

## Legal update

### Alberta's new condominium laws – a greater administrative burden for developers

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Real estate

With the recent [proclamation](#) of several sections of the [Condominium Property Amendment Act](#), 2014 and the [Condominium Property Amendment Regulation](#), as of January 1, 2018, and April 1, 2018, the [Condominium Property Act](#) (Alberta) (the Act) and the [Condominium Property Regulation](#) will be substantially amended.

One of the main objectives of the amendments is to improve protections for buyers and existing owners; however, such protections come at the expense of developers, who are now saddled with a greater administrative burden.

Briefly, some key amendments developers will face, the majority of which come into force as of April 1, 2018, are as follows.

**Firm Move-In Dates:** A developer is required to set firm move-in dates for buyers and prepare an occupancy statement setting out a fixed date or range of dates, by which the unit must be ready for occupancy. Such occupancy statement must be provided to the buyer at the time the purchase agreement is executed, and the occupancy statement must be initialed by the buyer. If a developer does not make a unit available for occupancy within 30 days after the final occupancy date set out in the occupancy date statement, the buyer will have the right to rescind the purchase agreement.

**Law Firms Must Hold Deposits:** All deposits received by a developer must be forwarded to the developer's lawyer (a prescribed trustee) to be held in trust, within three days of the developer receiving the buyer's deposit money. The lawyer must notify the buyer within 10 days of receiving the money to be held in trust that the buyer's deposit is held on deposit in its trust account. Within 10 days after depositing a buyer's deposit into the lawyer's trust account, the lawyer must notify the developer of the deposit.

**Deliverables to the Condominium Corporation:** A developer must provide a significant number of new deliverables to the condominium corporation (at the first meeting of the owners to elect the first board), including: (a) copies of warranties, drawings and specifications; (b) a copy of any legal or other professional advice or opinions paid for by the condominium corporation; (c) plans showing utility lines; and (d) copies of all tax records of the condominium corporation.

**Deliverables to the Buyer and Associated Developer Expenses:** A developer must provide a significant number of new deliverables to a buyer prior to the developer selling or agreeing to sell a unit or proposed unit, including: (a) a copy of the home warranty insurance contract under the *New Home Buyer Protection Act*; (b) if the unit is a conversion unit, a summary of the deficiencies, the reserve fund report, and a description of the previous building use; (c) a list of amounts payable by the condominium corporation to third parties; and (d) a description of any other fees the developer will charge the buyer. In the proposed budget deliverable, the developer must specify the projected total expenses, and

if off by more than 15% the developer shall pay the condominium corporation the amount of the actual total expenses that is greater than 15% above the projected total expenses. The proposed budget also must list all project expenses, which must be listed under specified categories, and it must include the name and credentials of the person who prepared the proposed budget, and the date on which the proposed budget was prepared.

**Requirements of Purchase Agreements and Rescission Rights of the Buyer:** A purchase agreement entered into by a developer must be drafted to include certain notifications, cost estimates and unit apportionment. As of April 1, 2018, the rescission right is different and a new disclaimer is required on the face of all purchase agreements with developers.

**Material Change Notification:** A developer must deliver written notice to the buyer of any material change in the information and documents provided by the developer to the buyer, any time before the buyer takes possession. A material change means a change or series of changes to a fact or proposal as stated in the information or a document provided under section 12 of the Act that, on a reasonable basis, would have an adverse effect on the value or use of the unit or proposed unit, the common property or the real property of the condominium corporation. If a developer fails to deliver notice, within 60 days from the date the buyer becomes aware or reasonably ought to have become aware of the material change, the buyer may file an originating application with the court, and the court may order any relief it considers appropriate, including damages or rescission of the purchase agreement (if the certificate of title has not yet been issued in the name of the buyer).

**Inspection, Investigation and Penalties:** An inspector, as appointed by the minister, may at any reasonable time, enter the business premises of a developer and inspect the operation and records and documents of the developer for the purpose of determining whether the Act or the regulations are being complied with. If a developer does not follow the rules (e.g., fails to comply with sections of the Act or furnishes false information or misrepresentations), it could be convicted of an offence and liable to a fine of not more than \$100,000. Specifically, a developer must, at a location in Alberta, produce any books, records, documents or other things requested by an inspector that are relevant to determine if there is compliance with the developer's duties under this Act and the regulations.

**Liability of Directors and Officers:** If a corporate developer commits an offence under the Act or the regulations, liability can extend to every principal, director, officer, manager, employee or agent of the developer who authorized the act or omission that constitutes the offence or who assented to, acquiesced in or participated in the act or omission that constitutes the offence, whether or not the developer has been prosecuted for the offence.

**Building Inspection Report:** For existing buildings being converted to condominiums, the developer must arrange for the preparation of a building assessment report. Such report must include the necessary information and be prepared not earlier than 180 days before the first unit in the building is offered for sale.

**Duties of a Developer:** No later than 30 days after registration of a condominium plan, a developer must appoint an interim board of directors and file at the land titles office a notice confirming the names and addresses of the interim board. Where units are located in a building in which one or more units have been transferred to a buyer, a developer must pay contributions in respect of each unit in the building it owns on the same basis as owners of other units are required to pay contributions, notwithstanding anything to the contrary in the bylaws.

**Termination of Agreements:** A condominium corporation has the ability to terminate any agreement, subject to certain enumerated agreements that cannot be terminated. This likely applies to a project completion agreement that is often put in place by a developer.

**Estoppel Certificate Requirements:** There are express estoppel requirements that must be certified within a requested estoppel certificate. The condominium corporation, management company, or developer managing a condominium project, will need to ensure its estoppel form complies with the certification information.

**Condominium Plan Requirements:** The condominium plan presented for registration by the developer will need to identify parking and disability spaces. This requirement comes into effect on April 1, 2018, and the developer must ensure all plans registered after April 1, 2018, contain these identifications.

As highlighted above, there are some significant amendments to the Act and the regulations thereunder, which will affect developers of condominium projects. Developers should prepare strong internal checklists and tracking systems to manage these new responsibilities, and work closely with our real estate team to ensure the pre-purchase documents and purchase agreements are in compliance for both new and ongoing projects.

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