

Condominium Property Act & Regulation

Information in this section is quoted directly from two sources: Condominium Property Act (Alberta) and the Condominium Property Regulations (Alberta). It is meant as a convenient reference for the Board members and unit owners about topic areas of relevance to the Condominium. This is not a complete or exhaustive reference and the reader is advised to consult the appropriate Act or Regulations before proceeding with any decisions for their Condominium.

Reserve fund

38 (1) A corporation shall, subject to the regulations, establish and maintain a capital replacement reserve fund to be used to provide sufficient funds that can reasonably be expected to provide for major repairs and replacement of

- (a) any real and personal property owned by the corporation, and
- (b) the common property,

where the repair or replacement is of a nature that does not normally occur annually.

(2) Notwithstanding subsection (1), funds shall not be taken from a capital replacement reserve fund for the purpose of making capital improvements unless

- (a) the removal of funds for that purpose is authorized by a special resolution, and
- (b) after the removal of funds pursuant to the special resolution, there are sufficient funds remaining in the capital replacement reserve fund to meet the requirements of subsection (1).

(3) The money in the capital replacement reserve fund of the corporation is an asset of the corporation and no part of that money shall be refunded or distributed to any owner of a unit except where the owners and the property cease to be governed by this Act.

1996 c12 s31

Capital Replacement Reserve Fund

Definitions

21 (1) In this Part,

- (a) “common property” includes common property referred to in section 14(1)(a) of the Act;
- (b) “depreciating property” means the property to which section 38(1) of the Act applies;
- (c) “qualified person” means, in respect of the depreciating property, an individual who, based on reasonable and objective criteria, is knowledgeable with respect to
 - (i) the depreciating property or that type of depreciating property,
 - (ii) the operation and maintenance of the depreciating property or that type of depreciating property, and
 - (iii) the costs of replacement of or repairs to, as the case may be, the depreciating property or that type of depreciating property;
- (d) “reserve fund” means, in respect of a corporation, the capital replacement reserve fund required to be established and maintained by the corporation under section 38 of the Act;
- (e) “reserve fund plan” means a plan prepared and approved in accordance with section 23(4) or 30(c);
- (f) “reserve fund report” means a report prepared in accordance with section 23(3) or 30(b);
- (g) “reserve fund study” means a study carried out in accordance with section 23(1) and (2) or 30(a).

(2) For the purposes of section 23, a reference to a qualified person includes a corporate entity if the corporate entity, in carrying out the functions of a qualified person, employs or otherwise retains the services of an individual who is a qualified person to carry out those functions.

AR 168/2000 s21;108/2004

Corporation as qualified person

22 Notwithstanding section 21(2), if a condominium plan consists of not more than 12 units, the corporation may, in respect of that condominium plan, carry out the functions of a qualified person if authorized to do so by a special resolution.

Reserve fund study, report and plan

23 (1) The board must retain a qualified person to carry out a study of the depreciating property for the purposes of determining the following:

- (a) an inventory of all of the depreciating property that, under the circumstances under which that property will be or is normally used, may need to be repaired or replaced within the next 25 years;
- (b) the present condition or state of repair of the depreciating property and an estimate as to when each component of the depreciating property will need to be repaired or replaced;
- (c) the estimated costs of repairs to or replacement of the depreciating property using as a basis for that estimate costs that are not less than the costs existing at the time that the reserve fund report is prepared;
- (d) the life expectancy of each component of the depreciating property once that property has been repaired or replaced.

(2) In carrying out the reserve fund study under subsection (1), the qualified person must also do the following:

- (a) determine the current amount of funds, if any, included in the corporation's reserve fund;
- (b) recommend the amount of funds, if any, that should be included in or added to the corporation's reserve fund in order to provide the necessary funds to establish and maintain or to maintain, as the case may be, a reserve fund for the purposes of section 38 of the Act;
- (c) describe the basis for determining
 - (i) the amount of the funds under clause (a), and
 - (ii) the amount in respect of which the recommendation was made under clause (b).

(3) On completing the reserve fund study under this section, the person who carried out the study must prepare and submit to the board a reserve fund report in writing in respect of the study setting out the following:

- (a) the qualifications of that person to carry out the reserve fund study and prepare the report;
- (b) whether or not the person is an employee or agent of or otherwise associated with the corporation or any person who performs management or maintenance services for the corporation;
- (c) the findings of the reserve fund study in respect of the matters referred to in subsections (1) and (2);
- (d) any other matters that the person considers relevant.

(4) On receiving the reserve fund report under subsection (3), the board must, after reviewing the reserve fund report, approve a reserve fund plan

- (a) under which a reserve fund is to be established, if one has not already been established, and
- (b) setting forth the method of and amounts needed for funding and maintaining the reserve fund.

(5) A reserve fund plan approved under subsection (4) must provide that, based on the reserve fund report, sufficient funds will be available by means of owners' contributions, or any other method that is reasonable in the circumstances, to repair or replace, as the case may be, the depreciating property in accordance with the reserve fund report.

(6) Notwithstanding that a reserve fund plan has been approved under subsection (4), the corporation must provide to the owners for the owners' information copies of that approved reserve fund plan prior to the collection of any funds for the purposes of those matters dealt with in the reserve fund report on which the approved reserve fund plan was based and that are to be carried out pursuant that report.

(7) Until such time that a corporation has approved a reserve fund plan under subsection (4) and has met the requirement under subsection (6) so as to be eligible to collect funds in respect of the reserve fund, the corporation may, notwithstanding subsection (6), collect or otherwise receive funds for a fund that is similar in nature to a reserve fund and may make expenditures from and generally continue to operate that fund.
AR 168/2000 s23;108/2004

When reserve fund study, report and plan must be prepared

24 (1) If a corporation is in existence immediately before September 1, 2000, the board must, before September 1, 2002, meet the requirements of section 23(1) to (6).

(2) If a condominium plan is registered on or after September 1, 2000, the board must not later than 2 years from the day that the condominium plan is registered meet the requirements of section 23(1) to (6).

(3) Notwithstanding subsection (1), if a corporation has, within the 5 years before September 1, 2000, completed a study that is the same as or substantially the same as a reserve fund study, the board must, before September 1, 2002, meet the requirements of section 23(4) in the same manner as if that study were a reserve fund study.

When study, report and plan must be prepared re rental units

25 Where on or after September 1, 2000

(a) the certificate of title to each of the units included in a condominium plan is registered in the name of the same owner or the same group of owners, and

(b) those units are rented or offered for rent to persons as tenants who are not purchasers and are not intended to be purchasers, the board is exempted from preparing a reserve fund study and a reserve fund plan and maintaining a reserve fund.

When study, report and plan must be prepared re conversions, etc.

26 (1) Notwithstanding sections 24 and 25, if the owner

(a) of premises to which section 21 of the Act applies offers those premises for sale, or

(b) of units to which section 25 applies offers those units for sale and if as a result of the sale of any of those units section 25 would no longer apply in respect of those units, the owner shall not sell any of those premises or units until

(c) a reserve fund study is carried out and a reserve fund report is prepared in accordance with section 23, and

(d) a reserve fund plan is prepared in accordance with section 23.

(2) The reserve fund report and the reserve fund plan referred to in subsection (1) must be made available for inspection by any person purchasing a unit referred to in subsection (1).

AR 168/2000 s26;108/2004

Maintenance of reserve fund

27 (1) A corporation must maintain the funding of its reserve fund at an appropriate amount or in an appropriate state so that the requirements of section 38 of the Act continue to be met.

(2) Except for the purposes of paying for repairs to or replacement of depreciating property, neither a corporation nor any person holding money or dealing with money on behalf of the corporation is to commingle any funds that make up the corporation's reserve fund with the corporation's operating funds or any funds of any other corporation or other entity.

(3) Neither a corporation nor any person holding money or dealing with money on behalf of the corporation is to commingle any funds that make up the corporation's reserve fund with the funds that make up any other corporation's reserve fund.

AR 168/2000 s27;108/2004

Repairs, etc. not to be construed as capital improvements

28 For the purposes of this Part and section 38 of the Act, a repair to or replacement of depreciating property that is carried out by a corporation is not to be construed as a capital improvement if that repair or improvement is a matter that was included in the current reserve fund report that was prepared and submitted to the corporation.

AR 168/2000 s28;108/2004

Annual report

29 (1) Commencing with the fiscal year of a corporation ending after September 1, 2002, a board must for each fiscal year prepare an annual report respecting the reserve fund setting out at least the following:

- (a) the amount of the reserve fund as of the last day of the immediately preceding fiscal year;
- (b) all the payments made into and out of the reserve fund for that year and the sources and uses of those payments;
- (c) a list of the depreciating property that was repaired or replaced during that year and the costs incurred in respect of the repair or replacement of that property.

(2) The annual report prepared under subsection (1) must be made available by the corporation to the owners for the owners' information before or at the time that the notice of the next annual general meeting of the corporation is provided to the owners.

5-year review

30 At the conclusion of 5 years from the day that the most recent reserve fund plan was approved, the corporation must, in accordance with the same procedures, requirements and restrictions to which section 23 is subject,

- (a) carry out a reserve fund study,
- (b) prepare a reserve fund report,
- (c) approve the reserve fund plan, and
- (d) provide to the owners for the owners' information copies of the approved reserve fund plan referred to in clause (c) prior to the collection of any funds for the purposes of those matters dealt with in the reserve fund report referred to in clause (b) and that are to be carried out pursuant that report.

Investments

43 (1) Subject to section 37(3) and the regulations, a corporation may invest any funds not immediately required by it only in investments in which a trustee may invest trust money under the Schedule to the *Trustee Act*.

(2) Where the corporation or any person is in receipt of money paid to or for the benefit of the corporation, that money and all the proceeds arising from that money are deemed to be held in trust for the performance of the duties and obligations in respect of which the payment was made.

(3) Where the corporation is in receipt of money referred to in subsection (2), the corporation shall

- (a) except as otherwise authorized in writing pursuant to a resolution of the board,
 - (i) deposit all the money into a separate account at a bank, trust company, credit union or treasury branch within 2 banking days from the day that the corporation received the money, and
 - (ii) designate the account as a trust account registered in the name of the corporation,
and
- (b) keep all trust money intact and not withdraw, convert, direct, borrow or commingle that trust money, other than pursuant to a resolution referred to in clause (a).

RSA 2000 cC-22 s43;2001 c28 s6

Information on request

44 On the written request of an owner, purchaser or mortgagee of a unit the corporation shall, within 10 days after receiving that request, provide to the person making the request one or more of the following as requested by that person:

- (a) a statement setting out the amount of any contributions due and payable in respect of a unit;
- (b) the particulars of
 - (i) any action commenced against the corporation and served on the corporation,
 - (ii) any unsatisfied judgment or order for which the corporation is liable, and
 - (iii) any written demand made on the corporation for an amount in excess of \$5000 that, if not met, may result in an action being brought against the corporation;
- (c) the particulars of or a copy of any subsisting management agreement;
- (d) the particulars of or a copy of any subsisting recreational agreement;
- (e) the particulars of any post tensioned cables that are located anywhere on or within the property that is included in the condominium plan;
- (f) a copy of the budget of the corporation;
- (g) a copy of the most recent financial statements, if any, of the corporation;
- (h) a copy of the bylaws of the corporation;
- (i) a copy of any minutes of proceedings of a general meeting of the corporation or of the board;
- (j) a statement setting out the amount of the capital replacement reserve fund;
- (k) a statement setting out the amount of the monthly contributions and the basis on which that amount was determined;
- (l) a statement setting out the unit factors and the criteria used to determine unit factor allocation;
- (m) a statement setting out any structural deficiencies that the corporation has knowledge of at the time of the request in any of the buildings that are included in the condominium plan;
- (n) a copy of any lease agreement or exclusive use agreement with respect to the possession of a portion of the common property, including a parking stall or storage unit.

RSA 1980 cC-22 s36;1996 c12 s36

31 (1) Notwithstanding that

- (a) the most recent reserve fund report,
- (b) the most recent reserve fund plan, or
- (c) the most recent annual report prepared under section 29

has been provided to the owners under this Regulation, the corporation, on the written request of an owner, must, within 10 days from the day of receipt of the written request, provide to that owner a copy of that

reserve fund report, reserve fund plan or annual report, or any one or more of them, as requested by the owner.

- (2) On the written request of a purchaser or a mortgagee of a unit, the corporation must, within 10 days from the day of receipt of the written request, provide to the person making the request a copy of
- (a) the most recent reserve fund report,
 - (b) the most recent reserve fund plan, and
 - (c) the most recent annual report prepared under section 29.

Documents, Specifications and Approvals

Documents required

46 (1) The owner of the land at the time a condominium plan is registered shall provide to the corporation without charge not later than 180 days from the day the condominium plan is registered the original or a copy of the following documents:

- (a) all warranties and guarantees on the real and personal property of the corporation and the common property for which the corporation is responsible;
- (b) the
 - (i) structural, electrical, mechanical and architectural working drawings and specifications, and
 - (ii) as built drawings, that exist for the common property for which the corporation is responsible;
- (c) the plans that exist showing the location of underground utility services, sewer pipes and cable television lines located on the common property;
- (d) all written agreements that the corporation is a party to;
- (e) all certificates, approvals and permits issued by a municipal authority, the Government or an agent of the Government that relate to any property for which the corporation is responsible.

(2) A corporation may at any time before it receives a document under subsection (1) make a written request to the owner of the land referred to in subsection (1) for a copy of that document and that person shall, within 20 days after receiving that request, provide to the corporation without charge a copy of that document if the document is in the possession of that person.

RSA 1980 cC-22 s37;1996 c12 s60

Insurance

47 (1) A corporation

- (a) where a building is divided into units, shall place and maintain insurance on the units, other than improvements made to the units by the owners, and the common property against loss resulting from destruction or damage caused by any peril prescribed by or otherwise required by the regulations to be insured against,
- (b) where a parcel is divided into bare land units, shall place and maintain insurance on the common property against loss resulting from destruction or damage caused by any peril prescribed by or otherwise required by the regulations to be insured against,
- (c) shall, if required to do so by bylaw, place and maintain insurance on the improvements made to the units by the owners against loss resulting from destruction or damage caused by any peril prescribed by or otherwise required by the regulations to be insured against, and
- (d) may place and maintain insurance on the units and the common property, or either of them, against additional perils other than those required to be insured against under clauses (a), (b) and (c), and for that purpose the corporation has an insurable interest in the units and the common property.

(2) Notwithstanding subsection (1)(b), a corporation is not required to place and maintain insurance against perils to which the common property is not subject.

(3) In complying with subsection (1), the corporation must place and maintain insurance for replacement cost value that provides that if

- (a) the insured property is destroyed or damaged, and
- (b) that property is replaced or repaired, no deduction shall be made from the settlement for depreciation to the property.

(4) If a corporation places insurance under subsection (1)(d), it may continue that insurance unless it is prohibited from doing so by a resolution passed at a properly convened meeting of the corporation.

(5) Any payment by an insurer under a policy of insurance for the destruction of or damage to a unit or the common property must, notwithstanding the terms of the policy,

- (a) be paid to the insurance trustee designated in the bylaws or, if the bylaws do not designate an insurance trustee, to the corporation, and
- (b) be used forthwith, subject to sections 59, 60 and 61, for the replacement or repair of the insured property that was destroyed or damaged.

(6) Notwithstanding the *Insurance Act* or any policy of insurance, if insurance is placed by a corporation and an owner against the loss resulting from destruction of or damage to the units or the common property,

- (a) the insurance placed by the corporation is deemed to be first loss insurance, and
- (b) the insurance placed by the owner of a unit in respect of the same property that is insured by the corporation is deemed to be excess insurance.

(7) In addition to placing and maintaining insurance under subsection (1), a corporation shall place and maintain insurance against the following:

- (a) any liability incurred by a member of the board or an officer of the corporation arising out of any action or omission of the member or officer with respect to carrying out the functions and duties of a member or officer except as a result of a failure to comply with section 28(2);
- (b) any liability incurred by the corporation arising out of any action or omission of a member of the board or an officer of the corporation with respect to carrying out the functions and duties of a member or officer;
- (c) any liability incurred by the corporation arising out of a breach of duty as the occupier of the common property;
- (d) any liability incurred by the corporation arising out of the ownership, use or operation of any machinery, equipment, pressure vessels and vehicles.

RSA 1980 cC-22 s38;1983 c71 s13;1996 c12 s38;2000 c11 s10

Copies of insurance policies

48 On the written request of an owner, purchaser or mortgagee of a unit

- (a) for a copy of a policy of insurance placed by the corporation, the corporation shall provide a copy of the policy to the person making the request within 30 days from the day of receiving that request, or
- (b) for an insurance certificate, the corporation shall provide the insurance certificate to the person making the request within 10 days from the day of receiving that request.

RSA 1980 cC-22 s39;1996 c12 s39

Insurance

Perils to be insured against

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61 (1) For the purposes of section 47(1)(a), (b) and (c) of the Act, a corporation must place and maintain insurance against the following perils:

- (a) fire;
- (b) leakage from fire protective equipment;
- (c) lightning;
- (d) smoke;
- (e) windstorm;
- (f) hail;
- (g) explosion of natural, coal or manufactured gas;
- (h) water damage caused by flood;
- (i) water damage caused by sewer back-up or the sudden and accidental escape of water or steam from within a plumbing, heating, sprinkler or air conditioning system or a domestic appliance that is located within an insured building;
- (j) impact by aircraft, spacecraft, watercraft and land vehicles;
- (k) riot, vandalism or malicious acts;
- (l) any other perils as required in the by-laws.

(2) Notwithstanding subsection (1), in respect of a bare land unit, a corporation is, unless the by-laws provide otherwise, required to place and maintain insurance against only those perils referred to in subsection (1)

- (a) to which the bare land unit may be at risk, or
- (b) to which the property for which the corporation is responsible may be at risk.

(3) Notwithstanding subsection (1)(h), for the purposes of section 47(1)(a), (b) and (c) of the Act the peril referred to in subsection (1)(h) is excluded where coverage against that peril is not available for the property being insured.

(4) The perils referred to in subsection (1)(a) to (k) refer to those perils covered by standard insurance policies and as customarily understood in the insurance industry.

(5) The insurance coverage referred to in section 47(7) of the Act and the extent or amount of liability and the perils to be insured against under section 47(7) of the Act are subject to any limitation, exception, exclusion or restriction that

- (a) is usual and customarily imposed or provided for in the insurance industry, or
- (b) is reasonable in the circumstances, as may from time to time be imposed or otherwise provided for by the insurer.

(6) For the purposes of the Act and this Regulation, insurance placed by a corporation is not to be considered inadequate by reason only that the insurance is subject to any limitation, exception, exclusion or restriction that

- (a) is usual and customarily imposed or provided for in the insurance industry, or
- (b) is reasonable in the circumstances, as may from time to time be imposed or otherwise provided for by the insurer.

AR 168/2000 s61;23/2001;108/2004

Amount of insurance

62 Property that is insured as required pursuant to section 47 of the Act must be insured for replacement value subject to any reasonable deductible that is agreed to by the board and the insurer.

AR 168/2000 s62;108/2004

Doors and windows

72(1) In this section, “doors and windows” means doors and windows as referred to in section 9(3) of the Act.

(2) Notwithstanding section 9(2) of the Act or section 71 of this Regulation, if

(a) immediately prior to September 1, 2000 the doors and windows of a unit that are located on the exterior walls of the unit were part of the unit, and

(b) by virtue of section 9(2) of the Act, on September 1, 2000 the doors and windows referred to in clause (a) became part of the common property, the corporation before September 1, 2002 may, by a special resolution, amend the condominium plan so that doors and windows referred to in clause (b) cease being part of the common property and become a part of the unit.

(3) On presentation of a special resolution passed pursuant to subsection (2), the Registrar is to amend the condominium plan so that the doors and windows that are the subject of the special resolution are part of the unit.

AR 168/2000 s72;108/2004