, it has the effect of dividing the original parcel of land shown on the plan of survey into units to be owned by individual owners and common property that is owned as undivided common property by all the owners together. Each unit is a single parcel that has a certificate of title. The undivided common property has a common property certificate in the name of the condominium corporation. Individual units in a condominium development cannot normally be divided into smaller units.

#### The plan

A condominium plan is the plan of survey for the entire condominium development that is registered in the Land Titles Office. It will be required to state in its heading whether it is a plan of conventional units, bare land units, or a phased condominium plan. It must show the external boundaries of the condominium as a whole, the boundaries of each unit, the approximate area of each unit, the boundaries of common property areas and their uses (such as parking, playground, landscaping, etc.), as well as other requirements in the act or regulations.

Condominium plans will have to comply with requirements:

- boundaries are established in accordance with the *Canada Land Survey Act*;
- any projections beyond the external boundaries have an easement for them;
- an architect, engineer or Canada land surveyor must certify that any buildings shown on the plan are the same as the actual buildings that exist; and
- the applicable planning authority (which will be either a city authority or the Yukon government) has approved the division of land on the plan.

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## Summary of a draft new Condominium Act

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### **The declaration**

The condominium declaration, which will be in a prescribed form, must be signed by the developer and any encumbrance holders (such as a mortgagee). It must also include a schedule of unit entitlement that allocates to each unit a fair portion of the expenses, liabilities and assets of the corporation and a schedule of voting rights that set out the number of votes allocated to each unit.

A notice of first directors is required to be filed with the declaration. It names the first directors of the condominium corporation who are appointed by the developer, and who hold office until the first annual general meeting of the condominium corporation. A notice of bylaws must also be filed at the same time. It must specify that the condominium corporation is to be governed by the standard bylaws that will be provided in new regulations, the standard bylaws as amended or new bylaws. Either way, a complete set of the actual bylaws are registered at the Land Titles Office along with the declaration.

### **The index, the register, the corporate record folder, and titles**

The registrar keeps all of these documents in folders for each registered condominium. The condominium index at the Land Titles Office records the name of each condominium corporation. The condominium register holds the common property certificate for the condominium as a whole and the certificate of title issued for each unit.

The registrar also:

- creates a corporate record folder and in it files the notice of bylaws, notice of first directors and notice of address;
- registers the condominium plan of survey;
- cancels the former certificate of title for the parcel shown on that plan;
- issues new certificates of title to the developer for each unit shown on the plan;
- issues a common property certificate in the name of the condominium corporation for the common property shown on the plan; and
- registers the declaration on each unit certificate of title and on the common property certificate.

## **3 – CONDOMINIUM PROPERTY**

### ***3:1 Units, common property and exclusive use common property***

#### **Unit ownership**

Only one unit can be included on one certificate of title. Anything registered against the original parcel that is being converted into a condominium will continue to apply against the individual units and against the common property. Unit titles will state that the owner owns an undivided interest in the common property and will not specify its percentage but will refer to the unit entitlement schedule attached to the declaration. It must also state whether the unit is a conventional building unit or a bare land unit, and other information required in regulations. Individual unit owners can deal with their ownership just like any other Yukon land registered under the *Land Titles Act* – they can devolve, transfer, lease, or mortgage it, etc.

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## Summary of a draft new Condominium Act

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### **Common property ownership**

The unit owner's certificate of title includes that owner's undivided interest in the common property. The unit owner's interest in the common property cannot normally be disposed of or become subject to a lease, mortgage or other encumbrance separately from the unit. The unit owner is entitled to exclusive ownership and use of the unit and reasonable use of the common property. However, the corporation may provide that parts of the common property, such as a parking spot, are designated for the exclusive use of a specified unit owner.

The condominium corporation's board or someone authorized by them may enter a unit to perform its responsibilities (an example might be to stop running water that is flowing into another unit).

### **Boundaries of conventional building units**

The plan will normally establish the boundaries of a condominium unit, but if it does not, the unit boundaries will include the interior finishing material of the floor, wall or ceiling, including any lath and plaster, paneling, gypsum board, panels, flooring material, coverings etc. Electrical, plumbing and other facilities are part of the common property if they are capable of being used by more than one unit or the common property.

### **Exclusive use common property**

Common property may be designated for the exclusive use of the owners of one or more units in the condominium plan. This might apply to parking, storage, patios, etc. Exclusive use areas are not an interest that can be registered in the Land Titles Office.

### **Property taxation, liability**

Common property is not taxed as a separate parcel; rather, each unit together with the owner's undivided share of common property constitutes a parcel for property assessment and taxation. The condominium corporation is the occupier of the common property regarding liability.

### ***3:2 – Implied Easements***

Each unit has the benefit of an easement for the structural support and shelter provided by the adjoining areas, underground structures and overhead areas of both the common property and other units, and for the electrical, plumbing and other facilities that it uses. A similar easement benefit applies to common property areas. The easements include a right of entry to inspect, maintain, repair and replace, but these easements are implied and do not require the registration of an easement agreement in the Land Titles Office.

### ***3:3 – Other common assets***

A condominium corporation may buy and sell personal property for the benefit of the unit owners. However, personal property worth more than \$1,000 must be approved by a special resolution. The corporation also may buy and sell land or one or more of the units in the condominium for the benefit of the unit owners, if approved in advance by a special resolution. Its personal property and real property do not become common property of the condominium.

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## Summary of a draft new Condominium Act

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### ***3:4 – Transfers and encumbrances of common property and common assets***

Any transfer or long term lease of common property is a subdivision of land and requires a plan amendment. The common property cannot be mortgaged or used as security.

However, the corporation can sell or mortgage its common assets, but only if approved by a special resolution (2/3 of votes) for real property it has purchased, or by an ordinary resolution (50% of votes) for assets such as appliances, furniture, art, etc. The common property and/or common assets may be leased, if approved by a special resolution. However, a lease of longer than one year must be registered with a sketch plan and a certificate as to the appropriate resolution allowing the lease. The lease is noted on the common property certificate in the Land Titles Office, and the accompanying documents are filed in the corporate record folder. They are not “registered” as such but merely filed, or held, at the Land Titles Office for the purpose of making the information available. Allowing short term (three years or less) exclusive use gives the corporation options for managing the use of the common property. Exclusive use areas are not an interest that can be registered in the Land Titles Office.

Where it would benefit the condominium (including bare land condominiums) and the common property, the condominium corporation is allowed to accept easements for access to, or over, condominium property without needing resolutions. The corporation can also allow easements if approved by a special resolution, in order to manage access to the condominium property. This kind of access would usually be for utilities services to perform their duties.

### ***3:5 – Repair and maintenance obligations***

#### **Repair of common property**

The corporation is responsible for the common property and the expense of repairing and maintaining it; unit owners pay a monthly fee into a maintenance fund for these costs. It may be appropriate for a single unit owner to pay for the repair or maintenance of an area of exclusive use, if provided for in a bylaw to make it transparent. The corporation has a right of access to common property in order to carry out its repair and maintenances. The unit owners must approve any significant change to the common areas by special resolution (2/3 of votes), unless there is a danger that requires immediate action.

#### **Repair of units**

The unit owners have the equivalent responsibility to repair and maintain their own units. If the unit owner does not do this, the corporation may step in, following the principle that the unit owners collectively have an interest in the entire condominium. The corporation may charge back to the owner the cost of doing repairs to an individual unit.

### ***3:6 – Work orders and builders’ liens***

#### **Work orders**

The corporation is bound by work orders against common property and common assets, but it must notify affected unit owners. Similarly, unit owners are bound by work orders against their units, and the corporation may, after giving notice to the owner of its intention, step in if the owner fails to do the work. However, the corporation must await the results of any appeal from

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## Summary of a draft new Condominium Act

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the work order made by the unit owner. Again, the corporation may charge back to the owner the cost of doing the repairs.

### **Builders' liens**

Builders' liens apply to condominiums, but in a phased condominium, they apply only to the phase in which the builder supplied materials and labour. For the first purchaser of a unit from the developer, any builders' liens incurred by the developer do not apply after 45 days following the purchase date. Regulations will establish the amount of holdbacks that first purchasers are entitled to as against the developer for builders' liens.

The unit purchaser cannot keep a holdback for more than 55 days unless the builders' lien is registered or a claim started. If a claim has been started, the unit purchaser may apply to pay either the holdback or the entire claim into court. The payment into court releases the unit purchaser from responsibility for the lien. There are similar provisions for subsequent unit purchasers: any future unit owner may apply to pay into court their share of a lien and be released from responsibility for a lien.

## **4: SALE OF UNITS BY DEVELOPER**

### **Duty of fairness, disclosure to purchaser**

The bill introduces a new duty of fairness to the sale of condominium units by the developer. The developer must now provide copies of specific legal and financial documents relating to the condominium development, including the agreement of purchase and sale or proposed agreement, the condominium application, and a proposed budget for the condominium's common expenses to the initial unit purchasers. Disclosure must be within 30 days of the condominium registration, or before an agreement of purchase and sale is made. Additional requirements may be added in the regulations.

### **Right to cancel the agreement of purchase and sale**

The initial purchaser from the developer has the right to cancel the agreement of purchase and sale in certain circumstances and within a limited time period. The unit purchaser's decision to cancel the sale must be with 10 days' notice. If the purchaser does cancel the sale, any money paid must be returned and there is no liability. The purchaser's right to cancel must be displayed on the agreement of purchase and sale. The regulations will detail how the developer must hold in trust any payments made.

### **Occupancy**

The developer must deliver to the initial purchaser an occupancy permit for the unit before the purchaser takes possession to ensure that the unit is suitable for occupancy. The regulations may provide remedies if the unit is not ready as promised, and may provide requirements for early occupancy of a unit before the condominium is registered at the Land Titles Office. Depending upon how the construction of a condominium development is scheduled, it may not be fully complete when the first unit owners move in. For example, common areas are often the last part of the complex to be completed. The developer will be required to provide information

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## Summary of a draft new Condominium Act

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as to how the complex is intended to be completed. Regulations may require the developer to put up securities to ensure completion.

### **5: CONDOMINIUM GOVERNANCE**

#### ***5:1 – The condominium corporation***

Condominiums are assigned consecutive numbers as their registered names, in accordance with the time and date of registration. The condominium corporation is created by the *Condominium Act*; it is not governed by any other legislation governing corporations. The unit owners are the corporation's members. Condominium corporations have the legal capacity of natural persons, as other corporations have.

#### ***5:2 – Board of directors***

Condominium corporations function through a board of directors. Individual directors, such as the president, cannot act alone unless the act or bylaws allows. Condominiums can hire professional managers. Large condominiums might hire a management company, while a smaller condominium might simply hire a bookkeeper or other part-time help. The governance of a condominium is by the members of the corporation, who are the unit owners.

#### **Eligibility to serve as director**

The bill provides that the directors of the corporation may be a unit owner, a unit tenant, a mortgagee, or other designated representative that has been assigned the unit owner's right to vote. The corporation has the option to change the eligibility rules by passing a bylaw at a general meeting. Certain individuals are automatically disqualified under circumstances that might put the corporation at risk including a unit owner with a lien registered against the unit, a minor, someone who has been found by a court to be incapable or an undischarged bankrupt.

#### **Membership of board**

The condominium corporation itself can determine how many directors it needs on the board of directors, relative to the size of the condominium development. Only one owner of a particular unit may be on the board of directors at a time. Similarly, only one representative of a corporate unit owner may be a director at any one time. However, small condominiums of two, three or four units may need to require all of the unit owners to be on the board. The board may not be completely inactive - the bylaws will determine how often it must meet and what its functions are.

#### **Director's standard of care**

Directors are required to act responsibly and in good faith; they must act in the best interests of the condominium corporation, exercise due diligence and disclose conflicts of interest. If they do that, they are indemnified from liability. The corporation must purchase insurance to cover the directors' indemnification. The board is expected to seek professional advice for decisions.

A condominium director faced with a conflict of interest must declare it and abstain from voting and attending the meeting at which the matter in conflict is discussed. The decisions of the

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## Summary of a draft new Condominium Act

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board must not be tainted by the self-interest of directors. A board of directors or a unit owner may apply to court if a director fails to comply with the conflict of interest requirements.

The corporation may pay remuneration to a director only if approved in the corporate budget, by the bylaws or by a special resolution (2/3 of votes). Payment alone does not put a director in a conflict of interest situation.

The corporation's business is still valid despite a defect or limitation in the decision making process. However, someone who should have known about the defect or limitation cannot stay silent and bind the corporation. Owners and occupying tenants can request to be heard by the board and the board must hear the request within 4 weeks. The board must make a decision requested within one week. It can refuse repeated applications. The unit owners can direct or restrict the board by an ordinary resolution (50% of votes), except under certain circumstances.

### ***5:3 – Change of control from developer to elected board of directors***

#### **The first directors**

The new act has provisions for change of control. Regulations will provide special rules for the change of control from developer to an elected board for the phases of a phased condominium.

The first board of directors is appointed by the developer who is responsible for its activities. It is responsible to govern the condominium corporation until an elected board of directors takes over at the first annual meeting. The first board has the same powers, responsibilities and standard of care as elected directors. The first directors cannot be paid. The first directors are assumed to be acting on behalf of and in the interests of the developer, and consequently, the usual rules for eligibility, conflict of interest, and application to court where a conflict of interest has not been declared do not apply. The first directors must pursue construction warranties and the corporation's financial records and transactions separately from the developer's. These financial records will eventually be transferred to the elected board of directors.

As soon as one condominium unit is sold, the developer no longer has the ability to enter into contracts with himself or his own representatives. Rather, each unit owner can veto not-at-arm's-length transactions.

#### **First annual general meeting**

The purpose of the first annual meeting is to elect a board of directors from among the unit owners and others who are eligible. The first directors must hold the first annual general meeting of unit owners once 50 percent plus one of the units has been sold or within nine months of the first unit being sold, whichever is sooner. A six-week period is allowed for the organization of the meeting. Condominium corporation members must be given notice of the first annual meeting and owners are entitled to see the financial statements and budget in advance. The required notice can be hand-delivered or slipped under the unit doors, for example. Any unit owner may convene the first annual meeting if the first directors fail to do so. There is a fine for failing to convene the first annual meeting.

It is mandatory for the eligible voters to elect a board of directors to replace the first directors. The first directors must present a budget, financial statements, an insurance report, a report on

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## Summary of a draft new Condominium Act

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contracts of the corporation, and recommendations for setting the fiscal year of the corporation. They must turn over, to the elected board, building plans and permits, structural, utilities, and as-built drawings, the locations of essential infrastructure, contracts and other information that the elected board may need to carry out their responsibilities. If the first directors fail to provide that information, and the corporation incurs an expense to obtain the information, the expense is a debt owed to the corporation by the developer.

### ***5:4 – Meetings of unit owners and other eligible voters***

Further annual general meetings of the corporation are required. A board of directors must be elected at each subsequent annual general meeting and financial statements, budget, and report on insurance must be presented. Bylaws must set out how elections are conducted, terms of office, pay and how directors may be removed from office. Additional mandatory disclosure at annual general meetings may be required by bylaws or in regulations. Those entitled to vote may raise condominium issues at the annual general meetings.

If all eligible voters waive in writing the right to have the annual general meeting, the business of the annual general meeting can be conducted by giving unanimous consent to written resolutions; however, the first annual general meeting cannot be waived.

### **Special general meetings**

The board may convene special general meetings with notice. Twenty percent of unit owners may require a special general meeting to consider a specific written resolution. If the board does not convene a special general meeting to deal with the resolution, the unit owners may themselves hold the meeting. Unanimous consent, in writing, of eligible voters is required to waive the holding of a special general meeting and, if waived, the same unanimous consent in writing is required to approve a resolution.

General meetings must be held in the municipality where the condominium is located, unless a majority of voters agree to hold it elsewhere. General meetings require 14 days' notice to unit owners as well as any mortgagees and long term tenants who have been given that right and have requested that they be given notice. The notice must describe the matter(s) to be voted on at the meeting. The board determines the agenda of a general meeting. However, 20 percent of unit owners may propose a resolution to be considered at a general meeting by notifying the board at least 10 days before the board must send out the meeting notices.

### **Quorum**

A general meeting must have quorum, which may be set in the bylaws. If not set out in the bylaws, quorum is one-third of unit owners' total votes. If there are only 3 voters, 2 votes are required, but if there are 2 voters (a duplex condominium), both votes are required. There is a half hour grace period for achieving quorum; otherwise the meeting must be adjourned. Teleconferencing and videoconferencing is allowed, as long as all participants can communicate with each other.

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## Summary of a draft new Condominium Act

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### **5:5 – Voting Rights**

The rule is one unit, one vote. Unit owners lose their voting right if the corporation has a lien against that unit; the exception is if a matter requires unanimous consent. The president, or in his or her absence the vice-president, can vote to break a tie as long as the bylaws so provide.

#### **Tenants and mortgagees**

A unit owner may assign his or her right to vote to a tenant as long as a copy of the lease or agreement that provides for that assignment is given to the corporation. To receive notifications of meetings, a tenant must give the prescribed request form to the corporation. A unit owner is also allowed to assign his or her right to vote to a mortgagee as long as a copy of the registered mortgage that so provides is given to the corporation. There will also be a prescribed request form for the mortgagee. The mortgagee must give the corporation a notice of his or her intention to attend at a meeting and vote. Only one mortgagee may vote.

#### **Proxy votes**

In response to complaints of individuals amassing proxy votes in order to control the affairs of condominium corporations, the bill sets out new provisions to limit the use of proxies. Proxy votes are allowed, if the proxy is in writing and signed. One person may hold only 2 proxies, unless the regulations say otherwise. Regulations will set out restrictions on the corporation's employees and contractors being proxies.

Parents, guardians or legally authorized representatives may vote on behalf of owners who are underage or lack legal capacity. If there is no one to vote for an owner who lacks capacity, the Supreme Court may appoint someone. Where a unanimous vote is required, it is not stymied by the lack of someone to cast a vote for a condominium unit – the court may make an order.

#### **Voting thresholds**

Most resolutions are decided by ordinary resolutions, which require 50 percent of the votes cast by eligible voters or by written resolution signed by more than 50 percent of all eligible voters. However, the board may change the voting threshold through bylaws. Minor amendments to special resolutions may be made at a general meeting; if an amendment is not minor, a special resolution before the meeting may change the special resolution (2/3 of votes required).

#### **Resolutions before the first annual general meeting**

While the developer controls the condominium corporation, special resolutions require a unanimous vote, so that all unit owners will have to agree. In condominiums that have 10 or more units the developer can apply for court approval to prevent a single unit owner, or less than 5 percent of unit owners, from blocking a resolution that would require a unanimous vote.

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# Summary of a draft new Condominium Act

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## 6: BYLAWS, RULES AND ENFORCMENT OF RIGHTS AND DUTIES

### 6:1 – General

#### Bylaws

Bylaws govern the basic issues of the operation of the condominium and what members of the corporation (the unit owners) may and may not do. A standard set of bylaws will be established in regulations. The board can change the standard bylaws to suit the needs of the particular condominium. Existing condominiums are grandfathered: their by-laws will continue to apply.

Bylaws may not conflict with the *Condominium Act* or other Yukon legislation, and unreasonable bylaws are prohibited. The bill specifically allows bylaws to impose age qualifications, density limits, restrictions upon rentals and sale or rental signage, but these cannot be imposed on occupants in place when the new legislation comes into force. Existing pets are grandfathered.

The bill gives more detailed guidance about how amendments to bylaws can be made. Bylaw changes are not effective until filed in the Land Titles Office, to make them accessible.

#### Rules

Rules are generally used to govern the use of common property, such as hours of use for common laundry facilities, an exercise room or playgrounds. Rules must be in writing and accessible to owners so that they know what they are. Previously boards found it difficult and expensive to enforce corporation rules, but the new bill allows for better enforcement.

### 6:2 – Rentals

The bill adds new provisions addressing the rights and duties of condominium tenants. Boards may pass bylaws addressing tenancies and tenants. Family members (to be defined in regulations) are exempt from tenancy provisions. An owner wanting any other exemption can apply to the condominium corporation for one, and has the right to have a hearing before the condominium corporation.

#### Tenancy agreements

A tenancy agreement is not allowed to override bylaws, but if it does, the tenant has the right to end the tenancy, and the landlord (the unit owner) must pay the tenant's moving expenses.

There is now a requirement for unit owners to disclose basic information to their tenants, and to notify the corporation of the tenant's contact information. There are penalties if a landlord does not comply with these requirements.

#### Long term tenants

There are new provisions for long term tenants that allow them to have, if the owner agrees, some or all of the powers and duties of an owner. The rationale for this provision is that long term tenants have more of a commitment to, and investment in, the condominium community.

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## Summary of a draft new Condominium Act

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### **6:3 – Sections**

#### **Mixed use development may have sections**

The bill introduces the new concept of a condominium with different sections that allow different rules to apply in mixed-use condominiums. Commercial unit owners such as retail outlets and businesses, and residential owners in the same condominium development likely have different needs and interests. There may be different common expenses such as for parking, signage, lighting, or heating for the commercial areas as compared to the residential areas. Yukon, the Northwest Territories and most southern jurisdictions have these developments.

A mixed-use development is defined as a condominium that has both commercial and residential units with differing needs in the same building and these different types of units may be treated as separate sections of the condominium corporation. Retail and business units usually occupy the bottom floor, with residential units above. Bylaws can control the mixed use by applying different bylaws to the different sections, and providing that only owners of units in a particular section can vote on amending the bylaws for that section. There may be separate section meetings and section resolutions. A special resolutions is required to alter the sections.

### **6:4 – Enforcement of rights and duties**

The bill adds new provisions to improve the condominium corporation's ability to enforce its bylaws and rules, in response to condominium board members' reports that this is a major challenge. The Land Titles Office has no mandate or ability to enforce condominium bylaws or rules. The bill introduces voluntary dispute resolution as a way to resolve disputes short of going to court. Yukon has an *Arbitration Act* that provides detailed procedures and options to resolve disputes. The board can impose fines for non-compliance. The board can control access to recreation facilities if an owner, tenant, occupant or visitor has contravened a bylaw or rule relating to the recreational facility. The bill imposes a fair process for the board's enforcement actions.

Boards will have the option to act directly to remedy a tenant's contravention of its bylaws and rules by doing work or removing objects as required by bylaws. Furthermore, for serious non-compliance, the board may evict the tenant. Within the current legislation, boards cannot act directly against tenants.

## **7: FINANCES**

### **7:1 – General**

#### **Financial responsibility for common expenses**

The corporation is responsible for the condominium's common expenses on behalf of the unit owners. Funds to carry out that responsibility are provided by the unit owners through their condominium fees. The bill clarifies who is responsible for certain expenses. This is to minimize the potential for disputes that arise from differing interpretations of financial responsibilities and to enhance current financial responsibilities under the legislation. The monthly fees paid by unit owners must be established in the schedule of unit entitlements. Some units may pay more than others if the unit is larger or has more amenities than others, such as elevator service or

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## Summary of a draft new Condominium Act

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underground parking that is not available to everyone. In a mixed-use development, the basis for calculating monthly fees may be different for commercial units than for residential units. The corporation must keep an operating fund of unit owners' monthly fees.

### **Reserve Fund**

The corporation must keep a separate reserve fund to pay for repairs and replacements of major, high-cost items such as roofing, siding, insulation, heating and cooling, water and sewer lines, electrical systems, etc. This spreads the costs of major repairs over all of the condominiums owners over the period of time that the item is in use. The reserve fund is an alternative to special levies to pay for major items, which are a serious financial burden to owners of the condominium at the time the repair must be done. Regulations will set out a formula for calculating the reserve fund to assist smaller condominium developments.

The corporation has trust obligations to the unit owners for the funds held by the corporation. It should not sit on the funds collected, but rather deposit it promptly in order to collect interest. Interest or income earned on the money in a fund becomes part of the fund.

The corporation may borrow money, but it is not allowed to borrow money using the common property as security.

### **Fiscal year**

The fiscal year is tied to the date when an elected board of directors takes over governance of the condominium corporation, which is at the first annual meeting. The board has the option of changing the fiscal year by special resolution (2/3 of votes).

### ***7:2 – Fees and expenses before transition period begins***

The bill lays out an orderly transition from management by the developer to an elected board of directors responsible for the affairs of the condominium. There are four periods of time:

1. from creation of the condominium by registering a declaration and survey plan in the Land Titles Office up to the sale of the first unit;
2. from the sale of the first unit up to the 1<sup>st</sup> annual general meeting;
3. from the 1<sup>st</sup> annual general meeting up to the 2<sup>nd</sup> annual meeting; and
4. thereafter.

Regulations will address special arrangements for the transition from management by the developer to an elected board of directors in phased developments.

### **Time period 1**

During this time period, the developer owns all of the condominium units and is normally completing construction of the development. Developers must keep records during the time when they have sole control. The records must be made available to the elected board of directors, once it is created. During the initial period, the developer pays no condominium fees, but pays all expenses. Future purchasers will not have to pay for condominium expenses during the period when the developer is the sole owner. The developer must establish a reserve fund

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## Summary of a draft new Condominium Act

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for a new condominium in an amount calculated in accordance with regulations. Condominiums that are created by converting existing buildings will have special requirements for a reserve fund, to take into account the age and condition of the existing building.

### ***7:3 – Fees and expenses during transition period***

#### **Time period 2**

New provisions regulate the second period of time: from the sale of the first condominium unit by the developer up to the election of a board of directors from among owners, which takes place at the first annual meeting once 50 percent plus one of the units are sold. Owners, including the developer, must pay fees starting from the time the first unit is sold. Expenses from the time the first unit is sold cannot be postponed for future owners to pay.

The first directors, who are appointed by the developer, are responsible for the budget that covers the second time period. They are also responsible for financial statements to be presented at the first annual meeting, and for disclosure of other financial information. If the actual common expenses accrued by a corporation for this period are greater than the estimated common expenses shown in the budget, the developer must pay the difference to the corporation within 8 weeks from the first annual meeting. If the actual common expenses are less than the estimated common expenses, the corporation must refund the difference to the unit owners in proportion to their contributions, or transfer the difference to the reserve fund.

### ***7:4 – Fees and expenses between first and second annual general meetings***

#### **Time period 3**

The third period of time runs from the first annual meeting at which an elected board of directors takes over the condominium's affairs, until the second annual meeting. The first directors prepare a budget that is adopted at the first annual meeting and applies to the first year of the elected board's mandate. It must be approved at the first annual meeting. Owners, including the developer, must pay fees during the third period of time. After a board of directors is elected at the first annual meeting, it takes over the condominium's affairs and becomes responsible for managing fees, paying common expenses, and the financial statements of the condominium.

The elected board must prepare a budget for the next fiscal year for presentation at the second annual meeting. Any budget shortfall must be recovered during the next year. This means the corporation will not fall into serious debt, and must manage its finances responsibly.

### ***7:5 – Financial management after second annual general meeting***

#### **Time period 4**

##### **Budgets**

The elected board must prepare a budget for each subsequent annual general meeting. The bill proposes requirements for the annual budget that improve disclosure and transparency to owners. The operating fund and the reserve fund must be accounted for separately.

If the condominium members do not approve a proposed budget by an ordinary resolution (50% of votes) at the annual general meeting, the board must, within 30 days (or such longer if

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## Summary of a draft new Condominium Act

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approved by a special resolution), prepare a new budget and place it before a special general meeting for approval. Until a new budget is approved, the corporation may spend money out of the operating fund only as set out in the previous budget. The board must inform unit owners within two weeks of any changes to their fees that result from a new budget.

### **Financial statement**

The elected board must prepare financial statements for the preceding fiscal year to be presented at the third and subsequent general meeting. The financial statement must compare the actual and estimated common expenses for the period and show the balance in each fund.

### **Operating fund expenditures**

The corporation must not spend money from the operating fund unless the expenditure is consistent with the purpose of the fund, authorized in the budget or a special resolution, or allowed in the act. Surpluses may be transferred into the reserve fund or carried forward.

### **Reserve fund expenditures**

The corporation must not spend money from the reserve fund unless the expenditure is consistent with the purpose of the fund; authorized in the budget or a special resolution; and there is enough left in the fund to pay for major repairs and replacement of the common property and common assets. The corporation may lend money from the reserve fund to the operating fund and can use money from any of the funds if an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, and the board must inform owners as soon as feasible about this use of funds.

### **Special levies**

If the board is managing its reserve fund properly, there should be little or no need for special levies. However, surprise expenses can happen, and the board may raise money from the owners by means of a special levy. A special levy must be approved by a special resolution (2/3 of votes) passed at or after the first annual general meeting and details about the levy must be provided before the special resolution. The board must account for the funds raised by a special levy.

### ***7:6 - Reserve fund study***

The corporation will be required to have a depreciation report (also called a reserve fund study) done that estimates the repair and replacement costs for the common property and major common assets. It also estimates their expected life and recommends the amount needed to pay for the major repairs and replacement.

### **Qualified person**

The report is to be done by a qualified person to be defined in regulations, but for smaller condominiums, the corporation itself may prepare the report. The report is used to determine how much the contributions to the reserve fund will be. Regulations will set out a formula to help small condominium boards to calculate the amount that should be in the reserve fund, taking into account estimates for repairs, age of the items that will need repair, and so on.

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## Summary of a draft new Condominium Act

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### **Exemptions**

Regulations will also set out which, if any, condominiums are exempt from this requirement, such as very small condominiums. Those corporations may potentially waive the requirement to have a reserve fund study by a special resolution (2/3 of votes) at a general meeting, within a time period to be set out in regulations.

### ***7:7 – Collecting money owed to condominium corporation***

Monthly fees are payable in advance on the first day of each month. The corporation may charge interest on unpaid amounts and is allowed to collect fees by requiring a tenant to pay as a deduction from rent, by accepting payment from a mortgagee, by going to court, registering a lien or engaging in alternative dispute resolution. If there is a dispute over whether money is owed, the owner, developer or tenant may pay the disputed amount to the corporation in trust, or into court. The corporation may collect its reasonable costs for the collection process, and may ultimately apply to the Supreme Court for the sale of the unit to pay back fees.

### ***7:8 – Insurance***

The corporation must obtain property insurance on the common property, common assets and condominium units. The insurance must be on a full replacement cost basis where no deduction is made against loss resulting from destruction or damage caused by fire or any other peril specified in the regulations or the bylaws.

### **Insurance on bare land condominiums and managed areas**

Bare land condominiums are unique. The corporation will not be required to insure detached buildings on the bare land units; they are the responsibility of the unit owner to insure. Some bare land condominiums have attached row housing units that share walls, siding, rooftops, etc. In that case, the corporation may designate these elements as “managed areas,” although they are owned by the unit owner. If the corporation does designate those areas as managed, the corporation will have a responsibility to keep them in good repair and to maintain insurance on them.

### **Liability insurance for directors**

The corporation must also maintain insurance against liability arising out of any act or omission of a director or officer carrying out their functions and duties. The insurance must also cover liability arising out of a defect in the appointment or election of a director or officer who makes a contract or signs a certificate on behalf of the corporation.

### **Duty to report on insurance**

The corporation must report on the insurance coverage at each annual general meeting and provide a copy of the corporation’s insurance policy to an owner, purchaser or mortgagee of a unit within 30 days of receiving a written request. Payment of an insurance deductible by the corporation is a common expense and may be paid from the reserve fund or by special levy. A unit owner may obtain additional insurance. For example, an owner of a bare land unit may buy insurance for the buildings on the bare land unit.

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# Summary of a draft new Condominium Act

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## 9: CONDOMINIUM MANAGEMENT

### 9:1 – *Records and Information Certificates*

#### **Obligation to keep records**

The corporation must keep minutes of annual and special general meetings and board meetings. Records must include results of votes; lists of directors, unit owners, tenants and mortgage holders who have requested notification; assignments of voting or other rights; and books of account. The corporations must keep these, as well as other legal and financial documents such as resolutions, bylaws, contracts, income tax returns and so on. The corporation must make them available to unit owners and former unit owners, tenants and former tenants, and persons authorized by them. It can charge fees for the documents as specified in the regulations.

#### **Information certificate**

On request in writing from an owner, a purchaser or mortgage holder, the corporation must provide an information certificate that sets out information such as the condo fee payable, amounts owed to the corporation, agreements under which the owner takes responsibility for expenses, amounts of any future special levy that the owner may have to pay, or other notices or resolutions.

### 9:2 – *Contracts*

Any management contract entered into before the first annual general meeting by the developer or the first directors ends four weeks after the second annual general meeting or on the termination date in the contract, whichever is earlier. Management contracts may be cancelled by the corporation with two-month notice with the approval of a special resolution (2/3 of votes). Any person providing management services to a corporation must, within four weeks of the management contract ending, give the corporation any records that he or she has.

### 9:3 – *Methods for giving notice and providing information*

Any mortgage holder or tenant who is entitled to notices of general meetings or notices of money owing must give a completed request for notification form to the corporation. Notices to the corporation can be given by registered mail at its most recent mailing address filed at the Land Titles Office or by personal service to a board member. Where the board is required to inform resident owners and tenants, it may post the information at a location designated for that purpose (such as an official notice board).

### 9:4 – *Corporate notices to be filed with registrar*

The corporation must file (and keep current) the names and addresses of board members and corporate mailing address at the Land Titles Office.

## 10: FUNDAMENTAL CHANGES

### 10:1 – *Amending a condominium plan to change exclusive use designations*

If eligible voters have passed a unanimous resolution, the corporation can designate exclusive use common property and remove the designation. This is most often done for designated

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## Summary of a draft new Condominium Act

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parking spots. The corporation must submit a completed prescribed form for this purpose, together with an explanatory plan of survey to the land titles registrar. If submitted by a condominium corporation before the first annual general meeting, the application to designate parking stalls for the exclusive use of unit owners is done by the developer.

### **10:2 – Amendments to subdivide or consolidate common property or units**

The condominium declaration and plan may be amended to add, divide or consolidate units, to make a common asset into common property and vice versa, but only in accordance with the *Subdivision Act*. The amended declaration must be executed by the corporation. If the unit is being divided or consolidated, the unit owner and any person holding a registered encumbrance against the unit must also execute the declaration. If common property is being divided or consolidated, any person holding an encumbrance registered on the common property must execute the amended declaration.

### **10:3 – Amalgamations**

Two or more adjacent condominiums may, in accordance with the regulations, be amalgamated and become one amalgamated condominium and parcel of land.

## **11: LEGAL PROCEEDINGS AND ARBITRATION**

### **11:1 – General**

#### **Court ordered investigator**

If, on application by an interested party, the Supreme Court is satisfied that improper conduct has taken place, the court may: appoint an investigator to report to the court; direct that the person carrying on the improper conduct cease or give other directions; award compensation to the applicant for its losses; and grant interim relief. Improper conduct includes: non-compliance with this act, the regulations or the bylaws of the corporation; oppressive or unfairly prejudicial actions or threats; and the use of voting rights by a person who holds 50 percent or more of the votes, including proxies, in a manner that is or would be oppressive or unfairly prejudicial.

#### **Arbitration, conciliation, mediation**

Any dispute may be dealt with by mediation, conciliation or similar techniques to encourage settlement of the dispute. Parties may, on agreement, refer any issue to arbitration under the *Arbitration Act*.

#### **Application to court**

The corporation, a unit owner or an encumbrance holder (such as a mortgagee or lien holder) may apply to the Supreme Court for an order directing the performance of a duty that is imposed by this act, the regulations, the bylaws or a rule. They may also apply to the Supreme Court for the appointment of an administrator to exercise any of the powers and duties of the corporation that the court orders.

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## Summary of a draft new Condominium Act

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### **11:2 – Proceedings against a condominium corporation**

A condominium corporation may be sued as the representative of all the unit owners with regard to the common property, common assets, the bylaws or rules. It must inform unit owners of the action promptly. The expense of defending a lawsuit is a common expense shared by unit owners in the same proportion as their unit entitlements. If the lawsuit is based on the act or omission of a particular unit owner, the condominium corporation may add the owner to the lawsuit.

### **11:3 – Proceedings by a condominium corporation**

The corporation may sue, as representatives of all unit owners, on issues around the use of common property or common assets; the use or enjoyment of a unit; money owing; or the interpretation or application of this act, regulations, bylaws or rules. The corporation must inform all unit owners before or promptly after starting the lawsuit. A unit owner who does not agree with the lawsuit may require a special general meeting. The cost of the lawsuit is a common expense shared by unit owners in proportion to their unit entitlements.

### **11:4 – Proceedings between a condominium corporation and a unit owner**

In a lawsuit between the corporation and a unit owner, the unit owner does not have to contribute to any legal costs a court or arbitrator orders and does not receive a share of any costs awarded to the corporation. The unit owner is not entitled to information or notices required to be given to other unit owners regarding the lawsuit.

## **12: TERMINATING A CONDOMINIUM**

### **12:1 – General**

A condominium may be terminated by registering an application in the Land Titles Office by the board or by a liquidator of the corporation appointed by a court. The application consolidates all the units and the common property into one or more new parcels owned by the former unit owners as tenants in common, and dissolves the condominium corporation.

### **12:2 – Voluntary termination without court order**

A corporation may also voluntarily terminate a condominium by a unanimous resolution. The resolution must authorize the board to have all the units and common property surveyed as one or more parcels of land in accordance with the *Subdivision Act*. The unit(s) are to be held by the former unit owners as tenants in common in the same proportions as their former condominium entitlements. It must also liquidate and wind up the corporation by disposing of all its common assets and paying off its liabilities.

### **12:3 – Court ordered termination**

A condominium corporation, a unit owner, an encumbrance holder (such as a mortgagee or lien holder) or anyone else the Supreme Court considers appropriate may apply to the Supreme Court for an order to terminate a condominium. The court may terminate the condominium if it is in the best interests of the unit owners, registered encumbrance holders and other creditors. The court may appoint a liquidator and give the liquidator directions. The liquidator has the powers and duties of the corporation that the court orders.

### 13: GENERAL

#### **Offences**

Anyone who knowingly and with intent to deceive makes a material false statement in a certificate of a condominium corporation commits an offence and is liable on conviction to a fine of not more than \$2,000 or to imprisonment for not more than six months, or to both.

#### **Authority for regulations, transitional provisions, coming into force date**

The bill also allows for the power to make regulations, amendments to other acts, transitional provisions and establishing when the new act will come into force.