

WHAT WE HEARD
Feedback from the Public Information Sessions on the proposed changes to the
Condominium Act of Newfoundland and Labrador

Background

The Department of Government Services is currently reviewing its legislation governing condominiums in the province. The current *Condominium Act* is not reflective of the new kinds of condominiums in the marketplace. In redrafting this piece of legislation, the Government of Newfoundland and Labrador will provide protection for first-time condominium buyers and current owners, improve the day-to-day operation of condominium corporations as well as allow for new types of condominium developments. The proposed changes to the legislation would have an impact on developers as well as lenders and unit owners. In compiling this document, the Department researched condominium legislation from other Canadian jurisdictions. Nova Scotia and Ontario have the most recent and far reaching condominium legislation and are referenced throughout the document.

Public Information Sessions

In September and early October of 2008, the Department of Government Services held public information sessions on the proposed changes to the *Condominium Act* in the communities of Labrador City, Corner Brook, Grand Falls/Windsor, Gander, Clarenville, Mount Pearl and St. John's. One hundred and fifty eight people attended the sessions across the province. The sessions were an opportunity to solicit feedback from the public on the proposed changes as well as receive suggestions on other possible improvements to this legislation. Additionally, the Department posted the consultation document on its website with an email address that permitted people to submit their opinions on-line. A total of twenty- seven (27) written submissions were received representing a wide range of interests from credit unions, condominium owners, condominium corporations, condominium management companies, municipalities, condominium developers, real estate agents, and lawyers. This document outlines the reaction and suggestions the Department received during the public information process.

Disclosure

There was overwhelming support for a disclosure statement that would accompany an agreement of purchase and sale for a new and previously owned condominium. Additional suggestions received were:

- Include a provision whereby the purchaser must acknowledge that they understand they are buying a condominium and all that it entails;

- Develop an agreement of purchase and sale just for condominiums. There was one objection to this suggestion who believes that an appendix could be added to the existing agreement of purchase of sale.

Estoppel Certificate

There was total agreement to include a provision in the new legislation requiring that an estoppel certificate would be received prior to the closing of the purchase of a condominium. An estoppel certificate is issued by a condominium corporation to a buyer of a pre-owned unit. The estoppel certificate provides details on: the condominium monthly fees; if the current unit under sale is in default of these fees to the condominium corporation; that the condominium building is insured; the by-laws of the corporation are registered; and, that the common property of the condominium corporation has not been mortgaged or transferred. It may also contain information about the reserve fund, whether the corporation is suing or is being sued and special assessments. The purchaser's lawyer would request and obtain an estoppel certificate for the condominium and pay the appropriate fee to the condominium corporation),

Reserve Fund and Reserve Fund Studies

Currently, the *Condominium Act* is silent on reserve funds and reserve fund studies. Reserve funds and reserve fund studies are at the discretion of the individual condominium corporations. It has been proposed that the new act contain a provision requiring mandatory reserve funds and reserve fund studies.

a) Reserve Fund Studies

The Department heard concerns regarding the funding of the reserve fund. Many people asked that consideration be given to allow those corporations that currently do not have an established reserve fund, time to meet this provision. It was suggested that time limits be established but not so short so as to impose a financial burden on condominium owners. Apart from these comments there was general agreement with the proposed changes.

The new act will stipulate that the study must be conducted by a qualified person. These qualified persons will be clearly defined. The corporation would be required to conduct studies at periodic intervals to ensure that the fund is adequate. It will also require that the reserve fund study be updated after five years and a new reserve fund study completed after 10 years.

Existing and new developments will be required to establish reserve funds. New condominium developments will be required to have a reserve fund study completed by the developer and filed with the declaration. This requirement would be limited to condominium developments with 10 units or more. Additionally, a developer, who is converting an existing building into a condominium complex, will be required to complete a reserve fund study and that this study is available to potential buyers.

Existing condominiums will be given a transition period to complete a reserve fund study.

b) Reserve Funds

There was a general consensus on the requirement for all condominium corporations to establish a reserve fund. The Department heard that many condominium corporations already have a reserve funds established as this was deemed prudent financial management of the corporation.

Mediation and Arbitration

The existing *Condominium Act* does not address the issues of settling of disputes between unit owners and the condominium corporation except for appeals to be heard in the Trial Division of the Supreme Court. It is proposed that the new act would outline procedures for dispute resolution. In other jurisdictions, disputes can be resolved through mediation and/or arbitration.

The majority opinion received via email or during the public information sessions, supported including a mediation/arbitration mechanism in the new Act. There was also support for keeping the provision relating to appeals to the Trial Division of the Supreme Court. Two groups felt that any dispute should go immediately to arbitration. There was one dissenting voice on this provision.

Liens

Our current *Condominium Act* allows the condominium corporation a right to a lien if there is a failure of a unit owner to pay their share of fees. The corporation also has the right to register this encumbrance over the unit and this lien can be enforced in the same way as a mortgage. However, as a result of a lack of priority standing, often there is not enough remaining equity to satisfy the condominium corporation's lien when a property is sold.

The new act would contain a provision stating that the condominium lien for unpaid fees ranks ahead of any mortgage, lien or charge other than a lien for taxes. There was overall support for this provision with one dissenting voice. All other jurisdictions in Canada carry this provision that places the condominium corporation ahead of most creditors.

Board of Directors

Traditionally, members of the condominium corporation are comprised of the unit owners. Some condominium corporations have reported that there is difficulty in recruiting board members especially when many of the unit owners are seniors. It has been suggested that unit owners be permitted to designate an immediate family member to act on their behalf in the condominium corporation.

There was strong agreement to include a provision that would permit a designate to act on behalf of a unit owner. It should be stated that given a designate cannot sit on the board of directors, the designate would act on their behalf in voting and participating in the affairs of the corporation. Some submissions requested that the designate not be restricted to a family member. There would also be a termination clause for this member should the unit owner cease their ownership.

Insurance

There was total agreement for the provision that would require condominium corporations to carry insurance. It was suggested that the corporation also carry insurance for the units and the unit holders would be responsible for their personal items and any upgrades completed in the unit.

There was general agreement that condominium corporations conduct appraisals on a regular basis to reflect the value of the units and the development. These values would be adjusted in the insurance policy to reflect current value of the corporation.

Different Types of Condominiums

Phased condominiums. Phased condominiums are those that are comprised of units and common elements added in stages, over a maximum 10-year period and still be part of one condominium corporation. Phased condominiums would eliminate the current need of constructing and registering individual buildings as condominium corporations and establishing extensive easement and cost-sharing agreements allowing the unit owners in these properties to have the benefit of the use and enjoyment of the shared facilities and services and ensuring that each of the corporations bears its proportionate share of responsibilities imposed by these agreements.

Common elements. Common elements condominium corporation (CECC) consist only of common interests. They are condominium corporations that have no units. For example, homes could be on separate pieces of land, with facilities such as a golf course or recreational centre as the common elements condominium.

Vacant land or bare use condominiums. Under this type of condominium corporation, the units can consist of vacant land upon which, following registration, owners can decide later what to build. A vacant land condominium allows a developer to sell land as units in a condominium corporation rather than in a plan of a subdivision. This permits the developer to create a development where the purchasers can build their own homes or buildings on the units but the costs for the roads, facilities and services will be commonly shared expenses of the corporation.

Commercial condominiums. These types of condominiums are similar to residential condominiums, these types of arrangements are growing in the business market. The purchaser owns the title to a unit of real property which is the space the office or store

occupies. The owner of the condominium also owns a common tenancy with owners of other units in the common area, which includes all the driveways, parking, elevators, outside hallways, recreation and landscaped areas, which are managed by a business, homeowners' or tenants association.

Hotel condominiums. Condominium hotels are developed and operated as luxury hotels. The unit owner essentially owns the condo deed to a specific hotel room and pays property taxes, insurance and maintenance fees as with a traditional condominium. Most owners then opt to participate in the hotel's rental program in exchange for management fees and a share of the rental revenues. The hotel management company rents out the room on a rotating basis with other available units.

Additional changes

In addition to the major changes outlined above, the Department received great support for the following provisions:

- A requirement would be included that a copy of the declaration and by-laws be provided at the time the purchase and sale agreement is entered into. If this was a new construction and the declaration and by-laws were not available at the time the purchaser entered into purchase and sales agreement, these documents would be made available to the purchaser when they were completed. The purchaser would be given a 10 day period to review the documents and decide if they wanted to proceed with the purchase.
- Consent of all encumbrancers (any claim or lien on a parcel of real property) will no longer be required for any amendments to the declaration.
- A detailed list outlining the powers of the corporation that are only excisable with the owners' consent will be provided for in the new act. For example, the condominium corporation, with the owner's consent may: acquire by purchase, gift, bequest or any other means, real or personal property and sell, mortgage, convey or otherwise deal with the property; borrow money; grant easements affecting the common elements; grant leases of the common elements; make capital expenditures; and, levy special assessments for extraordinary common element expenses.
- The duties of the Declarant, after a sale of the majority of units in a condominium development to the condominium corporation will be included in the new act. Some of these duties include: provide the seal of the corporation; the minute book for the corporation containing copies of the declarant, by-laws, rules and regulations and any amendments; any existing warranty or guarantee for equipment, fixture or chattel included in the sale of either the units or common elements; any architectural, structural, engineering, mechanical, electrical and plumbing plans; any plans for underground site service, site grading, drainage and landscaping and any cable-television drawings.

- A provision for the amalgamation of condominium corporations will be included in the new act.
- The process to be followed where substantial damage through fire or natural disaster has occurred will be provided in the new act.
- Provisions will be included in the purchase and sale agreement that would include: a definition of a unit as a percentage of the condominium corporation; a stipulation that common area charges are done at the same rate; the definition of parking; how condominium fees are paid; the rules and regulations of the condominium corporation; a copy of the budget; and a schedule in which the purchaser acknowledges they are purchasing a condominium.
- Condominium corporations would be required to prepare annual financial statements that are to be made available to the unit owners upon request. The Registrar of Condominiums may also request a copy of these statements.
- A provision that expropriation would not alter the status of a property as a condominium and that the expropriating authority does not become a member of the condominium corporation.