

CONDOMINIUM PROPERTY ACT

Chapter C-22

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (a) "architect" means
 - (i) a registered architect, visiting project architect or architects corporation, or
 - (ii) a joint firm or an architects and engineers firm, as defined in the *Architects Act*;
- (b) "bare land unit" means a unit defined in clause (y)(ii);
- (c) "board" means the board of a corporation as provided for in section 28;
- (d) "building" means one or more buildings on the same parcel;
- (e) "bylaws" means the bylaws of a corporation as amended from time to time and includes any bylaws passed in substitution for them;
- (f) "common property" means so much of the parcel as is not comprised in a unit shown in a condominium plan, but does not include land shown on the condominium plan that has been provided for the purposes of roads, public utilities and reserve land under Part 17 of the *Municipal Government Act*;
- (g) "condominium plan" means a plan registered in a land titles office that complies with section 8 and includes any amendment to a condominium plan referred to in section 18 or 20, any plan or condominium plan, as the case may be, relating to development in phases referred to in section 19 or any plan or condominium plan, as the case may be, relating to redivision referred to in section 20 that is registered in the land titles office;
- (h) "corporation" means a body incorporated by section 25;
- (i) "Court" means the Court of Queen's Bench;
- (j) "developer" means a person who, alone or in conjunction with other persons, sells or offers for sale to the public units or proposed units that have not previously been sold to the public by means of an arm's length transaction;
- (k) "engineer" means
 - (i) a professional engineer registered or licensed under the *Engineering, Geological and Geophysical Professions Act*, or
 - (ii) a holder of a permit issued under the *Engineering, Geological and Geophysical Professions Act*, if that holder is authorized to engage in the practice of engineering;
- (l) "land surveyor" means an Alberta land surveyor registered, or the holder of a permit issued, under the *Land Surveyors Act*;
- (m) "landlord" means an owner of a unit that is being rented and includes a person acting on behalf of the owner;
- (n) "management agreement" means an agreement entered into by a corporation governing the general control, management and administration of
 - (i) the real and personal property of the corporation, and
 - (ii) the common property;
- (o) "Minister" means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (p) "municipal authority" means
 - (i) a municipal authority as defined in the *Municipal Government Act*, or

- (ii) in the case of a national park other than a town within a national park to which subclause (i) applies, the Minister of the Crown in right of Canada charged with the administration of the *National Parks Act* (Canada);
- (q) "municipality" means the area of a city, town, village, municipal district, improvement district, special area or national park;
- (r) "ordinary resolution" means a resolution
 - (i) passed at a properly convened meeting of a corporation by a majority of all the persons present or represented by proxy at the meeting entitled to exercise the powers of voting conferred by this Act or the bylaws, or
 - (ii) signed by a majority of all the persons who, at a properly convened meeting of a corporation, would be entitled to exercise the powers of voting conferred by this Act or the bylaws and representing more than 50% of the total unit factors for all the units;
- (s) "owner" means a person who is registered as the owner of
 - (i) the fee simple estate in a unit, or
 - (ii) the leasehold estate in a unit when the parcel on which the unit is located is held under a lease and a certificate of title has been issued under section 5(1)(b) in respect of that lease;
- (t) "parcel" means the land comprised in a condominium plan;
- (u) "purchase agreement" means an agreement with a developer whereby a person purchases a unit or proposed unit or acquires a right to purchase a unit or proposed unit;
- (v) "recreational agreement" means an agreement entered into by a corporation that allows
 - (i) persons, other than the owners, to use recreational facilities located on the common property, or
 - (ii) the owners to use recreational facilities not located on the common property;
- (w) "residential unit" means
 - (i) in the case of a unit that is situated within a building, a unit that is used or intended to be used for residential purposes, and
 - (ii) in the case of a bare land unit, a unit that is used or intended to be used for residential purposes or that has been represented by a developer as being intended to be used for residential purposes;
- (x) "special resolution" means a resolution
 - (i) passed at a properly convened meeting of a corporation by a majority of not less than 75% of all the persons entitled to exercise the powers of voting conferred by this Act or the bylaws and representing not less than 75% of the total unit factors for all the units, or
 - (ii) agreed to in writing by not less than 75% of all the persons who, at a properly convened meeting of a corporation, would be entitled to exercise the powers of voting conferred by this Act or the bylaws and representing not less than 75% of the total unit factors for all the units;
- (y) "unit" means
 - (i) in the case of a building, a space that is situated within a building and described as a unit in a condominium plan by reference to floors, walls and ceilings within the building, and
 - (ii) in the case other than that of a building, land that is situated within a parcel and described as a unit in a condominium plan by reference to boundaries governed by monuments placed pursuant to the provisions of the *Surveys Act* respecting subdivision surveys;
- (z) "unit factor" means the unit factor for a unit as specified or apportioned in accordance with section 8(1)(j) or 20(6), as the case may be.

(2) In this Act a reference to an arm's length transaction or to a transaction being at arm's length is a reference to a transaction that is conducted in an open market between willing parties to the transaction negotiating in their own respective self interest where the consideration paid is competitive and not unreasonable having regard to open market conditions.

(3) Other expressions used in this Act and not defined in subsection (1) have the same meanings as may be assigned to them in the *Land Titles Act*.

RSA 1980 cC-22 s1;1983 c71 s2;1994 cG-8.5 s94;

1995 c24 ss99(3),100;1996 c12 s2;2000 c11 s2

Municipal Government Act applies

2(1) Part 17 of the *Municipal Government Act* applies to any building or land that is subject to a condominium plan or a proposed condominium plan or in respect of which a condominium plan is terminated.

(2) Notwithstanding subsection (1), the provisions of Part 17 of the *Municipal Government Act* relating to the subdivision of land do not apply to the division of a building under a condominium plan if

(a) the surface boundaries of the parcel as defined in this Act on which that building is located correspond to the boundaries of a parcel of land as defined in Part 17 of the *Municipal Government Act*, and

(b) each building located on the parcel that contains a unit contains 2 or more units.

1983 c71 s3;1995 c24 s100

Plan of subdivision

3 For the purposes of Part 17 of the *Municipal Government Act* and the *Land Titles Act*, a condominium plan is a plan of subdivision.

1983 c71 s3;1995 c24 s100

Subdivision of buildings into units

4(1) A building or land may be designated as a unit or part of a unit or divided into 2 or more units by the registration of a condominium plan under this Act.

(2) The Registrar shall not register a condominium plan unless that condominium plan describes 2 or more units in it.

(3) For the purposes of the *Land Titles Act*, a condominium plan is deemed on registration to be embodied in the register.

(4) This Act applies only with respect to land held in fee simple, excepting from the fee simple all mines and minerals.

(5) Notwithstanding subsection (4), if land is held under lease and a certificate of title has been issued under the *Land Titles Act* in respect of the lease, this Act applies to the land described in the certificate of title, excepting from that title all mines and minerals.

RSA 1980 cC-22 s2;1983 c71 s4

Certificate of title for unit

5(1) On registering a condominium plan, the Registrar

(a) shall cancel the certificate of title to the parcel described in the plan, except as to any mines and minerals comprised in it, and

(b) shall issue a separate certificate of title for each unit described in the plan,

and any interests affecting the parcel that are noted on the certificate of title cancelled under clause (a) shall be endorsed on the certificates of title issued under clause (b).

(2) No more than one unit may be included in one certificate of title and no other land, except the owner's share in the common property, may be included in the same certificate of title with a unit.

(3) After a certificate of title to a unit is issued pursuant to subsection (1), the unit comprised in it may devolve or be transferred, leased, mortgaged or otherwise dealt with in the same manner and form as land held under the *Land Titles Act* and the provisions of that Act apply to those dealings insofar as they do not conflict with this Act or the regulations.

RSA 1980 cC-22 s3

Certificate to show share in common property

6(1) The Registrar, in issuing a certificate of title for a unit, shall certify on it the owner's share in the common property.

(2) The common property comprised in a registered condominium plan is held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

(3) Except as provided in this Act, a share in the common property shall not be disposed of or become subject to a charge except as appurtenant to the unit of an owner and a disposition of or charge on a unit operates to dispose of or charge that share in the common property without express reference to it.

RSA 1980 cC-22 s4

Liability of owner

7 Except to the extent that an interest endorsed on a certificate of title relates to that particular unit, the owner of the unit is only liable in respect of that interest in proportion to the unit factor for the owner's unit.

RSA 1980 cC-22 s5

Condominium Plans

Requirements of condominium plan

8(1) Every plan presented for registration as a condominium plan shall

- (a) be described in the heading of the plan as a condominium plan,
- (b) delineate the external surface boundaries of the parcel and the location of the building, if any, in relation to them,
- (c) except where the condominium plan is to divide a building referred to in section 2(2), delineate that portion of the land that is to be provided for the purposes of roads, public utilities and reserve land under Part 17 of the *Municipal Government Act*,
- (d) bear a statement containing those particulars as may be necessary to identify the title to the parcel,
- (e) include a drawing illustrating the units and distinguishing the units by numbers or other symbols,
- (f) define the boundaries of each unit,
- (g) where a building is to be divided into units, show the approximate floor area of each unit,
- (h) where land is to be divided into bare land units, show the approximate area of each unit,
- (i) where in accordance with section 50 an owner may be permitted to exercise exclusive possession in respect of an area or areas of common property, delineate to the satisfaction of the Registrar the boundaries of the area of common property over which the owner may be permitted to exercise exclusive possession,
- (j) have endorsed on it a schedule specifying in whole numbers the unit factor for each unit in the parcel,
- (k) where the property for which the plan is presented for registration is to be developed into units and common property in phases, contain the information required under the regulations with respect to the development of property in phases,
- (l) be signed by the owner of the property,

(m) have endorsed on it the address at which documents may be served on the corporation concerned in accordance with section 71, and

(n) contain any other features prescribed by the regulations.

(2) Where, with respect to units included in a condominium plan, there are qualifications or restrictions respecting the use of a unit that are not prohibited under the law, those qualifications or restrictions may be endorsed on the condominium plan.

(3) The Registrar shall, within 28 days from the day a condominium plan is registered, mail to the municipal authority of the municipality in which the parcel is located, a copy of the registered condominium plan.

RSA 1980 cC-22 s6;1983 c71 s5;1995 c24 s100;1996 c12 s4

Boundaries of condominium units

9(1) Unless otherwise stipulated in the condominium plan, if

(a) a boundary of a unit is described by reference to a floor, wall or ceiling, or

(b) a wall located within a unit is a load bearing wall, the only portion of that floor, wall or ceiling, as the case may be, that forms part of the unit is the finishing material that is in the interior of that unit, including any lath and plaster, panelling, gypsum board, panels, flooring material or coverings or any other material that is attached, laid, glued or applied to the floor, wall or ceiling, as the case may be.

(2) Notwithstanding subsection (1),

(a) all doors and windows of a unit that are located on interior walls of the unit are part of the unit unless otherwise stipulated in the condominium plan, and

(b) all doors and windows of a unit that are located on exterior walls of the unit are part of the common property unless otherwise stipulated in the condominium plan.

(3) For the purposes of subsection (2), a reference

(a) to a door includes the door, the door frame and the door assembly components, if any, but does not include the door casing, trim or mouldings, and

(b) to a window includes the glazing, the window frame and the window assembly components, if any, but does not include the window casing, trim or mouldings.

(4) Notwithstanding subsections (1) and (2), if a condominium plan was registered prior to January 1, 1979, the common boundary of any unit described in the condominium plan with another unit or with common property is, unless otherwise stipulated in the condominium plan, the centre of the floor, wall or ceiling, as the case may be.

RSA 1980 cC-22 s7;1996 c12 s5

Certificates to accompany condominium plan

10(1) Every plan presented for registration as a condominium plan shall be endorsed with or accompanied with

(a) a certificate of a land surveyor stating

(i) that the boundaries of the parcel have been established or re-established in accordance with the *Surveys Act*,

(ii) that there are not any projections from other property infringing on the external boundaries of the parcel, or if there are projections from other property infringing on the external boundaries of the parcel, that an appropriate easement exists in respect of the parcel for those projections, and

(iii) where there is a building shown on the plan, that the building is within the external surface boundaries of the parcel that is the subject of the plan and, if any projections project beyond those external boundaries, that an appropriate easement has been granted as an appurtenance to the parcel,

and

- (b) where there is a building shown on the plan that is to contain units,
 - (i) a certificate of an architect, an engineer or a land surveyor stating, with respect to that building,
 - (A) that the units shown in the plan are the same as those existing, and
 - (B) whether there are any post tensioned cables located anywhere on or within that building or the property on which that building is located,
 - and
 - (ii) a certificate of the municipal authority or of a person designated by the municipal authority stating that the proposed division of the building, as illustrated in the plan, has been approved by the municipal authority.

(2) If an application is made for a certificate under subsection (1)(b)(ii), the municipal authority

(a) may, with respect to a building that was constructed prior to August 1, 1966 or for which the building permit was issued prior to August 1, 1966, prohibit the issue of the certificate if it considers it proper to do so, and

(b) shall, with respect to a building for which a building permit was issued on or after August 1, 1966, direct the issue of the certificate if it is satisfied that the building conformed to

(i) the development scheme, development control bylaw, zoning bylaw or land use bylaw, as the case may be, and

(ii) any permit issued under that scheme or bylaw, that existed at the time the building permit was issued.

RSA 1980 cC-22 s8;RSA 1980 cA-44.1 s77;1981 cE-11.1 s88;
1981 cL-4.1 s77;1983 c71 s6;1996 c12 s6;2000 c11 s4

Sale of Units by Developers

Fair dealing

11 Every agreement to sell a unit imposes on the developer selling the unit and the purchaser of the unit a duty of fair dealing with respect to the entering into, performance and enforcement of the agreement.

1996 c12 s7

Sale of units by developers

12(1) A developer shall not sell or agree to sell a unit or a proposed unit unless the developer has delivered to the purchaser a copy of

(a) the purchase agreement,

(b) the bylaws or proposed bylaws,

(c) any management agreement or proposed management agreement,

(d) any recreational agreement or proposed recreational agreement,

(e) the lease of the parcel, if the parcel on which the unit is located is held under a lease and the certificate of title to the unit or proposed unit has been or will be issued under section 5(1)(b),

(f) any mortgage that affects or proposed mortgage that will affect the title to the unit or proposed unit or, in respect of that mortgage or proposed mortgage, a notice prescribed under subsection (2), and

(g) the condominium plan or proposed condominium plan.

(2) A developer may deliver to the purchaser in respect of a mortgage or proposed mortgage a written notice stating

(a) the maximum principal amount available under the mortgage,

(b) the maximum monthly payment that may be paid under the mortgage,

(c) the amortization period,

(d) the term,

(e) the interest rate or the formula, if any, for determining the interest rate, and

- (f) the prepayment privileges, if any.
- (3)** Subject to subsection (4), a purchaser who purchases a residential unit pursuant to this section may, by providing written notice to the developer and without incurring any liability for doing so, rescind the purchase agreement within 10 days from the date the purchase agreement was executed by the parties to it.
- (4)** A purchaser may not rescind the purchase agreement under subsection (3) if all the documents required to be delivered to the purchaser under subsection (1) have been delivered to the purchaser not less than 10 days prior to the execution of the purchase agreement by the parties to it.
- (5)** If a purchase agreement is rescinded under subsection (3), the developer shall, within 10 days from the developer's receipt of a written notice by the purchaser of the rescission, return to the purchaser all of the money paid in respect of the purchase of the residential unit.
- (6)** A developer shall provide to a purchaser of a unit prior to or at the time that the purchaser takes possession of the unit or proposed unit an occupancy permit or permission in writing to occupy the unit or proposed unit that is issued or given pursuant to the regulations under the *Safety Codes Act*.

RSA 1980 cC-22 s9;1996 c12 s8

Rescission of purchase agreement

13 Every developer who enters into a purchase agreement shall include in the purchase agreement the following:

(a) a notification that is at least as prominent as the rest of the contents of the purchase agreement and that is printed on the outside front cover or on the first page of the purchase agreement in bold face, in upper case and in larger print than the rest of the purchase agreement stating as follows:

"The purchaser may, without incurring any liability for doing so, rescind this agreement within 10 days after its execution by the parties to it unless all of the documents required to be delivered to the purchaser under section 12 of the *Condominium Property Act* have been delivered to the purchaser not less than 10 days prior to the execution of this agreement by the parties to it.";

(b) where the units and the common property are not substantially completed at the time that the purchase agreement is entered into, a description, drawing or photograph showing

(i) where there is a building, the interior finishing of and all major improvements to the common property located within a building,

(ii) all major improvements to the common property, other than those to which subclause (i) applies,

(iii) any significant utility installations, major easement areas, retaining walls and other similar significant features,

(iv) the recreational facilities, equipment and other amenities to be used by the persons residing in or on the residential units,

(v) the equipment to be used for the maintenance of the common property,

(vi) the location of roadways, walkways, fences, parking areas and recreational facilities,

(vii) the landscaping, and

(viii) where there is a building, the exterior finishing of the building, as they will exist when the developer has fulfilled the developer's obligations under the purchase agreement;

(c) the amount or estimated amount of the monthly unit contributions that has been determined on a reasonable economic basis in respect of the unit;

(d) the unit factor of the unit and the basis of unit factor apportionment for all units comprised in the condominium plan.

RSA 2000 cC-22 s13; 2002 c30 s3

Payments held in trust

14(1) For the purposes of this section,

(a) "common property" includes facilities and property that are intended for common use by the owners notwithstanding that the facilities or property may be located in or comprise a unit or any part of a unit;

(b) "cost consultant" means a person who meets the requirements of the regulations to be a cost consultant or is otherwise designated as a cost consultant pursuant to the regulations;

(c) "developer" includes any person who, on behalf of a developer, acts in respect of the sale of a unit or a proposed unit or receives money paid by or on behalf of a purchaser of a unit or a proposed unit pursuant to a purchase agreement;

(d) "financial institution" means a bank, treasury branch, credit union or trust corporation;

(e) "substantially completed" means, subject to the regulations,

(i) in the case of a unit, when the unit is ready for its intended use, and

(ii) in the case of related common property, when the related common property is ready for its intended use.

(2) A reference in this section to "related common property" is, in relation to a unit, a reference to the following:

(a) the common property or a portion of the common property that is necessarily incidental to the completion of the unit;

(b) the common property or a portion of the common property that is necessarily incidental to the intended use of the unit;

(c) in the case of a unit other than a bare land unit, the common property or a portion of the common property consisting of

(i) utilities required to service the unit and the common property,

(ii) a facility providing for reasonable access to or entrance into the unit,

(iii) a facility providing for reasonable access to highways, municipal roads or streets,

(iv) waste removal facilities or other facilities for handling waste, and

(v) any other improvements or areas

(A) designated by the regulations, or

(B) required under any other Act or regulations,

that are necessarily incidental to the intended use of the unit;

(d) in the case of a unit other than a bare land unit, in addition to the common property referred to in clauses (a) to (c), any common property or any portion of the common property that has been represented in the purchase agreement by the developer as being or as going to be available for the use of the owner of the unit and, without limiting the generality of the foregoing, may include one or more of the following:

(i) roadways, parking areas and walkways;

(ii) fences or similar structures;

(iii) landscaped areas and site lighting;

(e) in the case of a bare land unit, the common property or a portion of the common property consisting of

(i) a facility providing for reasonable access to or entrance into the unit,

(ii) a facility providing for reasonable access to highways, municipal roads or streets, and

(iii) any other improvements or areas

(A) designated by the regulations, or

(B) required under any other Act or regulations,

that are necessarily incidental to the intended use of the unit;

(f) in the case of a bare land unit, in addition to the common property referred to in clauses (a), (b) and (e), any common property or any portion of the common property that has been represented in the purchase agreement by the developer as being or as going to be available for the use of the owner of the unit and, without limiting the generality of the foregoing, may include one or more of the following:

- (i) utilities required to service the unit and the common property;
- (ii) roadways, parking areas and walkways;
- (iii) fences or similar structures;
- (iv) landscaped areas and site lighting;
- (v) waste removal facilities or other facilities for handling waste.

(3) A developer shall hold in trust all money, other than rents or security deposits, paid by the purchaser of a unit up to the time that the certificate of title to the unit is issued in the name of the purchaser in accordance with the purchase agreement.

(4) Notwithstanding subsection (3), if a unit is not substantially completed, the developer shall hold in trust money, other than rents or security deposits, paid by the purchaser of the unit so that the amount of money held in trust will be sufficient, when combined with the unpaid portion of the purchase price of the unit, if any, to pay for the cost of substantially completing the construction of the unit as determined by a cost consultant.

(5) Notwithstanding subsection (3), if the related common property is not substantially completed, the developer shall hold in trust money, other than rents or security deposits, paid by the purchaser of the unit so that the amount of money held in trust will be sufficient, when combined with the unpaid portion of the purchase price of the unit, if any, to pay for the proportionate cost of substantially completing the construction of the related common property as determined by a cost consultant based on the unit factors of the units sharing the same related common property.

(6) The developer who receives money that is to be held in trust under this section shall forthwith deposit the money into an interest-bearing trust account maintained in a financial institution in Alberta.

(7) Money deposited under subsection (6) is to be kept on deposit in Alberta.

(8) If money is being held in trust under this section and the purchaser of the unit takes possession of or occupies the unit prior to the certificate of title being issued in the name of the purchaser, the interest earned on that money from the day that the purchaser takes possession or occupies the unit to the day that the certificate of title is issued in the name of the purchaser is to be applied against the purchase price of the unit.

(9) Subject to subsection (8), the developer is entitled to the interest earned on money held in trust under this section.

(10) Subject to subsection (11), this section does not apply in respect of money paid to a developer under a purchase agreement if that money is held, secured or otherwise dealt with under the provisions of a plan, agreement, scheme or arrangement approved by the Minister that provides for the receipt, handling and disbursing of all or a portion of that money or indemnifies against loss of all or a portion of that money or both.

(11) Where

(a) money is to be held, secured or otherwise dealt with under the provisions of a plan, agreement, scheme or arrangement referred to in subsection (10), and

(b) an amount of that money that is to be held, secured or otherwise dealt with exceeds the limits of the protection against loss provided for under the plan, agreement, scheme or arrangement,

that amount that exceeds the limits of the protection against loss under the plan, agreement, scheme or arrangement is to be held in trust under this section.

(12) Notwithstanding subsections (3) to (11),

(a) where in relation to a unit or related common property, or both, a developer is required to provide security under another enactment for the purpose of completing construction, and

(b) that construction referred to in clause (a) is the same or substantially the same construction with respect to a unit or related common property in respect of which money is to be held in trust under this section, the developer may, subject to the regulations, reduce the amount of money to be held in trust under this section by the amount of the security provided under the enactment referred to in clause (a).

(13) Where, with respect to a unit or related common property, or both,

(a) money is held in trust under this section or held, secured or otherwise dealt with pursuant to the provisions of a plan, agreement, scheme or arrangement approved under subsection (10), and

(b) the developer has not met the requirements under which that money is to be paid out of the trust or otherwise disbursed, the corporation or an interested party may apply to the Court for an order for that money to be paid out for the purposes of substantially completing the unit or related common property, as the case may be, or to be used as directed by the Court.

(14) On hearing an application under subsection (13), the Court may do one or more of the following:

(a) give directions as to whom the money is to be paid;

(b) give directions as to how the money is to be used for the purposes of substantially completing the unit or related common property, or both, as the case may be;

(c) give directions as to how the money is to be used or otherwise disposed of if it is not to be used for the purposes referred to in clause (b);

(d) appoint an administrator, a receiver or a receiver and manager for the purpose of carrying out any matters dealt with pursuant to the application;

(e) give any other directions, not referred to in clauses (a) to (d), that the Court considers appropriate in the circumstances;

(f) award costs.

(15) Once the unit or the related common property, or both, as the case may be, in respect of which money is being held in trust under this section are, as determined by a cost consultant, substantially completed, any money remaining in trust may be paid to the developer.

RSA 1980 cC-22 s11;1983 c71 s8;1991 cL-26.5 s335(13);

1996 c12 s10;2000 c11 s5

Exemption

15 Section 14 does not apply if the purchaser does not perform the purchaser's obligations under the purchase agreement.

RSA 1980 cC-22 s12

Limit on security deposit

16 If a purchaser of a residential unit, prior to receiving title to the unit, rents that unit from the developer, the amount that the developer may charge the purchaser as a security deposit in respect of the unit shall not exceed one month's rent charged for the unit.

RSA 1980 cC-22 s13

Management Agreements

Management agreements

17(1) In this section, “developer’s management agreement” means a management agreement that was entered into by a corporation at a time when its board was comprised of persons who were elected to the board while the majority of units were owned by a developer.

(2) Subject to subsection (3), a corporation may, notwithstanding anything contained in a developer’s management agreement or a collateral agreement, terminate a developer’s management agreement at any time after its board is comprised of persons who were elected to the board after the majority of the units were owned by persons other than a developer.

(3) A developer’s management agreement

(a) may not be terminated under subsection (2) without cause until one year has elapsed from the day that the agreement was entered into, except when the agreement permits termination at an earlier date, and

(b) may only be terminated under subsection (2) on the corporation giving 60 days’ written notice to the other party to the agreement of its intention to terminate the agreement,

and the corporation is not liable to the other party to the agreement by reason only of the agreement being terminated under this section.

RSA 1980 cC-22 s14;1996 c12 s11

Amendment of Condominium Plans
Amendments

18 Notwithstanding anything in this Act, a condominium plan may, in accordance with the regulations, be amended.

1996 c12 s12;2000 c11 s6

Phased Development

Development of units in phases

19 Notwithstanding anything in this Act,

(a) any building or land that is subject to a condominium plan or a proposed condominium plan may, in accordance with the regulations, be developed in phases, and

(b) in the process of carrying out the development of a building or land in phases, additional units and additional common property may, in accordance with the regulations, be created.

1996 c12 s12;2000 c11 s6

Modification of Condominium Plans

Redivision of unit

20(1) Any owner or owners may, with the approval of the municipal authority, redivide the owner’s or owners’ units by registering a condominium plan relating to the unit or units so redivided in the manner provided by this Act for the registration of condominium plans.

(2) Notwithstanding subsection (1), any owner or owners may, in accordance with the regulations and without the necessity of registering a condominium plan, modify an existing condominium plan by amending that condominium plan, if the modification consists only of the consolidation of 2 or more units that have adjacent walls, ceilings, floors or boundaries between them.

(3) Except as provided in this section, the provisions of this Act relating to condominium plans apply with all necessary modifications to a redivision of units.

(4) Notwithstanding section 25, the owners of units in a condominium plan of redivision are not a corporation, but are, on the date of registration of the condominium plan of redivision, members of the corporation formed on registration of the original condominium plan.

(5) On registration of a condominium plan of redivision, units comprised in it are subject to the burden and have the benefit of any easements affecting those units in

the original condominium plan that are included in the condominium plan of redivision.

(6) The schedule endorsed on a condominium plan of redivision, as required by section 8(1)(j), shall apportion among the units the unit factor or factors for the unit or units in the original condominium plan that are included in the redivision.

(7) Before registering a proposed condominium plan of redivision, the Registrar shall amend the original condominium plan in the manner prescribed by the regulations.

(8) On registration of a condominium plan of redivision, the land comprised in it shall not be dealt with by reference to units in the original condominium plan.

RSA 1980 cC-22 s15;1996 c12 s14

Conversions

Conversion to condominium units

21(1) If premises are

- (a) rented to a tenant who is not a party to a purchase agreement, and
- (b) not included in a condominium plan,

a developer or a person acting on the developer's behalf shall not sell or agree to sell those premises as a unit until the condominium plan that includes those premises is registered at a land titles office.

(2) Notwithstanding subsection (1), a developer or a person acting on a developer's behalf may sell premises referred to in subsection (1) prior to the registration at a land titles office of a condominium plan that includes those premises if it is a condition of the purchase agreement that the condominium plan is to be registered at the land titles office prior to the purchaser's being obliged to take possession of the unit.

RSA 1980 cC-22 s16;1983 c71 s9;1996 c12 s15

Easements

Easements in favour of owner

22 After the registration of a condominium plan, there is implied in respect of each unit shown in it,

(a) in favour of the owner of the unit, and as appurtenant to the unit, an easement for the subjacent and lateral support of the unit by the common property and by every other unit capable of affording support,

(b) in favour of the owner of the unit, and as appurtenant to the unit, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit, and

(c) in the case of a unit located in a building, in favour of the owner of the unit, and as appurtenant to the unit, an easement for the shelter of the unit by the common property and by every other unit capable of affording shelter.

RSA 1980 cC-22 s17;1983 c71 s10;1996 c12 s16

Easements against owner

23(1) After the registration of a condominium plan, there is implied in respect of each unit shown in it,

(a) as against the owner of the unit, an easement, to which the unit is subject, for the subjacent and lateral support of the common property and of every other unit capable of enjoying support,

(b) as against the owner of the unit, easements, to which the unit is subject, for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone,

radio and television services, through or by means of any pipes, wires, cables or ducts for the time being existing within the unit, as appurtenant to the common property and also to every other unit capable of enjoying those easements, and

(c) in the case of a unit located in a building, as against the owner of the unit, an easement, to which the unit is subject, to provide shelter to the common property and to every other unit capable of enjoying the shelter.

(2) When an easement is implied by this section, the owner of any utility service who is providing the owner's service to the parcel, or to any unit on it, is entitled to the benefit of any of those easements that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service.

RSA 1980 cC-22 s18;1983 c71 s11;1996 c12 s17

Easements or restrictions exist without mention

24(1) Easements or restrictions implied or created by this Act or the bylaws take effect and are enforceable

(a) without any memorial or notification on that part of the register constituting titles to the dominant or servient tenements, and

(b) without any express indication of those tenements.

(2) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied by this Act, including the right of an owner of a dominant tenement to enter a servient tenement and replace, renew or restore any thing that the dominant tenement is entitled to benefit from.

(3) Except as otherwise permitted in this section, no person may enter a unit under subsection (2) without the consent of the owner of the unit or of an adult person lawfully on the premises that comprise the unit.

(4) A person may enter a unit under subsection (2) without consent or notice if that person has reasonable grounds to believe that an emergency requires that person to enter the premises to replace, renew or restore any thing that the dominant tenement is entitled to benefit from.

(5) Subject to subsection (6), a person may enter a unit under subsection (2) without consent but after notice to the owner or person in possession of the unit to replace, renew or restore any thing that the dominant tenement is entitled to benefit from.

(6) A person is not entitled to enter a unit under subsection (5) unless

(a) the notice is served on the owner of the unit or an adult person in possession of the unit at least 24 hours before the time of entry,

(b) the entry is made on a day that is not

(i) a holiday, except that the person may enter on a Sunday if the day of religious worship of the adult person in possession of the unit is not Sunday and that adult person has provided to the person wishing to enter the unit a written notice of that adult person's day of religious worship, or

(ii) the day of religious worship of the adult person in possession of the unit if that day is not Sunday and that person has provided to the person wishing to enter the unit a written notice of that day,

and

(c) the entry is between 8 a.m. and 8 p.m.

(7) A notice under subsection (5) must

(a) be in writing,

(b) state the reason for the entry, and

(c) name a date and time of entry that comply with subsection (6).

RSA 1980 cC-22 s19;1996 c12 s18

Condominium Corporation

Condominium corporation

25(1) On the registration of a condominium plan, there is constituted a corporation under the name "Condominium Corporation No. _____" and the number to be specified is the number given to the plan on registration.

(2) A corporation consists of all those persons

(a) who are owners of units in the parcel to which the condominium plan applies, or

(b) who are entitled to the parcel when the condominium arrangement is terminated pursuant to section 60 or 61.

(3) Without limiting the powers of the corporation under this or any other Act, a corporation may

(a) sue for and in respect of any damage or injury to the common property caused by any person, whether an owner or not, and

(b) be sued in respect of any matter connected with the parcel for which the owners are jointly liable.

(4) Nothing in this Act shall be construed so as to prohibit a corporation from acting by means of agents or its employees.

(5) The *Companies Act* and the *Business Corporations Act* do not apply to a corporation.

RSA 1980 cC-22 s20;1983 c22 s2;1996 c12 s19

Voting Rights

Voting rights

26(1) The voting rights of the owner of a unit are determined by the unit factor for the owner's unit.

(2) When an owner's interest is subject to a registered mortgage, a power of voting conferred on the owner by this Act or the bylaws may be exercised as follows:

(a) first, by the mortgagee, if any, who is first entitled in priority if that mortgagee has notified the corporation of the mortgage in writing and is present at the meeting at which the vote is being conducted;

(b) second, by the owner;

(c) third and subsequently, in order of their priority among themselves, by any other mortgagees who are subsequent in priority to the mortgagee referred to in clause (a) if the subsequent mortgagee wishing to exercise the power of voting has notified the corporation of the mortgage in writing and is present at the meeting at which the vote is conducted.

(3) Subsection (2) does not apply unless the mortgagee has given written notice of the mortgagee's mortgage to the corporation at the corporation's address for service.

(4) An owner or mortgagee, as the case may be, may exercise the owner's or mortgagee's right to vote personally or by proxy.

(5) Notwithstanding anything in this section, neither an owner nor a mortgagee is entitled to exercise the power of voting conferred on the owner by this Act or the regulations where

(a) any contribution payable in respect of the owner's unit, or

(b) any other obligation owing to the corporation in respect of the owner's unit or the common property,

is in arrears for more than 30 days prior to the day that the power of voting may be exercised.

(6) Notwithstanding that anything under this Act or the bylaws may require a meeting of the corporation to be convened for the purpose of allowing the owners or other persons permitted under this Act or the bylaws to exercise the power of voting, instead of a meeting being convened for the purpose of exercising the powers of voting,

(a) in the case of an ordinary resolution, the ordinary resolution may be passed by being signed as described in section 1(1)(r), and

(b) in the case of a special resolution, the special resolution may be passed by being agreed to in writing as described in section 1(1)(x).

RSA 1980 cC-22 s21;1996 c12 s20;2000 c11 s7

Voting where owner incapable

27(1) Any powers of voting conferred by this Act or the bylaws may be exercised

(a) in the case of an owner who is a minor, by the guardian or trustee of the minor's estate or a trustee of the minor's property appointed by an order under the *Minors' Property Act* or, if no guardian or trustee has been appointed, by the Public Trustee, or

(b) in the case of an owner who is for any reason unable to exercise control over the owner's property, by the person who for the time being is authorized by law to exercise control over that property.

(2) If the Court, on application by the corporation or by an owner, is satisfied that there is no person capable, willing or reasonably available to vote in respect of a unit, the Court

(a) shall, in cases when a special resolution is required by this Act, and

(b) may, in its discretion, in any other case,

appoint the Public Trustee or some other person for the purpose of exercising the powers of voting under this Act and the bylaws as the Court determines.

(3) On making an appointment under this section, the Court may make any order it considers necessary or expedient to give effect to the appointment.

RSA 2000 cC-22 s27;2004 cM-18.1 s19

Board of a Corporation

Board of directors

28(1) A corporation shall have a board of directors that is to be constituted as provided by the bylaws of the corporation.

(2) Every member of a board shall exercise the powers and discharge the duties of the office of member of the board honestly and in good faith.

(3) Where a member of the board has a material interest in any agreement, arrangement or transaction to which the corporation is or is to become a party, that person

(a) shall declare to the board that person's interest in the agreement, arrangement or transaction,

(b) shall not vote in respect of any matter respecting that agreement, arrangement or transaction, and

(c) shall not be counted when determining whether a quorum exists when a vote or other action is taken in respect of the agreement, arrangement or transaction.

(4) Subsection (3) does not apply to an agreement, arrangement or transaction in which the member of the board has a material interest if that material interest exists only by virtue of that member of the board owning a unit.

(5) A corporation shall, within 30 days from the conclusion of the corporation's annual general meeting, file at the land titles office a notice in the prescribed form stating the names and addresses of the members of the board.

(6) Notwithstanding subsection (5), a corporation may at any time following a change in

(a) the membership of the board,

(b) the name of a member of the board, or

(c) the address of a member of the board,

file at the land titles office a notice in the prescribed form stating the change.

(7) The powers and duties of a corporation shall, subject to any restriction imposed or direction given in a resolution passed at a general meeting, be exercised and performed by the board of the corporation.

(8) A person who

(a) is a bona fide third party dealing at arm's length with the corporation, and

(b) does not have notice of a restriction or direction referred to in subsection (7),

is not liable for or otherwise affected or bound by any breach of or failure to follow that restriction or direction by the corporation.

(9) All acts done in good faith by a board are, notwithstanding that it is afterwards discovered that there was some defect in the election or appointment or continuance in office of any member of the board, as valid as if the member had been properly elected or appointed or had properly continued in office.

(10) At least 2/3 of the membership of the board of directors of the corporation shall be unit owners or mortgagees unless the bylaws provide otherwise.

RSA 1980 cC-22 s23;1996 c12 s21

Meetings of the Corporation

Convening of meeting

29(1) When a developer registers a condominium plan, the developer shall within

(a) 90 days from the day that 50% of the units are sold, or

(b) 180 days from the day that the first unit is sold,

whichever is sooner, convene a meeting of the corporation at which a board shall be elected.

(2) Notwithstanding subsection (1), if the developer does not convene a meeting of the corporation under subsection (1) within the time periods prescribed by subsection (1), an owner may convene the meeting.

RSA 1980 cC-22 s24;1996 c12 s23

Annual meeting

30(1) The board shall, once every year, convene an annual general meeting of the owners.

(2) An annual general meeting of the owners shall be convened by the board within 15 months of the conclusion of the immediately preceding annual general meeting.

(3) Subject to the regulations, the corporation shall,

(a) in accordance with generally accepted accounting principles, prepare financial statements for the corporation's preceding fiscal year and an annual budget for the corporation's fiscal year that immediately follows the corporation's preceding fiscal year, and

(b) distribute copies of the financial statements and the annual budget to each of the owners.

RSA 1980 cC-22 s25;1996 c12 s24

Venue of meeting

31 All meetings of the board and all general meetings of the corporation shall be held within the municipality in which the units are located unless a majority of the owners by means of an ordinary resolution passed at the corporation's annual general meeting agree to hold the meetings in another location.

1996 c12 s25

Bylaws

Bylaws

32(1) The bylaws shall regulate the corporation and provide for the control, management and administration of the units, the real and personal property of the corporation and the common property.

(2) The owners of the units and anyone in possession of a unit are bound by the bylaws.

(3) Any bylaw may be amended, repealed or replaced by a special resolution.

(4) An amendment, repeal or replacement of a bylaw does not take effect until

(a) the corporation files a copy of it with the Registrar, and

(b) the Registrar has made a memorandum of the filing on the

condominium plan.

(5) No bylaw operates to prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing with them or to destroy or modify any easement implied or created by this Act.

(6) The bylaws bind the corporation and the owners to the same extent as if the bylaws had been signed and sealed by the corporation and by each owner and contained covenants on the part of each owner with every other owner and with the corporation to observe and perform all the provisions of the bylaws.

(7) If there is a conflict between the bylaws and this Act, this Act prevails.

RSA 1980 cC-22 s26;1996 c12 s26

Initial bylaws

33 On the registration of a condominium plan, the bylaws of the corporation are the bylaws set out in Appendix 1, and those bylaws remain in force in respect of that corporation until they are repealed or replaced.

RSA 1980 cC-22 s27;1996 c12 s27

Previous bylaws

34 If

(a) a corporation existed on May 16, 1978, and

(b) that corporation was regulated by the bylaws set out in Appendix 2,

Schedules A and B as those bylaws existed on May 15, 1978,

that corporation shall continue to be regulated by those bylaws and for that purpose those bylaws remain in force in respect of that corporation until they are repealed or replaced by special resolution.

RSA 1980 cC-22 s28;1996 c12 s28

Sanctions for failure to comply with bylaws

35(1) The corporation may by bylaw impose monetary or other sanctions on owners, tenants and invitees of the owners or tenants who fail to comply with the bylaws.

(2) A bylaw under which sanctions are imposed must

(a) set out the sanctions that may be imposed, and

(b) in the case of monetary sanctions, set out the amount of the monetary sanctions or the range of monetary sanctions that may be imposed.

(3) A bylaw under which sanctions may be imposed may be general or specific in its application.

(4) A sanction imposed under this section must be reasonable in the circumstances for which it is imposed.

(5) Where a person fails to abide by a sanction or to pay to the corporation a monetary sanction imposed under a bylaw, the corporation may proceed under section 36 to enforce the sanction.

(6) A sanction may not be imposed that has the effect of prohibiting or restricting the devolution of units or any transfer, lease, mortgage or other dealing with the units or of destroying or modifying any easement implied or created by this Act.

1996 c12 s29

Enforcement of sanctions

36(1) If a person fails to comply with a sanction or to pay a monetary sanction imposed pursuant to a bylaw, the corporation may, in respect of the contravention,

- (a) take proceedings under Part 4 of the *Provincial Court Act* to recover from the person
 - (i) a monetary sanction, or
 - (ii) damages, in the case of any other sanction, in an amount not exceeding the amount that may be granted in damages under the *Provincial Court Act*, or
- (b) take proceedings in the Court of Queen's Bench to recover from the person
 - (i) a monetary sanction of not more than \$10 000, or
 - (ii) damages of not more than \$10 000, in the case of any other sanction.

(2) In an action under subsection (1), the corporation must establish to the satisfaction of the court hearing the matter that

- (a) the bylaws relating to the matter before the court were properly enacted, and
- (b) the bylaw for which the sanction was imposed was contravened by the defendant.

(3) On hearing the matter, the court may do one or more of the following:

- (a) give judgment against the defendant in the amount being sued for or any lesser amount as appears appropriate in the circumstances;
- (b) in the case of proceedings taken in the Court of Queen's Bench, grant injunctive or other relief that the Court considers appropriate in the circumstances;
- (c) dismiss the action;
- (d) make an award as to costs as appears appropriate in the circumstances.

(4) For the purposes of an action commenced under subsection (1)(a)(ii) or (b)(ii), once the court is satisfied that the requirements of subsection (2) have been met, damages are deemed to have been suffered by the corporation.

(5) Where a corporation takes proceedings under this section, it is entitled to claim from the defendant the corporation's legal expenses incurred in respect of the proceedings.

(6) For the purposes of subsection (2)(a), a copy of a bylaw that is certified by the Registrar as being a true copy of the bylaw filed at the land titles office is proof, in the absence of evidence to the contrary,

- (a) of the contents of the bylaw, and
- (b) that the bylaw was properly enacted.

(7) An action taken against a person under this section does not restrict, limit or derogate from any other remedy that an owner or the corporation may have against that person.

RSA 1980 cC-22 s29;1983 c71 s12;1996 c12 s30;2000 c11 s8

Powers and Duties of Corporation

Control and management

37(1) A corporation is responsible for the enforcement of its bylaws and the control, management and administration of its real and personal property and the common property.

(2) Without restricting the generality of subsection (1), the duties of a corporation include the following:

- (a) to keep in a state of good and serviceable repair and properly maintain the real and personal property of the corporation and the common property;
- (b) to comply with notices or orders by any municipal authority or public authority requiring repairs to or work to be done in respect of the parcel.

(3) A corporation may by a special resolution acquire or dispose of an interest in real property.

RSA 1980 cC-22 s30;1996 c12 s60

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

Administrative expenses

39(1) In addition to its other powers under this Act, the powers of a corporation include the following:

- (a) to establish a fund for administrative expenses sufficient, in the opinion of the corporation, for the control, management and administration of the common property, for the payment of any premiums of insurance and for the discharge of any other obligation of the corporation;
- (b) to determine from time to time the amounts to be raised for the purposes mentioned in clause (a);
- (c) to raise amounts so determined by levying contributions on the owners
 - (i) in proportion to the unit factors of the owners' respective units, or
 - (ii) if provided for in the bylaws, on a basis other than in proportion to the unit factors of the owners' respective units;
- (d) to recover from an owner by an action in debt any sum of money spent by the corporation
 - (i) pursuant to a bylaw, or
 - (ii) as required by a municipal authority or other public authority, in respect of the unit or common property that is leased to that owner under section 50.

(2) A contribution levied as provided in subsection (1) is due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, and may be recovered by an action for debt by the corporation

- (a) from the person who was the owner at the time when the resolution was passed, and
 - (b) from the person who was the owner at the time when the action was instituted,
- both jointly and severally.

(3) Where a contribution is levied under subsection (1) and is not paid by the owner, the mortgagee may pay any amount owing in respect of that contribution and add that amount to the amount owing to the mortgagee under the mortgage.

(4) Where

- (a) a person other than the owner is in possession of a unit and pays rent to the owner in respect of the unit, and

(b) the monthly contributions payable in respect of that unit are in arrears,
the corporation may require the person in possession of the unit to pay the rent owing to the owner in respect of that unit to the corporation for the purposes of applying that rent against the monthly contributions that are in arrears.

(5) Where a person in possession of a unit other than the owner pays the rent to the corporation under subsection (4), that person is deemed to have paid that rent to the owner.

(6) A corporation shall, on the application of an owner, purchaser or mortgagee or the solicitor of an owner, purchaser or mortgagee, or a person authorized in writing by any of those persons, certify

(a) the amount of any contribution determined as the contribution of the owner,

(b) the manner in which the contribution is payable,

(c) the extent to which the contribution has been paid by the owner, and

(d) the interest owing, if any, on any unpaid balance of a contribution

and, in favour of a person dealing with that owner, the certificate is conclusive proof of the matters certified in it.

(7) A corporation may file a caveat against the certificate of title to an owner's unit for the amount of a contribution levied on the owner but unpaid by the owner.

(8) On the filing of the caveat under subsection (7), the corporation has a charge against the unit equal to the unpaid contribution.

(9) A charge under subsection (8) has the same priority from the date of filing of the caveat as a mortgage under the *Land Titles Act* and may be enforced in the same manner as a mortgage.

(10) The *Dower Act* and Part 10 of the *Civil Enforcement Act* do not apply to proceedings under subsection (9).

(11) If a corporation has filed a caveat under this section, the corporation on the payment to it of the amount of the charge shall withdraw the caveat.

(12) Notwithstanding subsection (9), if

(a) a corporation has filed a caveat under this section,

(b) subsequent to the caveat's being filed another person gains title to the unit pursuant to

(i) a foreclosure action,

(ii) an action for specific performance, or

(iii) a public auction conducted under Part 10, Division 8 of the *Municipal*

Government Act,

and

(c) an amount remains owing to the corporation with respect to the contribution for which the caveat was filed,
that caveat shall remain registered against the certificate of title of the unit until the amount owing is paid to the corporation.

RSA 1980 cC-22 s31;1994 cC-10.5 s118;1996 c12 ss32,60

Interest on outstanding accounts

40(1) A corporation may charge interest on any unpaid balance of a contribution owing to it by an owner.

(2) Notwithstanding subsection (1), the rate of interest charged under subsection (1) is not to be greater than the rate of interest provided for by regulation.

RSA 1980 cC-22 s32;1996 c12 s33;2000 c11 s9

Recovery of money

41 If any interest referred to in section 40 or a deposit referred to in section 53(3) is owing by an owner to a corporation, the corporation may, in addition to any rights of recovery that it has in law, recover that amount in the same manner as a

contribution under section 39 and for that purpose that amount is to be considered as a contribution under section 39.

RSA 1980 cC-22 s33

Recovery of costs

42 Where a corporation takes any steps to collect any amount owing under section 39, the corporation may

(a) recover from the person against whom the steps were taken all reasonable costs, including legal expenses and interest, incurred by the corporation in collecting the amount owing, and

(b) if a caveat is registered against the title to the unit, recover from the owner all reasonable expenses incurred by the corporation with respect to the preparation, registration, enforcement and discharge of the caveat.

RSA 1980 cC-22 s34;1996 c12 s34

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

Inspection of records by mortgagee

45 On 10 days' written notice to a corporation, a mortgagee may inspect one or more of the following:

- (a) the records pertaining to the management or administration of the corporation;
- (b) the minutes of meetings of the board of directors of the corporation;
- (c) the minutes of any general or similar meeting of the owners.

1996 c12 s37

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

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

Dispositions of Common Property

Disposition of common property

49**(1)** By a special resolution a corporation may be directed to transfer or lease the common property, or any part of it.

(2) When the board is satisfied that the special resolution was properly passed and that all persons having registered interests in the parcel and all other persons having interests, other than statutory interests, notified to the corporation

(a) have, in the case of either a transfer or a lease, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer, or

(b) have, in the case of a lease, approved in writing of the execution of the proposed lease,
the corporation shall execute the appropriate transfer or lease.

(3) A transfer or lease executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the common property, and the receipt of the corporation for the purchase money, rent, premiums or other money payable to the corporation under the terms of the transfer or lease is a sufficient discharge of and exonerates the persons taking under the transfer or the lease from any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register a transfer or lease authorized under this section unless it has endorsed on it or is accompanied with a certificate under the seal of the corporation stating

(a) that the special resolution was properly passed,

(b) that the transfer or lease conforms with the terms of it, and

(c) that all necessary consents were given.

(5) The certificate referred to in subsection (4) is,

(a) in favour of a purchaser or lessee of the common property, or part of it, and

(b) in favour of the Registrar,
conclusive proof of the facts stated in the certificate.

(6) On the filing for registration of a transfer of common property, the Registrar

(a) shall, before issuing a certificate of title, amend the condominium plan by deleting from it the common property comprised in the transfer, and

(b) shall register the transfer by issuing to the transferee a certificate of title for the land transferred, but no notification of the transfer shall be made on any other certificate of title in the register.

(7) On the filing for registration of a lease of common property, the Registrar shall register the lease by noting it on the condominium plan in the manner prescribed by the regulations.

RSA 1980 cC-22 s40;1996 c12 s59

Exclusive use areas

50(1) Notwithstanding section 49, a corporation may grant a lease to an owner of a unit permitting that owner to exercise exclusive possession in respect of an area or areas of the common property.

(2) Where the corporation grants a lease permitting an owner to exercise exclusive possession in respect of an area or areas of the common property, the corporation may delegate its responsibility to care for and maintain that area or those areas to that owner.

RSA 1980 cC-22 s41;1996 c12 s40

Covenants benefiting parcel

51 By a special resolution a corporation may be directed to accept on behalf of the owners a grant of easement or a restrictive covenant benefiting the parcel.

RSA 1980 cC-22 s42;1996 c12 s59

Procedure for granting restrictive covenants

52(1) By a special resolution a corporation may be directed to execute on behalf of the owners a grant of easement or a restrictive covenant burdening the parcel.

(2) By a special resolution a corporation may be directed to execute on behalf of the owners a surrender of an easement or a restrictive covenant that was granted under subsection (1).

(3) When the board is satisfied that the special resolution was properly passed and that

(a) all persons having interests in the parcel, and

(b) all other persons having interests, other than statutory interests, that

have been notified to the corporation,

have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate instrument to grant the easement or covenant.

(4) An instrument granting an easement or covenant executed in accordance with subsection (3) is valid and effective without execution by any person having an interest in the parcel, and the receipt of the corporation is a sufficient discharge of and exonerates all persons taking under the instrument from any responsibility for the application of the money expressed to have been so received.

(5) The Registrar shall not register an instrument granting an easement or covenant authorized under this section unless it has endorsed on it or is accompanied with a certificate under the seal of the corporation stating that the special resolution was properly passed and that all necessary consents were given.

(6) The certificate referred to in subsection (5) is,

(a) in favour of a person dealing with the corporation under this section,

and

(b) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(7) The Registrar shall register the instrument granting the easement or covenant by noting it on the condominium plan in the manner prescribed by the regulations.

RSA 1980 cC-22 s43;1996 c12 s41

Rental of Units

Rental of units

53(1) An owner of a unit shall not rent the owner's unit until the owner has given written notice to the corporation of the owner's intention to rent the unit, setting out

(a) the address at which the owner may be served with a notice given by the corporation under section 54 or an originating notice or order referred to in section 55 or 56, and

(b) the amount of rent to be charged for the unit.

(2) If an owner of a unit rents the owner's unit it is a condition of that tenancy, notwithstanding anything in the tenancy agreement, that any person in possession of that unit shall not

(a) cause damage to the real or personal property of the corporation or the common property, or

(b) contravene the bylaws.

(3) The corporation may require an owner who rents the owner's unit to pay to and maintain with the corporation a deposit that the corporation may use for

(a) the repair or replacement of the real and personal property of the corporation or of the common property, and

(b) the maintenance, repair or replacement of any common property that is subject to a lease granted to the owner of the unit under section 50, that is damaged, destroyed, lost or removed, as the case may be, by any person in possession of the rented unit.

(4) A deposit referred to in subsection (3) shall not exceed one month's rent charged for the unit.

(5) The owner of a unit shall give the corporation written notice of the name of the tenant renting the unit within 20 days from the commencement of the tenancy.

(6) Within 20 days after ceasing to rent the owner's unit, the owner shall give the corporation written notice that the owner's unit is no longer rented.

(7) A corporation shall, within 20 days after receiving a written notice under subsection (6),

(a) return the deposit to the owner,

(b) if the corporation has made use of the deposit for one or more of the purposes referred to under subsection (3), deliver to the owner

(i) a statement of account showing the amount used, and

(ii) the balance of the deposit not used, if any,

or

(c) if the corporation is entitled to make use of the deposit but is unable to determine the amount of the deposit that it will use, deliver to the owner an estimated statement of account showing the amount it intends to use and, within 60 days after delivering to the owner the estimated statement of account, deliver to the owner

(i) a final statement of account showing the amounts used, and

(ii) the balance of the deposit not used, if any.

RSA 1980 cC-22 s44;1983 c71 s14;1996 c12 s43

Notice to give up possession

54(1) The corporation may give a tenant renting a unit a notice to give up possession of that unit if any person in possession of the unit

(a) causes damage, other than normal wear and tear, to the real or personal property of the corporation or to the common property, or

(b) contravenes a bylaw.

(2) When the corporation gives a tenant a notice under subsection (1),

(a) the tenant shall give up possession of the unit, and

(b) notwithstanding the *Residential Tenancies Act* or anything contained in the tenancy agreement between the tenant and the tenant's landlord, the tenancy agreement terminates,

on the last day of the month immediately following the month in which the notice is served on the tenant.

(3) A notice given under subsection (1) shall be served on the tenant and the tenant's landlord.

RSA 1980 cC-22 s45;1983 c71 s15;1991 c18 s46;
1996 c12 s44

Application for order to give up possession

55(1) If a tenant is given notice under section 54(1) and does not give up possession, the corporation or the landlord may apply by originating notice to the Court for an order requiring the tenant to give up possession of the unit.

(2) An originating notice under this section shall be served on the tenant and the tenant's landlord not less than 3 days, exclusive of holidays and Saturdays, before the day named in the notice for the hearing of the application.

(3) The application of the corporation shall be supported by an affidavit

(a) establishing service of the notice under section 54 to give up possession,

(b) stating the reasons for giving the tenant a notice to give up possession,

(c) stating the failure of the tenant to give up possession and the reasons given, if any, for that failure, and

(d) stating any other relevant facts.

(4) On hearing the application, the Court may order the tenant to give up possession of the unit by a date specified in the order and make any other order that it considers proper in the circumstances.

(5) If the corporation is granted an order under subsection (4), it shall serve a copy of that order on the landlord.

RSA 1980 cC-22 s46;1996 c12 s58

Application for order to give up possession

56(1) If any person in possession of a unit that is being rented

(a) has caused or is causing excessive damage to the real or personal property of the corporation or to the common property, or

(b) is a danger to or is intimidating the owners or any persons who are in possession of the other units located on the parcel,

the corporation may, notwithstanding that the tenant renting that unit has or has not been given a notice to give up possession of that unit under section 54 or by the landlord under the tenancy agreement, apply by originating notice to the Court for an order requiring the tenant to give up immediate possession of that unit.

(2) An originating notice under this section shall be served on the tenant and the tenant's landlord not less than 3 days, exclusive of holidays and Saturdays, before the day named in the notice for the hearing of the application.

(3) The application of the corporation shall be supported by an affidavit

(a) setting out

(i) the damage to the real or personal property of the corporation or the common property, and

(ii) the nature of the danger to or intimidation of persons who are owners or are in possession of the other units,
or either of them, and

(b) stating any other relevant facts.

(4) On hearing the application, the Court may make an order

(a) requiring the tenant to give up possession of the rented unit if the Court is satisfied that

(i) a person who is in possession of that unit has caused or is causing excessive damage to the real or personal property of the corporation or to the common property or is a danger to or is intimidating the owners or any persons who are in possession of the other units, and

(ii) there are reasonable and probable grounds to believe that further damage may be done or that the danger or intimidation will not cease if the tenant is allowed to remain in possession of the rented unit,

and

(b) fixing the day on which the tenant is required to give up possession of the rented unit,

and make any other order that it considers proper in the circumstances.

(5) The tenancy agreement between the tenant and the landlord terminates on the day that the tenant is required to give up possession of the unit pursuant to an order made under subsection (4).

(6) The corporation shall serve a copy of an order made under subsection (4) on the landlord.

RSA 1980 cC-22 s47;1983 c71 s16;1996 c12 s45

Residential Tenancies Act

57 Where a conflict arises between the operation of sections 53 to 56 of this Act and the provisions of the *Residential Tenancies Act*, sections 53 to 56 of this Act prevail.

1996 c12 s46

Administration of Corporation

Appointment of administrator

58(1) A corporation or a person having an interest in a unit may apply to the Court for appointment of an administrator.

(2) The Court may, on cause shown, appoint an administrator for an indefinite period or for a fixed period on any terms and conditions as to remuneration or otherwise that it thinks fit.

(3) The remuneration and expenses of an administrator appointed under this section are administrative expenses within the meaning of this Act.

(4) An administrator has, to the exclusion of the board and the corporation, those powers and duties of the corporation that the Court orders.

(5) An administrator may delegate any of the powers or duties so vested in the administrator.

(6) The Court may, on the application of an administrator or a person referred to in subsection (1), remove or replace the administrator.

RSA 1980 cC-22 s49

Damage to Building

Settlement scheme for damage to building

59(1) If a building that is designated as a unit or part of a unit or that is divided into units is damaged but the condominium status is not terminated pursuant to section 60 or 61, an application to settle a scheme may be made to the Court by the corporation, an owner, a registered mortgagee of a unit or a vendor under an agreement for sale of a unit.

(2) On an application under this section, the Court may by order settle a scheme including provisions

(a) for the reinstatement in whole or in part of the building, or

(b) for transfer of the interests of owners of units that have been wholly or partially destroyed to the other owners in proportion to their unit factors.

(3) In the exercise of its powers under subsection (2), the Court may make those orders as it considers necessary or expedient for giving effect to the scheme, including orders

(a) directing the application of insurance money received by the corporation in respect of damage to the building,

(b) directing payment of money by the corporation or by the owners or by some one or more of them,

(c) directing an amendment of the condominium plan as the Court thinks fit, so as to include in the common property any accretion to it, and

(d) imposing any terms and conditions it thinks fit.

(4) On an application to the Court under this section, an insurer who has effected insurance on the building or any part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel.

RSA 1980 cC-22 s50;1983 c71 s17

Termination of Condominium

Termination of condominium

60 The condominium status of a building or parcel may be terminated by a special resolution.

RSA 1980 cC-22 s51;1983 c71 s18;1996 c12 s59

Application for termination of condominium

61**(1)** An application to terminate the condominium status of a building or parcel may be made to the Court by the corporation, an owner, a registered mortgagee of a unit or a vendor under an agreement for sale of a unit.

(2) On an application under this section, if the Court is satisfied that, having regard to the rights and interests of the owners as a whole, it is just and equitable that the condominium status of the building or parcel should be terminated, the Court may make a declaration to that effect.

(3) When a declaration has been made pursuant to subsection (2), the Court may by order impose any conditions and give any directions, including directions for the payment of money, that it thinks fit for the purpose of adjusting as between the corporation and the owners and as among the owners themselves the effect of the declaration.

(4) On an application to the Court under this section, an insurer who has effected insurance on the building or a part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or counsel.

RSA 1980 cC-22 s52;1983 c71 s19

Effect of termination of condominium

62**(1)** On the condominium status of the building or parcel being terminated under section 60 or 61, the corporation shall forthwith file with the Registrar a notice of the termination in the prescribed form.

(2) On receipt of the notice referred to in subsection (1), the Registrar shall make a notification in respect of the notice on the condominium plan in the manner prescribed by the regulations and on the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.

(3) On the filing of a notice of the termination with the Registrar,

(a) the corporation ceases to exist, and

(b) subject to any declaration of the Court made under section 61, any funds of the corporation that are left after the payment of the corporation's debts and liabilities shall be distributed to the owners of the units in the plan in shares proportional to the unit factors of the owners' respective units.

RSA 1980 cC-22 s53;1983 c71 s20;1996 c12 s48

Sale of property

63**(1)** When the condominium status of a building or parcel is being terminated the corporation may be directed, by a special resolution, to transfer the parcel or any part of it.

(2) When the board is satisfied that the special resolution was properly passed and that

(a) all persons having registered interests in the parcel, and

(b) all other persons having interests, other than statutory interests, that have been notified to the corporation, have consented in writing to the release of the interests in respect of the land comprised in the proposed disposition, the corporation shall execute the appropriate transfer.

(3) A transfer executed pursuant to subsection (2) is valid and effective without execution by any person having an interest in the parcel, and the receipt of the corporation is a sufficient discharge of and exonerates the person taking under the transfer from any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register a transfer executed pursuant to this section

(a) unless the transfer has endorsed on it or is accompanied with a certificate under the seal of the corporation stating that the special resolution was properly passed and that all necessary consents were given, and

(b) until the notification required by section 62 has been made on the condominium plan.

(5) A certificate made pursuant to subsection (4) is,

(a) in favour of a purchaser of the parcel, and

(b) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(6) When land is transferred by a corporation pursuant to this section, the Registrar

(a) shall cancel the certificates of title relating to the units, and

(b) shall register the transfer and issue to the transferee a certificate of title for the land transferred.

RSA 1980 cC-22 s54;1983 c71 s21;

1996 c12 s59;1999 c10 s42

Dissolution of Corporation

Dissolution of corporation

64(1) The Court on an application by a corporation, a member of the corporation, or an administrator appointed under section 58 may by order provide for the winding up of the affairs of a corporation.

(2) By the same or subsequent order the Court may declare the corporation dissolved on a date specified in the order.

RSA 1980 cC-22 s55

Assessment and Taxation

Liability of corporation

65 The corporation is not liable in relation to a unit and the share in the common property assigned to the unit for any rate, charge or tax levied by the Crown, a local authority as defined in the *Municipal Government Act* or any other authority that has the power to assess and levy rates, charges or taxes on land or in respect of the ownership of land.

RSA 1980 cC-22 s59;1994 cM-26.1 s642(10);

1996 c12 s49

Miscellaneous

Petition to Court

66(1) Unless otherwise provided for in this Act or the regulations, an application to the Court under this Act shall be by originating notice.

(2) On an application, notice shall be served on the persons the Court directs.

(3) Notwithstanding subsection (2), the Court may dispense with notice.

(4) The Court may direct the trial of an issue and may give any directions as to all matters, including filing of pleadings, that appear necessary and proper for the final hearing of the application.

RSA 1980 cC-22 s60;1996 c12 s50

Court ordered remedy

67(1) In this section,

- (a) "improper conduct" means
 - (i) non-compliance with this Act, the regulations or the bylaws by a developer, a corporation, an employee of a corporation, a member of a board or an owner,
 - (ii) the conduct of the business affairs of a corporation in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,
 - (iii) the exercise of the powers of the board in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party,
 - (iv) the conduct of the business affairs of a developer in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party or a purchaser or a prospective purchaser of a unit, or
 - (v) the exercise of the powers of the board by a developer in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of an interested party or a purchaser or a prospective purchaser of a unit;
- (b) "interested party" means an owner, a corporation, a member of the board, a registered mortgagee or any other person who has a registered interest in a unit.

(2) Where on an application by an interested party by means of an originating notice the Court is satisfied that improper conduct has taken place, the Court may do one or more of the following:

- (a) direct that an investigator be appointed to review the improper conduct and report to the Court;
- (b) direct that the person carrying on the improper conduct cease carrying on the improper conduct;
- (c) give directions as to how matters are to be carried out so that the improper conduct will not reoccur or continue;
- (d) if the applicant suffered loss due to the improper conduct, award compensation to the applicant in respect of that loss;
- (e) award costs;
- (f) give any other directions or make any other order that the Court considers appropriate in the circumstances.

(3) The Court may grant interim relief under subsection (2) pending the final determination of the matter by the Court.

1996 c12 s51

Variation of order

68 The Court may from time to time vary any order made by it under this Act.

RSA 1980 cC-22 s61

Alternate dispute resolution

69(1) Any dispute respecting any matter arising under this Act or in respect of the bylaws of a corporation may, with the agreement of the parties to the dispute,

- (a) be dealt with by means of mediation, conciliation or similar techniques to encourage settlement of the dispute, or
- (b) be arbitrated under the *Arbitration Act*.

(2) Nothing in subsection (1) shall be construed so as to prohibit a dispute from being arbitrated subsequent to an unsuccessful attempt to deal with the dispute by means of mediation, conciliation or a similar technique.

1996 c12 s52

Right of entry

70 When a municipal authority, public authority or person authorized by either of them has a statutory right to enter on any part of a parcel, the authority or person is entitled to enter on any other part of the parcel to the extent necessary or expedient to enable the authority or person to exercise the authority's or person's statutory powers.

RSA 1980 cC-22 s62;1996 c12 s60

Service

71(1) A document including any written notice or request may be served on a corporation

- (a) by leaving it at or by sending it by registered mail
 - (i) if a change of address for service has not been filed under section 73(2), to the address shown on the condominium plan, or
 - (ii) if a change of address for service has been filed under section 73(2), to the address for service shown on the latest notice filed,
- or
- (b) by personal service on a member of the board.

(2) For the purposes of this section, "document" includes summons, notice, tax notice, order and other legal process.

RSA 1980 cC-22 s63

Service of notices

72(1) A corporation may serve on a landlord a notice given under section 54 or an originating notice or order referred to in section 55 or 56

- (a) by personal service, or
- (b) by registered mail sent to the address given to the corporation under section 53.

(2) A corporation may serve on a tenant a notice given under section 54 or an originating notice or order referred to in section 55 or 56

- (a) by personal service, or
- (b) if the tenant cannot be served personally by reason of the tenant's absence from the premises or by reason of the tenant evading service,
 - (i) by giving it to an adult person who apparently resides with the tenant,
 - (ii) by posting it in a conspicuous place on some part of the premises, or
 - (iii) by sending it by registered mail to the tenant at the address where the tenant resides.

RSA 1980 cC-22 s64

Change of address for service

73(1) A corporation may by resolution of the board change its address for service.

(2) A change in the address for service under subsection (1) does not take effect until a notice of that change of address is filed in the prescribed form at the land titles office.

RSA 1980 cC-22 s65

Fees for documents

74 The corporation may charge a reasonable fee to compensate it for the expenses it incurs in producing and providing a document required under this Act.

RSA 1980 cC-22 s66

Dower Act

75 For the purposes of the *Dower Act*, one unit, together with the owner's share in the common property, constitutes a homestead.

RSA 1980 cC-22 s67

Civil Enforcement Act

76 For the purposes of Part 10 of the *Civil Enforcement Act*, a unit together with the owner's share in the common property is deemed to be a house and lot.

RSA 1980 cC-22 s68;1994 cC-10.5 s118

Writ of enforcement

77 If a judgment is obtained against a corporation, a writ of enforcement in respect of it may be registered against the condominium plan.

RSA 1980 cC-22 s69;1994 cC-10.5 s118

Builders' Lien Act

78(1) For the purposes of the *Builders' Lien Act*,

(a) if on the request of the owner of a unit
(i) work is done in or on or in respect of that unit, or
(ii) material is furnished to be used in or on that unit,
any lien that arises under that Act in consequence of it is on the estate of the owner in that unit and the owner's share in the common property;

(b) if on the request of a corporation
(i) work is done in or on or in respect of the common property or a unit,
or both, or
(ii) material is furnished to be used in or on the common property or a unit, or both,

intended for the benefit of the common property generally, any lien that arises under that Act in consequence of it is on the estates of all the owners in all the units and the common property;

(c) if on the request of a corporation
(i) work is done in or on or in respect of any unit, or
(ii) material is furnished to be used in or on any unit,
intended for the benefit of that unit, any lien that arises under that Act in consequence of it is on the estate of the owner in that unit and the owner's share in the common property.

(2) Where

(a) a lien referred to in subsection (1)(b) arises, and
(b) a statement of lien is registered against the condominium plan,
that statement of lien, on being registered against the condominium plan,
(c) is deemed to be also registered against the certificate of title for each unit, and
(d) may be enforced against the common property and each unit in the same manner as if the statement of lien were specifically registered against the estate of each owner and that owner's share in the common property.

(3) Where

(a) a lien referred to in subsection (1)(b) is registered with the Registrar,
and
(b) payment is made to the holder of the lien in an amount that is sufficient to discharge the proportion of the liability that relates to the owner's unit and the owner's share in the common property,
the holder of the lien shall, on the demand of the owner, provide to the owner a discharge of the lien as it pertains to the owner's unit and the owner's share in the common property.

(4) A discharge of a lien that is provided under subsection (3) may be entered on the condominium plan.

RSA 1980 cC-22 s70;1983 c71 s22;1996 c12 s53

Offences and penalties

79(1) A person who fails to comply with section 12(1) or (5), 13, 14 or 21 is guilty of an offence and liable to a fine

(a) of not less than \$200 nor more than \$15 000 in the case of a person who is not a company, and

(b) of not less than \$500 nor more than \$25 000 in the case of a company.

(2) Subject to subsection (1), a person who fails to comply with this Act is guilty of an offence and liable to a fine of not less than \$200 nor more than \$5000.

(3) If a corporation fails to comply with this Act, each member of the board who is knowingly a party to that failure is guilty of an offence and liable to a fine of not less than \$200 nor more than \$5000.

RSA 1980 cC-22 s71;1996 c12 s54

Application of Act

80(1) This Act applies notwithstanding any agreement to the contrary and any waiver or release given of the rights, benefits or protections provided by or under sections 12 to 17 is void.

(2) A remedy that a purchaser of a unit has under this Act is in addition to any other rights or remedies that the purchaser has.

(3) A purchase agreement may be enforced by a purchaser notwithstanding that the developer failed to comply with this Act.

RSA 1980 cC-22 s72;1996 c12 s58

Regulations

81 The Lieutenant Governor in Council may make regulations

(a) in respect of forms to be used for the purposes of this Act, including the form of certificates of title to units;

(b) respecting the manner of registering a condominium plan;

(c) with respect to anything that must be contained in or on, attached to or endorsed on a condominium plan or a plan presented for registration as a condominium plan,

(i) for the purposes of section 8, prescribing any other information or feature that must be contained in a condominium plan;

(ii) providing that additional pages or material attached or otherwise annexed to the condominium plan form part of the condominium plan;

(iii) providing for alternate methods or an alternate manner by which a condominium plan may contain information or material or be endorsed;

(iv) respecting information or any other material to be included in a condominium plan with respect to the amendment of a condominium plan, the development in phases of units and common property or the modification of a condominium plan;

(d) for the purposes of section 14,

(i) providing for and governing the requirements for and the designation of persons as cost consultants;

(ii) respecting the determination as to what common property constitutes related common property;

(iii) respecting the determination as to when a unit or related common property is substantially completed;

(iv) designating improvements or areas as related common property;

(v) respecting when a unit or related common property is substantially completed;

(vi) governing the reduction pursuant to section 14(12) of the amount of money to be held in trust;

(vii) governing the criteria to be met in order for a plan, agreement, scheme or arrangement to be approved under section 14(10);

(viii) governing when a plan, agreement, scheme or arrangement or coverage under a plan, agreement, scheme or arrangement commences to apply in respect of a unit;

(e) governing amendments to condominium plans;

(f) governing the modification of a condominium plan under section 20(2);

- (g) for the purposes of section 40, providing for the maximum rate of interest to be charged;
- (h) for the purposes of section 47, prescribing the perils that must be insured against;
- (i) subject to sections 60 to 63, governing the termination of condominium status of real property;
- (j) subject to section 64, governing the dissolution and winding-up of a corporation;
- (k) providing for and governing the amalgamation of adjacent parcels;
- (l) governing the development of units and common property in phases under a condominium plan, including, in respect of a development in phases, the creation of additional units and common property;
- (m) governing the cancellation or the non-completion of a development of units and common property in phases under a condominium plan;
- (n) in the case of the amalgamation of adjacent parcels, the development of units and common property in phases or the cancellation or non-completion of a development of units and common property in phases, providing for and governing
 - (i) the assignment of or the re-apportionment of unit factors to or among the units;
 - (ii) the amalgamation of corporations arising out of the amalgamation of adjacent parcels;
 - (iii) any other matter not referred to in subclauses (i) and (ii) that is necessary or expedient so that the parcels, corporations, units and common property or any one or more of them are able to function and to be administered under this Act;
- (o) governing the requirements to be met by developers;
- (p) governing capital replacement reserve funds maintained by corporations;
- (q) governing the preparation and distribution of financial statements and annual budgets under section 30(3);
- (r) prescribing the fees to be paid for any procedure or function required or permitted to be done under this Act;
- (s) respecting the practice and procedure governing application to the Court under this Act;
- (t) authorizing an association or organization that in the opinion of the Minister represents the interests of owners, corporations, developers, managers of corporations and persons other than owners who have interests in units
 - (i) to establish and enforce standards of conduct for corporations, managers and developers with respect to matters that come under this Act;
 - (ii) to provide for mediation, conciliation, arbitration or similar techniques to encourage settlement of disputes arising in respect of units, common property, management of units, of common property or of corporations, the sale or rental of units or any other matter coming under this Act;
 - (iii) to carry out functions or duties under this Act that are delegated to the association or organization by the Minister;
- (u) authorizing the Minister to delegate to an association or organization referred to in clause (t) the carrying out of any function or duty under this Act;
- (u.1) respecting the investment of money for the purpose of section 43(1);
- (v) concerning all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

NOTE: Sections 61 to 63 of the Condominium Property Amendment Act, 1996, which came into force on September 1, 2000, provide as follows:

Transitional

61(1) In this section,

(a) "amended Act" means the Condominium Property Act as amended by this Act;

(b) "previous Act" means the Condominium Property Act as it read immediately before it was amended by this Act.

(2) Where a purchaser enters into a purchase agreement, as defined in the previous Act, before the coming into force of the amended Act, section 11 of the previous Act applies in respect of that purchase agreement in the same manner as if that section had not been repealed by section 10 of this Act and replaced by section 11 as enacted by section 10 of this Act.

(NOTE: In RSA 2000, section 11 has been renumbered as section 14.)

(3) If an action is commenced under section 29 of the previous Act and is not concluded before the coming into force of this Act, the previous Act continues to apply to that action as if that section had not been repealed by section 30 of this Act and replaced by section 29 as enacted by section 30 of this Act.

(NOTE: In RSA 2000, section 29 has been renumbered as section 36.)

(4) Where under the amended Act a special resolution is required in respect of a matter for which a unanimous resolution was required under the previous Act, the amended Act applies and that matter is to be dealt with by means of a special resolution.

1996 c12 s61;2000 c11 s12

62(1) A corporation that was incorporated under the Condominium Property Act before the coming into force of section 20(a) of this Act may, by a resolution of the board of directors, change its name to "Condominium Corporation No." (the number to be specified being the number given to the condominium plan when the condominium plan was registered under the Condominium Property Act).

(2) A change of name made under subsection (1) does not take effect until

(a) the corporation files with the Registrar of Land Titles a copy of the board of directors' resolution changing the corporation's name, and

(b) the Registrar of Land Titles has made a memorandum of the filing on the condominium plan.

1996 c12 s62

63 Section 38 of the Condominium Property Act as amended by section 39(a) of this Act applies only in respect of insurance that is placed or renewed after the coming into force of section 39(a) of this Act.

(NOTE: In RSA 2000, section 38 has been renumbered as section 47.)

1996 c12 s63

APPENDIX 1

(Section 33)

Bylaws of the Corporation

1(1) In these bylaws,

- (a) "Act" means the *Condominium Property Act*;
- (b) "annual general meeting" means an annual general meeting of the corporation;
- (c) "general meeting" means a general meeting of the corporation.

(2) Expressions defined in section 1 of the Act have the same meaning in these bylaws.

(3) The rights and obligations given or imposed on the corporation or the owners under these bylaws are in addition to any rights or obligations given or imposed on the corporation or the owners under the Act.

(4) If there is any conflict between these bylaws and the Act, the Act prevails.

Duties of the Owner

2 An owner

- (a) shall permit the corporation and its agents, at all reasonable times on notice (except in case of emergency when no notice is required), to enter in or on the owner's unit for the purpose of
 - (i) inspecting the unit,
 - (ii) maintaining, repairing or replacing pipes, wires, cables and ducts existing in or on the unit and used or capable of being used in connection with the enjoyment of any other unit or common property,
 - (iii) maintaining, repairing or replacing common property, or
 - (iv) ensuring that the bylaws are being observed,
- (b) shall forthwith
 - (i) carry out all work that may be required pursuant to these bylaws or as required by a municipal authority or other public authority in respect of the owner's unit, other than any work for the benefit of the building or parcel generally, and
 - (ii) pay all rates, taxes, charges and assessments that may be payable in respect of the owner's unit,
- (c) shall maintain the owner's unit in a state of good repair,
- (d) shall notify the corporation forthwith of
 - (i) any change in the ownership of the unit, or
 - (ii) any mortgage registered against the unit, and
- (e) shall not make structural, mechanical or electrical alterations to the owner's unit or to the common property without the prior written consent of the board, which must not be unreasonably withheld.

Powers of the Corporation

3 The corporation may

- (a) acquire personal property to be used
 - (i) for the maintenance, repair or replacement of the real or personal property of the corporation or the common property, or
 - (ii) by owners in connection with their enjoyment of the real and personal property of the corporation or the common property,
- (b) borrow money required by it in the performance of its duties or the exercise of its powers,
- (c) secure the repayment of money borrowed by it and interest on that money by negotiable instrument, a mortgage of unpaid contributions (whether levied or not), or a mortgage of any property owned by it or by any combination of those means,
- (d) grant a lease to an owner under section 50 of the Act,

(e) charge interest under section 40 of the Act on any contribution owing to it by an owner, and

(f) make an agreement with an owner or tenant of a unit for the provision of amenities or services by it to the unit or to the owner or tenant of the unit.

Election of the Board

4(1) The board shall consist of not less than 3 and not more than 7 individuals.

(2) Notwithstanding subsection (1), if there are not more than 2 owners, the board may consist of one or more individuals not to exceed 7 in number.

(3) An individual shall not be a member of the board unless that individual is 18 years of age or older.

Eligibility to Sit on the Board

5(1) A person does not need to be an owner in order to be elected to the board.

(2) Notwithstanding subsection (1),

(a) if a unit has more than one owner, only one owner in respect of that unit may sit on the board at one time, and

(b) an owner who has not paid to the corporation the contributions due and owing in respect of the owner's unit is not eligible for election to the board.

Voting

6 At an election of members of the board each person entitled to vote may vote for the same number of nominees as there are vacancies to be filled on the board.

Term of Office

7(1) Subject to subsection (2), a member of the board is to be elected at an annual general meeting for a term expiring at the conclusion of the annual general meeting convened in the 2nd year following the year in which the member was elected to the board.

(2) At the first general meeting convened under section 29 of the Act,

(a) not more than 50% of the members of the board shall be elected for a term expiring at the conclusion of the annual general meeting convened in the year following the year in which they were elected, and

(b) the balance of the members shall be elected for a term expiring at the conclusion of the annual general meeting convened in the 2nd year following the year in which they were elected.

(3) Each member of the board shall remain in office until

(a) the office becomes vacant under section 9 of these bylaws,

(b) the member resigns,

(c) the member is removed under section 8 of these bylaws, or

(d) the member's term of office expires,

whichever comes first.

Removal of a Member of the Board

8 Except when the board consists of less than 3 individuals, the corporation may by resolution at a general meeting remove a member of the board before the expiration of the member's term of office and appoint another individual in the member's place to hold that office for the remainder of the term.

Vacating of the Office of a Member of the Board

9 The office of a member of the board is vacated if the member

(a) becomes bankrupt under the *Bankruptcy and Insolvency Act* (Canada),

(b) is more than 30 days in arrears in payment of any contribution required to be made by the member as an owner,

(c) is the subject of a certificate of incapacity issued under the *Dependent Adults Act*,

(d) is convicted of an indictable offence for which the member is liable to imprisonment for a term of not less than 2 years,

(e) resigns the member's office by serving notice in writing on the corporation, or

(f) is absent from 3 consecutive meetings of the board without permission of the board and it is resolved at a subsequent meeting of the board that the member's office be vacated.

Vacancy

10 When a vacancy occurs on the board under section 9 of these bylaws, the board may appoint an individual to fill that office for the remainder of the former member's term.

Officers of the Corporation

11**(1)** At the first meeting of the members of the board held after the general meeting of the corporation at which they were elected, the board shall designate from its members a president, vice-president, secretary and treasurer of the corporation.

(2) Notwithstanding subsection (1), the board may designate one person to fill the offices of secretary and treasurer.

(3) In addition to those duties assigned to the officers by the board,

(a) the president or, in the event of the president's absence or disability, the vice-president,

(i) is responsible for the daily execution of the business of the corporation, and

(ii) shall act as chair of the meetings of the board;

(b) the secretary or, in the event of the secretary's absence or disability, another member of the board designated by the board,

(i) shall record and maintain all the minutes of the board,

(ii) is responsible for all the correspondence of the corporation, and

(iii) shall carry out the secretary's duties under the direction of the president and the board;

(c) the treasurer or, in the event of the treasurer's absence or disability, another member of the board designated by the board, shall

(i) receive all money paid to the corporation and deposit it as the board may direct,

(ii) properly account for the funds of the corporation and keep those books as the board directs,

(iii) present to the board when directed to do so by the board, a full detailed account of receipts and disbursements of the corporation, and

(iv) prepare for submission at the annual general meeting

(A) a budget for the forthcoming fiscal year of the corporation, and

(B) an audited statement for the most recently completed fiscal year of the corporation.

(4) A person ceases to be an officer of the corporation if the person ceases to be a member of the board.

(5) If a person ceases to be an officer of the corporation, the board shall designate from its members a person to fill that office for the remainder of the term.

(6) If a board consists of not more than 3 persons, those persons may perform the duties of the officers of the corporation in any manner that the board may direct.

Majority Vote and Quorum of the Board

12**(1)** At meetings of the board, all matters are to be determined by majority vote and in the event of a tie vote, the chair is entitled to a casting vote in addition to the chair's original vote.

(2) A quorum for a meeting of the board is a majority of the members of the board.

Written Resolutions

13 A written resolution of the board signed by all of the members of the board has the same effect as a resolution passed at a meeting of the board duly convened and held.

Seal of the Corporation

14**(1)** The corporation shall have a corporate seal that must not be used except

(a) under the authority of a resolution of the board given prior to its use, and

(b) in the presence of not less than 2 members of the board who shall sign the instrument to which the seal is affixed.

(2) Notwithstanding subsection (1), if there are not more than 2 members of the corporation, one member may be authorized by the board to use the corporate seal and sign the instrument to which the seal is affixed.

Signing Authority

15 The board shall prescribe, by resolution,

(a) those officers or other persons who are authorized to sign cheques, drafts, instruments and documents not required to be signed under the corporate seal, and

(b) the manner, if any, in which those cheques, drafts, instruments or other documents are to be signed.

Powers of the Board

16**(1)** The board shall

(a) meet at the call of the president to conduct its business and adjourn and otherwise regulate its meetings as it thinks fit, and

(b) meet when a member of the board gives to the other members not less than 7 days' notice of a meeting proposed by the member, specifying the reason for calling the meeting.

(2) The board may employ on behalf of the corporation any agents and employees it thinks necessary to control, manage and administer the real and personal property of the corporation and the common property and in that respect may authorize those persons to exercise the powers of and carry out the duties of the corporation.

(3) The board may, subject to any restriction imposed on it or direction given to it at a general meeting of the corporation, delegate to any of its members or to other persons any or all of its powers and duties as it thinks fit, and may at any time revoke that delegation.

Duties of the Board

17 The board shall

(a) cause proper books of account to be kept in respect of all money received and expended by it and the matters in respect of which the receipt and expenditure take place;

(b) prepare financial statements relating to all money of the corporation, and the income and expenditures of the corporation, for each annual general meeting;

(c) maintain financial records of all the assets, liabilities and equity of the corporation;

(d) submit to the annual general meeting an annual report consisting of the financial statements and other information as the board may determine or as may be directed by a resolution passed at a general meeting.

Procedure

18 All meetings of the board and general meetings are to be conducted according to the rules of procedure adopted by the board.

General Meetings other than an Annual General Meeting

19 The board

(a) shall, on the written request of the owners entitled to vote and who represent not less than 15% of the total unit factors for the units, convene a general meeting, and

(b) may, whenever it considers it proper to do so, convene a general meeting.

Notice of General Meetings

20(1) When an annual general meeting or a general meeting is to be convened, the board shall, not less than 7 days prior to the day on which the meeting is to be convened, give to each owner written notice of the meeting stating

(a) the place, date and time at which the meeting is to be convened, and

(b) the nature of any special business, if any, to be brought forth at the meeting.

(2) On being notified by a mortgagee entitled to vote under section 26 of the Act that the mortgagee wishes to be notified of general meetings, the board shall give to that mortgagee the same notices required to be given to the owner under subsection (1) of this section.

(3) An annual general meeting or a general meeting or anything done at that meeting is not invalid by reason only that

(a) a person, by accident, was not, in respect of that meeting, given a notice under subsection (1), or

(b) a person did not in fact receive a notice given under subsection (1) in respect of that meeting.

Quorum

21(1) Except as otherwise provided by these bylaws, no business shall be transacted at an annual general meeting or a general meeting unless a quorum of persons entitled to vote is present or represented by proxy, at the time when the meeting commences.

(2) A quorum for an annual general meeting or a general meeting consists of not less than 25% of all the persons entitled to receive notice under section 20 of these bylaws being present in person or represented by proxy at that meeting.

(3) If within 30 minutes from the time appointed for the commencement of an annual general meeting or a general meeting a quorum is not present, the meeting shall stand adjourned to the corresponding day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the commencement of the meeting, the persons entitled to vote who are present or represented by proxy constitute a quorum for the purpose of that meeting.

22(1) The president or, in the event of the president's absence or disability, the vice-president or other person elected at the meeting, shall act as chair of an annual general meeting or a general meeting.

(2) The order of business at an annual general meeting and, as far as practicable at any other general meeting, is to be as follows:

(a) call to order by the chair;

(b) calling of the roll and certifying of proxies;

(c) proof of notice of meeting, waiver or proxies, as the case may be;

(d) reading and disposal of any unapproved minutes;

(e) reports of officers;

(f) reports of committees;

(g) election of members of the board;

(h) unfinished business;

(i) new business;

(j) adjournment.

Show of Hands

23(1) At an annual general meeting or a general meeting, a resolution shall be voted on by a show of hands unless a poll is demanded by a person entitled to vote and present in person or by proxy, and unless a poll is so demanded, a declaration by the chair that a resolution has on the show of hands been carried is conclusive proof of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution.

(2) If a person demands a poll, that person may withdraw that demand and on the demand being withdrawn the vote shall be taken by a show of hands.

Taking of Poll

24 A poll, if demanded, shall be conducted in a manner as directed by the chair, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Tie Vote

25 In the case of a tie in a vote taken at an annual general meeting or a general meeting, whether on a show of hands or on a poll, the chair of the meeting is entitled to a casting vote in addition to the chair's original vote.

Number of Votes

26(1) If a vote is taken by a show of hands, each person entitled to vote has one vote.

(2) If a vote is taken by a poll, the number of votes that a person may cast shall correspond to the unit factors for the respective units represented by that person.

Votes at an Annual General Meeting or a General Meeting

27 Except for matters requiring a special resolution, all matters shall be determined by a majority vote.

Manner of Voting

28 On a show of hands or on a poll, votes may be given either personally or by proxy.

Appointment of Proxy

29 An instrument appointing a proxy shall be in writing under the hand of the person making the appointment or that person's attorney, and may be either general or for a particular meeting, but a proxy need not be an owner.

Restrictions on Voting

30 Except as provided for in the Act, there are no restrictions or limitations on an owner's rights to vote at an annual general meeting or a general meeting.

Vote by Co-owners

31(1) If a unit is owned by more than one person, those co-owners may vote personally or by proxy and

(a) in the case of a vote taken by a show of hands, those co-owners are entitled to one vote between them, and

(b) in the case of a vote taken by a poll, a co-owner is entitled to that portion of the vote applicable to the unit as is proportionate to the co-owner's interest in the unit.

(2) A co-owner may demand that a poll be taken.

Signed Resolution - Majority Vote

32 If a resolution of the members of the corporation requires a majority vote, that resolution signed in person or by proxy by all the persons who, at a properly convened annual general meeting or general meeting, would be entitled to vote, has the same effect as a resolution duly passed at the meeting.

Failure to Comply with Bylaws

33 The board may exercise the powers provided for in section 36 of the Act.

Tenants

34 The corporation is authorized to

(a) impose and collect deposits under section 53 of the Act,

(b) give notices to give up possession of units under section 54 of the Act, and

(c) make applications to the Court under sections 55 and 56 of the Act.

Amendment of Bylaws

35 Notwithstanding section 20 of these bylaws, if a bylaw is to be amended, repealed or replaced, the persons entitled to vote shall be given written copies of the text of the proposed amendment, repeal or replacement not less than 14 days prior to the day on which the special resolution is to be voted on.

Restrictions in Use

36**(1)** In this section,

(a) "occupant" means a person present in or on a unit or in or on the real or personal property of the corporation or the common property with the permission of an owner;

(b) "owner" includes a tenant.

(2) An owner shall not

(a) use or enjoy the real or personal property of the corporation or the common property in such a manner as to unreasonably interfere with its use and enjoyment by other owners or the occupants;

(b) use the owner's unit in a manner or for a purpose that will cause a nuisance or hazard to any other owner or occupant;

(c) use the owner's unit for a purpose that is illegal;

(d) make undue noise in or on the owner's unit or on or about real property of the corporation or the common property;

(e) keep an animal in or on the owner's unit or on the real property of the corporation or the common property after a date specified in a notice given to the owner by the board;

(f) in the case of a residential unit, use the owner's unit for a purpose other than for residential purposes;

(g) do anything in respect of the owner's unit, the real or personal property of the corporation or the common property or bring or keep anything on it that will in any way increase the risk of fire or result in an increase of any insurance premiums payable by the corporation;

(h) use a toilet, sink, tub, drain or other plumbing fixture for a purpose other than that for which it is constructed;

(i) hang or place on the real property of the corporation or the common property or within or on a unit anything that is, in the opinion of the board, esthetically displeasing when viewed from outside the units;

(j) leave articles belonging to the owner's household on the real property of the corporation or the common property when those articles are not in actual use;

(k) obstruct a sidewalk, walkway, passage, driveway or parking area other than for ingress and egress to and from the owner's unit;

(l) use any portion of the real property of the corporation or the common property except in accordance with the bylaws.

(3) An owner shall ensure that the owner's occupants comply with those requirements that the owner must comply with under subsection (2).

RSA 1980 cC-22 App. 1;1983 c71 s23;1994 c23 s51;

1996 c12 ss56,60

APPENDIX 2

(Section 34)

Bylaws of a Corporation that was
Incorporated Before May 16, 1978
Schedule A

1 An owner shall

(a) permit the corporation and its agents, at all reasonable times on notice (except in case of emergency when no notice is required), to enter the owner's unit for the purpose of inspecting the unit and maintaining, repairing or renewing pipes, wires, cables and ducts for the time being existing in the unit and capable of being used in connection with the enjoyment of any other unit or common property, or for the purpose of maintaining, repairing or renewing common property, or for the purpose of ensuring that the bylaws are being observed,

(b) forthwith carry out all work that may be ordered by any municipality or public authority in respect of the owner's unit, other than such work as may be for the benefit of the building generally, and pay all rates, taxes, charges, outgoings and assessments that may be payable in respect of the owner's unit,

(c) repair and maintain the owner's unit, and keep it in a state of good repair, reasonable wear and tear and damage by fire, storm, tempest or act of God excepted,

(d) use and enjoy the common property in such a manner as to not unreasonably interfere with the use and enjoyment thereof by other owners or their families or visitors,

(e) not use the owner's unit or permit it to be used in any manner or for any purpose that will cause a nuisance or hazard to any occupier of a unit (whether an owner or not) or the family of such an occupier, and

(f) notify the corporation forthwith on any change of ownership or of any mortgage or other dealing in connection with the owner's unit.

2 The corporation shall

(a) control, manage and administer the common property for the benefit of all owners,

(b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings (including elevators) used in connection with the common property,

(c) where practicable establish and maintain suitable lawns and gardens on the common property,

(d) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one unit or common property, and

(e) on the written request of an owner or registered mortgagee of a unit or a vendor under an agreement for sale of a unit, produce to the owner, mortgagee or vendor, or to any person authorized in writing by the owner, mortgagee or vendor, the policy or policies of insurance effected by the corporation, and the receipt or receipts for the last premium or premiums in respect thereof.

3 The corporation may

(a) purchase, hire or otherwise acquire personal property for use by owners in connection with their enjoyment of common property,

(b) borrow money required by it in the performance of its duties or the exercise of its powers,

(c) secure the repayment of money borrowed by it, and the payment of interest thereon, by negotiable instrument, or mortgage of unpaid contributions

(whether levied or not), or mortgage of any property vested in it, or by combination of those means,

(d) invest as it may determine any money in the fund for administrative expenses,

(e) make an agreement with any owner or occupier of a unit for the provision of amenities or services by it to the unit or to the owner or occupier thereof,

(f) grant to an owner the right to exclusive use and enjoyment of common property, or special privileges in respect thereof, but any such grant shall be determinable on reasonable notice unless the corporation by special resolution otherwise resolves, and

(g) do all things reasonably necessary for the enforcement of the bylaws and the control, management and administration of the common property.

4 The board shall consist of not less than 3 nor more than 7 owners and shall be elected at each annual general meeting, but where there are not more than 3 owners, the board shall consist of all owners.

5 Except where the board consists of all the owners, the corporation may by resolution at an extraordinary general meeting remove any member of the board before the expiration of his term of office and appoint another owner in his place to hold office until the next annual general meeting.

6 Any casual vacancy on the board may be filled by the remaining members of the board.

7 Except where there is only one owner, a quorum of the board is 2 where the board consists of 4 or less members, 3 where it consists of 5 or 6 members, and 4 where it consists of 7 members.

8 At the commencement of each meeting the board shall elect a chair for the meeting, who shall have a casting as well as an original vote, and if any chair so elected vacates the chair during the course of a meeting the board shall choose in the chair's stead another chair who has the same rights of voting.

9 At meetings of the board all matters shall be determined by simple majority vote.

10 The board may

(a) meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit, but it shall meet when any member gives to the other members not less than 7 days' notice of a meeting proposed by him, specifying the reason for calling the meeting,

(b) employ for and on behalf of the corporation such agents and servants as it thinks fit in connection with the control, management and administration of the common property, and the exercise and performance of the powers and duties of the corporation, and

(c) subject to any restriction imposed or direction given at a general meeting, delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke such delegation.

11 The board shall

(a) keep minutes of its proceedings,

(b) cause minutes to be kept of general meetings,

(c) cause proper books of account to be kept in respect of all sums of money received and expended by it and the matters in respect of which such receipt and expenditure take place,

(d) prepare proper accounts relating to all money of the corporation, and the income and expenditure thereof, for each annual general meeting, and

(e) on application of an owner or mortgagee, or any person authorized in writing by him, make the books of account available for inspection at all reasonable times.

- 12 A general meeting of owners shall be held within 3 months after registration of the condominium plan.
- 13 Subsequent general meetings shall be held once in each year and not more than 15 months shall elapse between the date of one annual general meeting and that of the next.
- 14 All general meetings other than the annual general meeting shall be called extraordinary general meetings.
- 15 The board may whenever it thinks fit, and shall on a requisition in writing made by owners representing 25% of the total unit factors for the units, convene an extraordinary general meeting.
- 16 Seven days' notice of every general meeting specifying the place, the date and the hour of meeting and, in case of special business, the general nature of that business, shall be given to all owners and registered first mortgagees who have notified their interests to the corporation but accidental omission to give that notice to any owner or to any registered first mortgagee or non-receipt of that notice by any owner or any first mortgagee does not invalidate any proceedings at any such meeting.
- 17 All business shall be deemed special that is transacted at an annual general meeting with the exception of the consideration of accounts and election of members to the board, or at an extraordinary general meeting.
- 18 Except as otherwise provided in these bylaws, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present at the time when the meeting proceeds to business, and 1/2 of the persons entitled to vote present in person or by proxy constitutes a quorum.
- 19 If within 1/2 hour from the time appointed for a general meeting a quorum is not present the meeting shall stand adjourned to the corresponding day in the next week at the same place and time and if at the adjourned meeting a quorum is not present within 1/2 hour from the time appointed for the meeting the persons entitled to vote who are present constitute a quorum.
- 20 At the commencement of a general meeting a chair of the meeting shall be elected.
- 21 At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands unless a poll is demanded by an owner present in person or by proxy, and unless a poll is so demanded a declaration by the chair that a resolution has on the show of hands been carried is conclusive proof of the fact without proof of the number or proportion of votes recorded in favour of or against such resolution, but a demand for a poll may be withdrawn.
- 22 A poll, if demanded, shall be taken in such manner as the chair thinks fit and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 23 In the case of equality in the votes whether on a show of hands or on a poll the chair of the meeting is entitled to a casting vote in addition to the chair's original vote.
- 24 On a show of hands each owner shall have one vote; on a poll the votes of owners shall correspond with the unit factors for their respective units.
- 25 On a show of hands or in a poll votes may be given either personally or by proxy.
- 26 An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting, but a proxy need not be an owner.
- 27 Except as provided for in the *Condominium Property Act*, there are no restrictions or limitations on an owner's rights to vote at an annual general meeting or a general meeting.

28 Co-owners may vote by proxy jointly appointed by them, and in the absence of such a proxy are entitled to vote on a show of hands, except when the special resolution of owners is required by the *Condominium Property Act*, but any one co-owner may demand a poll, and on any poll each co-owner is entitled to such part of the vote applicable to a unit as is proportionate to his interest in the unit, and the joint proxy, if any, on a poll has a vote proportionate to the interest in the unit of such of the joint owners as do not vote personally or by individual proxy.

29 Where owners are entitled to successive interests in a unit, the owner entitled to the first interest is alone entitled to vote, whether on a show of hands or a poll, and this bylaw is applicable whether by the *Condominium Property Act* the special resolution of owners is required or not.

30 Where an owner is a trustee he shall exercise the voting rights in respect of the unit to the exclusion of persons beneficially interested in the trust, and those persons may not vote.

31 The corporation shall have a common seal which shall at no time be used except by authority of the board previously given and in the presence of the members of the board or at least 2 members thereof who shall sign every instrument to which the seal is affixed, but where there is only one member of the corporation his signature is sufficient for the purpose of this clause.

32**(1)** The bylaws in Appendix 2, Schedule B of the *Condominium Property Act* may be added to, amended or repealed by special resolution of the corporation and not otherwise.

(2) A special resolution means a resolution passed at a general meeting of which at least 14 days' notice specifying the proposed special resolution has been given by owners representing a majority of not less than 3/4 of the total unit factors for all the lots, and not less than 3/4 of all the owners.

RSA 1980 cC-22 App. 2,Sched. A;1996 c12 ss57,59

Schedule B

1 An owner shall not

- (a) use his unit for any purpose that may be illegal or injurious to the regulation of the building, or
- (b) make undue noise in or about any unit or common property, or
- (c) keep any animals on his unit or the common property after notice in that behalf from the board.

2 When the purpose for which a unit is intended to be used is shown expressly or by necessary implication or by the registered condominium plan, an owner shall not use his unit for any other purpose, or permit the unit to be so used.

1966 c19 Sched. B