

# *Condominium Act, 1998*

S.O. 1998, c. 19

Amended by: 2000, c. 26, Sched. B, s. 7.

**Note: This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. See: 1998, c. 19, s. 187.**

## PART I DEFINITIONS

### Definitions

1. (1) In this Act,

“annual general meeting” means a meeting of the owners of a corporation held in accordance with subsection 45 (2); (“assemblée générale annuelle”)

“approval authority” means the approval authority for the purposes of sections 51, 51.1 and 51.2 of the *Planning Act*; (“autorité approbatrice”)

“auditor” means a person licensed as a public accountant under the *Public Accountancy Act* who is appointed as an auditor of a corporation under section 60; (“vérificateur”)

“board” means the board of directors of a corporation; (“conseil”)

“building” means a building included in a property; (“bâtiment”)

“by-law” means a by-law of a corporation; (“règlement administratif”)

“claim” includes a right, title, interest, encumbrance or demand of any kind affecting land but does not include the interest of an owner in the owner’s unit or common interest; (“réclamation”)

“common elements” means all the property except the units; (“parties communes”)

“common elements condominium corporation” means a common elements condominium corporation described in subsection 138 (2); (“association condominiale de parties communes”)

“common expenses” means the expenses related to the performance of the objects and duties of a corporation and all expenses specified as common expenses in this Act or in a declaration; (“dépenses communes”)

“common interest” means the interest in the common elements appurtenant to,

- (a) a unit, in the case of all corporations except a common elements condominium corporation, or
- (b) an owner’s parcel of land to which the common interest is attached and which is described in the declaration, in the case of a common elements condominium corporation; (“intérêt commun”)

“common surplus” means the excess of all receipts of the corporation over the expenses of the corporation; (“excédent commun”)

“corporation” means a corporation created or continued under this Act; (“association”)

“declarant” means a person who owns the freehold or leasehold estate in the land described in the description and who registers a declaration and description under this Act, and includes a successor or assignee of that person but does not include a purchaser in good faith of a unit who pays fair market value or a successor or assignee of the purchaser; (“déclarant”)

“declaration” means a declaration registered under section 2 and all amendments to the declaration; (“déclaration”)

“deed” includes a transfer under the *Land Titles Act*; (“acte scellé”)

“description” means a description registered under section 2 and all amendments to the description; (“description”)

“encumbrance” means a claim that secures the payment of money or the performance of any other obligation and includes a charge under the *Land Titles Act*, a mortgage and a lien; (“sûreté réelle”)

“freehold condominium corporation” means a corporation in which all the units and their appurtenant common interests are held in fee simple by the owners; (“association condominiale de propriété franche”)

“leasehold condominium corporation” means a corporation in which all the units and their appurtenant common interests are subject to leasehold interests held by the owners; (“association condominiale de propriété à bail”)

“lessor”, in relation to a leasehold condominium corporation, means the person who owns the freehold estate in the land described in the description; (“bailleur”)

“Minister” means the minister responsible for the administration of this Act; (“ministre”)

“mortgage” includes a charge under the *Land Titles Act*, in which case “mortgagor” and “mortgagee” mean the chargor and the chargee under the charge; (“hypothèque”, “débiteur hypothécaire”, “créancier hypothécaire”)

“municipality” means a city, town, village, township or county and includes a metropolitan, regional or district municipality and the County of Oxford; (“municipalité”)

“owner” means,

- (a) in relation to a corporation other than a leasehold condominium corporation or a common elements condominium corporation, a person who owns a freehold interest in a unit and its appurtenant common interest and who is shown as the owner in the records of the land registry office in which the description of the corporation is registered, and includes a mortgagee in possession and a declarant with respect to any unit that the declarant has not transferred to another person,
- (b) in relation to a leasehold condominium corporation, a person who owns a leasehold interest in a unit and its appurtenant common interest and who is shown as the owner in the records of the land registry office in which the description of the corporation is registered, and includes a mortgagee in possession and a declarant with respect to any unit in which the declarant has not transferred the leasehold interest to another person but does not include a tenant of the owner,
- (c) in relation to a common elements condominium corporation, a person, including the declarant, who owns a common interest in the common elements and a freehold interest in the parcel of land to which the common interest is attached as described in the declaration and who is shown as the owner in the records of the land registry office in which the description of the corporation is registered; (“propriétaire”)

“phased condominium corporation” means a phased condominium corporation to which Part XI applies; (“association condominiale constituée par étape”)

“prescribed” means prescribed by the regulations made under this Act; (“prescrit”)

“property” means the land, including the buildings on it, and interests appurtenant to the land, as the land and interests are described in the description and includes all land and interests appurtenant to land that are added to the common elements; (“propriété”)

“proposed property” means the property described in the declaration and description that are required to be registered to designate a proposed unit as a unit under this Act; (“propriété projetée”)

“proposed unit” means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed in registerable form after a declaration and description have been registered in respect of the land; (“partie privative projetée”)

“purchaser of a unit”, in relation to a leasehold condominium corporation, means the purchaser of an owner’s interest in a unit and the appurtenant common interest; (“acquéreur d’une partie privative”)

“registered” means registered under the *Land Titles Act* or the *Registry Act* and “register” and “registration” have corresponding meanings; (“enregistré”, “enregistrer”, “enregistrement”)

“reserve fund” means a reserve fund established under section 93; (“fonds de réserve”)

“reserve fund study” means a reserve fund study described in section 94; (“étude du fonds de réserve”)

“rule” means a rule of a corporation; (“règle”)

“status certificate” means a status certificate described in section 76; (“certificat d’information”)

“unit” means a part of the property designated as a unit by the description and includes the space enclosed by its boundaries and all of the land, structures and fixtures within this space in accordance with the declaration and description; (“partie privative”)

“vacant land condominium corporation” means a vacant land condominium corporation described in subsection 155 (2). (“association condominiale de terrain nu”) 1998, c. 19, s. 1 (1).

#### Ownership of land

(2) For the purposes of this Act, the ownership of land or of a leasehold interest in land includes the ownership of space or of a leasehold interest in space respectively. 1998, c. 19, s. 1 (2).

#### Proposed declarant

(3) A reference to a declarant in this Act shall be deemed to include, where applicable, a person who proposes or intends to register a declaration and description. 1998, c. 19, s. 1 (3).

## **PART II REGISTRATION AND CREATION**

### CREATION

#### Registration

**2.** (1) Subject to the regulations made under this Act and subsection (2), a declaration and description may be registered by or on behalf of the person who owns the freehold or leasehold estate in the land described in the description. 1998, c. 19, s. 2 (1).

#### Restriction

(2) A declaration and description for a freehold condominium corporation shall not be registered by or on behalf of a person who does not own the freehold estate in the land described in the description. 1998, c. 19, s. 2 (2).

#### Effect of registration

- (3) Upon registration of a declaration and description,
- (a) this Act governs the land and the interests appurtenant to the land, as the land and the interests are described in the description;
  - (b) the land described in the description is divided into units and common elements in accordance with the description; and
  - (c) a condominium corporation is created. 1998, c. 19, s. 2 (3).

#### Place of registration

- 3.** (1) The declaration and description shall be registered in,
- (a) the land titles division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office has a land titles division; or
  - (b) the registry division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office does not have a land titles division. 1998, c. 19, s. 3 (1).

#### Index

(2) A land registrar in whose office a declaration and description are registered shall keep an index of the corporations created by the registrations. 1998, c. 19, s. 3 (2).

### Same

(3) The index mentioned in subsection (2) shall be in the form approved by the Director of Titles appointed under section 9 of the *Land Titles Act* and shall be known in English as the Condominium Corporations Index and in French as Répertoire des associations condominiales. 1998, c. 19, s. 3 (3).

### Condominium register

(4) A land registrar in whose office a declaration and description are registered shall keep a register in the form approved by the Director of Titles to be known in English as the Condominium Register and in French as Registre des condominiums. 1998, c. 19, s. 3 (4).

### Contents of condominium register

(5) Declarations, descriptions, by-laws, notices of termination and other instruments respecting land governed by this Act shall be registered and recorded in the Condominium Register in accordance with the regulations made under this Act and the instructions of the Director of Titles. 1998, c. 19, s. 3 (5).

### Real property Acts

**4.** (1) The *Land Titles Act* or the *Registry Act*, as the case may be, applies in respect of property governed by this Act but, if the provisions of either of those Acts conflict with the provisions of this Act, the provisions of this Act prevail. 1998, c. 19, s. 4 (1).

### Rights of tenants

(2) The registration of a declaration and description shall not terminate or otherwise affect the rights under the *Tenant Protection Act, 1997* of a person who, at the time of the registration, is a tenant of the property or of a part of the property. 1998, c. 19, s. 4 (4).

### No termination of tenancy

(3) The registration of a declaration and description does not constitute grounds for a landlord to give notice of termination under Part III of the *Tenant Protection Act, 1997* to a tenant described in subsection (2). 1998, c. 19, s. 4 (4).

(4) SPENT: 1998, c. 19, s. 4 (4).

### Corporation

**5.** (1) A corporation created or continued under this Act is a corporation without share capital whose members are the owners. 1998, c. 19, s. 5 (1).

### Name

(2) The land registrar shall assign a name to each corporation in accordance with the regulations made under this Act. 1998, c. 19, s. 5 (2).

#### Other Act

(3) The *Corporations Act* does not apply to the corporation. 1998, c. 19, s. 5 (3).

#### Same

(4) Subject to the regulations made under this Act, the *Corporations Information Act* applies to the corporation. 1998, c. 19, s. 5 (4).

#### Types of corporations

6. (1) Corporations under this Act consist of the following types:

1. Freehold condominium corporations.
2. Leasehold condominium corporations. 1998, c. 19, s. 6 (1).

#### Types of freehold corporations

(2) Freehold condominium corporations consist of the following types:

1. Common elements condominium corporations.
2. Phased condominium corporations.
3. Vacant land condominium corporations.
4. Standard condominium corporations that are not any of the corporations mentioned in paragraphs 1, 2 and 3. 1998, c. 19, s. 6 (2).

#### Restriction on registration

(3) A declaration and description shall not be registered unless the registration would create a freehold condominium corporation or a leasehold condominium corporation. 1998, c. 19, s. 6 (3).

#### Indication in declaration

(4) The declaration shall state,

- (a) whether the corporation is a freehold condominium corporation or a leasehold condominium corporation; and
- (b) if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is. 1998, c. 19, s. 6 (4).

### DECLARATION AND DESCRIPTION

### Requirements for declaration

7. (1) A declaration shall not be registered unless the declarant has executed it in the manner prescribed by the Act under which it is to be registered. 1998, c. 19, s. 7 (1).

### Contents

(2) A declaration shall contain,

- (a) a statement that this Act governs the land and interests appurtenant to the land, as the land and the interests are described in the description;
- (b) the consent of every person having a registered mortgage against the land or interests appurtenant to the land, as the land and the interests are described in the description;
- (c) a statement of the proportions, expressed in percentages, of the common interests appurtenant to the units;
- (d) a statement of the proportions, expressed in percentages allocated to the units, in which the owners are to contribute to the common expenses;
- (e) an address for service, a municipal address for the corporation, if available, and the mailing address of the corporation if it differs from its address for service or municipal address;
- (f) a specification of all parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;
- (g) a statement of all conditions that the approval authority, in approving or exempting the description under section 9, requires the declaration to mention; and
- (h) all other material that the regulations made under this Act require. 1998, c. 19, s. 7 (2).

### Consent

(3) A person shall not withhold the consent mentioned in clause (2) (b) by reason only of the failure of the declarant to enter into a specified number of agreements of purchase and sale for the sale of proposed units. 1998, c. 19, s. 7 (3).

### Additional contents

(4) In addition to the material mentioned in subsection (2) and in any other section in this Act, a declaration may contain,



- (a) a statement specifying the common expenses of the corporation;
- (b) conditions or restrictions with respect to the occupation and use of the units or common elements;
- (c) conditions or restrictions with respect to gifts, leases and sales of the units and common interests;
- (d) a list of the responsibilities of the corporation consistent with its objects and duties; and
- (e) a description of the allocation of obligations to maintain the units and common elements and to repair them after damage, which allocation has been done in accordance with this Act. 1998, c. 19, s. 7 (4).

#### Inconsistent provisions

(5) If any provision in a declaration is inconsistent with the provisions of this Act, the provisions of this Act prevail and the declaration shall be deemed to be amended accordingly. 1998, c. 19, s. 7 (5).

#### Requirements for description

- 8.** (1) Subject to the regulations made under this Act, a description shall contain,
- (a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of the buildings;
  - (b) architectural plans of the buildings and, if there are any, structural plans of the buildings;
  - (c) a specification of the boundaries of each unit by reference to the buildings or other monuments;
  - (d) diagrams showing the shape and dimensions of each unit and the approximate location of each unit in relation to the other units and the buildings;
  - (e) a certificate of an architect that all buildings have been constructed in accordance with the regulations and, if there are structural plans, a certificate of an engineer that all buildings have been constructed in accordance with the regulations;
  - (f) a certificate signed by an Ontario land surveyor licensed under the *Surveyors Act* stating that the diagrams of the units are substantially accurate;

- (g) a description of all interests appurtenant to the land that are included in the property; and
- (h) all other material that the regulations made under this Act require. 1998, c. 19, s. 8 (1).

#### Preparation of documents

(2) A survey, plan, specification, diagram, certificate or description mentioned in subsection (1) shall be prepared in accordance with the regulations made under this Act. 1998, c. 19, s. 8 (2).

#### Common elements, units in building

- (3) A description shall not be registered unless,
  - (a) the property includes common elements; and
  - (b) each unit for residential purposes includes one or more buildings or is included in a building. 1998, c. 19, s. 8 (3).

#### Approval by examiner of surveys

(4) The examiner of surveys appointed under the *Land Titles Act* may require a description or an amendment to a description to be submitted to the examiner of surveys for approval before it is registered. 1998, c. 19, s. 8 (4).

#### Same

(5) The examiner of surveys shall approve the description or the amendment to the description if satisfied that the document submitted meets the requirements of this section. 1998, c. 19, s. 8 (5).

## PLANNING ACT

#### Subdivision control

- 9.** (1) Section 50 of the *Planning Act* does not apply in respect of,
- (a) dealings with whole units and common interests; or
  - (b) easements transferred by or reserved to the corporation. 1998, c. 19, s. 9 (1).

#### Approvals of descriptions

(2) Subject to this section, the provisions of sections 51, 51.1 and 51.2 of the *Planning Act* that apply to a plan of subdivision apply with necessary modifications to a description or an amendment to a description. 1998, c. 19, s. 9 (2).

### Registration

- (3) A description or an amendment to a description shall not be registered unless,
- (a) the approval authority has approved it; or
  - (b) the approval authority has exempted it from those provisions of sections 51 and 51.1 of the *Planning Act* that would normally apply to it under subsection (2) and it is accompanied by a certificate of exemption issued by the approval authority. 1998, c. 19, s. 9 (3).

### Conversion of rented residential premises

(4) If an applicant makes an application for approval in respect of a property that includes a building or related group of buildings containing one or more premises that is used as a rented residential premises or that has been used as a rented residential premises and is vacant, the approval authority may, after consulting with the council of the local municipality in which the property is located if the approval authority is not that municipality, require the applicant to have a person who holds a certificate of authorization within the meaning of the *Professional Engineers Act* or a certificate of practice within the meaning of the *Architects Act* or another qualified person inspect the property and report to the approval authority all matters that the approval authority considers may be of concern. 1998, c. 19, s. 9 (4).

### Additional conditions

(5) In addition to the conditions that it may impose under subsection 51 (25) of the *Planning Act*, the approval authority that receives an application described in subsection (4) may impose the conditions that it considers are reasonable in light of the report mentioned in subsection (4). 1998, c. 19, s. 9 (5).

### Application for exemption

(6) Before making an application under subsection 51 (16) of the *Planning Act*, the owner of a property or a person authorized in writing by the owner of the property may apply to the approval authority to have the description or any part of the description exempted from those provisions of sections 51 and 51.1 of the *Planning Act* that would normally apply to it under subsection (2). 1998, c. 19, s. 9 (6).

### Individual exemption

(7) The approval authority may grant an exemption if it believes the exemption is appropriate in the circumstances. 1998, c. 19, s. 9 (7).

### Exemption made by Minister

(8) If the Minister of Municipal Affairs and Housing is the approval authority, that Minister may by regulation provide that the provisions of sections 51 and 51.1 of the

*Planning Act* that apply to a plan of subdivision do not apply to a class of description or an amendment to a class of description specified in the regulation. 1998, c. 19, s. 9 (8).

#### Effect of regulation

(9) The regulation may be restricted to specified geographic areas of Ontario. 1998, c. 19, s. 9 (9).

#### Exemption made by municipality

(10) If the Minister of Municipal Affairs and Housing is not the approval authority, the approval authority may by by-law provide that the provisions of sections 51 and 51.1 of the *Planning Act* that apply to a plan of subdivision do not apply to a class of description or an amendment to a class of description specified in the by-law. 1998, c. 19, s. 9 (10).

#### Effect of by-law

(11) The by-law may be restricted to specified geographic areas within the geographic area of the authority. 1998, c. 19, s. 9 (11).

#### s. 52 of *Planning Act*

(12) Section 52 of the *Planning Act* applies in respect of a description of a vacant land condominium corporation but does not apply in respect of a description of any other corporation. 1998, c. 19, s. 9 (12).

## **PART III OWNERSHIP**

#### Type of property

**10.** Units and common elements are real property for all purposes. 1998, c. 19, s. 10.

#### Ownership of property

**11.** (1) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of the owner's unit. 1998, c. 19, s. 11 (1).

#### Same, common elements

(2) The owners are tenants in common of the common elements and an undivided interest in the common elements is appurtenant to each owner's unit. 1998, c. 19, s. 11 (2).

#### Common interests

(3) The proportions of the common interests are those expressed in the declaration. 1998, c. 19, s. 11 (3).

#### No separation

(4) The ownership of a unit shall not be separated from the ownership of the common interest and an instrument that purports to separate the ownership of a unit from a common interest is void. 1998, c. 19, s. 11 (4).

#### No division

(5) Except as provided by this Act, the common elements shall not be partitioned or divided. 1998, c. 19, s. 11 (5).

#### Easements

**12.** (1) The following easements are appurtenant to each unit and shall be for the benefit of the owner of the unit and the corporation:

1. An easement for the provision of a service through the common elements or any other unit.
2. An easement for support by all buildings and structures necessary for providing support to the unit.
3. If a building or a part of a building moves after registration of the declaration and description or after having been damaged and repaired but has not been restored to the position occupied at the time of registration of the declaration and description, an easement for exclusive use and occupation over the space of the other units and common elements that would be space included in the unit if the boundaries of the unit were determined by the position of the buildings from time to time after registration of the description and not at the time of registration.
4. If a corporation is entitled to use a service or facility in common with another corporation, an easement for access to and for the installation and maintenance of the service or facility over the land of the other corporation, described in accordance with the regulations made under this Act. 1998, c. 19, s. 12 (1).

#### Same, common elements

(2) The following easements are appurtenant to the common elements:

1. An easement for the provision of a service through a unit or through a part of the common elements of which an owner has exclusive use.
2. An easement for support by all units necessary for providing support. 1998, c. 19, s. 12 (2).

#### Effect on encumbrances

**13.** Upon the registration of the declaration and description, an encumbrance against the common elements is no longer enforceable against the common elements but is enforceable against all the units and common interests. 1998, c. 19, s. 13.

#### Discharge of encumbrances

**14.** (1) If an encumbrance registered before the registration of the declaration and description is, by virtue of section 13, enforceable against all the units of a corporation and their common interests, an owner may discharge the portion of the encumbrance that is applicable to the owner's unit and common interest by paying to the encumbrancer the portion of the amount owing on account of principal and interest under the encumbrance that is attributable to the owner's common interest as specified in the declaration. 1998, c. 19, s. 14 (1).

#### Form

(2) Upon payment of the portion of the encumbrance sufficient to discharge a unit and common interest, and upon demand, the encumbrancer shall give to the owner a discharge of that unit and common interest in accordance with the requirements of the regulations made under this Act. 1998, c. 19, s. 14 (2).

#### Assessment

**15.** (1) Each unit, together with its appurtenant common interest, constitutes a parcel for the purpose of municipal assessment and taxation. 1998, c. 19, s. 15 (1).

#### Common elements

(2) Subject to subsection (3), the common elements of a corporation that is not a common elements condominium corporation do not constitute a parcel for the purpose of municipal assessment and taxation. 1998, c. 19, s. 15 (2).

#### Exception

(3) A part of the common elements of a corporation that is not a common elements condominium corporation constitutes a separate parcel for the purpose of municipal assessment and taxation if it is leased for business purposes under section 21, the lessee carries on an undertaking for gain on it and it is in the commercial property class prescribed under the *Assessment Act*. 1998, c. 19, s. 15 (3).

#### Common elements condominium corporation

(4) The common elements of a common elements condominium corporation constitute a parcel for the purpose of municipal assessment and taxation within each municipality in which the common elements or a part of them are located and the municipal taxes levied on the parcel or parcels shall form part of the common expenses of the corporation. 1998, c. 19, s. 15 (4).

## PART IV CORPORATION

### GENERAL

#### Seal

**16.** (1) The corporation shall have a seal that the board shall adopt and may change. 1998, c. 19, s. 16 (1).

#### Name

(2) The name of the corporation shall appear in legible characters on the seal. 1998, c. 19, s. 16 (2).

#### Objects

**17.** (1) The objects of the corporation are to manage the property and the assets, if any, of the corporation on behalf of the owners. 1998, c. 19, s. 17 (1).

#### Duties

(2) The corporation has a duty to control, manage and administer the common elements and the assets of the corporation. 1998, c. 19, s. 17 (2).

#### Ensuring compliance

(3) The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 17 (3).

**Note: On the day Part IV comes into force, the Act is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (1) by adding the following section:**

#### Dealing with title to real property

**17.1** Nothing in this Act confers on the corporation the power to grant, transfer, lease, release, dispose of or otherwise deal with the title to any real property that the corporation does not own or any interest in real property where the corporation does not own the interest, unless this Act specifically confers the power on the corporation.

**See: 2000, c. 26, Sched. B, ss. 7 (1), 20 (3).**

#### Assets

**18.** (1) The corporation may own, acquire, encumber and dispose of real and personal property only for purposes that are consistent with the objects and duties of the corporation. 1998, c. 19, s. 18 (1).

**Note: On the day Part IV comes into force, section 18 is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (2) by adding the following subsection:**

#### Interests in real property

(1.1) The assets of the corporation do not include any real property that the corporation does not own or any interest in real property where the corporation does not own the interest.

**See: 2000, c. 26, Sched. B, ss. 7 (2), 20 (3).**

#### Interest in assets

(2) The owners share the assets of the corporation in the same proportions as the proportions of their common interests in accordance with this Act, the declaration and the by-laws. 1998, c. 19, s. 18 (2).

#### Validity of easement

(3) A grant or transfer of an easement to the corporation is valid even though the corporation does not own land capable of being benefited by the easement. 1998, c. 19, s. 18 (3).

#### Right of entry

**19.** On giving reasonable notice, the corporation or a person authorized by the corporation may enter a unit or a part of the common elements of which an owner has exclusive use at any reasonable time to perform the objects and duties of the corporation or to exercise the powers of the corporation. 1998, c. 19, s. 19.

#### Easements described in declaration or phase

**20.** (1) An easement described in subsection (2) is created,

- (a) upon the registration of a declaration and description that creates a corporation, if the easement is described in the declaration and description; or
- (b) upon the registration of an amendment to a declaration and description that creates a phase within the meaning of Part XI in a phased condominium corporation, if the easement is described in the amendment. 1998, c. 19, s. 20 (1).

#### Application

(2) Subsection (1) applies to an easement that,



- (a) imposes a benefit or a burden on land owned by the declarant other than the property; or
- (b) the approval authority requires as a condition of approving the declaration and description for the corporation. 1998, c. 19, s. 20 (2).

#### Creation of easement

(3) No deed or other document is required to be registered or delivered to the owner of the land benefited by an easement that is created under subsection (1) in order for the easement to be made effective. 1998, c. 19, s. 20 (3).

#### Validity of easement

(4) An easement that is created under subsection (1) is valid even though the declarant owns the land to be benefited or burdened by the easement in addition to owning the land relating to the easement that is described in the description. 1998, c. 19, s. 20 (4).

#### Easements and lease of common elements

**21.** (1) The corporation may by by-law,

- (a) lease a part of the common elements, except a part that the declaration specifies is to be used only by the owners of one or more designated units and not by all the owners; or

**Note: On the day Part IV comes into force, clause (a) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (3) by striking out “or” at the end. See: 2000, c. 26, Sched. B, ss. 7 (3), 20 (3).**

- (b) grant or transfer an easement or licence through the common elements. 1998, c. 19, s. 21 (1).

**Note: On the day Part IV comes into force, clause (b) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (3) by adding “or” at the end. See: 2000, c. 26, Sched. B, ss. 7 (3), 20 (3).**

**Note: On the day Part IV comes into force, subsection (1) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (3) by adding the following clause:**

- (c) release an easement that is part of the common elements.

**See: 2000, c. 26, Sched. B, ss. 7 (3), 20 (3).**

### Binding on all owners

(2) A lease, grant or transfer mentioned in subsection (1), signed by the authorized officers of the corporation, affects the interest of every owner in the common elements as if the lease, grant or transfer had been executed by that owner. 1998, c. 19, s. 21 (2).

**Note: On the day Part IV comes into force, subsection (2) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (4) by striking out “or transfer” in both places where it occurs and substituting in each case “transfer or release”. See: 2000, c. 26, Sched. B, ss. 7 (4), 20 (3).**

### Telecommunications agreements

**22.** (1) In this section,

“telecommunications” means the emission, transmission or reception of any combination of signs, signals, writing, images, sound, data, alphanumeric characters or intelligence of any nature by wire, cable, radio or an optical, electromagnetic or any similar technical system; (“télécommunications”)

“telecommunications agreement” means an agreement for the provision of services or facilities related to telecommunications to, from or within the property of a corporation and includes a grant or transfer of an easement, lease or licence through the property of a corporation for the purposes of telecommunications. (“convention concernant les télécommunications”) 1998, c. 19, s. 22 (1).

### By-law not required

(2) Despite subsection 21 (1), a corporation may, by resolution of the board without a by-law,

- (a) make an agreement for a network upgrade to a telecommunications system that services the units of the corporation;
- (b) make an agreement for a telecommunications system that is not connected to a telecommunications system that services the units of the corporation; or
- (c) amend an agreement for a telecommunications system that services the units of the corporation to permit the other party to the agreement to supply and invoice part or all of the services directly to the unit owners. 1998, c. 19, s. 22 (2).

### Notice required

(3) Subsections 97 (3), (4), (5) and (6) apply to an agreement described in subsection (2) as if it were a change in a service that a corporation provides to the owners. 1998, c. 19, s. 22 (3).

#### Charge to unit owners

(4) The cost of the services that are invoiced directly to the unit owners under clause (2) (c) shall not form part of the common expenses, despite anything in the declaration. 1998, c. 19, s. 22 (4).

#### Telecommunications easement

(5) A corporation and a party, if any, that has entered into a telecommunications agreement with the corporation shall have a non-exclusive easement over the part of the property described in clause (b) for the purpose of installing and using a telecommunications system if,

- (a) the corporation was created on or after the day this section comes into force and includes one or more units for residential purposes;
- (b) part of the property is designed to control, facilitate or provide telecommunications to, from or within the property; and
- (c) the corporation does not have an easement over the property described in the description or a right to use the property that is adequate for,
  - (i) the telecommunications agreement that it has entered into with respect to the property, if it has entered into such an agreement, or
  - (ii) the telecommunications system that the corporation intends to install and use on the property, if it has not entered into a telecommunications agreement with respect to the property. 1998, c. 19, s. 22 (5).

#### Duty to accommodate easement

(6) If a telecommunications system installed on the part of the property described in clause (5) (b) interferes with a telecommunications system that the corporation intends to have installed and to use on the property described in the description, the owner of the part of the property shall, upon 30 days written notice by the owner of the easement described in subsection (5), take all necessary steps that are reasonable to accommodate the intended telecommunications system. 1998, c. 19, s. 22 (6).

#### Validity of easement

(7) The easement is valid even though the corporation and the party, if any, that has entered into a telecommunications agreement with the corporation own no land to be benefited by the easement. 1998, c. 19, s. 22 (7).

#### Easements non-exclusive

(8) If the property of a corporation that includes one or more units for residential purposes is subject to an easement for the purposes of telecommunications and at least 10 years have passed since the later of the execution of the grant of the easement and the registration of the declaration and description, then, despite anything in the grant, the easement shall be deemed to be non-exclusive. 1998, c. 19, s. 22 (8).

#### Termination of agreements

(9) A corporation that includes one or more units for residential purposes may terminate a telecommunications agreement if,

- (a) at least 10 years have passed since the later of the execution of the agreement and the registration of the declaration and description;
- (b) the board has, by resolution, approved the termination of the agreement;
- (c) the owners of more than 50 per cent of the units at the time the board passes the resolution consent in writing to the termination of the agreement; and
- (d) the corporation has given the person 120 days written notice of the termination. 1998, c. 19, s. 22 (9).

#### Exception

(10) Subsection (9) does not apply to a telecommunications agreement if,

- (a) the corporation entered into the agreement after a new board is elected at a turn-over meeting held under section 43;
- (b) the agreement is non-exclusive; and
- (c) the agreement makes allowance for the installation of alternate telecommunications systems. 1998, c. 19, s. 22 (10).

#### Personal property

(11) If, under subsection (9), a corporation terminates a telecommunications agreement, a party to the agreement may, on giving reasonable notice to the corporation, remove personal property that it owns and that is located on the property that was subject to the agreement within 30 days after the termination of the agreement. 1998, c. 19, s. 22 (11).

#### Duties on removal

(12) A party removing personal property under subsection (11) shall,

- (a) carry out the removal in a manner that facilitates the installation of other similar personal property for the purposes of telecommunications; and
- (b) reimburse the corporation for the damage, if any, that the removal causes to the property of the corporation. 1998, c. 19, s. 22 (12).

#### Abandonment

(13) A party to a telecommunications agreement that has the right to remove its personal property under subsection (11) shall be deemed to have abandoned the property if it does not remove the property within the time specified in that subsection. 1998, c. 19, s. 22 (13).

#### Action by corporation

**23.** (1) Subject to subsection (2), in addition to any other remedies that a corporation may have, a corporation may, on its own behalf and on behalf of an owner,

- (a) commence, maintain or settle an action for damages and costs in respect of any damage to common elements, the assets of the corporation or individual units; and
- (b) commence, maintain or settle an action with respect to a contract involving the common elements or a unit, even though the corporation was not a party to the contract in respect of which the action is brought. 1998, c. 19, s. 23 (1).

#### Notice to owners

(2) Before commencing an action mentioned in subsection (1), the corporation shall give written notice of the general nature of the action to all persons whose names are in the record of the corporation maintained under subsection 47 (2) except if,

- (a) the action is to enforce a lien of the corporation under section 85 or to fulfil its duty under subsection 17 (3); or
- (b) the action is commenced in the Small Claims Court. 1998, c. 19, s. 23 (2).

#### Costs

(3) Unless the board determines otherwise, the legal and court costs in an action that the corporation commences or maintains in whole or in part on behalf of any owners in respect of their units shall be borne by those owners in the proportion in which their interests are affected. 1998, c. 19, s. 23 (3).

#### Judgment as asset

(4) A judgment for payment in favour of the corporation in an action that the corporation commences or maintains on its own behalf is an asset of the corporation. 1998, c. 19, s. 23 (4).

#### Corporation may be sued

(5) The corporation may, as representative of the owners of the units, be sued in respect of any matter relating to the common elements or assets of the corporation. 1998, c. 19, s. 23 (5).

#### Judgment against corporation

(6) A judgment for the payment of money against the corporation is also a judgment against each owner at the time of judgment for a portion of the judgment determined by the proportions specified in the declaration for sharing the common interests. 1998, c. 19, s. 23 (6).

#### Notices under the *Expropriations Act*

**24.** (1) For the purposes of the *Expropriations Act*, if the land to be expropriated is part of the common elements of a corporation and does not include any units, any document that an expropriating authority is required or entitled to serve on the owner of the land, including a notice, an appraisal report and an offer of compensation, is sufficiently served on the owners of the land if the expropriating authority serves the document,

- (a) on the corporation; and
- (b) if the land to be expropriated is part of the common elements that the declaration specifies are for the exclusive use of the owners of one or more of the units of the corporation, but not all the owners, on the owners of those units. 1998, c. 19, s. 24 (1).

#### Notice to owners

(2) Within 15 days of being served with a document under subsection (1), the corporation shall notify all persons whose names are in the record of the corporation maintained under subsection 47 (2) that it has been served with a document for the purposes of the *Expropriations Act* and shall make a copy of the document available for examination by them. 1998, c. 19, s. 24 (2).

#### Corporation acting for owners

(3) For the purposes of the *Expropriations Act*, all the rights under that Act of the owners of the land to be expropriated in respect of which a document has been served on the corporation under subsection (1) shall be transferred to and exercised by the corporation, subject to section 126. 1998, c. 19, s. 24 (3).

#### Notices under the *Planning Act*

**25.** A corporation that is served with a notice under the *Planning Act* shall, within 15 days of being served, notify all persons whose names are in the record of the corporation maintained under subsection 47 (2) that it has been served with a notice under that Act and shall make a copy of the notice available for examination by them. 1998, c. 19, s. 25.

#### Occupier's liability

**26.** For the purposes of determining liability resulting from breach of the duties of an occupier of land, the corporation shall be deemed to be the occupier of the common elements and the owners shall be deemed not to be occupiers of the common elements. 1998, c. 19, s. 26.

### DIRECTORS AND OFFICERS

#### Board of directors

**27.** (1) A board of directors shall manage the affairs of the corporation. 1998, c. 19, s. 27 (1).

#### Number

(2) Subject to subsection 42 (4), the board shall consist of at least three persons or such greater number as the by-laws may provide. 1998, c. 19, s. 27 (2).

#### Change in number

(3) The corporation may by by-law increase or, subject to subsection (2), decrease the number of directors as set out in its by-laws. 1998, c. 19, s. 27 (3).

#### Election of directors

**28.** (1) Subject to subsection 42 (1), the owners shall elect the board of directors in accordance with this Act and the by-laws. 1998, c. 19, s. 28 (1).

#### Notice of candidates

(2) The notice of a meeting to elect one or more directors shall include the name and address of each individual who has notified the board in writing of the intention to be a candidate in the election as of the fourth day before the notice is sent. 1998, c. 19, s. 28 (2).

#### Notice of owner-occupant position

(3) If, under subsection 51 (6), one position on the board is reserved for voting by owners of owner-occupied units, the notice of meeting shall include,

- (a) a statement that one position on the board is reserved for voting by owners of owner-occupied units; and

- (b) a statement indicating which persons have notified the board in writing as of the day before the notice is sent that they intend to be candidates for the position on the board reserved for voting by owners of owner-occupied units. 1998, c. 19, s. 28 (3).

#### Qualifications

**29.** (1) No person shall be a director if,

- (a) the person is under eighteen years of age;
- (b) the person is an undischarged bankrupt; or
- (c) the person is a mentally incompetent person. 1998, c. 19, s. 29 (1).

#### Disqualification

(2) A person immediately ceases to be a director if,

- (a) the person becomes an undischarged bankrupt or a mentally incompetent person; or
- (b) a certificate of lien has been registered under subsection 85 (2) against a unit owned by the person and the person does not obtain a discharge of the lien under subsection 85 (7) within 90 days of the registration of the lien. 1998, c. 19, s. 29 (2).

#### Consent

**30.** (1) A person shall not be elected or appointed as a director unless the person consents. 1998, c. 19, s. 30 (1).

#### Deemed consent

(2) A person shall be deemed to consent if the person is present at the meeting when elected or appointed and does not refuse to act as a director. 1998, c. 19, s. 30 (2).

#### Written consent

(3) A person who is not present at the meeting may be elected or appointed if the person consents in writing to act as director before the meeting or within 10 days after the meeting. 1998, c. 19, s. 30 (3).

#### Non compliance

(4) The election or appointment of a person as director contrary to this section is ineffective. 1998, c. 19, s. 30 (4).



### Term

**31.** (1) Except in the case of directors appointed to the first board of directors under subsection 42 (1), a director is elected for a term of three years or such lesser period as the by-laws may provide. 1998, c. 19, s. 31 (1).

### Same

(2) Despite subsection (1), a director may continue to act until a successor is elected. 1998, c. 19, s. 31 (2).

### Conduct of business

**32.** (1) Subject to subsection 42 (5), the board of a corporation shall not transact any business of the corporation except at a meeting of directors at which a quorum of the board is present. 1998, c. 19, s. 32 (1).

### Quorum

(2) A quorum for the transaction of business is a majority of the members of the board. 1998, c. 19, s. 32 (2).

### Removal

**33.** (1) Subject to subsection 51 (8), a director, other than a director on the first board, may be removed before the expiration of the director's term of office by a vote of the owners at a meeting duly called for the purpose where the owners of more than 50 per cent of all of the units in the corporation vote in favour of removal. 1998, c. 19, s. 33 (1).

### Replacement

(2) In accordance with the by-laws dealing with the election of directors, the owners may, at the meeting, elect any person qualified to be a member of the board for the remainder of the term of a director who has been removed. 1998, c. 19, s. 33 (2).

### Vacancy

**34.** (1) If a vacancy arises in the board, the remaining directors may exercise all the powers of the board as long as a quorum of the board remains in office. 1998, c. 19, s. 34 (1).

### Replacement made by board

(2) If a vacancy arises in the board and a quorum of the board remains in office, the majority of the remaining members of the board may appoint any person qualified to be a member of the board to fill the vacancy until the next annual general meeting. 1998, c. 19, s. 34 (2).

### Replacement made by owners

(3) Subject to subsection 51 (6), at the annual general meeting mentioned in subsection (2) the owners shall elect a person to fill the vacancy that arose under that subsection who

shall hold office for the remainder of the term of the director whose position became vacant. 1998, c. 19, s. 34 (3).

#### Election when no quorum

(4) If a vacancy arises in the board and there are not enough directors remaining in office to constitute a quorum, the remaining directors shall, within 30 days of losing the quorum, call and hold a meeting of owners to fill all vacancies in the board. 1998, c. 19, s. 34 (4).

#### Owner may call meeting

(5) If the directors do not call and hold the meeting or if there are no directors then in office, an owner may call the meeting. 1998, c. 19, s. 34 (5).

#### Reimbursement of cost

(6) Upon request, the corporation shall reimburse an owner who calls a meeting under subsection (5) for the reasonable costs incurred in calling the meeting. 1998, c. 19, s. 34 (6).

#### Increase

(7) Despite subsection (2), a vacancy resulting from an increase in the number of directors shall be filled only by election at a meeting of owners duly called for that purpose and the directors so elected shall not act until the by-law increasing the number of directors is registered under subsection 56 (9). 1998, c. 19, s. 34 (7).

#### Meetings of directors

**35.** (1) In addition to meetings of the directors required by the by-laws of the corporation, a quorum of the directors may, at any time, call a meeting for the transaction of any business. 1998, c. 19, s. 35 (1).

#### Notice

(2) The person calling a meeting of directors shall give a written notice of the meeting to every director of the corporation,

- (a) at least 10 days before the day of the meeting, unless the by-laws specify otherwise; and
- (b) by delivering it to the director personally or by sending it by prepaid mail, courier delivery or electronic communication addressed to the director at the latest address as shown on the records of the corporation, unless the by-laws specify otherwise. 1998, c. 19, s. 35 (2).

#### Content of notice

(3) The notice shall state the time and place of the meeting and the general nature of the business to be discussed at the meeting. 1998, c. 19, s. 35 (3).

#### Waiver of notice

(4) A director who attends a meeting shall be deemed to have waived the right to object to a failure to give the required notice unless the director expressly objects to the failure at the meeting. 1998, c. 19, s. 35 (4).

#### Teleconference

(5) A meeting of the directors may be held by teleconference or another form of communications system that allows the directors to participate concurrently if,

- (a) the by-laws authorize those means for holding a meeting of the directors; and
- (b) all directors of the corporation consent to the means used for holding the meeting. 1998, c. 19, s. 35 (5).

#### Officers

**36.** (1) A corporation shall have a president and a secretary and all other officers that are provided for by by-law or by resolution of the directors. 1998, c. 19, s. 36 (1).

#### Election and appointment

(2) Subject to the by-laws, the directors,

- (a) shall elect the president from among themselves;
- (b) shall appoint or elect the secretary; and
- (c) may appoint or elect one or more vice-presidents or other officers. 1998, c. 19, s. 36 (2).

#### Holding several offices

(3) The same person may hold two or more offices of the corporation. 1998, c. 19, s. 36 (3).

#### Standard of care

**37.** (1) Every director and every officer of a corporation in exercising the powers and discharging the duties of office shall,

- (a) act honestly and in good faith; and

- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. 1998, c. 19, s. 37 (1).

#### Validity of acts

(2) The acts of a director or officer are valid despite any defect that may afterwards be discovered in the person's election, appointment or qualifications. 1998, c. 19, s. 37 (2).

#### Liability of directors

(3) A director shall not be found liable for a breach of a duty mentioned in subsection (1) if the breach arises as a result of the director's relying in good faith upon,

- (a) financial statements of the corporation that the auditor in a written report, an officer of the corporation or a manager under an agreement for the management of the property represents to the director as presenting fairly the financial position of the corporation in accordance with generally accepted accounting principles; or
- (b) a report or opinion of a lawyer, public accountant, engineer, appraiser or other person whose profession lends credibility to the report or opinion. 1998, c. 19, s. 37 (3).

#### Indemnification

**38.** (1) Subject to subsection (2), the by-laws of a corporation may provide that every director and every officer of the corporation and the person's heirs, executors, administrators, estate trustees and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against,

- (a) any liability and all costs, charges and expenses that the director or officer sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against the person for or in respect of anything that the person has done, omitted to do or permitted in respect of the execution of the duties of office; and
- (b) all other costs, charges and expenses that the person sustains or incurs in respect of the affairs of the corporation. 1998, c. 19, s. 38 (1).

#### Not for breach of duty

(2) No director or officer of a corporation shall be indemnified by the corporation in respect of any liability, costs, charges or expenses that the person sustains or incurs in or about an action, suit or other proceeding as a result of which the person is adjudged to be in breach of the duty to act honestly and in good faith. 1998, c. 19, s. 38 (2).

### Insurance

**39.** If the insurance is reasonably available, a corporation shall purchase and maintain insurance for the benefit of a director or officer against the matters described in clauses 38 (1) (a) and (b) except insurance against a liability, cost, charge or expense of the director or officer incurred as a result of a breach of the duty to act honestly and in good faith. 1998, c. 19, s. 39.

### Disclosure by director of interest

**40.** (1) A director of a corporation who has, directly or indirectly, an interest in a contract or transaction to which the corporation is a party or a proposed contract or transaction to which the corporation will be a party, shall disclose in writing to the corporation the nature and extent of the interest. 1998, c. 19, s. 40 (1).

### Interest to be material

(2) Subsection (1) does not apply to a contract or transaction or a proposed contract or transaction unless both it and the director's interest in it are material. 1998, c. 19, s. 40 (2).

### Purchase of property

(3) If the contract or transaction or the proposed contract or transaction to which subsection (1) applies involves the purchase or sale of real or personal property by the corporation that the seller acquired within five years before the date of the contract or transaction or the proposed contract or transaction, the director shall disclose the cost of the property to the seller, to the extent to which that information is within the director's knowledge or control. 1998, c. 19, s. 40 (3).

### Time of disclosure

(4) The disclosure required by this section shall be made,

- (a) at the meeting of the board at which the contract or transaction or the proposed contract or transaction is first considered;
- (b) if the director is not as of the date of the meeting mentioned in clause (a) interested in the contract or transaction or the proposed contract or transaction, at the next meeting of the directors held after the director becomes so interested;
- (c) if the director becomes interested in the contract or transaction after it is entered into, at the first meeting of the directors held after the director becomes so interested; or
- (d) if the contract or transaction or the proposed contract or transaction is one that in the ordinary course of the corporation's business would not require

approval by the directors or owners, at the first meeting of the directors held after the director becomes aware of the contract or transaction or the proposed contract or transaction. 1998, c. 19, s. 40 (4).

#### Minutes

(5) The board shall enter the disclosure made by a director under this section in the minutes of the meeting of the board at which the disclosure was made. 1998, c. 19, s. 40 (5).

#### Right to vote

(6) The director shall not be present during the discussion at a meeting, vote or be counted in the quorum on a vote with respect to a contract or transaction or a proposed contract or transaction to which subsection (1) applies unless the director's interest in it,

- (a) is or would be limited solely to the insurance described in section 39 or remuneration as a director, officer or employee of the corporation; or
- (b) arises or would arise solely because the director is a director, officer or employee of the declarant, if the director has been appointed to the first board by the declarant under subsection 42 (1). 1998, c. 19, s. 40 (6).

#### Effect of disclosure

(7) A director who has complied with the requirements of this section and who was acting honestly and in good faith at the time the contract or transaction was entered into, is not, by reason only of holding the office of director, accountable to the corporation or to its owners for any profit or gain realized from the contract or transaction, and the contract or transaction is not voidable by reason only of the director's interest in it. 1998, c. 19, s. 40 (7).

#### Confirmation by owners

(8) Despite anything in this section, a director who has acted honestly and in good faith is not accountable to the corporation or to the owners for any profit or gain realized from the contract or transaction by reason only of holding the office of director, and the contract or transaction is not voidable by reason only of the director's interest in it if,

- (a) the contract or transaction is confirmed or approved by at least two-thirds of the votes cast at a meeting of owners duly called for that purpose; and
- (b) the nature and extent of the director's interest in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting. 1998, c. 19, s. 40 (8).

#### Disclosure by officer of interest

**41.** (1) An officer of a corporation who is not a director and who has, directly or indirectly, an interest in a contract or transaction to which the corporation is a party or a proposed contract or transaction to which the corporation will be a party, shall disclose in writing to the corporation the nature and extent of the interest. 1998, c. 19, s. 41 (1).

#### Time of disclosure

(2) An officer who is required to make a disclosure under subsection (1) shall make the disclosure at the first meeting of the board held after the officer becomes aware of the contract or transaction or the proposed contract or transaction. 1998, c. 19, s. 41 (2).

#### Application of s. 40

(3) Subsections 40 (2), (3), (5), (7) and (8) apply to an officer of a corporation who is not a director as if all references to a director in those subsections were references to an officer. 1998, c. 19, s. 41 (3).

### TRANSFER OF CONTROL BY DECLARANT

#### First board of directors

**42.** (1) Within 10 days after the registration of the declaration and description, the declarant shall appoint the first board of a corporation. 1998, c. 19, s. 42 (1).

#### Replacements

(2) The declarant may revoke the appointment of a director to the first board and appoint another director to the first board who shall hold office until a new board is elected at a turn-over meeting held under section 43. 1998, c. 19, s. 42 (2).

#### Term

(3) The first board shall hold office until a new board is elected at a turn-over meeting held under section 43. 1998, c. 19, s. 42 (3).

#### Number

(4) The first board shall consist of three persons or such greater number as the declaration provides. 1998, c. 19, s. 42 (4).

#### Conduct of business

(5) A written resolution that is adopted by the first board before the owners elect a director to the first board under subsection (8) and that is signed by all the directors entitled to vote on the resolution at a meeting of the first board, is valid even though no meeting is held to vote on the resolution. 1998, c. 19, s. 42 (5).

### Owners' meeting

(6) Subject to subsection (7), the first board shall call and hold a meeting of owners by the later of,

- (a) the 30th day after the day by which the declarant has transferred 20 per cent of the units in the corporation; and
- (b) the 90th day after the declarant transfers the first unit in the corporation.  
1998, c. 19, s. 42 (6).

### Exception

(7) The first board is not required to call or hold the meeting mentioned in subsection (6) if, by the day set for the meeting, the declarant no longer owns a majority of the units and advises the first board in writing of that fact. 1998, c. 19, s. 42 (7).

### Election of directors

(8) At the meeting mentioned in subsection (6), the owners, other than the declarant, may elect two directors to the first board. 1998, c. 19, s. 42 (8).

### Quorum

(9) Despite subsection 50 (1), at the meeting mentioned in subsection (6), the quorum for the election of directors under subsection (8) is those owners who own 25 per cent of the units in the corporation not owned by the declarant. 1998, c. 19, s. 42 (9).

### Determination of quorum

(10) To count towards the quorum, an owner must have been entitled to receive notice of the meeting, must be entitled to vote at a meeting and shall be present at the meeting or represented by proxy. 1998, c. 19, s. 42 (10).

### Increased number

(11) A director elected to the first board under subsection (8) shall hold office in addition to the directors appointed to the first board even if the addition of an elected director results in more directors on the board than the declaration allows. 1998, c. 19, s. 42 (11).

### Transition

(12) The owners other than the declarant shall not be entitled to elect a director under subsection (8) if the corporation's first board was appointed or elected on or before the day this section comes into force. 1998, c. 19, s. 42 (12).

### Turn-over meeting

**43.** (1) The board elected or appointed at a time when the declarant owns a majority of the units shall, not more than 21 days after the declarant ceases to be the registered



owner of the majority of the units, call a meeting of owners to elect a new board. 1998, c. 19, s. 43 (1).

#### Who may call meeting

(2) If the board does not call the meeting within the required time, an owner or a mortgagee having the right to vote under section 48 may call the meeting. 1998, c. 19, s. 43 (2).

#### Time of meeting

(3) The board shall hold the meeting within 21 days after it is called. 1998, c. 19, s. 43 (3).

#### Things to turn over

- (4) At the meeting, the declarant shall deliver to the board elected at the meeting,
- (a) the seal of the corporation;
  - (b) the minute book for the corporation including a copy of the registered declaration, registered by-laws, current rules and minutes of owners' meetings and board meetings;
  - (c) copies of all agreements entered into by the corporation or the declarant or the declarant's representatives on behalf of the corporation, including management contracts, deeds, leases, licences and easements;
  - (d) copies of all policies of insurance and the related certificates or memoranda of insurance and all insurance trust agreements;
  - (e) bills of sale or transfers for all items that are assets of the corporation but not part of the property;
  - (f) the records maintained under subsection 47 (2) and subsection 83 (3); and
  - (g) all records that it has related to the units or to employees of the corporation. 1998, c. 19, s. 43 (4).

#### Same, after meeting

- (5) The declarant shall deliver to the board within 30 days after the meeting,
- (a) the existing warranties and guarantees for all the equipment, fixtures and chattels included in the sale of either the units or common elements that are not protected by warranties and guarantees given directly to a unit purchaser;

- (b) the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
- (c) the as-built specifications, indicating all substantive changes, if any, from the original specifications;
- (d) all existing plans for underground site services, site grading, drainage and landscaping, and television, radio or other communications services;
- (e) all other existing plans and information not mentioned in clause (b), (c) or (d) that are relevant to the repair or maintenance of the property;
- (f) if the property of the corporation is subject to the *Ontario New Home Warranties Plan Act*,
- (i) proof, in the form, if any, prescribed by the Minister, that the units and common elements have been enrolled in the Plan within the meaning of that Act in accordance with the regulations made under that Act, and
- (ii) a copy of all final reports on inspections that the Corporation within the meaning of that Act requires be carried out on the common elements;
- (g) a table setting out the responsibilities for repair after damage and maintenance and indicating whether the corporation or the owners are responsible;
- (h) a schedule setting out what constitutes a standard unit for each class of unit that the declarant specifies for the purpose of determining the responsibility for repairing improvements after damage and insuring them;
- (i) all financial records of the corporation and of the declarant relating to the operation of the corporation from the date of registration of the declaration and the description;
- (j) if the meeting is held after nine months following the registration of the declaration and description, the reserve fund study that is required within the year following the registration of the declaration and description;
- (k) all reserve fund studies that have been completed or are required to have been completed at the time the meeting is held, other than the reserve fund study that is required within the year following the registration of the declaration and description;

- (l) a copy of the most current disclosure statement delivered to a purchaser of a unit in the corporation under section 72 before the meeting; and
- (m) all other material that the regulations made under this Act require to be given to the board. 1998, c. 19, s. 43 (5).

#### Cost

(6) The items mentioned in subsections (4) and (5) shall be prepared at the declarant's expense, except for the items mentioned in clauses (5) (j) and (k) which shall be prepared at the expense of the corporation. 1998, c. 19, s. 43 (6).

#### Audited financial statements

(7) The declarant shall deliver to the board within 60 days after the meeting audited financial statements of the corporation prepared by the auditor, on behalf of the owners and at the expense of the corporation, as of the last day of the month in which the meeting is held. 1998, c. 19, s. 43 (7).

#### Application

(8) The corporation may make an application to the Ontario Court (General Division) for an order under subsection (9). 1998, c. 19, s. 43 (8).

**Note: On the day Part IV comes into force, subsection (8) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (5) by striking out "Ontario Court (General Division)" and substituting "Superior Court of Justice". See: 2000, c. 26, Sched. B, ss. 7 (5), 20 (3).**

#### Court order

(9) The court, if satisfied that the declarant has, without reasonable excuse, failed to comply with subsection (4), (5) or (7),

- (a) shall order that the declarant pay damages to the corporation for the loss it incurred as a result of the declarant's acts of non-compliance with subsection (4), (5) or (7), as the case may be;
- (b) shall order that the declarant pay the corporation's costs of the application;
- (c) may order the declarant to pay to the corporation an additional amount not to exceed \$10,000; and
- (d) may order the declarant to comply with subsection (4), (5) or (7), as the case may be. 1998, c. 19, s. 43 (9).

#### Performance audit

**44.** (1) If the property of the corporation includes one or more units for residential purposes or if the corporation is a common elements condominium corporation, the board shall retain a person who holds a certificate of authorization within the meaning of the *Professional Engineers Act* or a certificate of practice within the meaning of the *Architects Act* to conduct a performance audit of the common elements described in the description on behalf of the corporation. 1998, c. 19, s. 44 (1).

#### Time for audit

(2) A performance audit shall be conducted no earlier than six months, and no later than 10 months, following the registration of the declaration and description. 1998, c. 19, s. 44 (2).

#### Cost

(3) The corporation shall pay the cost of the performance audit and it shall form part of the corporation's budget for the year following the registration of the declaration and description. 1998, c. 19, s. 44 (3).

#### Purpose

(4) The person who conducts the performance audit shall determine whether there are any deficiencies in the performance of the common elements described in the description after construction has been completed on them that,

- (a) may give rise to a claim for payment out of the guarantee fund under section 14 of the *Ontario New Home Warranties Plan Act* to the corporation; or
- (b) subject to the regulations made under this Act, would give rise to a claim described in clause (a) if the property of the corporation were subject to that Act. 1998, c. 19, s. 44 (4).

#### Duties

(5) In making the determination, the person who conducts the performance audit shall,

- (a) inspect the major components of the buildings on the property which, subject to the regulations made under this Act, include the foundation, parking garage, wall construction, air and vapour barriers, windows, doors, elevators, roofing, mechanical system, electrical system, fire protection system and all other components that are prescribed;
- (b) subject to the regulations made under this Act, inspect the landscaped areas of the property;

- (c) review all final reports on inspections that the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* requires be carried out on the common elements; and
- (d) conduct a survey of the owners of the corporation as to what evidence, if any, they have seen of,
  - (i) damage to the units that may have been caused by defects in the common elements, and
  - (ii) defects in the common elements that may cause damage to the units. 1998, c. 19, s. 44 (5).

#### Powers for audit

- (6) The person who conducts a performance audit may, for the purpose of the audit,
  - (a) enter onto the property at any reasonable time either alone or accompanied with any expert that the person considers necessary for the audit;
  - (b) require any person to produce any drawings, specifications or information that may on reasonable grounds be relevant to the audit;
  - (c) make all examinations, tests or inquiries that may on reasonable grounds be relevant to the audit; and
  - (d) call upon any expert for the assistance that the person considers necessary in conducting the audit. 1998, c. 19, s. 44 (6).

#### No obstruction

(7) No person shall obstruct a person who is exercising powers under this section or provide false information or refuse to provide information to the person. 1998, c. 19, s. 44 (7).

#### Contents

- (8) The person who conducts a performance audit shall prepare a written report that includes,
  - (a) a copy of the person's certificate of authorization within the meaning of the *Professional Engineers Act* or certificate of practice within the meaning of the *Architects Act*, as the case may be;
  - (b) details of the inspection and findings made by the person in the course of conducting the audit;

- (c) a statement that the person has reviewed all final reports described in clause (5) (c);
- (d) a copy of the survey described in clause (5) (d) and a summary of the results of it;
- (e) the determination that subsection (4) requires the person to make; and
- (f) all other material that the regulations made under this Act require. 1998, c. 19, s. 44 (8).

#### Submission of report

(9) Before the end of the 11th month following the registration of the declaration and description, the person who conducts a performance audit shall,

- (a) submit the report to the board; and
- (b) file the report with the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* if the property is subject to that Act. 1998, c. 19, s. 44 (9).

#### Claim under other Act

(10) The filing of the report with the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* shall be deemed to constitute a notice of claim that the corporation gives to the Corporation within the meaning of that Act under the regulations made under that Act for the deficiencies disclosed in the report. 1998, c. 19, s. 44 (10).

## OWNERS

#### Meetings

**45.** (1) Subject to the other requirements of this Act, anything that this Act requires to be approved by a vote of any of the owners shall be approved only at a meeting of owners duly called for that purpose. 1998, c. 19, s. 45 (1).

#### Annual general meeting

(2) The board shall hold a general meeting of owners not more than three months after the registration of the declaration and description and subsequently within six months of the end of each fiscal year of the corporation. 1998, c. 19, s. 45 (2).

#### Matters for annual general meeting

(3) At an annual general meeting, an owner may raise for discussion any matter relevant to the affairs and business of the corporation. 1998, c. 19, s. 45 (3).

#### Other meetings

(4) The board may at any time call a meeting of owners for the transaction of any business, and the notice of the meeting shall specify the nature of the business. 1998, c. 19, s. 45 (4).

#### Requisition for meeting

**46.** (1) A requisition for a meeting of owners may be made by those owners who at the time the board receives the requisition, own at least 15 per cent of the units, are listed in the record maintained by the corporation under subsection 47 (2) and are entitled to vote. 1998, c. 19, s. 46 (1).

#### Form of requisition

(2) The requisition shall,

- (a) be in writing and be signed by the requisitionists;
- (b) state the nature of the business to be presented at the meeting; and
- (c) be delivered personally or by registered mail to the president or secretary of the board or deposited at the address for service of the corporation. 1998, c. 19, s. 46 (2).

#### Same, removal of directors

(3) If the nature of the business to be presented at the meeting includes the removal of one or more of the directors, the requisition shall state, for each director who is proposed to be removed, the name of the director, the reasons for the removal and whether the director occupies a position on the board that under subsection 51 (6) is reserved for voting by owners of owner-occupied units. 1998, c. 19, s. 46 (3).

#### Duty of board

(4) Upon receiving a requisition mentioned in subsection (1), the board shall,

- (a) if the requisitionists so request in the requisition or consent in writing, add the business to be presented at the meeting to the agenda of items for the next annual general meeting; or
- (b) otherwise call and hold a meeting of owners within 35 days. 1998, c. 19, s. 46 (4).

### Non-compliance

(5) If the board does not comply with subsection (4), a requisitioner may call a meeting of owners which shall be held within 45 days of the day on which the meeting is called. 1998, c. 19, s. 46 (5).

### Reimbursement of cost

(6) Upon request, the corporation shall reimburse a requisitioner who calls a meeting under subsection (5) for the reasonable costs incurred in calling the meeting. 1998, c. 19, s. 46 (6).

### Notice to owners

**47.** (1) A notice that is required to be given to owners shall,

- (a) be in writing;
- (b) be given at least 15 days before the day of the meeting if the notice is a notice of meeting of owners; and
- (c) be given to,
  - (i) each owner who has notified the corporation in writing of the owner's name and address for service, and
  - (ii) each mortgagee of a unit who,
    - (A) under the terms of the mortgage, has the right to vote at a meeting of owners in the place of the unit owner or to consent in writing in the place of the unit owner, and
    - (B) has notified the corporation in writing of the right and the mortgagee's name and address for service. 1998, c. 19, s. 47 (1).

### Record of owners and mortgagees

(2) A corporation shall maintain a record of the names and addresses for service that it receives under subsection (1). 1998, c. 19, s. 47 (2).

### Use of record

(3) A corporation shall use the record for the purposes of this Act, and no other purpose. 1998, c. 19, s. 47 (3).

### Change in address

(4) A person whose name is in the record shall notify the corporation in writing of all changes in the address for service. 1998, c. 19, s. 47 (4).



#### Record date

(5) In the case of a notice of meeting of owners, the persons whose names appeared in the record 20 days before the day of the meeting shall be deemed to be the persons to whom the notice is required to be given under subsection (1). 1998, c. 19, s. 47 (5).

#### Same, other notice

(6) In the case of a notice to owners that is not a notice of meeting of owners, the persons whose names appeared in the record 5 days before the day the notice is given shall be deemed to be the persons to whom the notice is required to be given under subsection (1). 1998, c. 19, s. 47 (6).

#### Service on owner

(7) A notice that is required to be given to an owner shall be,

- (a) delivered to the owner personally;
- (b) sent by prepaid mail addressed to the owner at the address for service that appears in the record;
- (c) sent by facsimile transmission, electronic mail or any other method of electronic communication if the owner agrees in writing that the party giving the notice may give the notice in this manner; or
- (d) delivered at the owner's unit or at the mail box for the unit unless,
  - (i) the party giving the notice has received a written request from the owner that the notice not be given in this manner, or
  - (ii) the address for service that appears in the record is not the address of the unit of the owner. 1998, c. 19, s. 47 (7).

#### Service on mortgagee

(8) A notice that is required to be given to a mortgagee shall be,

- (a) delivered to the mortgagee personally;
- (b) sent by prepaid mail addressed to the mortgagee at the address for service that appears in the record; or
- (c) sent by facsimile transmission, electronic mail or any other method of electronic communication if the mortgagee agrees in writing that the party giving the notice may give the notice in this manner. 1998, c. 19, s. 47 (8).

### Content of notice of meeting

- (9) A notice of meeting of owners shall,
- (a) specify the place, the date and the hour of the meeting, as well as the nature of the business to be presented at the meeting; and
  - (b) be accompanied by,
    - (i) a copy of all proposed changes to the declaration, by-laws, rules or agreements that are to be discussed at the meeting, and
    - (ii) a copy of the requisition, if an owner has made a requisition under section 46. 1998, c. 19, s. 47 (9).

### Matters at meeting

(10) No vote shall be taken at a meeting of owners on any matter other than routine procedure unless that matter was clearly disclosed in the notice of the meeting. 1998, c. 19, s. 47 (10).

### Waiver of notice

(11) An owner or mortgagee who attends a meeting or who is represented by proxy at a meeting shall be deemed to have waived the right to object to a failure to give the required notice, unless the person expressly objects to the failure at the meeting. 1998, c. 19, s. 47 (11).

### Mortgagee's right to vote

**48.** (1) A mortgagee of a unit who is entitled to receive notice of a meeting of owners has the right to vote at the meeting in the place of the unit owner or to exercise the right, if any, of the unit owner to consent in writing if the mortgagee gives notice to the corporation and to the owner at least four days before the date of the meeting of the mortgagee's intention to exercise the right. 1998, c. 19, s. 48 (1).

### More than one mortgagee

(2) If a unit is subject to more than one mortgage for which the mortgagee has the right to vote at a meeting of owners in the place of the owner or to consent in writing in the place of the owner, the mortgagee who has priority may exercise the right and in that case no other mortgagee may exercise the right. 1998, c. 19, s. 48 (2).

### Same

(3) If a mortgagee who has priority fails to exercise the right, the mortgagee who is next in priority may exercise the right and in that case no other mortgagee may exercise the right. 1998, c. 19, s. 48 (3).

#### Voting by owner

(4) If none of the mortgagees who have the right exercises the right, the owner has the right to vote at a meeting of owners subject to subsection 51 (1) or to consent in writing. 1998, c. 19, s. 48 (4).

#### Loss of owner's right to vote

**49.** (1) An owner is not entitled to vote at a meeting if any contributions payable in respect of the owner's unit have been in arrears for 30 days or more at the time of the meeting. 1998, c. 19, s. 49 (1).

#### Payment of arrears

(2) An owner who is not entitled to vote under subsection (1) may vote if the corporation receives payment of the arrears with respect to the owner's unit before the meeting is held. 1998, c. 19, s. 49 (2).

#### Parking or storage unit

(3) No owner shall vote in respect of a unit that is intended for parking or storage purposes or for the purpose of housing services or facilities or mechanical installations unless all the units in the corporation are used for one or more of those purposes. 1998, c. 19, s. 49 (3).

#### Quorum

**50.** (1) A quorum for the transaction of business at a meeting of owners is those owners who own 25 per cent of the units of the corporation, unless a by-law registered in accordance with subsection 56 (9) after this subsection comes into force provides that the quorum is those owners who own  $33\frac{1}{3}$  per cent of the units of the corporation. 1998, c. 19, s. 50 (1).

#### Determination of quorum

(2) To count towards the quorum, an owner must have been entitled to receive notice of the meeting, must be entitled to vote at a meeting and shall be present at the meeting or represented by proxy. 1998, c. 19, s. 50 (2).

#### Where only one owner

(3) If a corporation has only one owner, the owner present in person or by proxy constitutes a meeting. 1998, c. 19, s. 50 (3).

#### Voting

**51.** (1) To vote at a meeting of owners, an owner must have been entitled to receive notice of the meeting and must be entitled to vote at the meeting. 1998, c. 19, s. 51 (1).

### One vote per unit

(2) All voting by owners shall be on the basis of one vote per unit. 1998, c. 19, s. 51 (2).

### Joint owners

(3) The majority of the owners of a unit may exercise the right to vote in respect of the unit but the vote shall not be counted if there are two or more owners of the unit and they are evenly divided on how to exercise the vote. 1998, c. 19, s. 51 (3).

### Voting for directors

(4) Subject to this section, on a vote to elect or to remove a member of the board all owners entitled to vote may vote for each member of the board. 1998, c. 19, s. 51 (4).

### Definition

(5) In subsections (6), (7) and (8),

“owner-occupied unit” means a unit of an owner who is entitled to vote in respect of the unit at a meeting to elect or to remove a director where the unit is used for residential purposes and the owner has not leased the unit within the 60 days before notice is given for the meeting, as shown by the record that the corporation is required to maintain under subsection 83 (3). 1998, c. 19, s. 51 (5).

### Reserved position

(6) If at least 15 per cent of the units of the corporation are owner-occupied units on or after the time at which the board is required to call a turn-over meeting under section 43, no persons other than the owners of owner-occupied units may elect a person to or remove a person from one of the positions on the board. 1998, c. 19, s. 51 (6).

### Other positions

(7) Nothing in subsection (6) affects the right of the owner of an owner-occupied unit to vote to elect or to remove any members of the board other than the member who occupies the position mentioned in that subsection. 1998, c. 19, s. 51 (7).

### Removal

(8) A director elected under subsection (6) may be removed before the expiration of the director’s term of office by a vote of the owners at a meeting duly called for the purpose where the owners of more than 50 per cent of all of the owner-occupied units in the corporation vote in favour of removal. 1998, c. 19, s. 51 (8).

### Method of voting

**52.** (1) On a show of hands or on a recorded vote, votes may be cast either personally or by proxy. 1998, c. 19, s. 52 (1).

#### Request for recorded vote

(2) At a meeting of owners, a person entitled to vote at the meeting may request that a recorded vote be held on any item scheduled for a vote either before or promptly after the vote. 1998, c. 19, s. 52 (2).

#### Proxy

(3) A proxy need not be an owner. 1998, c. 19, s. 52 (3).

#### Appointment of proxy

(4) Subject to the regulations made under this Act and subsection (5), an instrument appointing a proxy shall be in writing under the hand of the appointer or the appointer's attorney and shall be for a particular meeting of owners. 1998, c. 19, s. 52 (4).

#### Proxy for voting for directors

(5) An instrument appointing a proxy for the election or removal of a director at a meeting of owners shall state the name of the directors for and against whom the proxy is to vote. 1998, c. 19, s. 52 (5).

#### Prescribed form

(6) An instrument appointing a proxy may be in the prescribed form. 1998, c. 19, s. 52 (6).

#### Record of corporation

(7) The corporation shall retain all instruments appointing a proxy for a meeting of owners as a record of the corporation for 90 days following the date of the meeting. 1998, c. 19, s. 52 (7).

#### Majority voting

**53.** Unless otherwise provided in this Act, all questions proposed for the consideration of the owners at a meeting of owners shall be determined by a majority of the votes cast by owners present at the meeting in person or by proxy if there is a quorum at the meeting. 1998, c. 19, s. 53.

#### Service on owner or mortgagee

**54.** Unless this Act indicates otherwise, anything required to be given to an owner or a mortgagee under this Act is sufficiently served if it is given in accordance with subsection 47 (7) or (8), as the case may be. 1998, c. 19, s. 54.

#### Records

**55.** (1) The corporation shall keep adequate records, including the following records:

1. The financial records of the corporation.

2. A minute book containing the minutes of owners' meetings and the minutes of board meetings.
3. A copy of the declaration, by-laws and rules.
4. All lists, items, records and other documents mentioned in subsections 43 (4) and (5).
5. The report described in subsection 44 (8) that the corporation receives from the person who conducts a performance audit.
6. The records required under subsection 47 (2) and 83 (3).
7. A record of all reserve fund studies and all plans to increase the reserve fund under subsection 94 (8).
8. A copy of all agreements entered into by or on behalf of the corporation.
9. The report that the corporation receives from an inspector in accordance with subsection 130 (5).
10. All other records as may be prescribed or specified in the by-laws of the corporation. 1998, c. 19, s. 55 (1).

#### Financial records

(2) The corporation shall keep all financial records for at least six years from the end of the last fiscal period to which they relate, in addition to satisfying the requirements of any taxing authority of Ontario, the government of Canada or any other jurisdiction to which the corporation is subject. 1998, c. 19, s. 55 (2).

#### Examination of records

(3) Upon receiving a written request and reasonable notice, the corporation shall permit an owner, a purchaser or a mortgagee of a unit or an agent of one of them duly authorized in writing, to examine the records of the corporation, except those records described in subsection (4), at a reasonable time for all purposes reasonably related to the purposes of this Act. 1998, c. 19, s. 55 (3).

#### Exception

- (4) The right to examine records under subsection (3) does not apply to,
  - (a) records relating to employees of the corporation, except for contracts of employment between any of the employees and the corporation;

- (b) records relating to actual or pending litigation or insurance investigations involving the corporation; or
- (c) subject to subsection (5), records relating to specific units or owners. 1998, c. 19, s. 55 (4).

#### Same

(5) Clause (4) (c) does not prevent,

- (a) an owner, a purchaser or a mortgagee of a unit or an agent of one of them from examining records under subsection (3) that relate to the unit of the owner, the unit being purchased or the unit that is subject to the mortgage, as the case may be; or
- (b) an owner of a unit or an agent of the owner from examining records under subsection (3) that relate to the owner. 1998, c. 19, s. 55 (5).

#### Copies of records

(6) The corporation shall, within a reasonable time, provide copies of the records to a person examining them, if the person so requests and pays a reasonable fee to compensate the corporation for the labour and copying charges. 1998, c. 19, s. 55 (6).

#### Admissible evidence

(7) A copy that a corporation has certified under its seal to be a true copy of a record is admissible in evidence and, in the absence of evidence to the contrary, is proof of the facts stated in it. 1998, c. 19, s. 55 (7).

#### Penalty for non-compliance

(8) A corporation that without reasonable excuse does not permit an owner or an agent of an owner to examine records or to copy them under this section shall pay the sum of \$500 to the owner on receiving a written request for payment from the owner. 1998, c. 19, s. 55 (8).

#### Recovery of sum

(9) The owner may recover the sum from the corporation by an action in the Small Claims Court. 1998, c. 19, s. 55 (9).

#### Order for production of records

(10) If a corporation without reasonable excuse does not permit an owner or an agent of an owner to examine records or to copy them under this section, the Small Claims Court may order the corporation to produce the records for examination. 1998, c. 19, s. 55 (10).

## BY-LAWS AND RULES

## By-laws

**56.** (1) The board may, by resolution, make, amend or repeal by-laws, not contrary to this Act or to the declaration,

- (a) to govern the number, qualification, nomination, election, resignation, removal, term of office and remuneration of the directors, subject to subsection (2);
- (b) to regulate board meetings, the form of board meetings and the quorum and functions of the board;
- (c) to provide that the quorum for the transaction of business at a meeting of owners is those owners who own  $33\frac{1}{3}$  per cent of the units of the corporation, subject to subsection 50 (2);
- (d) to govern the appointment, remuneration, functions, duties, resignation and removal of agents, officers and employees of the corporation and the security, if any, to be given by them to it;
- (e) subject to subsection (3), to authorize the borrowing of money to carry out the objects and duties of the corporation;
- (f) to authorize the corporation to object to assessments under the *Assessment Act* on behalf of owners if it gives notice of the objections to the owners, and to authorize the defraying of costs of objections out of the common expenses;
- (g) to govern the assessment and collection of contributions to the common expenses;
- (h) to establish what constitutes a standard unit for each class of unit specified in the by-law for the purpose of determining the responsibility for repairing improvements after damage and insuring them;
- (i) to extend the circumstances described in subsection 105 (2) under which an amount shall be added to the common expenses payable for an owner's unit for the purposes of subsection 105 (3);
- (j) to govern the maintenance of the units and common elements;
- (k) to restrict the use and enjoyment that persons other than occupants of the units may make of the common elements and assets of the corporation,



subject to any agreement made by the corporation with respect to the use and enjoyment of its common elements and assets that it shares with another person;

- (l) to govern the management of the property;
- (m) to govern the use and management of the assets of the corporation;
- (n) to specify duties of the corporation in addition to the duties set out in this Act and the declaration;
- (o) to establish the procedure with respect to the mediation of disputes or disagreements between the corporation and the owners for the purpose of section 125 or 132; or
- (p) to govern the conduct generally of the affairs of the corporation. 1998, c. 19, s. 56 (1).

#### Remuneration of directors

(2) A by-law relating to the remuneration of directors shall fix the remuneration and the period not exceeding three years for which it is to be paid. 1998, c. 19, s. 56 (2).

#### Borrowing by-law

(3) A corporation shall not borrow money for expenditures not listed in the budget for the current fiscal year unless it has passed a by-law under clause (1) (e) specifically to authorize the borrowing. 1998, c. 19, s. 56 (3).

#### Assessment complaint

(4) If the board has made a by-law under clause (1) (f), the corporation shall have the capacity and authority to make a complaint under section 40 of the *Assessment Act* on behalf of owners but shall not be liable for an alteration in the assessment of a unit or for any other matter relating to the complaint, except for the costs of the complaint. 1998, c. 19, s. 56 (4).

#### Same

(5) Despite a by-law made under clause (1) (f), on written notice to the board and to the Assessment Review Board given before the hearing of a complaint under section 40 of the *Assessment Act*, an owner may withdraw a complaint that the corporation has made on the owner's behalf. 1998, c. 19, s. 56 (5).

#### By-laws to be reasonable

(6) The by-laws shall be reasonable and consistent with this Act and the declaration. 1998, c. 19, s. 56 (6).

#### Same, proposed by-laws

(7) By-laws proposed by the declarant before the registration of a declaration and description shall be reasonable and consistent with this Act and the proposed declaration. 1998, c. 19, s. 56 (7).

#### Inconsistent provisions

(8) If any provision in a by-law or a proposed by-law is inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the by-law or proposed by-law, as the case may be, shall be deemed to be amended accordingly. 1998, c. 19, s. 56 (8).

#### Registration

(9) For each by-law of a corporation, an officer of the corporation shall certify a copy of the by-law as a true copy and the corporation shall register the copy in,

- (a) the land titles division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office has a land titles division; or
- (b) the registry division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office does not have a land titles division. 1998, c. 19, s. 56 (9).

#### When by-law effective

(10) A by-law is not effective until,

- (a) the owners of a majority of the units of the corporation vote in favour of confirming it, with or without amendment; and
- (b) a copy of it is registered in accordance with subsection (9). 1998, c. 19, s. 56 (10).

#### Same, proposed by-law

(11) Despite subsection (10), a by-law proposed by the declarant before the registration of the declaration and description shall be effective until it is replaced or confirmed by a by-law of the corporation that takes effect in accordance with subsection (10). 1998, c. 19, s. 56 (11).

#### Occupancy standards by-law

**57.** (1) Subject to section 56, the board may, by resolution, make, amend or repeal by-laws not contrary to this Act or the declaration that establish standards for the occupancy of units of the corporation for residential purposes. 1998, c. 19, s. 57 (1).

### Standards

- (2) The standards shall be,
- (a) the occupancy standards contained in a by-law passed by the council of a municipality in which the land of the corporation is situated; or
  - (b) subject to the regulations made under this Act, standards that are not more restrictive than standards that are in accordance with the maximum occupancy for each unit based on the maximum occupancy for which the building in which the units are located is designed. 1998, c. 19, s. 57 (2).

### Prohibition

(3) A by-law passed under subsection (1) may prohibit persons from occupying units of the corporation that do not comply with the standards set out in the by-law. 1998, c. 19, s. 57 (3).

### Assessments

(4) If the board has passed a by-law under subsection (1) and a person contravenes the standards for the occupancy of a unit set out in the by-law, the board may, by resolution, levy against the unit,

- (a) an assessment for the amount that reasonably reflects the amount by which the contravention increases the cost of maintaining the common elements and repairing them after damage; and
- (b) an assessment for the amount that reasonably reflects the amount by which the contravention increases the cost of using the utilities that form part of the common expenses. 1998, c. 19, s. 57 (4).

### Part of common expenses

(5) The assessments mentioned in subsection (4) shall form part of the contribution to the common expenses payable for the unit. 1998, c. 19, s. 57 (5).

### Rules

**58.** (1) The board may make, amend or repeal rules respecting the use of common elements and units to,

- (a) promote the safety, security or welfare of the owners and of the property and assets of the corporation; or

- (b) prevent unreasonable interference with the use and enjoyment of the common elements, the units or the assets of the corporation. 1998, c. 19, s. 58 (1).

#### Rules to be reasonable

(2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws. 1998, c. 19, s. 58 (2).

#### Same, proposed rules

(3) Rules proposed by the declarant before the registration of a declaration and description shall be reasonable and consistent with this Act, the proposed declaration and the proposed by-laws. 1998, c. 19, s. 58 (3).

#### Inconsistent provisions

(4) If any provision in a rule or a proposed rule is inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the rule or proposed rule, as the case may be, shall be deemed to be amended accordingly. 1998, c. 19, s. 58 (4).

#### Amendment by owners

(5) The owners may amend or repeal a rule at a meeting of owners duly called for that purpose. 1998, c. 19, s. 58 (5).

#### Notice of rule

(6) Upon making, amending or repealing a rule, the board shall give a notice of it to the owners that includes,

- (a) a copy of the rule as made, amended or repealed, as the case may be;
- (b) a statement of the date that the board proposes that the rule will become effective; and
- (c) a statement that the owners have the right to requisition a meeting under section 46 and the rule becomes effective at the time determined by subsections (7) and (8). 1998, c. 19, s. 58 (6).

#### When rule effective

(7) Subject to subsection (8), a rule is not effective until,

- (a) the owners approve it at a meeting of owners, if the board receives a requisition for the meeting under section 46 within 30 days after the board has given notice of the rule to the owners; or

- (b) 30 days after the board has given notice of the rule to the owners, if the board does not receive a requisition for the meeting under section 46 within those 30 days. 1998, c. 19, s. 58 (7).

#### Same

(8) A rule or an amendment to a rule that has substantially the same purpose or effect as a rule that the owners have previously amended or repealed within the preceding two years is not effective until the owners approve it, with or without amendment, at a meeting duly called for that purpose. 1998, c. 19, s. 58 (8).

#### Same, proposed rule

(9) Despite subsection (7), a rule proposed by the declarant before the registration of the declaration and description shall be effective until it is replaced or confirmed by a rule of the corporation that takes effect in accordance with subsection (7). 1998, c. 19, s. 58 (9).

#### Compliance

(10) All persons bound by the rules shall comply with them and the rules may be enforced in the same manner as the by-laws. 1998, c. 19, s. 58 (10).

#### Joint by-laws and rules

**59.** (1) The boards of two or more corporations may make, amend or repeal joint by-laws or rules governing the use and maintenance of shared facilities and services. 1998, c. 19, s. 59 (1).

#### Application to corporations

(2) A joint by-law or rule is a by-law or rule, as the case may be, of each corporation. 1998, c. 19, s. 59 (2).

#### When joint by-law effective

- (3) A joint by-law is not effective until,
  - (a) the majority of the owners of the units of each corporation vote in favour of confirming it, with or without amendment; and
  - (b) each corporation registers a copy of it in accordance with subsection 56 (9). 1998, c. 19, s. 59 (3).

#### Joint meeting

(4) The vote of the owners under clause (3) (a) may be at a joint meeting of the corporations duly called for that purpose. 1998, c. 19, s. 59 (4).

#### Repeal of joint by-law

(5) Once a joint by-law is effective, it is effective until the owners of a majority of the units of each corporation vote in favour of repealing it and a copy of the repealing by-law is registered in accordance with subsection 56 (9). 1998, c. 19, s. 59 (5).

#### Amendment of joint rule

(6) The owners of each corporation may amend or repeal a joint rule at a joint meeting of owners of the corporations or at a meeting of owners of each corporation if the meeting has been duly called for that purpose. 1998, c. 19, s. 59 (6).

#### Notice of joint rule

(7) Upon making, amending or repealing a joint rule, the board of each corporation shall give a notice of the joint rule to its owners that includes,

- (a) a copy of the rule as made, amended or repealed, as the case may be;
- (b) a statement of the date that the boards propose that the rule will become effective; and
- (c) a statement that the owners have the right to requisition a meeting under section 46 and the rule becomes effective at the time determined by subsections (8), (9) and (10). 1998, c. 19, s. 59 (7).

#### When joint rule effective

(8) Subject to subsection (10), if the board of any of the corporations receives a requisition for a meeting under section 46 within 30 days after it gives notice of the joint rule to its owners, the joint rule is not effective until the owners approve it at a joint meeting of owners of the corporations or at a meeting of owners of each corporation. 1998, c. 19, s. 59 (8).

#### Same, no requisition

(9) Subject to subsection (10), if the board of none of the corporations receives a requisition for a meeting under section 46 within 30 days after it gives notice of the joint rule to its owners, the joint rule is not effective until 30 days after the board of each corporation has given notice of the joint rule to its owners. 1998, c. 19, s. 59 (9).

#### Same, previous rule

(10) A joint rule or an amendment to a joint rule that has substantially the same purpose or effect as a joint rule that the owners have previously amended or repealed within the preceding two years is not effective until the owners of each corporation approve it, with or without amendment, at a joint meeting of owners of the corporations or at a meeting of owners of each corporation duly called for that purpose. 1998, c. 19, s. 59 (10).

## AUDITORS AND FINANCIAL STATEMENTS

## Appointment of auditor

**60.** (1) At their first meeting, the owners shall appoint one or more persons qualified to be auditors to hold office as auditors until the close of the next annual general meeting and, if the owners do not do so, the board shall make the necessary appointments as expeditiously as possible. 1998, c. 19, s. 60 (1).

## Same, subsequent years

(2) At each annual general meeting, the owners shall appoint one or more persons qualified to be auditors to hold office as auditors until the close of the next annual general meeting and, if the owners do not do so, the auditor in office continues in office until a successor is appointed. 1998, c. 19, s. 60 (2).

## Appointment by court

(3) If for any reason no auditor is appointed as required by this section, the Ontario Court (General Division) may, on the application of an owner,

- (a) appoint one or more persons qualified to be auditors to hold office as auditors until the close of the next annual general meeting;
- (b) fix the remuneration that the corporation shall pay for the services of the auditor who is appointed; and
- (c) fix the amount that the corporation shall pay to the owner for the cost of the application. 1998, c. 19, s. 60 (3).

**Note: On the day Part IV comes into force, subsection (3) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (5) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (5), 20 (3).**

## Notice of appointment

(4) The corporation shall give notice in writing to an auditor of the appointment immediately after the appointment is made. 1998, c. 19, s. 60 (4).

## Exception

(5) The owners of a corporation shall not appoint auditors under subsection (2) at an annual general meeting if,

- (a) a turn-over meeting has been held under section 43;

- (b) the corporation consists of fewer than 25 units; and
- (c) as of the date of the meeting, all the owners consent in writing to dispense with the audit mentioned in subsection 67 (1) until the next annual general meeting. 1998, c. 19, s. 60 (5).

#### Qualifications

**61.** No person shall act as auditor of a corporation if the person,

- (a) is a director, officer or employee of the corporation;
- (b) is a manager under an agreement for the management of the property of the corporation;
- (c) has an interest in a contract to which the corporation is a party; or
- (d) is a partner, employer or employee of a person mentioned in clause (a) or (b). 1998, c. 19, s. 61.

#### Remuneration

**62.** The remuneration of an auditor shall be fixed,

- (a) by the owners if the auditor is appointed by the owners; or
- (b) by the board if authorized by the owners to do so or if the auditor is appointed by the board. 1998, c. 19, s. 62.

#### Removal

**63.** (1) The owners may remove an auditor before the expiration of the auditor's term of office at a meeting duly called for that purpose. 1998, c. 19, s. 63 (1).

#### Replacement

(2) If the owners remove an auditor under subsection (1), they shall, at the same meeting, appoint a person qualified to be an auditor to act as auditor for the remainder of the term of the auditor who was removed. 1998, c. 19, s. 63 (2).

#### Approval

(3) The removal of an auditor and the appointment of an auditor under subsection (2) requires the approval of the majority of votes cast by the owners who are present at the meeting in person or by proxy. 1998, c. 19, s. 63 (3).



#### Notice to auditors

(4) At least 30 days before giving the owners notice of a meeting for the purpose of removing an auditor, the person calling the meeting shall give to the auditor,

- (a) written notice of the intention to call the meeting, specifying the date on which the notice of the meeting is proposed to be mailed;
- (b) a statement of the name of the auditor who is proposed to be removed and the reasons for the removal; and
- (c) a copy of all material proposed to be sent to the owners in connection with the meeting. 1998, c. 19, s. 63 (4).

#### Right to make representations

(5) An auditor may make written representations to the corporation concerning the proposed removal of the auditor or the appointment of another person to fill the office of auditor. 1998, c. 19, s. 63 (5).

#### Method

(6) In order to make representations under subsection (5), an auditor shall send them to the person calling the meeting at least three days before the mailing of the notice of the meeting. 1998, c. 19, s. 63 (6).

#### Notice of meeting

(7) The person calling the meeting shall, at the expense of the corporation, include in the notice of the meeting,

- (a) a statement of the name of the auditor who is proposed to be removed and the reasons for the removal; and
- (b) a copy of all representations received. 1998, c. 19, s. 63 (7).

#### Resignation

**64.** (1) A resignation of an auditor becomes effective at the time a written resignation is delivered to the corporation or at the time specified in the resignation, whichever is later. 1998, c. 19, s. 64 (1).

#### Representations

(2) In a resignation, the auditor may make written representations to the corporation concerning the resignation and in that case the corporation shall attach a copy of the representations to the notice of the next meeting of owners. 1998, c. 19, s. 64 (2).

### Vacancy

**65.** (1) If a vacancy arises in the office of auditor, the directors may appoint any person qualified to be an auditor to hold office as auditor to fill the vacancy. 1998, c. 19, s. 65 (1).

### Term of replacement

(2) An auditor appointed under subsection (1) shall hold office until the close of the next annual general meeting or until a successor is appointed, whichever is later. 1998, c. 19, s. 65 (2).

### Financial statements

**66.** (1) A corporation shall have its financial statements prepared in the prescribed manner and in accordance with generally accepted accounting principles as are prescribed. 1998, c. 19, s. 66 (1).

### Contents

- (2) The financial statements shall include,
- (a) a balance sheet;
  - (b) a statement of general operations;
  - (c) a statement of changes in financial position;
  - (d) a statement of reserve fund operations;
  - (e) prescribed information relating to the reserve fund study and the operation of the reserve fund;
  - (f) an indication of the aggregate remuneration paid to the directors in that capacity and the aggregate remuneration paid to the officers in that capacity; and
  - (g) the additional statements or information that the regulations made under this Act require. 1998, c. 19, s. 66 (2).

### Approval

(3) The board shall approve the financial statements before placing them before an annual general meeting. 1998, c. 19, s. 66 (3).

### Form of approval

(4) The approval shall be evidenced by the signature at the bottom of the balance sheet by two of the directors duly authorized to sign. 1998, c. 19, s. 66 (4).

### Audit

**67.** (1) The auditor shall, every year, make the examination that is necessary in order to make an annual report on the financial statements to the corporation on behalf of the owners. 1998, c. 19, s. 67 (1).

### Right of access

(2) The auditor has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers and employees of the corporation or from persons under contract to the corporation to manage the property or its assets the information and explanations that, in the auditor's opinion, are necessary in order to make the report. 1998, c. 19, s. 67 (2).

### Standards

(3) The auditor's report shall be prepared in the prescribed manner and in accordance with generally accepted auditing standards as are prescribed. 1998, c. 19, s. 67 (3).

### Contents of report

(4) The auditor shall include in the report the statements that the auditor considers necessary if the corporation's financial statements are not in accordance with the requirements of this Act and the regulations made under it. 1998, c. 19, s. 67 (4).

### Same, reserve fund study

(5) The auditor shall state in the report whether the statement of reserve fund operations and any other prescribed information relating to the operation of the reserve fund and contained in the financial statements do not fairly present the information contained in the reserve fund studies that the auditor has received. 1998, c. 19, s. 67 (5).

### Presentation of report

(6) The auditor shall present the auditor's report to the audit committee described in subsection 68 (1) or to the board if there is no audit committee. 1998, c. 19, s. 67 (6).

### Immunity

(7) Except with respect to the contents of the report, no action or other proceeding for damages shall be instituted against an auditor or a former auditor for any oral or written statement made in good faith in the execution or intended execution of the duty as auditor under this Act. 1998, c. 19, s. 67 (7).

### Audit committee

**68.** (1) If the number of directors of the corporation is more than six, the directors may elect annually from among their number a committee to be known as the audit committee to hold office until the next annual general meeting. 1998, c. 19, s. 68 (1).

### Members

(2) The audit committee shall be composed of at least three directors and the majority of committee members shall not consist of officers or employees of the corporation. 1998, c. 19, s. 68 (2).

### Review of statements

(3) On receiving the financial statements, the auditor's report and an amended auditor's report, if any, the audit committee shall review them and submit them to the board. 1998, c. 19, s. 68 (3).

### Auditor to appear

(4) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the committee when the committee so requires. 1998, c. 19, s. 68 (4).

### Meeting at auditor's request

(5) At the request of the auditor, the audit committee shall convene a meeting of the committee to consider all matters the auditor believes should be brought to the attention of the board or the committee members. 1998, c. 19, s. 68 (5).

### Delivery of statements

**69.** (1) The board shall place before each annual general meeting,

- (a) the financial statements as approved by the board;
- (b) the auditor's report; and
- (c) all further information respecting the financial position of the corporation that the by-laws of the corporation require. 1998, c. 19, s. 69 (1).

### Copy with notice of meeting

(2) The corporation shall attach to the notice of the annual general meeting a copy of the financial statements and the auditor's report. 1998, c. 19, s. 69 (2).

### Right to attend meeting

**70.** (1) The auditor is entitled to attend a meeting of owners and to be heard on any part of the business of the meeting that concerns the office of the auditor. 1998, c. 19, s. 70 (1).

### Notice of meetings

(2) The corporation shall give the auditor notice of all meetings of owners and all other communications relating to the meetings that the owners are entitled to receive. 1998, c. 19, s. 70 (2).

#### Attendance required

(3) The corporation or an owner may require that an auditor or a former auditor attend a meeting of owners for the purpose of answering inquiries described in subsection (6) by giving written notice to the person whose attendance is required, at least five days before the meeting, that the person's presence is required. 1998, c. 19, s. 70 (3).

#### Notice to corporation

(4) An owner who gives written notice to an auditor or former auditor under subsection (3) shall give a copy of the notice to the corporation. 1998, c. 19, s. 70 (4).

#### Remuneration for attendance

(5) If an auditor or a former auditor is required to attend a meeting of owners, the corporation shall compensate the auditor or former auditor, as the case may be, for expenses and pay the reasonable remuneration that it deems appropriate. 1998, c. 19, s. 70 (5).

#### Duty to answer questions

(6) At a meeting of owners, the auditor or former auditor, as the case may be, if present, shall answer inquiries concerning the basis upon which the person formed the opinion stated in the person's reports. 1998, c. 19, s. 70 (6).

#### Amendment of statements

**71.** (1) The board shall amend the corporation's financial statements if facts come to the attention of the directors or officers of a corporation after the annual general meeting and the facts require a material adjustment to the financial statements that were presented at the meeting. 1998, c. 19, s. 71 (1).

#### Copy of amended statements

(2) Immediately after making an amendment, the corporation shall send to the auditor a statement of the facts that gave rise to the amendment and a copy of the amended financial statements. 1998, c. 19, s. 71 (2).

#### Amendment of auditor's report

(3) On receiving the statements furnished under subsection (2), the auditor shall amend the auditor's report if the auditor is of the opinion that it is necessary and in that case shall present it to the audit committee or to the board if there is no audit committee. 1998, c. 19, s. 71 (3).

#### Delivery of amended report

(4) The board shall mail or deliver a copy of the amended report to the owners. 1998, c. 19, s. 71 (4).

Same, by auditor

(5) If the board does not mail or deliver a copy of the amended report to the owners within a reasonable time, the auditor shall mail or deliver a copy of the amended report to the owners and the corporation shall reimburse the auditor for the reasonable costs incurred in the mailing or the delivery. 1998, c. 19, s. 71 (5).

## **PART V SALE AND LEASE OF UNITS**

### DISCLOSURE REQUIREMENTS

Disclosure statement

**72.** (1) The declarant shall deliver to every person who purchases a unit or a proposed unit from the declarant a copy of the current disclosure statement made by the declarant for the corporation of which the unit or proposed unit forms part. 1998, c. 19, s. 72 (1).

Purchaser not bound

(2) An agreement of purchase and sale of a unit or a proposed unit entered into by a declarant is not binding on the purchaser until the declarant has delivered to the purchaser a copy of the current disclosure statement. 1998, c. 19, s. 72 (2).

Contents

(3) A disclosure statement shall specify the date on which it is made and shall contain,

- (a) a table of contents prepared in accordance with subsection (4) and located at the beginning of the disclosure statement;
- (b) a statement indicating,
  - (i) whether the corporation is a freehold condominium corporation or a leasehold condominium corporation, and
  - (ii) if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is;
- (c) a statement of the name and municipal address of the declarant and the mailing address of the property or the proposed property and its municipal address if available;
- (d) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with all conditions that apply to the provision of amenities;

- (e) if the declarant has made an application for approval described in subsection 9 (4), a summary of the reports, if any, that the approval authority has required be made under subsection 9 (4) and the agreements, if any, that the approval authority has imposed under subsection 9 (5) as a condition of approval;
- (f) a statement indicating whether the property or part of the property is or may be subject to the *Ontario New Home Warranty Plan Act* or whether the declarant has enrolled or intends to enrol the proposed units and common elements in the Plan within the meaning of that Act in accordance with the regulations made under that Act;
- (g) a statement whether a building on the property or a unit or a proposed unit has been converted from a previous use;
- (h) a statement whether one or more units or proposed units may be used for commercial or other purposes not ancillary to residential purposes;
- (i) a statement of the portion of units or proposed units which the declarant intends to market in blocks of units to investors;
- (j) a statement of the portion of units or proposed units, to the nearest anticipated 25 per cent, that the declarant intends to lease;
- (k) if construction of amenities is not completed, a schedule of the proposed commencement and completion dates;
- (l) a list of the amenities that the declarant proposes to provide to the purchaser during a period of interim occupancy of a proposed unit under section 80;
- (m) a copy of the existing or proposed declaration, by-laws, rules and insurance trust agreement, if any;
- (n) a brief description of the significant features of all agreements or proposed agreements mentioned in section 111, 112, 113 or 114 and of all agreements or proposed agreements between the corporation and another corporation;
- (o) a statement of whether, to the knowledge of the declarant, the corporation intends to amalgamate with another corporation or whether the declarant intends to cause the corporation to amalgamate with another corporation within 60 days of the date of registration of the declaration and description for the corporation;

- (p) if an amalgamation is intended under clause (o), a copy of the proposed declaration, description, by-laws and rules for the amalgamated corporation, if available;
- (q) a copy of the budget statement described in subsection (6);
- (r) a copy of the budget of the corporation for the current fiscal year if more than one year has passed since the registration of the declaration and description for the corporation;
- (s) a statement setting out the fees or charges, if any, that the corporation is required to pay to the declarant or another person; and
- (t) all other material that the regulations made under this Act require. 1998, c. 19, s. 72 (3).

#### Table of contents

(4) The table of contents in the disclosure statement shall be in the prescribed form, shall indicate whether the declaration, by-laws, rules or the proposed declaration, by-laws or rules of the corporation or any other material in the disclosure statement deal with the following matters and, if so, shall indicate where the matters are dealt with:

1. A statement indicating,
  - i. whether the corporation is a leasehold condominium corporation or a freehold condominium corporation, and
  - ii. if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is.
2. The property or part of the property is or may be subject to the *Ontario New Home Warranties Plan Act* or the proposed units and common elements are enrolled or are intended to be enrolled in the Plan within the meaning of that Act in accordance with the regulations made under that Act.
3. A building on the property or a unit or a proposed unit has been converted from a previous use.
4. One or more units or proposed units may be used for commercial or other purposes not ancillary to residential purposes.
5. A provision exists with respect to pets on the property or the proposed property.



6. There exist restrictions or standards with respect to the occupancy or use of units or proposed units or the use of common elements or proposed common elements that are based on the nature or design of the facilities and services on the property or on other aspects of the buildings located on the property.
7. A statement of the portion of units or proposed units, to the nearest anticipated 25 per cent, that the declarant intends to lease.
8. A statement whether the proportion, expressed in percentages, of the common interest appurtenant to any unit or proposed unit differs in an amount of 10 per cent or more from that appurtenant to any other unit or proposed unit of the same type, size and design.
9. A statement whether the proportion, expressed in percentages, in which the owner of any unit or proposed unit is required to contribute to the common expenses differs in an amount of 10 per cent or more from that required of the owner of any other unit or proposed unit of the same type, size and design.
10. A statement whether any unit or proposed unit is exempt from a cost attributable to the rest of the units or proposed units.
11. Part or the whole of the common elements or the proposed common elements are subject to a lease or licence.
12. A statement whether parking is allowed in or on a unit, on the common elements or on a part of the common elements of which an owner has exclusive use and a statement of the restrictions on parking.
13. Any other statement specified in the regulations made under this Act. 1998, c. 19, s. 72 (4).

#### Copy of budget

(5) On the request of the declarant, the corporation shall, promptly and without charge, provide a copy of its budget for the current fiscal year to the declarant. 1998, c. 19, s. 72 (5).

#### Budget statement

(6) The budget statement is a statement for the one-year period immediately following the registration of the declaration and description and shall contain,

- (a) a statement of the common expenses of the corporation;

- (b) a statement of the proposed amount of each expense of the corporation, including the cost of the reserve fund study required for the year, the cost of the performance audit under section 44 and the cost of preparing audited financial statements if subsection 43 (7) requires the declarant to deliver them within one year following the registration of the declaration and description;
- (c) particulars of the type, frequency and level of the services to be provided;
- (d) a statement of the projected monthly common expense contribution for each type of unit;
- (e) a statement of the portion of the common expenses to be paid into a reserve fund;
- (f) a statement of the status of all pending lawsuits material to the property of which the declarant has actual knowledge and that may affect the property after the registration of a deed to the unit from the declarant to the purchaser;
- (g) a statement of the amounts of all current or expected fees, charges, rents or other revenue to be paid to or by the corporation or by any of the owners for the use of the common elements or other facilities related to the property, unless a turn over meeting has been held under section 43;
- (h) a statement of all services not included in the budget that the declarant provides, or expenses that the declarant pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;
- (i) a statement of the projected amounts in all reserve funds at the end of the current fiscal year;
- (j) a summary of the most recent reserve fund study, if any; and
- (k) all other material that the regulations made under this Act require. 1998, c. 19, s. 72 (6).

#### Rescission of agreement

**73.** (1) A purchaser who receives a disclosure statement under subsection 72 (1) may, in accordance with this section, rescind the agreement of purchase and sale before accepting a deed to the unit being purchased that is in registerable form. 1998, c. 19, s. 73 (1).

#### Notice of rescission

(2) To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser's solicitor shall give a written notice of rescission to the declarant or to the declarant's solicitor who must receive the notice within 10 days of the later of,

- (a) the date that the purchaser receives the disclosure statement; and
- (b) the date that the purchaser receives a copy of the agreement of purchase and sale executed by the declarant and the purchaser. 1998, c. 19, s. 73 (2).

#### Refund upon rescission

(3) If a declarant or the declarant's solicitor receives a notice of rescission from a purchaser under this section, the declarant shall promptly refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price, together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it. 1998, c. 19, s. 73 (3).

#### Material changes in disclosure statement

**74.** (1) Whenever there is a material change in the information contained or required to be contained in a disclosure statement delivered to a purchaser under subsection 72 (1) or a revised disclosure statement or a notice delivered to a purchaser under this section, the declarant shall deliver a revised disclosure statement or a notice to the purchaser. 1998, c. 19, s. 74 (1).

#### Definition

(2) In this section,

“material change” means a change or a series of changes that a reasonable purchaser, on an objective basis, would have regarded collectively as sufficiently important to the decision to purchase a unit or proposed unit in the corporation that it is likely that the purchaser would not have entered into an agreement of purchase and sale for the unit or the proposed unit or would have exercised the right to rescind such an agreement of purchase and sale under section 73, if the disclosure statement had contained the change or series of changes, but does not include,

- (a) a change in the contents of the budget of the corporation for the current fiscal year if more than one year has passed since the registration of the declaration and description for the corporation,
- (b) a substantial addition, alteration or improvement within the meaning of subsection 97 (6) that the corporation makes to the common elements after a turn-over meeting has been held under section 43,

- (c) a change in the portion of units or proposed units that the declarant intends to lease,
- (d) a change in the schedule of the proposed commencement and completion dates for the amenities of which construction had not been completed as of the date on which the disclosure statement was made, or
- (e) a change in the information contained in the statement described in subsection 161 (1) of the services provided by the municipality or the Minister of Municipal Affairs and Housing, as the case may be, as described in that subsection, if the unit or the proposed unit is in a vacant land condominium corporation. 1998, c. 19, s. 74 (2).

#### Contents of revised statement

(3) The revised disclosure statement or notice required under subsection (1) shall clearly identify all changes that in the reasonable belief of the declarant may be material changes and summarize the particulars of them. 1998, c. 19, s. 74 (3).

#### Time of delivery

(4) The declarant shall deliver the revised disclosure statement or notice to the purchaser within a reasonable time after the material change mentioned in subsection (1) occurs and, in any event, no later than 10 days before delivering to the purchaser a deed to the unit being purchased that is in registerable form. 1998, c. 19, s. 74 (4).

#### Purchaser's application to court

(5) Within 10 days after receiving a revised disclosure statement or a notice under subsection (1), a purchaser may make an application to the Ontario Court (General Division) for a determination whether a change or a series of changes set out in the statement or notice is a material change. 1998, c. 19, s. 74 (5).

**Note: On the day Part V comes into force, subsection (5) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (5) by striking out "Ontario Court (General Division)" and substituting "Superior Court of Justice". See: 2000, c. 26, Sched. B, ss. 7 (5), 20 (4).**

#### Rescission after material change

(6) If a change or a series of changes set out in a revised disclosure statement or a notice delivered to a purchaser constitutes a material change or if a material change occurs that the declarant does not disclose in a revised disclosure statement or notice as required by subsection (1), the purchaser may, before accepting a deed to the unit being purchased that is in registerable form, rescind the agreement of purchase and sale within 10 days of the latest of,

- (a) the date on which the purchaser receives the revised disclosure statement or the notice, if the declarant delivered a revised disclosure statement or notice to the purchaser;
- (b) the date on which the purchaser becomes aware of a material change, if the declarant has not delivered a revised disclosure statement or notice to the purchaser as required by subsection (1) with respect to the change; and
- (c) the date on which the Ontario Court (General Division) makes a determination under subsection (5) or (8) that the change is material, if the purchaser or the declarant, as the case may be, has made an application for the determination. 1998, c. 19, s. 74 (6).

**Note: On the day Part V comes into force, clause (c) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (5) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (5), 20 (4).**

#### Notice of rescission

(7) To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser’s solicitor shall give a written notice of rescission to the declarant or to the declarant’s solicitor. 1998, c. 19, s. 74 (7).

#### Declarant’s application to court

(8) Within 10 days after receiving a notice of rescission, the declarant may make an application to the Ontario Court (General Division) for a determination whether the change or the series of changes on which the rescission is based constitutes a material change, if the purchaser has not already made an application for the determination under subsection (5). 1998, c. 19, s. 74 (8).

**Note: On the day Part V comes into force, subsection (8) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (5) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (5), 20 (4).**

#### Refund upon rescission

(9) A declarant who receives a notice of rescission from a purchaser under this section shall refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price, together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it. 1998, c. 19, s. 74 (9).

### Time of refund

(10) The declarant shall make the refund,

- (a) within 10 days after receiving a notice of rescission, if neither the purchaser nor the declarant has made an application for a determination described in subsection (5) or (8) respectively; or
- (b) within 10 days after the court makes a determination that the change is material, if the purchaser has made an application under subsection (5) or the declarant has made an application under subsection (8). 1998, c. 19, s. 74 (10).

### Accountability for budget statement

**75.** (1) The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description. 1998, c. 19, s. 75 (1).

### Common expenses

(2) The declarant shall pay to the corporation the amount by which the total actual amount of common expenses incurred for the period covered by the budget statement, except for those attributable to the termination of an agreement under section 111 or 112, exceeds the total budgeted amount. 1998, c. 19, s. 75 (2).

### Revenue

(3) The declarant shall pay to the corporation the amount by which the total actual amount of fees, charges, rents and other revenue paid or to be paid to the corporation, during the period covered by the budget statement, for the use of any part of the common elements or assets or of any other facilities related to the property, is less than the total budgeted amount. 1998, c. 19, s. 75 (3).

### Set-off

(4) If the total actual amount of revenue described in subsection (3) exceeds the total budgeted amount, the declarant may deduct the excess from any amount payable under subsection (2). 1998, c. 19, s. 75 (4).

### Notice of payment

(5) After receiving the audited financial statements for the period covered by the budget statement, the board shall compare the actual amount of common expenses and revenue described in subsections (2) and (3) for the period covered by the budget statement with the budgeted amounts and shall, within 30 days of receiving the audited financial statements, give written notice to the declarant of the amount that the declarant is required to pay to the corporation under this section. 1998, c. 19, s. 40 (6). 1998, c. 19, s. 75 (5).

#### Time for payment

(6) Within 30 days of receiving the notice, the declarant shall pay the corporation the amount that it is required to pay under this section. 1998, c. 19, s. 75 (6).

#### Status certificate

**76.** (1) The corporation shall give to each person who so requests a status certificate with respect to a unit in the corporation, in the prescribed form, that specifies the date on which it was made and that contains,

- (a) a statement of the common expenses for the unit and the default, if any, in payment of the common expenses;
- (b) a statement of the increase, if any, in the common expenses for the unit that the board has declared since the date of the budget of the corporation for the current fiscal year and the reason for the increase;
- (c) a statement of the assessments, if any, that the board has levied against the unit since the date of the budget of the corporation for the current fiscal year to increase the contribution to the reserve fund and the reason for the assessments;
- (d) a statement of the address for service of the corporation;
- (e) a statement of the names and address for service of the directors and officers of the corporation;
- (f) a copy of the current declaration, by-laws and rules;
- (g) a copy of all applications made under section 109 to amend the declaration for which the court has not made an order;
- (h) a statement of all outstanding judgments against the corporation and the status of all legal actions to which the corporation is a party;
- (i) a copy of the budget of the corporation for the current fiscal year, the last annual audited financial statements and the auditor's report on the statements;
- (j) a list of all current agreements mentioned in section 111, 112 or 113 and all current agreements between the corporation and another corporation or between the corporation and the owner of the unit;

- (k) a statement that the person requesting the status certificate has the rights described in subsections (7) and (8) with respect to the agreements mentioned in clause (j);
- (l) a statement whether the parties have complied with all current agreements mentioned in clause 98 (1) (b) with respect to the unit;
- (m) a statement with respect to,
  - (i) the most recent reserve fund study and updates to it,
  - (ii) the amount in the reserve fund no earlier than at the end of a month within 90 days of the date of the status certificate, and
  - (iii) current plans, if any, to increase the reserve fund under subsection 94 (8);
- (n) a statement of those additions, alterations or improvements to the common elements, those changes in the assets of the corporation and those changes in a service of the corporation that are substantial and that the board has proposed but has not implemented, together with a statement of the purpose of them;
- (o) a statement of the number of units for which the corporation has received notice under section 83 that the unit was leased during the fiscal year preceding the date of the status certificate;
- (p) a certificate or memorandum of insurance for each of the current insurance policies;
- (q) a statement of the amounts, if any, that this Act requires be added to the common expenses payable for the unit;
- (r) a statement whether the Ontario Court (General Division) has made an order appointing an inspector under section 130 or an administrator under section 131;

**Note: On the day Part V comes into force, clause (r) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (5) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (5), 20 (4).**

- (s) all other material that the regulations made under this Act require. 1998, c. 19, s. 76 (1).



#### Fee for certificate

(2) The corporation may charge the prescribed fee for providing the status certificate. 1998, c. 19, s. 76 (2).

#### Time for giving certificate

(3) The corporation shall give the status certificate within 10 days after receiving a request for it and payment of the fee charged by the corporation for it. 1998, c. 19, s. 76 (3).

#### Omission of information

(4) If a status certificate that a corporation has given under subsection (1) omits material information that it is required to contain, it shall be deemed to include a statement that there is no such information. 1998, c. 19, s. 76 (4).

#### Default in giving certificate

(5) A corporation that does not give a status certificate within the required time shall be deemed to have given a certificate on the day immediately after the required time has expired stating that,

- (a) there has been no default in the payment of common expenses for the unit;
- (b) the board has not declared any increase in the common expenses for the unit since the date of the budget of the corporation for the current fiscal year; and
- (c) the board has not levied any assessments against the unit since the date of the budget of the corporation for the current fiscal year to increase the contribution to the reserve fund. 1998, c. 19, s. 76 (5).

#### Effect of certificate

(6) The status certificate binds the corporation, as of the date it is given or deemed to have been given, with respect to the information that it contains or is deemed to contain, as against a purchaser or mortgagee of a unit who relies on the certificate. 1998, c. 19, s. 76 (6).

#### Examination of agreements

(7) Upon receiving a written request and reasonable notice, the corporation shall permit a person who has requested a status certificate and paid the fee charged by the corporation for the certificate, or an agent of the person duly authorized in writing, to examine the agreements mentioned in clause (1) (k) at a reasonable time and at a reasonable location. 1998, c. 19, s. 76 (7).

### Copies of agreements

(8) The corporation shall, within a reasonable time, provide copies of the agreements to a person examining them, if the person so requests and pays a reasonable fee to compensate the corporation for the labour and copying charges. 1998, c. 19, s. 76 (8).

### Information on corporation

**77.** On the request of any person, the corporation shall, without fee, provide the names and address for service of the directors and officers of the corporation, the person responsible for the management of the property of the corporation and the person to whom the corporation has delegated the responsibility for providing status certificates. 1998, c. 19, s. 77.

## SALE OF UNITS

### Implied covenants

**78.** (1) Every agreement of purchase and sale of a proposed unit entered into by a declarant before the registration of the declaration and description that creates the unit shall be deemed to contain the following covenants by the declarant:

1. If the proposed unit is for residential purposes, a covenant to take all reasonable steps to sell the other residential units included in the property without delay, except for the units that the declarant intends to lease.
2. A covenant to take all reasonable steps to deliver to the purchaser without delay a deed to the unit that is in registerable form.
3. A covenant to hold in trust for the corporation the money, if any, that the declarant collects from the purchaser on behalf of the corporation. 1998, c. 19, s. 78 (1).

### No merger of covenants

(2) The covenants shall be deemed not to merge by operation of law on delivery to the purchaser of a deed that is in registerable form. 1998, c. 19, s. 78 (2).

### Compliance order

(3) If the declarant breaches a covenant described in subsection (1), the purchaser under the agreement of purchase and sale may make an application for an order under section 134 and an order may be made under that section. 1998, c. 19, s. 78 (3).

### Duty to register declaration and description

**79.** (1) A declarant who has entered into an agreement of purchase and sale of a proposed unit shall take all reasonable steps to complete the buildings required by the agreement subject to all prescribed requirements and to register, without delay, a

declaration and description in respect of the property in which the proposed unit will be included. 1998, c. 19, s. 79 (1).

#### No right to terminate

(2) Despite any provision to the contrary in the agreement of purchase and sale, the declarant is not entitled to terminate an agreement of purchase and sale of a proposed unit by reason only of the failure to register the declaration and description within a period of time specified in the agreement, unless the purchaser consents to the termination in writing. 1998, c. 19, s. 79 (2).

#### Application to court

(3) Despite subsection (2), if a declaration and description have not been registered, the declarant may, upon 15 days written notice to the purchasers of all proposed units in the property affected by the declaration and description, make an application to the Ontario Court (General Division) for an order terminating the agreements of purchase and sale of the purchasers. 1998, c. 19, s. 79 (3).

**Note: On the day Part V comes into force, subsection (3) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (5) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (5), 20 (4).**

#### Subsequent registration

(4) The court may, in the order, provide that a declaration and description shall not be registered in respect of the property in which the proposed units will be included during a period specified in the order. 1998, c. 19, s. 79 (4).

#### Considerations

- (5) On an application for an order, the court shall consider whether,
- (a) the declarant has taken all reasonable steps to register a declaration and description;
  - (b) a declaration and description can be registered within a reasonable period of time; and
  - (c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the declarant. 1998, c. 19, s. 79 (5).

#### Registration of order

(6) The order is ineffective until a certified copy of it is registered. 1998, c. 19, s. 79 (6).

### Interim occupancy

**80.** (1) An agreement of purchase and sale may permit or require interim occupancy of a proposed unit. 1998, c. 19, s. 80 (1).

### Definition

(2) In this section,

“interim occupancy” means the occupancy of a proposed unit before the purchaser receives a deed to the unit that is in registerable form. 1998, c. 19, s. 80 (2).

### Right to pay in full

(3) Despite any provision to the contrary in the agreement of purchase and sale, before the expiry of the time period mentioned in subsection 73 (2) for rescinding the agreement, a purchaser may elect to pay in full, on assuming interim occupancy of the proposed unit, the balance of the purchase price remaining after deducting the amounts paid under the agreement before assuming interim occupancy. 1998, c. 19, s. 80 (3).

### Occupancy fee

(4) If the purchaser assumes interim occupancy of a proposed unit or is required to do so under the agreement of purchase and sale, the declarant may charge the purchaser a monthly occupancy fee which shall not be greater than the total of the following amounts:

1. Where applicable, interest calculated on a monthly basis on the unpaid balance of the purchase price at the prescribed rate.
2. An amount reasonably estimated on a monthly basis for municipal taxes attributable to the unit.
3. The projected monthly common expense contribution for the unit. 1998, c. 19, s. 80 (4).

### Reserve fund contribution

(5) If the declarant charges the purchaser a monthly occupancy fee for interim occupancy of a proposed unit for residential purposes for longer than six months and the monthly occupancy fee includes a projected contribution to the reserve fund of the corporation, then, with respect to the occupancy fee for each month after the sixth month, the declarant shall hold in trust and remit to the corporation upon registering the declaration and description the portion of the monthly occupancy fee that represents the projected contribution to the reserve fund. 1998, c. 19, s. 80 (5).

### Rights and duties of declarant

(6) If a purchaser assumes interim occupancy of a proposed unit, the declarant,

- (a) shall provide those services that the corporation will have a duty to provide to owners after the registration of the declaration and description that creates the unit;
- (b) shall repair and maintain the proposed property and the proposed unit in the same manner as the corporation will have a duty to repair after damage and maintain after the registration of the declaration and description that creates the unit;
- (c) has the same right of entry that the corporation will have after the registration of the declaration and description that creates the unit;
- (d) may withhold consent to an assignment of the right to occupy the proposed unit;
- (e) may charge a reasonable fee for consenting to an assignment of the right to occupy the proposed unit; and
- (f) shall, within 30 days of the registration of the declaration and description that creates the unit, notify the purchaser in writing of the date and instrument numbers of the registration, unless within that time the purchaser receives a deed to the unit that is in registerable form. 1998, c. 19, s. 80 (6).

#### Application of *Tenant Protection Act, 1997*

(7) The rights and duties described in subsection (6) apply despite any provision to the contrary in the *Tenant Protection Act, 1997*. 1998, c. 19, s. 80 (11).

#### Refund of municipal taxes

(8) The declarant shall, on delivering to the purchaser a deed that is in registerable form or as soon as is practicable after delivery, refund to the purchaser the portion of the monthly occupancy fee that the purchaser has paid on account of municipal taxes attributable to the proposed unit in excess of the amount actually assessed against the unit. 1998, c. 19, s. 80 (8).

#### Municipal taxes payable

(9) If the portion of the monthly occupancy fee that the purchaser has paid on account of municipal taxes attributable to the proposed unit is insufficient to pay the amount actually assessed against the unit, the declarant may require the purchaser to pay the difference between the two amounts. 1998, c. 19, s. 80 (9).

#### Non-application

(10) Sections 94, 95, 96, 107, 108 and 109 and Part VI of the *Tenant Protection Act, 1997* do not apply to interim occupancy and monthly occupancy fees charged under this section. 1998, c. 19, s. 80 (12).

**Note: On the day Part V comes into force, subsection (10) is repealed by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (6) and the following substituted:**

#### Non-application

(10) Sections 100, 101, 102, 114, 115 and 116 and Part VI of the *Tenant Protection Act, 1997* do not apply to interim occupancy and monthly occupancy fees charged under this section.

**See: 2000, c. 26, Sched. B, ss. 7 (6), 20 (4).**

(11) SPENT: 1998, c. 19, s. 80 (11).

(12) SPENT: 1998, c. 19, s. 80 (12).

#### Money held in trust

**81.** (1) A declarant shall ensure that a trustee of a prescribed class or the declarant's solicitor receives and holds in trust all money, together with interest earned on it, as soon as a person makes a payment,

- (a) with respect to reserving a right to enter into an agreement of purchase and sale for the purchase of a proposed unit;
- (b) on account of an agreement of purchase and sale of a proposed unit; or
- (c) on account of a sale of a proposed unit. 1998, c. 19, s. 81 (1).

#### Exception

(2) Subsection (1) does not apply to money received,

- (a) on account of the purchase of personal property included in the proposed unit that is not to be permanently affixed to the land; or
- (b) as an occupancy fee under subsection 80 (4). 1998, c. 19, s. 81 (2).

#### Reservation money

(3) If a person has paid money to reserve a right to enter into an agreement of purchase and sale for the purchase of a proposed unit and subsequently enters into such an

agreement with the declarant, the declarant shall, on entering into the agreement, credit the money received to the purchase price under the agreement, despite any provision of the agreement. 1998, c. 19, s. 81 (3).

#### Trustee

(4) Upon receiving money that is required to be held in trust under subsection (1), a trustee of a prescribed class shall hold the money in trust in a separate account in Ontario designated as a trust account at a bank listed in Schedule I or II to the *Bank Act* (Canada), a trust corporation, a loan corporation, a credit union or a Province of Ontario Savings Office. 1998, c. 19, s. 81 (4).

#### Declarant's solicitor

(5) Upon receiving money that is required to be held in trust under subsection (1), the declarant's solicitor shall hold the money in trust in a trust account in Ontario. 1998, c. 19, s. 81 (5).

#### Evidence of compliance

(6) Within 10 days of the payment of the money under subsection (1), the declarant shall provide to the person who paid the money written evidence, in the form prescribed by the Minister, of compliance with subsection (1) and one of subsections (4) and (5). 1998, c. 19, s. 81 (6).

#### Duration of trust

(7) Despite the registration of a declaration and description, the person who holds money in trust under subsection (1) shall hold it in trust until,

- (a) the person holding the money in trust disposes of it to the person entitled to it, where the disposal is done in accordance with this Act and an agreement that the person who paid the money has entered into with respect to the proposed unit; or
- (b) the declarant ensures that security of a prescribed class is provided for the money, except if the money has been received under clause (1) (a) and has not been credited to the purchase price under the agreement. 1998, c. 19, s. 81 (7).

#### Interest

**82.** (1) The declarant shall pay interest at the prescribed rate to the purchaser on all money that a person pays on account of the purchase price of a proposed unit or that the declarant credits to the purchase price of a proposed unit. 1998, c. 19, s. 82 (1).

#### Money released from trust

(2) The interest is payable on the money even if, under clause 81 (7) (b), the declarant provides security of a prescribed class for the money. 1998, c. 19, s. 82 (2).

#### Calculation

(3) The interest shall be calculated from the day the person pays the money received until the day the proposed unit is available for possession or occupancy in accordance with the purchaser's agreement of purchase and sale with the declarant. 1998, c. 19, s. 82 (3).

#### Time of payment

(4) The interest shall be paid to the purchaser by way of payment or set-off,

- (a) on the day the declarant delivers to the purchaser a deed to the proposed unit that is in registerable form, if the declarant so elects; or
- (b) on the day the proposed unit is available for possession or occupancy in accordance with the purchaser's agreement of purchase and sale with the declarant, otherwise. 1998, c. 19, s. 82 (4).

#### Compound interest

(5) A declarant who elects to pay the interest to the purchaser on the day of delivering to the purchaser a deed to the proposed unit that is in registerable form shall, on that day, pay interest to the purchaser at the prescribed rate on the interest that the declarant is required to pay under subsection (1). 1998, c. 19, s. 82 (5).

#### Calculation

(6) The declarant shall pay the interest payable under subsection (5) from the day the proposed unit is available for possession or occupancy in accordance with the purchaser's agreement of purchase and sale with the declarant until the day of payment. 1998, c. 19, s. 82 (6).

#### Terminated agreements

(7) If an agreement of purchase and sale provides that a purchaser is entitled to a return of money paid under the agreement upon termination of the agreement and the agreement is terminated, the declarant shall pay interest at the prescribed rate to the purchaser on the money returned. 1998, c. 19, s. 82 (7).

#### Excess interest

(8) The declarant is entitled to the excess of all interest earned on money held in trust over the interest it is required to pay under this section. 1998, c. 19, s. 82 (8).



## LEASE OF UNITS

### Notification by owner

**83.** (1) The owner of a unit who leases the unit or renews a lease of the unit shall, within 30 days of entering into the lease or the renewal, as the case may be,

- (a) notify the corporation that the unit is leased;
- (b) provide the corporation with the lessee's name, the owner's address and a copy of the lease or renewal or a summary of it in the form prescribed by the Minister; and
- (c) provide the lessee with a copy of the declaration, by-laws and rules of the corporation. 1998, c. 19, s. 83 (1).

### Termination of lease

(2) If a lease of a unit is terminated and not renewed, the owner of the unit shall notify the corporation in writing. 1998, c. 19, s. 83 (2).

### Record of notices

(3) A corporation shall maintain a record of the notices that it receives under this section. 1998, c. 19, s. 83 (3).

## PART VI OPERATION

### COMMON EXPENSES

#### Contribution of owners

**84.** (1) Subject to the other provisions of this Act, the owners shall contribute to the common expenses in the proportions specified in the declaration. 1998, c. 19, s. 84 (1).

#### Common surplus

(2) A common surplus in a corporation shall be applied either against future common expenses or paid into the reserve fund, and except on termination, shall not be distributed to the owners or mortgagees of the units. 1998, c. 19, s. 84 (2).

#### No avoidance

(3) An owner is not exempt from the obligation to contribute to the common expenses even if,

- (a) the owner has waived or abandoned the right to use the common elements or part of them;

- (b) the owner is making a claim against the corporation; or
- (c) the declaration, by-laws or rules restrict the owner from using the common elements or part of them. 1998, c. 19, s. 84 (3).

#### Lien upon default

**85.** (1) If an owner defaults in the obligation to contribute to the common expenses, the corporation has a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount. 1998, c. 19, s. 85 (1).

#### Expiration of lien

(2) The lien expires three months after the default that gave rise to the lien occurred unless the corporation within that time registers a certificate of lien in a form prescribed by the Minister. 1998, c. 19, s. 85 (2).

#### Certificate of lien

(3) A certificate of lien when registered covers,

- (a) the amount owing under all of the corporation's liens against the owner's unit that have not expired at the time of registration of the certificate;
- (b) the amount by which the owner defaults in the obligation to contribute to the common expenses after the registration of the certificate; and
- (c) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in clauses (a) and (b), including the costs of preparing and registering the certificate of lien and a discharge of it. 1998, c. 19, s. 85 (3).

#### Notice to owner

(4) At least 10 days before the day a certificate of lien is registered, the corporation shall give written notice of the lien to the owner whose unit is affected by the lien. 1998, c. 19, s. 85 (4).

#### Service of notice

(5) The corporation shall give the notice by personal service or by sending it by prepaid mail addressed to the owner at the address for service that appears in the record of the corporation maintained under subsection 47 (2). 1998, c. 19, s. 85 (5).

#### Lien enforcement

(6) The lien may be enforced in the same manner as a mortgage. 1998, c. 19, s. 85 (6).

#### Discharge of lien

(7) Upon payment of the amounts described in subsection (3), the corporation shall prepare and register a discharge of the certificate of lien in the form prescribed by the Minister and shall advise the owner in writing of the particulars of the registration. 1998, c. 19, s. 85 (7).

#### Priority of lien

**86.** (1) Subject to subsection (2), a lien mentioned in subsection 85 (1) has priority over every registered and unregistered encumbrance even though the encumbrance existed before the lien arose but does not have priority over,

- (a) a claim of the Crown other than by way of a mortgage;
- (b) a claim for taxes, charges, rates or assessments levied or recoverable under the *Municipal Act*, the *Education Act*, the *Local Roads Boards Act*, the *Statute Labour Act* or the *Local Improvement Act*; or
- (c) a lien or claim that is prescribed. 1998, c. 19, s. 86 (1).

#### Exception, non-residential lien

(2) A lien in respect of a unit for non-residential purposes does not have priority under this section in respect of the amount by which the owner of the unit has defaulted in the obligation to contribute to the common expenses before the coming into force of this section. 1998, c. 19, s. 86 (2).

#### Notice of lien

(3) The corporation shall, on or before the day a certificate of lien is registered, give written notice of the lien to every encumbrancer whose encumbrance is registered against the title of the unit affected by the lien. 1998, c. 19, s. 86 (3).

#### Service of notice

(4) The corporation shall give the notice by personal service or by sending it by registered prepaid mail addressed to the encumbrancer at the encumbrancer's last known address. 1998, c. 19, s. 86 (4).

#### Effect of no notice

(5) Subject to subsection (6), the lien loses its priority over an encumbrance unless the corporation gives the required notice to the encumbrancer. 1998, c. 19, s. 86 (5).

#### Priority if notice late

(6) If a corporation gives notice of a lien to an encumbrancer after the day the certificate of lien is registered, the lien shall have priority over the encumbrance to the extent of,

- (a) the arrears of common expenses that accrued during the three months before the day notice is given and that continue to accrue subsequent to that day; and
- (b) all interest owing on the arrears and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the arrears. 1998, c. 19, s. 86 (6).

#### Default with respect to leased unit

**87.** (1) If an owner who has leased a unit defaults in the owner's obligation to contribute to the common expenses, the corporation may, by written notice to the lessee, require the lessee to pay to the corporation the lesser of the amount of the default and the amount of the rent due under the lease. 1998, c. 19, s. 87 (1).

#### Service on lessee

(2) The corporation shall give the notice to the lessee by personal service or by sending it by prepaid mail addressed to the lessee at the address of the unit. 1998, c. 19, s. 87 (2).

#### Notice to owner

(3) If the corporation gives a notice to a lessee, it shall give a copy of the notice to the owner of the unit that the lessee has leased. 1998, c. 19, s. 87 (3).

#### Service on owner

(4) The corporation shall give the copy of the notice to the owner by personal service or by sending it by prepaid mail addressed to the owner at the address for service that appears in the record of the corporation maintained under subsection 47 (2). 1998, c. 19, s. 87 (4).

#### Rent paid to corporation

(5) Upon receiving a notice under subsection (1), the lessee shall make the required payment to the corporation even if an encumbrancer of the unit has acquired the right of the lessor to receive rent under the lease. 1998, c. 19, s. 87 (5).

#### No default in lease

(6) The payment to the corporation shall constitute payment towards rent under the lease and the lessee shall not by reason only of the payment to the corporation be considered to be in default of an obligation in the lease. 1998, c. 19, s. 87 (6).

### Mortgagee's rights

**88.** (1) Every mortgage of a unit shall be deemed to contain a provision that,

- (a) the mortgagee has the right to collect the owner's contribution to the common expenses and shall promptly pay the amount so collected to the corporation on behalf of the owner;
- (b) the owner's default in the obligation to contribute to the common expenses constitutes default under the mortgage;
- (c) the mortgagee has the right to pay,
  - (i) the amounts of the owner's contribution to the common expenses that from time to time fall due and are unpaid in respect of the mortgaged premises,
  - (ii) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in subclause (i), including, where applicable, the costs of preparing and registering a certificate of lien and a discharge of it;
- (d) payments made by the mortgagee under clause (c), together with interest and all reasonable costs, charges and expenses incurred in respect of the payments, are to be added to the debt secured by the mortgage and to be payable, with interest at the rate payable on the mortgage; and
- (e) if after demand the owner fails to fully reimburse the mortgagee, the mortgage immediately becomes due and payable at the option of the mortgagee. 1998, c. 19, s. 88 (1).

### Statement of common expenses

(2) A corporation shall, on request and free of charge, provide to the mortgagee of a unit a written statement setting out the common expenses in respect of the unit and, if there is a default in the payment of them, the amounts described in subsection 85 (3) in respect of the unit. 1998, c. 19, s. 88 (2).

## REPAIR AND MAINTENANCE

### Repair after damage

**89.** (1) Subject to sections 91 and 123, the corporation shall repair the units and common elements after damage. 1998, c. 19, s. 89 (1).

#### Extent of obligation

(2) The obligation to repair after damage includes the obligation to repair and replace after damage or failure but, subject to subsection (5), does not include the obligation to repair after damage improvements made to a unit. 1998, c. 19, s. 89 (2).

#### Determination of improvements

(3) For the purpose of this section, the question of what constitutes an improvement to a unit shall be determined by reference to a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 89 (3).

#### Standard unit

(4) A standard unit for the class of unit to which the unit belongs shall be,

- (a) the standard unit described in a by-law made under clause 56 (1) (h), if the board has made a by-law under that clause;
- (b) the standard unit described in the schedule mentioned in clause 43 (5) (h), if the board has not made a by-law under clause 56 (1) (h). 1998, c. 19, s. 89 (4).

#### Transition, existing corporations

(5) A corporation that was created before the day this section comes into force and that had the obligation of repairing after damage improvements made to a unit before the registration of the declaration and description shall continue to have the obligation unless it has, by by-law, established what constitutes a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 89 (5).

#### Maintenance

**90.** (1) Subject to section 91, the corporation shall maintain the common elements and each owner shall maintain the owner's unit. 1998, c. 19, s. 90 (1).

#### Normal repairs included

(2) The obligation to maintain includes the obligation to repair after normal wear and tear but does not include the obligation to repair after damage. 1998, c. 19, s. 90 (2).

#### Provisions of declaration

**91.** The declaration may alter the obligation to maintain or to repair after damage as set out in this Act by providing that,

- (a) subject to section 123, each owner shall repair the owner's unit after damage;
- (b) the owners shall maintain the common elements or any part of them;

- (c) each owner shall maintain and repair after damage those parts of the common elements of which the owner has the exclusive use; and
- (d) the corporation shall maintain the units or any part of them. 1998, c. 19, s. 91.

#### Work done for owner

**92.** (1) If the declaration provides that the owner has an obligation to repair after damage and the owner fails to carry out the obligation within a reasonable time after damage occurs, the corporation shall do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (1).

#### Same, maintenance

(2) If the declaration provides that the owner has an obligation to maintain the common elements or any part of them and the owner fails to carry out the obligation within a reasonable time, the corporation may do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (2).

#### Same, maintenance of units

(3) If an owner has an obligation under this Act to maintain the owner's unit and fails to carry out the obligation within a reasonable time and if the failure presents a potential risk of damage to the property or the assets of the corporation or a potential risk of personal injury to persons on the property, the corporation may do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (3).

#### Cost

(4) An owner shall be deemed to have consented to the work done by a corporation under this section and the cost of the work shall be added to the owner's contribution to the common expenses. 1998, c. 19, s. 92 (4).

#### Reserve fund

**93.** (1) The corporation shall establish and maintain one or more reserve funds. 1998, c. 19, s. 93 (1).

#### Purpose of fund

(2) A reserve fund shall be used solely for the purpose of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 93 (2).

#### Designation not required

(3) A fund set up for the purpose mentioned in subsection (2) shall be deemed to be a reserve fund even though it may not be so designated. 1998, c. 19, s. 93 (3).

#### Contributions to fund

(4) The corporation shall collect contributions to the reserve fund from the owners, as part of their contributions to the common expenses. 1998, c. 19, s. 93 (4).

#### Amount of contributions

(5) Unless the regulations made under this Act specify otherwise, until the corporation conducts a first reserve fund study and implements a proposed plan under section 94, the total amount of the contributions to the reserve fund shall be the greater of the amount specified in subsection (6) and 10 per cent of the budgeted amount required for contributions to the common expenses exclusive of the reserve fund. 1998, c. 19, s. 93 (5).

#### Same, after first reserve fund study

(6) The total amount of the contributions to the reserve fund after the time period specified in subsection (5) shall be the amount that is reasonably expected to provide sufficient funds for the major repair and replacement of the common elements and assets of the corporation, calculated on the basis of the expected repair and replacement costs and the life expectancy of the common elements and assets of the corporation. 1998, c. 19, s. 93 (6).

#### Income earned

(7) Interest and other income earned from the investment of money in the reserve fund shall form part of the fund. 1998, c. 19, s. 93 (7).

#### Reserve fund study

**94.** (1) The corporation shall conduct periodic studies to determine whether the amount of money in the reserve fund and the amount of contributions collected by the corporation are adequate to provide for the expected costs of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 94 (1).

#### Contents of study

(2) A reserve fund study shall be of the prescribed class, shall include the material that is prescribed for its class and shall be performed in accordance with the standards that are prescribed for its class. 1998, c. 19, s. 94 (2).

#### Updates

(3) For the purposes of this Act, an update to a reserve fund study shall constitute a class of reserve fund study. 1998, c. 19, s. 94 (3).

#### Time of study

(4) A corporation created on or after this section comes into force shall conduct a reserve fund study within the year following the registration of the declaration and description and subsequently at the prescribed times. 1998, c. 19, s. 94 (4).



#### Same, existing corporations

(5) A corporation created before the day this section comes into force shall conduct a reserve fund study at the prescribed times. 1998, c. 19, s. 94 (5).

#### Person conducting study

(6) A reserve fund study shall be conducted by a person of a prescribed class who shall have no affiliation with the board or with the corporation that is contrary to the regulations made under this Act. 1998, c. 19, s. 94 (6).

#### Cost of study

(7) The cost of conducting the study shall be a common expense which the board may charge to the reserve fund. 1998, c. 19, s. 94 (7).

#### Plan for future funding

(8) Within 120 days of receiving a reserve fund study, the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period of time and in accordance with the prescribed requirements, the fund will be adequate for the purpose for which it was established. 1998, c. 19, s. 94 (8).

#### Copy of plan

(9) Within 15 days of proposing a plan, the board shall,

- (a) send to the owners a notice containing a summary of the study, a summary of the proposed plan and a statement indicating the areas, if any, in which the proposed plan differs from the study; and
- (b) send to the auditor a copy of the study, a copy of the proposed plan and a copy of the notice sent to the owners under clause (a). 1998, c. 19, s. 94 (9).

#### Implementation of proposed plan

(10) The board shall implement the proposed plan after the expiration of 30 days following the day on which the board complies with subsection (9). 1998, c. 19, s. 94 (10).

#### Use of reserve fund

**95.** (1) No part of a reserve fund shall be used except for the purpose mentioned in subsection 93 (2). 1998, c. 19, s. 95 (1).

#### Board's use

(2) The board does not require the consent of the owners to make an expenditure out of a reserve fund. 1998, c. 19, s. 95 (2).

#### No distribution

(3) The amount of a reserve fund shall constitute an asset of the corporation and shall not be distributed to the mortgagees of the units or, except on termination of the corporation, to the owners of the units. 1998, c. 19, s. 95 (3).

#### Warranties

**96.** (1) All warranties given with respect to work and materials furnished for a unit shall be for the benefit of an owner. 1998, c. 19, s. 96 (1).

#### Enforcement by corporation

(2) The corporation may enforce the warranties mentioned in subsection (1) on behalf of an owner if the corporation does work on behalf of the owner under section 92. 1998, c. 19, s. 96 (2).

#### Same, common elements

(3) All warranties given with respect to work and materials furnished for the common elements shall be for the benefit of the corporation. 1998, c. 19, s. 96 (3).

### CHANGES TO COMMON ELEMENTS AND ASSETS

#### Changes made by corporation

**97.** (1) If the corporation has an obligation to repair the units or common elements after damage or to maintain them and the corporation carries out the obligation using materials that are as reasonably close in quality to the original as is appropriate in accordance with current construction standards, the work shall be deemed not to be an addition, alteration or improvement to the common elements or a change in the assets of the corporation for the purpose of this section. 1998, c. 19, s. 97 (1).

#### Changes made without notice

(2) A corporation may, by resolution of the board and without notice to the owners, make an addition, alteration or improvement to the common elements, a change in the assets of the corporation or a change in a service that the corporation provides to the owners if,

- (a) it is necessary to make the addition, alteration, improvement or change to comply with an agreement mentioned in section 113 or the requirements imposed by any general or special Act or regulations or by-laws made under that Act;
- (b) in the opinion of the board, it is necessary to make the addition, alteration, improvement or change to ensure the safety or security of persons using the

property or assets of the corporation or to prevent imminent damage to the property or assets; or

- (c) subject to the regulations made under this Act, the estimated cost, in any given month or other prescribed period, if any, of making the addition, alteration, improvement or change is no more than the greater of \$1,000 and 1 per cent of the annual budgeted common expenses for the current fiscal year. 1998, c. 19, s. 97 (2).

#### Changes made on notice

(3) A corporation may make an addition, alteration or improvement to the common elements, a change in the assets of the corporation or a change in a service that the corporation provides to the owners if,

- (a) the corporation has sent a notice to the owners that,
  - (i) describes the proposed addition, alteration, improvement or change,
  - (ii) contains a statement of the estimated cost of the proposed addition, alteration, improvement or change indicating the manner in which the corporation proposes to pay the cost,
  - (iii) specifies that the owners have the right, in accordance with section 46 and within 30 days of receiving the notice, to requisition a meeting of owners, and
  - (iv) contains a copy of section 46 and this section; and
- (b) one of the following conditions has been met:
  1. The owners have not requisitioned a meeting in accordance with section 46 within 30 days of receiving a notice under clause (a).
  2. The owners have requisitioned a meeting in accordance with section 46 within 30 days of receiving a notice under clause (a) but have not voted against the proposed addition, alteration, improvement or change at the meeting. 1998, c. 19, s. 97 (3).

#### Approval of substantial change

(4) Despite subsection (3), the corporation shall not make a substantial addition, alteration, improvement to the common elements, a substantial change in the assets of the corporation or a substantial change in a service that the corporation provides to the owners unless the owners who own at least  $66\frac{2}{3}$  per cent of the units of the corporation vote in favour of approving it. 1998, c. 19, s. 97 (4).

### Meeting

(5) The vote shall be taken at a meeting duly called for the purpose of subsection (4). 1998, c. 19, s. 97 (5).

### Meaning of substantial change

(6) For the purposes of subsection (4), an addition, alteration, improvement or change is substantial if,

- (a) its estimated cost, based on its total cost, regardless of whether part of the cost is incurred before or after the current fiscal year, exceeds the lesser of,
  - (i) 10 per cent of the annual budgeted common expenses for the current fiscal year, and
  - (ii) the prescribed amount, if any; or
- (b) the board elects to treat it as substantial. 1998, c. 19, s. 97 (6).

### Cost of changes

(7) The cost of an addition, alteration, improvement or change that the corporation makes under this section shall form part of the common expenses. 1998, c. 19, s. 97 (7).

### Changes made by owners

**98.** (1) An owner may make an addition, alteration or improvement to the common elements that is not contrary to this Act or the declaration if,

- (a) the board, by resolution, has approved the proposed addition, alteration or improvement;
- (b) the owner and the corporation have entered into an agreement that,
  - (i) allocates the cost of the proposed addition, alteration or improvement between the corporation and the owner,
  - (ii) sets out the respective duties and responsibilities, including the responsibilities for the cost of repair after damage, maintenance and insurance, of the corporation and the owner with respect to the proposed addition, alteration or improvement, and
  - (iii) sets out the other matters that the regulations made under this Act require;

- (c) subject to subsection (2), the requirements of section 97 have been met in cases where that section would apply if the proposed addition, alteration or improvement were done by the corporation; and
- (d) the corporation has included a copy of the agreement described in clause (b) in the notice that the corporation is required to send to the owners. 1998, c. 19, s. 98 (1).

#### No notice or approval

(2) Clauses (1) (c) and (d) do not apply if the proposed addition, alteration or improvement relates to a part of the common elements of which the owner has exclusive use and if the board is satisfied on the evidence that it may require that the proposed addition, alteration or improvement,

- (a) will not have an adverse effect on units owned by other owners;
- (b) will not give rise to any expense to the corporation;
- (c) will not detract from the appearance of buildings on the property;
- (d) will not affect the structural integrity of buildings on the property according to a certificate of an engineer, if the proposed addition, alteration or improvement involves a change to the structure of the buildings; and
- (e) will not contravene the declaration or any prescribed requirements. 1998, c. 19, s. 98 (2).

#### When agreement effective

(3) An agreement described in clause (1) (b) does not take effect until,

- (a) the conditions set out in clause (1) (a) and subsection (2) have been met or the conditions set out in clauses (1) (a), (c) and (d) have been met; and
- (b) the corporation has registered it against the title to the owner's unit. 1998, c. 19, s. 98 (3).

#### Lien for default under agreement

(4) The corporation may add the costs, charges, interest and expenses resulting from an owner's failure to comply with an agreement to the common expenses payable for the owner's unit and may specify a time for payment by the owner. 1998, c. 19, s. 98 (4).

### Agreement binds unit

(5) An agreement binds the owner's unit and is enforceable against the owner's successors and assigns. 1998, c. 19, s. 98 (5).

## INSURANCE

### Property insurance

**99.** (1) The corporation shall obtain and maintain insurance, on its own behalf and on behalf of the owners, for damage to the units and common elements that is caused by major perils or the other perils that the declaration or the by-laws specify. 1998, c. 19, s. 99 (1).

### Definition

(2) In subsection (1),

“major perils” means the perils of fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil commotion, impact by aircraft or vehicles, vandalism or malicious acts. 1998, c. 19, s. 99 (2).

### Exclusion ineffective

(3) An exclusion in the insurance required by this section is not effective with respect to damage resulting from faulty or improper material, workmanship or design that would be insured, but for the exclusion. 1998, c. 19, s. 99 (3).

### Improvements not included

(4) The obligation to insure under subsection (1) does not include insurance for damage to improvements made to a unit. 1998, c. 19, s. 99 (4).

### Determination of improvements

(5) For the purpose of this section, the question of what constitutes an improvement to a unit shall be determined by reference to a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 99 (5).

### Standard unit

(6) A standard unit for the class of unit to which the unit belongs shall be,

- (a) the standard unit described in a by-law made under clause 56 (1) (h), if the board has made a by-law under that clause;
- (b) the standard unit described in the schedule mentioned in clause 43 (5) (h), if the board has not made a by-law under clause 56 (1) (h). 1998, c. 19, s. 99 (6).

#### Amount of recovery

(7) Subject to a reasonable deductible, the insurance required under this section shall cover the replacement cost of the property damaged by the perils to which the insurance applies. 1998, c. 19, s. 99 (7).

#### Breach of policy

(8) Despite anything in an insurance policy issued under this section, no act of any person shall be deemed to be a breach of the conditions of the policy if the act is prejudicial to the interests of the corporation or the owners. 1998, c. 19, s. 99 (8).

#### Termination

(9) An insurance policy issued under this section shall be deemed to include a clause that the insurer shall not terminate the insurance contract unless the insurer gives the corporation and the insurance trustee, if any, at least 60 days notice by registered mail. 1998, c. 19, s. 99 (9).

#### Proceeds

**100.** (1) Despite anything contained in an insurance trust agreement that the corporation has entered into with an insurance trustee, if the proceeds of an insurance policy issued under section 99 are less than 15 per cent of the replacement cost of the property covered by the policy, the insurer shall pay the proceeds to the corporation or the person whom the corporation specifies. 1998, c. 19, s. 100 (1).

#### Use of insurance proceeds

(2) Upon the proceeds being available, the corporation shall promptly use them for the repair or replacement of the damaged units and common elements, unless the owners have voted to terminate because of substantial damage in accordance with section 123. 1998, c. 19, s. 100 (2).

#### Payment from Ontario New Home Warranties Plan

(3) A corporation that receives a payment out of the guarantee fund under subsection 14 (3) or (4) of the *Ontario New Home Warranties Plan Act* for remedial work to the common elements shall promptly use the payment for the remedial work, unless,

- (a) the owners have voted to terminate because of substantial damage in accordance with section 123; or
- (b) the corporation has already completed and paid for the remedial work. 1998, c. 19, s. 100 (3).

#### Limitation, mortgage

(4) Despite any provision in a mortgage or subsection 6 (2) of the *Mortgages Act*, a mortgagee may not require that proceeds received under an insurance policy on the

property or on a part of the property or a payment received out of the guarantee fund under subsection 14 (3) or (4) of the *Ontario New Home Warranties Plan Act* be applied towards the discharge of the mortgage; a requirement that contravenes this subsection is void. 1998, c. 19, s. 100 (4).

#### Double coverage

**101.** (1) Insurance that a corporation obtains and maintains under section 99 shall be deemed not to be other insurance for the purpose of any prohibition of or condition against other insurance in a policy of an owner insuring against loss of or damage to the owner's unit or the owner's interest in the common elements and covering only to the extent that the insurance placed by the corporation is inapplicable, inadequate or ineffective. 1998, c. 19, s. 101 (1).

#### No reciprocal contribution

(2) Despite section 150 of the *Insurance Act*, an insurance policy issued under section 99 and any other insurance policy, except another policy under section 99, are not liable to be brought into contribution with each other. 1998, c. 19, s. 101 (2).

#### Other insurance

**102.** The corporation shall obtain and maintain,

- (a) insurance against its liability resulting from a breach of duty as occupier of the common elements or land that the corporation holds as an asset; and
- (b) insurance against its liability arising from the ownership, use or operation, by or on its behalf, of boilers, machinery, pressure vessels and motor vehicles. 1998, c. 19, s. 102.

#### Capacity to maintain insurance

**103.** (1) Nothing in this Act shall be construed to restrict the capacity of a corporation, an owner or any other person to obtain and maintain insurance in respect of an insurable interest. 1998, c. 19, s. 103 (1).

#### Same

(2) For the purposes of sections 99 and 102, the corporation shall be deemed to have an insurable interest in the units and common elements. 1998, c. 19, s. 103 (2).

#### Disclosure by insurer

**104.** An insurer under an insurance policy required by this Act shall provide the corporation with a certificate or memorandum of insurance declaring the coverage carried by the corporation on behalf of all owners. 1998, c. 19, s. 104.



#### Deductible

**105.** (1) Subject to subsection (2) and (3), if an insurance policy obtained by the corporation in accordance with this Act contains a deductible clause that limits the amount payable by the insurer, the portion of a loss that is excluded from coverage shall be a common expense. 1998, c. 19, s. 105 (1).

#### Owner's responsibility

(2) If an owner, a lessee of an owner or a person residing in the owner's unit with the permission or knowledge of the owner through an act or omission causes damage to the owner's unit, the amount that is the lesser of the cost of repairing the damage and the deductible limit of the insurance policy obtained by the corporation shall be added to the common expenses payable for the owner's unit. 1998, c. 19, s. 105 (2).

#### Same, by-law

(3) The corporation may pass a by-law to extend the circumstances in subsection (2) under which an amount shall be added to the common expenses payable for an owner's unit if the damage to the unit was not caused by an act or omission of the corporation or its directors, officers, agents or employees. 1998, c. 19, s. 105 (3).

#### Owner's insurable interest

(4) The amount payable by an owner under this section or as a result of a by-law passed under this section constitutes an insurable interest of the owner. 1998, c. 19, s. 105 (4).

#### Act prevails

**106.** If any provision of an insurance policy required by section 99 or 102 or any part of the *Insurance Act* conflicts with anything in this Act, the provisions of this Act apply. 1998, c. 19, s. 106.

### AMENDMENTS TO THE DECLARATION AND DESCRIPTION

#### Amendments with owners' consent

**107.** (1) The corporation shall not amend the declaration or the description except in accordance with this section. 1998, c. 19, s. 107 (1).

#### Conditions

- (2) The corporation may amend the declaration or the description if,
- (a) the board, by resolution, has approved the proposed amendment;
  - (b) the declarant has consented to the proposed amendment in writing if,

- (i) at the time the board approved the proposed amendment, the declarant had not transferred all of the units except for the part of the property described in subsection 22 (5), and
- (ii) less than three years have elapsed from the later of the date of registration of the declaration and description and the date that the declarant first entered into an agreement of purchase and sale for a unit in the corporation;
- (c) the board has held a meeting of owners in accordance with subsections (3) and (4);
- (d) the owners of at least 90 per cent of the units at the time the board approved the proposed amendment have consented to it in writing, if it makes a change in a matter described in clause 7 (2) (c), (d) or (f) or 7 (4) (e);
- (e) the owners of at least 80 per cent of the units at the time the board approved the proposed amendment have consented to it in writing, in all cases apart from a case described in clause (d); and
- (f) the corporation has, in accordance with subsection 47 (8), sent a notice of the proposed amendment to all mortgagees whose names appeared in the record of the corporation maintained under subsection 47 (2) at the time the board approved the proposed amendment. 1998, c. 19, s. 107 (2).

#### Meeting of owners

(3) The board shall call a meeting of owners for the purpose of considering the proposed amendment. 1998, c. 19, s. 107 (3).

#### Notice of meeting

(4) The board shall give the owners a notice of the meeting which shall include a copy of the proposed amendment. 1998, c. 19, s. 107 (4).

#### Registration

(5) The corporation shall register a copy of an amendment made under this section but shall not register the copy until after the expiration of 30 days following the time at which it gave the notice described in clause (2) (f). 1998, c. 19, s. 107 (5).

#### Form of registration

(6) The registered copy of the amendment shall include a certificate, in the form prescribed by the Minister, made by the officers authorized to act on behalf of the corporation that certifies that the amendment complies with the requirements of this section. 1998, c. 19, s. 107 (6).

#### When amendment effective

(7) An amendment made under this section is ineffective until the copy of the amendment has been registered. 1998, c. 19, s. 107 (7).

#### Change of address for service

**108.** Despite section 107, the board may change the address for service or the mailing address of the corporation by registering a notice of change of address in the form prescribed by the Minister. 1998, c. 19, s. 108.

#### Court order

**109.** (1) The corporation or an owner may make an application to the Ontario Court (General Division) for an order to amend the declaration or description. 1998, c. 19, s. 109 (1).

**Note: On the day Part VI comes into force, subsection (1) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (5).**

#### Notice of application

(2) The applicant shall give at least 15 days notice of an application to the corporation and to every owner and mortgagee who, on the 30th day before the application is made, is listed in the record of the corporation maintained under subsection 47 (2), but the applicant is not required to give notice to the applicant. 1998, c. 19, s. 109 (2).

#### Grounds for order

(3) The court may make an order to amend the declaration or description if satisfied that the amendment is necessary or desirable to correct an error or inconsistency that appears in the declaration or description or that arises out of the carrying out of the intent and purpose of the declaration or description. 1998, c. 19, s. 109 (3).

#### Registration

(4) An amendment under this section is ineffective until a certified copy of the order has been registered. 1998, c. 19, s. 109 (4).

#### Order of Director of Titles

**110.** (1) The corporation or an interested person may apply to the Director of Titles appointed under section 9 of the *Land Titles Act* for an order to amend the declaration or description to correct an error or inconsistency that is apparent on the face of the declaration or description, as the case may be. 1998, c. 19, s. 110 (1).

### Notice of application

(2) The applicant shall give notice of the application in the form and manner that the Director of Titles directs to the corporation and to every owner and mortgagee listed in the record of the corporation maintained under subsection 47 (2) whose interest would be affected by the amendment, but the applicant is not required to give notice to the applicant. 1998, c. 19, s. 110 (2).

### Grounds for order

(3) The Director of Titles shall make an order to amend the declaration or description if satisfied that the amendment will correct an error or inconsistency that is apparent on the face of the declaration or description, as the case may be. 1998, c. 19, s. 110 (3).

### Registration

(4) An amendment under this section is ineffective until a certified copy of the order has been registered. 1998, c. 19, s. 110 (4).

## TERMINATION OF AGREEMENTS

### Management agreements

**111.** (1) Subject to subsection (2), a corporation may, by resolution of the board, terminate an agreement for the management of the property that it has entered into with a person before the owners elected a new board at a meeting held in accordance with subsection 43 (1). 1998, c. 19, s. 111 (1).

### Notice

(2) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the corporation entered into the agreement. 1998, c. 19, s. 111 (2).

### Other agreements

**112.** (1) Subject to subsection (4), a corporation may, by resolution of the board within 12 months following the election of a new board at a meeting held in accordance with subsection 43 (1), terminate an agreement mentioned in subsection (2) that the corporation has entered into with a person other than another corporation before the election of the new board. 1998, c. 19, s. 112 (1).

### Application

(2) Subsection (1) applies to the following agreements:

1. An agreement for the provision of goods or services on a continuing basis.
2. An agreement for the provision of facilities to the corporation on other than a non-profit basis.

3. A lease of all or part of the common elements for business purposes. 1998, c. 19, s. 112 (2).

#### Non-application

(3) Subsection (1) does not apply to a telecommunications agreement within the meaning of section 22. 1998, c. 19, s. 112 (3).

#### Notice

(4) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the corporation entered into the agreement. 1998, c. 19, s. 112 (4).

#### Exception, easements

(5) Nothing in this section permits the termination of an easement created by an instrument in writing except in accordance with the instrument. 1998, c. 19, s. 112 (5).

#### Mutual use agreements

**113.** (1) If a corporation and a person have entered into an agreement for the mutual use, provision or maintenance or the cost-sharing of facilities or services before the owners elected a new board at a meeting held in accordance with subsection 43 (1), any party to the agreement may, within 12 months following the election, make an application to the Ontario Court (General Division) for an order under subsection (3). 1998, c. 19, s. 113 (1).

**Note: On the day Part VI comes into force, subsection (1) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (5).**

#### Non-application

(2) Subsection (1) does not apply to a telecommunications agreement within the meaning of section 22. 1998, c. 19, s. 113 (2).

#### Court order

(3) The court may make an order amending or terminating the agreement or any of its provisions or may make any other order that the court deems necessary if it is satisfied that,

- (a) the disclosure statement did not clearly and adequately disclose the provisions of the agreement; and

- (b) the agreement or any of its provisions produces a result that is oppressive or unconscionably prejudicial to the corporation or any of the owners. 1998, c. 19, s. 113 (3).

#### Insurance trust agreements

**114.** Despite anything contained in an insurance trust agreement that a corporation has entered into with an insurance trustee and anything in the declaration, the corporation may terminate the agreement by giving at least 60 days notice in writing of the termination date to the trustee. 1998, c. 19, s. 114.

### MISCELLANEOUS

#### Corporation's money

**115.** (1) A person who receives money on behalf of or for the benefit of the corporation, including money received from owners as contributions to the common expenses or the reserve fund, shall hold the money, together with interest and other proceeds earned from investing it, in trust for the performance by the corporation of its duties and obligations. 1998, c. 19, s. 115 (1).

#### Corporation's accounts

(2) A corporation shall maintain one or more accounts in its name designated as general accounts and one or more accounts in its name designated as reserve fund accounts. 1998, c. 19, s. 115 (2).

#### Location of accounts

(3) Each of the accounts shall be located in Ontario at a bank listed under Schedule I or II to the *Bank Act* (Canada), a trust corporation, a loan corporation, a credit union authorized by law to receive money on deposit or a Province of Ontario Savings Office. 1998, c. 19, s. 115 (3).

#### Deposit of money

(4) Subject to subsections (6) and (7), the person who receives money on behalf of or for the benefit of the corporation shall pay the money, together with interest and other proceeds earned from investing it, into,

- (a) a general account of the corporation, if the money was not received as contributions from owners to the reserve fund; or
- (b) a reserve fund account of the corporation, if the money was received as contributions from owners to the reserve fund. 1998, c. 19, s. 115 (4).

#### Definition

- (5) In subsections (6) and (7),

“eligible security” means a bond, debenture, guaranteed investment certificate, deposit receipt, deposit note, certificate of deposit, term deposit or other similar instrument that,

- (a) is issued or guaranteed by the government of Canada or the government of any province of Canada,
- (b) is issued by an institution located in Ontario insured by the Canada Deposit Insurance Corporation, or
- (c) is a security of a prescribed class. 1998, c. 19, s. 115 (5).

#### Investment

(6) The board may invest all or any part of the money in the corporation’s general accounts in eligible securities if,

- (a) they are convertible to cash within 90 days following a request by the board;  
and
- (b) they are,
  - (i) registered in the name of the corporation, or
  - (ii) held in a segregated account under the name of the corporation by a member of the Investment Dealers Association of Canada and insured by the Canadian Investor Protection Fund. 1998, c. 19, s. 115 (6).

#### Same, reserve fund accounts

(7) Subject to subsection (8), the board may invest all or any part of the money in the corporation’s reserve fund accounts in eligible securities if they are,

- (a) registered in the name of the corporation; or
- (b) held in a segregated account under the name of the corporation by a member of the Canadian Investment Dealers Association and insured by the Canadian Investor Protection Fund. 1998, c. 19, s. 115 (7).

#### Investment plan

(8) Before investing any part of the money in the corporation’s reserve fund accounts, the board shall develop an investment plan based on the anticipated cash requirements of the reserve fund as set out in the most recent reserve fund study. 1998, c. 19, s. 115 (8).

## Records

(9) A person who receives money under subsection (1) shall keep records relating to the receipt and disposition of all money under this section and shall, upon reasonable notice and at all reasonable times, make the records available for examination by the corporation, an owner or a mortgagee. 1998, c. 19, s. 115 (9).

## Use of common elements by owners

**116.** An owner may make reasonable use of the common elements subject to this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 116.

## Dangerous activities

**117.** No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual. 1998, c. 19, s. 117.

## Entry by canvassers

**118.** No corporation or employee or agent of a corporation shall restrict reasonable access to the property by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly or an office in a municipal government or school board if access is necessary for the purpose of canvassing or distributing election material. 1998, c. 19, s. 118.

## Compliance with Act

**119.** (1) A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 119 (1).

## Responsibility for occupier

(2) An owner shall take all reasonable steps to ensure that an occupier of the owner's unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 119 (2).

## Right against owner

(3) A corporation, an owner and every person having a registered mortgage against a unit and its appurtenant common interest have the right to require the owners and the occupiers of units to comply with this Act, the declaration, the by-laws and the rules. 1998, c. 19, s. 119 (3).

## Proposed unit

(4) Until the declarant registers a declaration and description and the by-laws and rules of the corporation come into force, an occupier of a proposed unit shall comply with this



Act, the declaration and the by-laws and rules proposed by the declarant; the declarant shall take all reasonable steps to ensure that the occupier complies with this section. 1998, c. 19, s. 119 (4).

#### Right against occupier

(5) Until the declarant registers a declaration and description and the by-laws and rules of the corporation come into force, an occupier of a proposed unit has the right to require the occupiers of the other units in the proposed corporation to comply with this Act, the declaration and the by-laws and rules proposed by the declarant. 1998, c. 19, s. 119 (5).

## PART VII AMALGAMATION

#### Amalgamation

**120.** (1) Subject to the regulations made under this Act, two or more leasehold condominium corporations or two or more freehold condominium corporations of the same type may amalgamate by registering a declaration and description amalgamating the corporations if,

- (a) the board of each amalgamating corporation has held a meeting in accordance with subsections (2) and (3);
- (b) the owners of at least 90 per cent of the units of each corporation as of the date of that corporations's meeting have, within 90 days of the meeting, consented in writing to the registration of the declaration and description; and
- (c) the corporations have complied with all prescribed requirements. 1998, c. 19, s. 120 (1).

#### Meeting of owners

(2) The board of each amalgamating corporation shall call a meeting of owners for the purpose of considering a declaration and description amalgamating the corporations. 1998, c. 19, s. 120 (2).

#### Notice of meeting

- (3) The board shall give the owners a notice of the meeting which shall include,
- (a) a copy of the proposed declaration and description of the amalgamated corporation and a copy of the proposed budget for the corporation's first year of operation;
  - (b) a copy of all proposed by-laws and rules of the amalgamated corporation;

- (c) a certificate as to the status for each amalgamating corporation in the form prescribed by the Minister;
- (d) for each amalgamating corporation, the auditor's report on the last annual financial statements of the corporation, if it is not included in the certificate mentioned in clause (c); and
- (e) all additional statements and information that the regulations made under this Act require. 1998, c. 19, s. 120 (3).

#### Signing of declaration

(4) The declaration of an amalgamated corporation shall not be registered unless the officers of each amalgamating corporation who are duly authorized to sign on behalf of the corporation have signed the declaration. 1998, c. 19, s. 120 (4).

#### Part VIII not applicable

(5) Part VIII does not apply to an amalgamation carried out under this section but does apply to an amalgamated corporation after the registration of its declaration and description. 1998, c. 19, s. 120 (5).

#### Effect of registration

**121.** (1) On registration of a declaration and description for an amalgamated corporation,

- (a) the amalgamating corporations are amalgamated and continue as one corporation;
- (b) the units and common interests of the amalgamating corporations are continued as units and common interests in the amalgamated corporation;
- (c) all encumbrances, easements and leases that affected the units or common elements of the amalgamating corporations are continued as encumbrances, easements and leases respectively that affect the units or common elements, as the case may be, of the amalgamated corporation;
- (d) all declarations, descriptions, by-laws and rules of the amalgamating corporations cease to apply;
- (e) the directors of the amalgamating corporations constitute the first directors of the amalgamated corporation;

- (f) the proposed by-laws and rules mentioned in clause 120 (3) (b) shall be the by-laws and rules respectively of the amalgamated corporation until the corporation amends or replaces them;
- (g) the amalgamated corporation possesses all the assets, rights and privileges and is subject to all liabilities, including civil, criminal and quasi-criminal, and all contracts, agreements, warranties and debts of each of the amalgamating corporations;
- (h) a conviction against, or ruling, order or judgment in favour of or against an amalgamating corporation may be enforced by or against the amalgamated corporation; and
- (i) the amalgamated corporation shall be deemed to be the party plaintiff or the party defendant, as the case may be, in all civil actions commenced by or against an amalgamating corporation before the amalgamation becomes effective. 1998, c. 19, s. 121 (1).

#### First auditors

(2) Immediately following the registration of a declaration and description for an amalgamated corporation, the directors shall appoint one or more auditors who shall hold office until the close of the meeting of owners described in subsection (3). 1998, c. 19, s. 121 (2).

#### Subsequent directors

(3) The first directors of an amalgamated corporation shall hold office until the owners elect their successors at a meeting which the first directors shall call and hold within 60 days following the registration of the declaration and description for the corporation. 1998, c. 19, s. 121 (3).

#### Subsequent auditors

(4) At the meeting the owners shall, subject to section 60 with necessary modifications, appoint successors for the auditors mentioned in subsection (2). 1998, c. 19, s. 121 (4).

## PART VIII TERMINATION

#### Termination with consent

**122.** (1) A corporation shall register a notice terminating the government of the property by this Act if,

- (a) the owners of at least 80 per cent of the units, at the date of the vote, vote in favour of termination; and

- (b) at least 80 per cent of those persons who, at the date of the vote, have registered claims against the property, that were created after the registration of the declaration and description that made this Act applicable to the property, consent in writing to the termination. 1998, c. 19, s. 122 (1).

#### Notice of termination

(2) The notice of termination shall be in the form prescribed by the Minister, shall be signed by the authorized officers of the corporation and shall include a certificate stating that the persons described in clause (1) (b) have consented in writing to the termination. 1998, c. 19, s. 122 (2).

#### Termination upon substantial damage

**123.** (1) The registration of a notice under subsection (7) terminates the government of the property by this Act. 1998, c. 19, s. 123 (1).

#### Definition

(2) In this section,

“substantial damage” means damage for which the cost of repair is estimated to equal or exceed 25 per cent of the replacement cost of all the buildings and structures located on the property. 1998, c. 19, s. 123 (2).

#### Estimates of damage

(3) If damage occurs to a building or a structure located on the property that, in the opinion of the board, may constitute substantial damage, the board shall have at least two persons, who shall have no affiliation with the board and who, in the opinion of the board, are qualified, make estimates of the damage within 30 days after the occurrence of the damage. 1998, c. 19, s. 123 (3).

#### Determination by board

(4) The board shall determine whether, based on the estimates, there has been substantial damage. 1998, c. 19, s. 123 (4).

#### Notice of determination

(5) If the board determines that there has been substantial damage, it shall give notice of its determination to the owners. 1998, c. 19, s. 123 (5).

#### Contents of notice

(6) The notice shall specify that,

- (a) the owners have the right, in accordance with section 46 and within 30 days of receiving the notice, to requisition a meeting of owners; and

- (b) the board is required to register a notice terminating the government of the property by this Act if the condition described in subsection (7) is met. 1998, c. 19, s. 123 (6).

#### Vote for termination

(7) The board shall register a notice terminating the government of the property by this Act if the owners of at least 80 per cent of the units, at the date of the vote, vote in favour of termination. 1998, c. 19, s. 123 (7).

#### Form of notice

(8) The notice shall be in the form prescribed by the Minister and shall be signed by the authorized officers of the corporation. 1998, c. 19, s. 123 (8).

#### Time of registration

(9) The board shall register the notice within 30 days of a vote in favour of termination under subsection (7). 1998, c. 19, s. 123 (9).

#### Repairs if no termination

(10) If there is no vote in favour of termination under subsection (7), the corporation shall, within a reasonable time, repair the damage to the building or structure located on the property. 1998, c. 19, s. 123 (10).

#### Termination upon sale of property

**124.** (1) If the corporation sells the property or a part of the common elements, this Act ceases to govern the property being sold. 1998, c. 19, s. 124 (1).

#### Authorization of sale

- (2) The corporation shall not sell the property or a part of the common elements unless,
  - (a) the owners of at least 80 per cent of the units, at the date of the vote, vote in favour of the sale;
  - (b) at least 80 per cent of those persons who, at the date of the vote, have registered claims against the property being sold, that were created after the registration of the declaration and description that made this Act applicable to the property being sold, consent in writing to the sale; and
  - (c) if the sale is for only part of the common elements and includes common elements that are for the use of the owners of certain designated units and not all the owners, the owners of the designated units consent in writing to the sale. 1998, c. 19, s. 124 (2).

### Conveyance

(3) When a sale takes place, the board shall deliver to the purchaser the following documents signed by the authorized officers of the corporation: a deed and a certificate in the form prescribed by the Minister stating that the persons who, under subsection (2), are required to vote in favour of the sale or consent in writing to the sale have done so. 1998, c. 19, s. 124 (3).

### Proceeds

(4) Subject to subsection (5), the owners at the time of the registration of the deed shall share the net proceeds of the sale in the same proportions as their common interests. 1998, c. 19, s. 124 (4).

### Same

(5) The portion of the proceeds of the sale that is attributable to a portion of the common elements that is for the use of the owners of certain designated units, and not all the owners, shall be divided among the owners of the designated units in the proportions in which their interests are affected. 1998, c. 19, s. 124 (5).

### Right of dissenters

**125.** (1) A corporation that has made a sale under section 124 and every owner in the corporation shall be deemed to have made an agreement that an owner who has dissented on the vote authorizing the sale may, within 30 days of the vote, submit to mediation a dispute over the fair market value of the property or the part of the common elements that has been sold, determined as of the time of the sale. 1998, c. 19, s. 125 (1).

### Application of s. 132

(2) If an owner submits a dispute to mediation, section 132 applies to the dispute with necessary modifications as if it were a disagreement under that section. 1998, c. 19, s. 125 (2).

### Notice

(3) An owner who submits a dispute to mediation shall give the corporation notice of intention within 10 days after the vote authorizing the sale. 1998, c. 19, s. 125 (3).

### Entitlement to amount

(4) An owner who serves a notice of intention is entitled to receive from the proceeds of the sale the amount the owner would have received if the sale price had been the fair market value as determined by the arbitration. 1998, c. 19, s. 125 (4).

### Deficiency

(5) The corporation shall pay to each of the owners who served a notice of intention, the deficiency in the amount to which the owner is entitled if the proceeds of the sale are inadequate to pay the amount. 1998, c. 19, s. 125 (5).

### Liability

(6) The owners other than those who dissented on the vote authorizing the sale are liable for the amount of the deficiency payments determined by the proportions of their common interests. 1998, c. 19, s. 125 (6).

### Common expenses of other owners

(7) The corporation shall add the amount of the liability of each of the owners who voted in favour of the sale to the common expenses appurtenant to the units of those owners and may specify a time for payment by each of those owners. 1998, c. 19, s. 125 (7).

### Expropriation

**126.** (1) Upon expropriation of the property or a part of the common elements under the *Expropriations Act*, this Act ceases to govern the property or the part of the common elements, as the case may be. 1998, c. 19, s. 126 (1).

### Proceeds

(2) Subject to subsection (3), if part of the common elements is expropriated under the *Expropriations Act*, the owners shall share the proceeds in the same proportions as their common interests. 1998, c. 19, s. 126 (2).

### Same

(3) The portion of the proceeds received on expropriation under the *Expropriations Act* that is attributable to a portion of the common elements that is for the use of the owners of certain designated units, and not all the owners, shall be divided among the owners of the designated units in the proportions in which their interests are affected. 1998, c. 19, s. 126 (3).

### Effect of registration

**127.** (1) Upon registration of a notice of termination under section 122 or 123,

- (a) this Act ceases to govern the property;
- (b) the owners are tenants in common of the land and interests appurtenant to the land described in the description in the same proportions as their common interests;
- (c) claims against the land and the interests appurtenant to the land described in the description, that were created before the registration of the declaration and description that made this Act applicable to the land, are as effective as if the declaration and description had not been registered;

- (d) encumbrances against each unit and common interest, that were created after the registration of the declaration and description that made this Act applicable to the unit, are claims against the interests of the owner in the land and interests appurtenant to the land described in the description and have the same priority as they had before the registration of the notice of termination; and
- (e) all other claims against the property that were created after the registration of the declaration and description that made this Act applicable to the property are extinguished. 1998, c. 19, s. 127 (1).

#### Same, sale or expropriation

(2) Upon the registration of a deed and a certificate under section 124 or upon expropriation under section 126,

- (a) this Act ceases to govern the property being sold or expropriated, as the case may be;
- (b) claims against the land and interests appurtenant to the land, that were created before the registration of the declaration and description that made this Act applicable to the land, are as effective as if the declaration and description had not been registered; and
- (c) claims against the property being sold or expropriated, as the case may be, that were created after the registration of the declaration and description that made this Act applicable to that property, are extinguished. 1998, c. 19, s. 127 (2).

#### Termination by court

**128.** (1) A corporation, an owner, or a person having an encumbrance against a unit and common interest, may make an application to the Ontario Court (General Division) for an order terminating the government of the property by this Act. 1998, c. 19, s. 128 (1).

**Note: On the day Part VIII comes into force, subsection (1) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (6).**

#### Grounds for order

(2) The court may order that the government of the property by this Act be terminated if the court is of the opinion that the termination would be just and equitable, having regard to,



- (a) the scheme and intent of this Act;
- (b) the probability of unfairness to the owners if the court does not order termination;
- (c) the probability of confusion and uncertainty in the affairs of the corporation or of the owners if the court does not order termination; and
- (d) the best interests of the owners. 1998, c. 19, s. 128 (2).

#### Contents of order

(3) The court may include in the order all provisions that it considers appropriate in the circumstances. 1998, c. 19, s. 128 (3).

#### Registration of order

(4) If the court makes an order terminating the government of the property by this Act, the applicant shall register the order. 1998, c. 19, s. 128 (4).

#### Distribution of assets

**129.** When the owners and the property cease to be governed by this Act,

- (a) the assets of the corporation shall be used to pay all claims for the payment of money against the corporation; and
- (b) the remainder of the assets of the corporation shall be distributed among the owners in the same proportions as the proportions of their common interests. 1998, c. 19, s. 129.

## PART IX ENFORCEMENT

#### Inspector

**130.** (1) Upon application by the corporation, a lessor of a leasehold condominium corporation, an owner or a mortgagee of a unit, the Ontario Court (General Division) may make an order appointing an inspector to,

**Note:** On the day Part IX comes into force, subsection (1) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (7).

- (a) investigate the items that the declarant is required to give to the board under subsections 43 (4), (5) and (7);
- (b) investigate the corporation's records mentioned in subsection 55 (1);
- (c) investigate the affairs of a person mentioned in subsection 115 (1); or
- (d) conduct an audit of the accounts and records mentioned in section 43, 55 or 115. 1998, c. 19, s. 130 (1).

#### Grounds for order

(2) The court may make the order if it is satisfied that the application is made in good faith and that the order is in the best interests of the applicant. 1998, c. 19, s. 130 (2).

#### Powers of inspector

(3) The inspector shall have the powers of a commission under Part II of the *Public Inquiries Act* that the order states and when the inspector exercises those powers, that Part applies to the inspector's investigation or audit as if it were an inquiry under that Act. 1998, c. 19, s. 130 (3).

#### Contents of order

- (4) In the order, the court,
  - (a) shall require the inspector to make a written report within a specified time to the applicant for the order and to the corporation on the activities that the order requires the inspector to perform; and
  - (b) may make an order as to the costs of the investigation or audit or any other matter as it deems proper. 1998, c. 19, s. 130 (4).

#### Summary of report

- (5) The board shall send a summary of the report to the owners. 1998, c. 19, s. 130 (5).

#### Administrator

**131.** (1) Upon application by the corporation, a lessor of a leasehold condominium corporation, an owner or a mortgagee of a unit, the Ontario Court (General Division) may make an order appointing an administrator for a corporation under this Act if at least 120 days have passed since a turn-over meeting has been held under section 43. 1998, c. 19, s. 131 (1).

**Note: On the day Part IX comes into force, subsection (1) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out**

**“Ontario Court (General Division)” and substituting “Superior Court of Justice”.**  
**See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (7).**

#### Grounds for order

(2) The court may make the order if the court is of the opinion that it would be just or convenient, having regard to the scheme and intent of this Act and the best interests of the owners. 1998, c. 19, s. 131 (2).

#### Contents of order

- (3) The order shall,
- (a) specify the powers of the administrator;
  - (b) state which powers and duties, if any, of the board shall be transferred to the administrator; and
  - (c) contain the directions and impose the terms that the court considers just. 1998, c. 19, s. 131 (3).

#### Application for direction

(4) The administrator may apply to the court for the opinion, advice or direction of the court on any question regarding the management or administration of the corporation. 1998, c. 19, s. 131 (4).

#### Mediation and arbitration

**132.** (1) Every agreement mentioned in subsection (2) shall be deemed to contain a provision to submit a disagreement between the parties with respect to the agreement to,

- (a) mediation by a person selected by the parties unless the parties have previously submitted the disagreement to mediation; and
- (b) unless a mediator has obtained a settlement between the parties with respect to the disagreement, arbitration under the *Arbitration Act, 1991*,
  - (i) 60 days after the parties submit the disagreement to mediation, if the parties have not selected a mediator under clause (a), or
  - (ii) 30 days after the mediator selected under clause (a) delivers a notice stating that the mediation has failed. 1998, c. 19, s. 132 (1).

#### Application

- (2) Subsection (1) applies to the following agreements:

1. An agreement between a declarant and a corporation.
2. An agreement between two or more corporations.
3. An agreement described in clause 98 (1) (b) between a corporation and an owner.
4. An agreement between a corporation and a person for the management of the property. 1998, c. 19, s. 132 (2).

#### Disagreements on budget statement

(3) The declarant and the board shall be deemed to have agreed in writing to submit a disagreement between the parties with respect to the budget statement described in subsection 72 (6) or the obligations of the declarant under section 75 to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively. 1998, c. 19, s. 132 (3).

#### Disagreements between corporation and owners

(4) Every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, by-laws or rules to mediation and arbitration in accordance with clauses (1) (a) and (b) respectively. 1998, c. 19, s. 132 (4).

#### Duty of mediator

(5) A mediator appointed under clause (1) (a) shall confer with the parties and endeavour to obtain a settlement with respect to the disagreement submitted to mediation. 1998, c. 19, s. 132 (5).

#### Fees and expenses

- (6) Each party shall pay the share of the mediator's fees and expenses that,
- (a) the settlement specifies, if a settlement is obtained; or
  - (b) the mediator specifies in the notice stating that the mediation has failed, if the mediation fails. 1998, c. 19, s. 132 (6).

#### Record of settlement

(7) Upon obtaining a settlement between the parties with respect to the disagreement submitted to mediation, the mediator shall make a written record of the settlement which shall form part of the agreement or matter that was the subject of the mediation. 1998, c. 19, s. 132 (7).

#### False, misleading statements

**133.** (1) A declarant shall not, in a statement or information that the declarant is required to provide under this Act,

- (a) make a material statement or provide material information that is false, deceptive or misleading; or
- (b) omit a material statement or material information that the declarant is required to provide. 1998, c. 19, s. 133 (1).

#### Right to damages

(2) A corporation or an owner may make an application to the Ontario Court (General Division) to recover damages from a declarant for any loss sustained as a result of relying on a statement or on information that the declarant is required to provide under this Act if the statement or information,

**Note: On the day Part IX comes into force, subsection (2) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (7).**

- (a) contains a material statement or material information that is false, deceptive or misleading; or
- (b) does not contain a material statement or material information that the declarant is required to provide. 1998, c. 19, s. 133 (2).

#### Compliance order

**134.** (1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Ontario Court (General Division) for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement. 1998, c. 19, s. 134 (1).

**Note: On the day Part IX comes into force, subsection (1) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (7).**

#### Pre-condition for application

(2) If the mediation and arbitration processes described in section 132 are available, a person is not entitled to apply for an order under subsection (1) until the person has failed to obtain compliance through using those processes. 1998, c. 19, s. 134 (2).

#### Contents of order

- (3) On an application, the court may, subject to subsection (4),
- (a) grant the order applied for;
  - (b) require the persons named in the order to pay,
    - (i) the damages incurred by the applicant as a result of the acts of non-compliance, and
    - (ii) the costs incurred by the applicant in obtaining the order; or
  - (c) grant such other relief as is fair and equitable in the circumstances. 1998, c. 19, s. 134 (3).

#### Order terminating lease

- (4) The court shall not, under subsection (3), grant an order terminating a lease of a unit for residential purposes unless the court is satisfied that,
- (a) the lessee is in contravention of an order that has been made under subsection (3); or
  - (b) the lessee has received a notice described in subsection 87 (1) and has not paid the amount required by that subsection. 1998, c. 19, s. 134 (4).

#### Addition to common expenses

(5) If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit and the corporation may specify a time for payment by the owner of the unit. 1998, c. 19, s. 134 (5).

#### Oppression remedy

**135.** (1) An owner, a corporation, a declarant or a mortgagee of a unit may make an application to the Ontario Court (General Division) for an order under this section. 1998, c. 19, s. 135 (1).

**Note:** On the day Part IX comes into force, subsection (1) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (7).

#### Grounds for order

(2) On an application, if the court determines that the conduct of an owner, a corporation, a declarant or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, it may make an order to rectify the matter. 1998, c. 19, s. 135 (2).

#### Contents of order

(3) On an application, the judge may make any order the judge deems proper including,

- (a) an order prohibiting the conduct referred to in the application; and
- (b) an order requiring the payment of compensation. 1998, c. 19, s. 135 (3).

#### Other remedies

**136.** Unless the Act specifically provides the contrary, nothing in this Act restricts the remedies otherwise available to a person for the failure of another to perform a duty imposed by this Act. 1998, c. 19, s. 136.

#### Offences

**137.** (1) Every corporation under this Act or any other Act and every other person who knowingly contravenes subsection 43 (1), (3), (4), (5), (7), 55 (1) or 72 (1), section 81, subsection 115 (1), (2), (3), (4) or (9), section 118, subsection 133 (1), section 143, subsection 147 (1), (3), 152 (1), (2) or 161 (2) or section 169 is guilty of an offence and on conviction is liable to a fine of,

- (a) not more than \$100,000, if the person is a corporation within the meaning of this Act or any other Act; or
- (b) not more than \$25,000, if the person is not a corporation within the meaning of this Act or any other Act. 1998, c. 19, s. 137 (1).

#### Directors and officers

(2) It is an offence for a director or officer of a corporation within the meaning of this Act or any other Act to knowingly cause, authorize, permit, participate in or acquiesce in the commission by the corporation of an offence mentioned in subsection (1). 1998, c. 19, s. 137 (2).

#### Limitation

(3) A proceeding shall not be commenced in respect of an offence after the second anniversary of the day on which the facts that gave rise to the offence were discovered. 1998, c. 19, s. 137 (3).

#### Compliance order

(4) The court hearing the proceeding may make an order requiring a person convicted of an offence to comply with the provisions of the Act that the person has contravened, if the court has competent jurisdiction to make the order. 1998, c. 19, s. 137 (4).

## **PART X COMMON ELEMENTS CONDOMINIUM CORPORATIONS**

#### Creation

**138.** (1) Subject to the regulations made under this Act, a declarant may register a declaration and description that create common elements but do not divide the land into units. 1998, c. 19, s. 138 (1).

#### Type

(2) The type of corporation created by the registration of a declaration and description under subsection (1) shall be known as a common elements condominium corporation. 1998, c. 19, s. 138 (2).

#### Requirements for registration

(3) A declaration and description for a common elements condominium corporation shall not be registered unless the registration would create a freehold condominium corporation that is not a vacant land condominium corporation or, except as provided in the regulations made under this Act, a phased condominium corporation. 1998, c. 19, s. 138 (3).

#### Application

(4) Subject to this Part, Parts I to IX and XIV apply with necessary modifications to a common elements condominium corporation, except that,

- (a) references to a unit or a proposed unit shall be deemed to be references to a common interest in the corporation or a proposed common interest in the corporation, respectively;
- (b) references to a mortgagee of a unit shall be deemed to be references to a mortgagee of a common interest appurtenant to an owner's parcel of land mentioned in subsection 139 (1); and
- (c) references to a common interest appurtenant to a unit shall be deemed to be references to a common interest appurtenant to an owner's parcel of land mentioned in subsection 139 (1). 1998, c. 19, s. 138 (4).



#### Other corporations

(5) This Part does not apply to a corporation that is not a common elements condominium corporation. 1998, c. 19, s. 138 (5).

#### Owners' land

**139.** (1) A declaration for a common elements condominium corporation shall not be registered unless each of the owners of a common interest in the corporation,

- (a) also owns the freehold estate in a parcel of land,
  - (i) that is not included in the land described in the description,
  - (ii) that, subject to the regulations made under this Act, is situated within the boundaries of the land titles and registry divisions of the land registry office in which the description of the corporation is registered, and
  - (iii) to which the *Land Titles Act* applies or for which a certificate of title has been registered under the *Certification of Titles Act*; and
- (b) has signed a certificate in a form prescribed by the Minister stating the owner consents to the registration of the declaration and the notice described in subclause (2) (b) (i). 1998, c. 19, s. 139 (1).

#### Non-severable from common interest

(2) Upon the registration of a declaration and description for a common elements condominium corporation,

- (a) the common interest of an owner in the corporation attaches to the owner's parcel of land; and
- (b) the declarant shall register against each owner's parcel of land,
  - (i) a notice in the form prescribed by the Minister that sets out the information contained in clause (a), and
  - (ii) a copy of the certificate described in clause (1) (b). 1998, c. 19, s. 139 (2).

#### Division of parcel

(3) Subject to the regulations made under this Act, if an owner's parcel of land is divided into two or more new parcels, the owners of the new parcels are joint owners of the common interest attached to the original parcel. 1998, c. 19, s. 139 (3).

#### Common interest preserved

(4) Despite any other Act, upon the sale of the parcel of land of an owner in a common elements condominium corporation or the enforcement of an encumbrance registered against the parcel, the common interest of the owner in the corporation is not terminated or severed from the parcel, but continues to be attached to the parcel. 1998, c. 19, s. 139 (4).

#### Lien

(5) If an owner defaults in the obligation to contribute to the common expenses of a common elements condominium corporation, the corporation has a lien against the owner's parcel of land. 1998, c. 19, s. 139 (5).

#### Same

(6) The lien is a lien for the purposes of sections 85 and 86. 1998, c. 19, s. 139 (6).

#### Priority of lien

(7) Despite section 86, the lien does not have priority over an encumbrance registered against an owner's parcel of land before the common interest of the owner attached to it unless the encumbrancer agrees in writing otherwise. 1998, c. 19, s. 139 (7).

#### Contents of declaration

**140.** In addition to the requirements of subsection 7 (2), a declaration for a common elements condominium corporation shall contain,

- (a) a statement that the common elements are intended for the use and enjoyment of the owners;
- (b) a legal description of the parcels of land mentioned in subsection 139 (1); and
- (c) all other material that the regulations made under this Act require. 1998, c. 19, s. 140.

#### Contents of description

**141.** Clauses 8 (1) (c), (d), (f) and 8 (3) (b) do not apply to a description for a common elements condominium corporation. 1998, c. 19, s. 141.

#### Subdivision control

**142.** Section 50 of the *Planning Act* does not apply in respect of dealings with common interests in a common elements condominium corporation. 1998, c. 19, s. 142.

#### Disclosure statement

**143.** In addition to the requirements of subsection 72 (3), a disclosure statement for a common interest in a common elements condominium corporation shall contain,

- (a) a statement that the common interest attaches to the owner's parcel of land described in the declaration of the corporation and cannot be severed from the parcel upon the sale of the parcel or the enforcement of an encumbrance registered against the parcel; and
- (b) all other material that the regulations made under this Act require. 1998, c. 19, s. 143.

#### Repair after damage and insurance

**144.** (1) Sections 89 and 90 and clauses 91 (a) and (d) do not apply to a common elements condominium corporation. 1998, c. 19, s. 144 (1).

#### Repair after damage and maintenance

(2) Subject to clauses 91 (b) and (c) and section 123, the corporation shall repair and replace the common elements after damage or failure and shall maintain them. 1998, c. 19, s. 144 (2).

#### Insurance

(3) References to a unit in sections 99 to 105 shall be deemed not to apply to a common elements condominium corporation. 1998, c. 19, s. 144 (3).

## **PART XI PHASED CONDOMINIUM CORPORATIONS**

#### Power to create phases

**145.** (1) Subject to the regulations made under this Act, the declarant may create additional units or common elements in a corporation in accordance with this Part after the registration of the declaration and description if,

- (a) the corporation is a freehold condominium corporation;
- (b) except as provided in the regulations made under this Act, the corporation is not a vacant land condominium corporation or a common elements condominium corporation;
- (c) the declaration indicates that the corporation is a phased condominium corporation;
- (d) the description contains a legal description of the land that will be the servient tenement within the meaning of section 151; and

- (e) the board has been elected at a meeting of owners held at a time when the declarant did not own a majority of the units. 1998, c. 19, s. 145 (1).

#### Type of corporation

(2) A corporation that meets the criteria described in subsection (1) shall be known as a phased condominium corporation. 1998, c. 19, s. 145 (2).

#### Definition

(3) In this Part,

“phase” means the additional units and common elements in a phased condominium corporation that are created in accordance with this Part upon the registration of an amendment to both the declaration and description. 1998, c. 19, s. 145 (3).

#### Application

(4) Subject to this Part, Parts I to IX and XIV apply with necessary modifications to a phased condominium corporation. 1998, c. 19, s. 145 (4).

#### Same

(5) For the purposes of subsection (4), a reference to the registration of the declaration and description in section 13, subsection 14 (1), 22 (4), 56 (11), 58 (9), 78 (1), 80 (6), 122 (1) or (2), 124 (2) or (3), 127 (1) or (2) shall be deemed, if applicable, to be a reference to the registration of the amendments to the declaration and description required for creating a phase. 1998, c. 19, s. 145 (5).

#### Other corporations

(6) This Part does not apply to a corporation that is not a phased condominium corporation. 1998, c. 19, s. 145 (6).

#### Creation of phase

**146.** (1) A phase that contains units may be created only in the blocks of numbers of units, during the time periods and in accordance with the requirements that are prescribed. 1998, c. 19, s. 146 (1).

#### Phase containing common elements

(2) A phase that contains common elements may be created only during the time periods and in accordance with the requirements that are prescribed. 1998, c. 19, s. 146 (2).

#### Method of creation

(3) To create a phase, the declarant shall register an amendment to both the declaration and description. 1998, c. 19, s. 146 (3).

#### Amendment to declaration

- (4) The amendment to the declaration required for creating a phase shall include,
- (a) the consent of every person having a registered mortgage against the land included in the phase or interests appurtenant to the land, as the land and the interests are described in the amendment to the description required for creating the phase;
  - (b) a statement of the proportions, expressed in percentages, of the common interests appurtenant to the units in the corporation after the creation of the phase;
  - (c) a statement of the proportions, expressed in percentages allocated to the units in the corporation, in which the owners after the creation of the phase are to contribute to the common expenses;
  - (d) a specification of all parts of the common elements contained in the phase that are to be used by the owners of one or more designated units and not by all the owners;
  - (e) a statement of all conditions that the approval authority, in approving or exempting under section 9 the amendment to the description required for creating the phase, requires the amendment to the declaration to mention; and
  - (f) all other material that the regulations made under this Act require. 1998, c. 19, s. 146 (4).

#### Amendment to description

- (5) The amendment to the description required for creating a phase shall include,
- (a) the material mentioned in subsection 8 (1) prepared with respect to the phase;
  - (b) a legal description of the land that will be the servient tenement within the meaning of section 151; and
  - (c) all other material that the regulations made under this Act require. 1998, c. 19, s. 146 (5).

#### Same

(6) Subsection 8 (2) and clause 8 (3) (b) apply with necessary modifications to the amendment. 1998, c. 19, s. 146 (6).

#### Consent of owners not required

(7) Section 107 does not apply to amendments to the declaration that comply with subsection (4) or to amendments to the description that comply with subsections (5) and (6). 1998, c. 19, s. 146 (7).

#### Completion of buildings

(8) The amendments to the declaration and description required for creating a phase shall not be registered unless all facilities and services have been installed or provided as the municipality in which the land of the corporation is situated, or the Minister of Municipal Affairs and Housing if the land is not situated in a municipality, determines are necessary to ensure the independent operation of the corporation if no subsequent phases are created. 1998, c. 19, s. 146 (8).

#### Security

(9) Despite subsection (8), a declarant may register the amendments to the declaration and description required for creating a phase, even though certain facilities and services have not been installed or provided, if the municipality or the Minister of Municipal Affairs and Housing, as the case may be, agrees that the declarant provide to a specified person a bond or other security that is sufficient to ensure the installation or provision of the facilities and services. 1998, c. 19, s. 146 (9).

#### Partial release

(10) The person holding the bond or other security may provide a partial release of it to the declarant with the consent of the municipality or the Minister of Municipal Affairs and Housing, as the case may be. 1998, c. 19, s. 146 (10).

#### Full release

(11) The person holding the bond or other security shall not release it in full until,

- (a) all the facilities and services covered by the bond, or other security have been installed or provided in accordance with the regulations made under this Act; and
- (b) the municipality or the Minister of Municipal Affairs and Housing, as the case may be, consents. 1998, c. 19, s. 146 (11).

#### Disclosure statement

**147.** (1) In addition to the requirements of subsection 72 (3), a disclosure statement for a unit or a proposed unit in a phased condominium corporation shall contain,

- (a) a statement whether the declarant intends to create one or more phases after the creation of the unit or proposed unit;

- (b) a statement that the declarant is not required to create a phase after the creation of the unit or proposed unit;
- (c) a statement that sets out the projected year of registration of the amendments to the declaration and description required for creating each phase that the declarant intends to create after the creation of the unit or proposed unit;
- (d) a statement that sets out, for each phase that the declarant intends to create after the creation of the unit or proposed unit,
  - (i) the approximate number of the units included in the phase and a legal description of the land included in the phase,
  - (ii) the approximate location of the buildings and structures to be contained in the phase and a description of the facilities and services to be contained in the phase,
  - (iii) a statement of the proportions, expressed in percentages, of the common interests and common expenses attributable to the units after the creation of the phase,
  - (iv) a statement of the facilities and services that the owners will share after the creation of the phase, and
  - (v) a statement that there are no representations with respect to the quality of materials or appearance of buildings other than those specifically set out as representations in the disclosure statement; and
- (e) all other material that the regulations made under this Act require. 1998, c. 19, s. 147 (1).

#### Not material changes

(2) A change in the matters described in subclause (1) (d) (i) and a change in the matters described in subclause (1) (d) (iii) if it is the result only of a change in the number of units included in the phase shall be deemed not to be a material change within the meaning of section 74. 1998, c. 19, s. 147 (2).

#### No merger of statements

(3) The statements described in clause (1) (d) and made by a declarant in a disclosure statement with respect to a phase that is created after the creation of the unit or proposed unit to which the disclosure statement related are enforceable against the declarant and shall be deemed not to merge by operation of law when a deed that is in registerable form is delivered to the purchaser of the unit or proposed unit. 1998, c. 19, s. 147 (3).

#### Obligations for phase

- (4) If a unit or proposed unit is part of a phase,
- (a) a reference to the registration of the declaration and description in subsection 72 (3) or (6), 74 (2) or 75 (1) shall be deemed to be a reference to the registration of the amendments to the declaration and description required for creating the phase; and
  - (b) the reference in subsection 75 (2) to the termination of an agreement under section 111 or 112 shall be deemed to be a reference to the termination of an agreement under section 111 or 112 that affects the property contained in the phase. 1998, c. 19, s. 147 (4).

#### Copy of disclosure statement

(5) Within 15 days of registering the amendments to the declaration and description required for creating a phase, the declarant shall send to the corporation a copy of the most current disclosure statement delivered to the purchasers of units in the phase. 1998, c. 19, s. 147 (5).

#### Status certificate

**148.** In addition to the requirements of subsection 76 (1), a status certificate for a unit in a phased condominium corporation shall contain a copy of the disclosure statement that the corporation has received from the declarant under subsection 147 (5) with respect to the phase that contains the unit unless the declarant,

- (a) has completed all phases described in the disclosure statement; and
- (b) no longer owns any of the units in the phases except for the part of the property designed to control, facilitate or provide telecommunications to, from or within the property. 1998, c. 19, s. 148.

#### Corporation's remedy

**149.** (1) The declarant shall not register the amendments to the declaration and description required for creating a phase until at least 60 days after delivering to the corporation,

- (a) a copy of the disclosure statement delivered to a purchaser of a unit in the corporation most recently before the registration of the declaration and description;
- (b) a copy of the proposed amendments to the declaration and description required for creating the phase; and



- (c) a statement specifying all differences between the proposed amendments to the declaration and description required for creating the phase and the following matters with respect to the phase that were described in the disclosure statement mentioned in clause (a):
1. The matters described in subclauses 147 (1) (d) (ii) and (iv).
  2. The matters described in subclause 147 (1) (d) (iii) if they differ from the proposed amendments to the declaration and description required for creating the phase for a reason other than a change in the number of units included in the phase. 1998, c. 19, s. 149 (1).

#### Application for injunction

(2) Before the earlier of the registration date of the proposed amendments to the declaration and description required for creating a phase and 60 days after receiving the documents described in clauses (1) (a), (b) and (c), the corporation may make an application to the Ontario Court (General Division) for an injunction to prevent the registration if any of the differences described in clause (1) (c) are material and detrimentally affect the corporation or the use and enjoyment of the property by the owners. 1998, c. 19, s. 149 (2).

**Note: On the day Part XI comes into force, subsection (2) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (8).**

#### Grounds for injunction

(3) If the court is satisfied that the grounds for the application exist, it may grant the injunction or award damages to the corporation. 1998, c. 19, s. 149 (3).

#### Contents of order

(4) The court may include in the order all provisions that it considers appropriate in the circumstances. 1998, c. 19, s. 149 (4).

#### Restriction on declarant

(5) If the corporation makes an application for an injunction under subsection (2), the declarant is not entitled to register a declaration and description to create a corporation on the land to be included in the phase, instead of registering the amendments required for creating the phase, unless 120 days have passed after the court has made a final disposition of the application for the injunction. 1998, c. 19, s. 149 (5).

### Remedy of purchasers

**150.** (1) Within 15 days of registering the amendments to the declaration and description required for creating a phase, the declarant shall send a copy of the amendments to the corporation and the owners. 1998, c. 19, s. 150 (1).

### Damages from declarant

(2) A person who purchased a unit or proposed unit in the corporation before the registration of the amendments to the declaration and description required for creating a phase is entitled to recover damages from the declarant for a difference between the following matters disclosed in the disclosure statement delivered to the person and the registered amendments if the difference is material and detrimentally affects the use and enjoyment of the person's unit:

1. The matters described in subclauses 147 (1) (d) (ii) and (iv).
2. The matters described in subclause 147 (1) (d) (iii) if they differ from the registered amendments for a reason other than a change in the number of units included in the phase. 1998, c. 19, s. 150 (2).

### Court order

(3) Upon application by the person, the Ontario Court (General Division) may make an order requiring the declarant to pay to the person the damages to which the person is entitled under subsection (2). 1998, c. 19, s. 150 (3).

**Note: On the day Part XI comes into force, subsection (3) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out "Ontario Court (General Division)" and substituting "Superior Court of Justice". See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (8).**

### Easements

**151.** (1) Upon registration of a declaration and description for a phased condominium corporation or the amendments to the declaration and description required for creating a phase, the following easements are created, where necessary, for the benefit of the units and common elements:

1. An easement for the provision of services over the servient tenement.
2. An easement for support from the servient tenement.
3. An easement for access to and for the installation and maintenance of the services and facilities that the corporation is entitled to use over the servient tenement.

4. An easement for access to public roads over the servient tenement. 1998, c. 19, s. 151 (1).

#### Definition

- (2) In subsection (1),

“servient tenement” means the land owned by the declarant that is not included in the phase, including the buildings and structures on the land. 1998, c. 19, s. 151 (2).

#### Turn-over obligations

**152.** (1) In addition to the items mentioned in subsection 43 (4), the declarant shall give to the board at the first meeting held under section 43,

- (a) a copy of the statements described in subsection 147 (1); and
- (b) all other material that the regulations made under this Act require. 1998, c. 19, s. 152 (1).

#### Obligation upon creation of phase

(2) Upon the registration of the amendments to the declaration and description required for creating a phase, the declarant shall turn over to the board all materials mentioned in subsections (1) and 43 (4) and clauses 43 (5) (a) to (h) and (l) and (m) that relate to the phase and that the declarant has not previously turned over to the board. 1998, c. 19, s. 152 (2).

#### Non-application of s. 43

(3) Subsections 43 (4) and (5) do not apply to the declarant if the board is required to hold a meeting of owners under section 43 after the declarant has turned over to the board the materials mentioned in subsection (2). 1998, c. 19, s. 152 (3).

#### Application

(4) The corporation may make an application to the Ontario Court (General Division) for an order under subsection (5). 1998, c. 19, s. 152 (4).

**Note: On the day Part XI comes into force, subsection (4) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out “Ontario Court (General Division)” and substituting “Superior Court of Justice”. See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (8).**

#### Court order

(5) If the court is satisfied that the declarant is required to comply with subsection (2) and has not done so without reasonable excuse, the court,

- (a) shall order that the declarant pay damages to the corporation for the loss it incurred as a result of the declarant's acts of non-compliance with subsection (2);
- (b) shall order that the declarant pay the corporation's costs of the application;
- (c) may order the declarant to pay to the corporation an additional amount not to exceed \$10,000; and
- (d) may order the declarant to comply with subsection (2). 1998, c. 19, s. 152 (5).

#### Election of directors

(6) If, 30 days after the registration of the amendments to the declaration and description required for creating a phase, the declarant owns a majority of the units in the corporation, the board shall, at the request of the declarant, call a meeting of owners to elect a new board which shall hold office until a board is elected as required by subsection 43 (1). 1998, c. 19, s. 152 (6).

#### Corporation's obligations for phase

**153.** (1) If the declarant registers the amendments to the declaration and description required for creating a phase and the phase contains one or more units for residential purposes, the board shall have a performance audit of the common elements contained in the phase conducted on behalf of the corporation. 1998, c. 19, s. 153 (1).

#### Application of s. 44

- (2) Section 44 applies to the performance audit, except that,
  - (a) references in that section to the registration of the declaration and description shall be deemed to be references to the registration of the amendments; and
  - (b) references in that section to the common elements shall be deemed to be references to the common elements contained in the phase. 1998, c. 19, s. 153 (2).

#### Financial statements

(3) Within 90 days of the registration of the amendments to the declaration and description required for creating a phase, the corporation shall have the financial statements required by subsection 66 (2) prepared and sections 66 to 71 apply to them. 1998, c. 19, s. 153 (3).

#### Reserve fund study

(4) Within the prescribed time following the registration of the amendments to the declaration and description required for creating a phase, the corporation shall conduct a reserve fund study in accordance with section 94 with respect to the phase. 1998, c. 19, s. 153 (4).

#### Termination of agreements

**154.** (1) Subject to subsection (2), after the registration of the amendments to the declaration and description required for creating a phase, a corporation may, by resolution of the board, terminate an agreement for the management of the property contained in the phase that the declarant entered into on behalf of the corporation before the registration of the amendments. 1998, c. 19, s. 154 (1).

#### Notice

(2) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the declarant entered into the agreement. 1998, c. 19, s. 154 (2).

#### Other agreements

(3) Subject to subsection (4) and subsection 112 (5), within 12 months following the first election of the board under section 43 after the registration of the amendments to the declaration and description required for creating a phase, the corporation may, by resolution of the board, terminate an agreement described in subsection 112 (2), that the declarant has entered into on behalf of the corporation before the registration of the amendments and that affects the property contained in the phase. 1998, c. 19, s. 154 (3).

#### Notice

(4) To terminate an agreement, the board shall give at least 60 days notice in writing of the date of termination to the person with whom the declarant entered into the agreement. 1998, c. 19, s. 154 (4).

#### Mutual use agreements

(5) If a declarant on behalf of a corporation has entered into an agreement for the mutual use, provision or maintenance or the cost-sharing of facilities or services before the registration of the amendments to the declaration and description required for creating a phase, and the agreement affects the property contained in the phase, any party to the agreement may, within 12 months following the first election of the board under section 43 after the registration of the amendments, make an application to the Ontario Court (General Division) for an order under subsection (6). 1998, c. 19, s. 154 (5).

**Note: On the day Part XI comes into force, subsection (5) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out**

**“Ontario Court (General Division)” and substituting “Superior Court of Justice”.**  
**See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (8).**

Court order

(6) The court may make an order described in subsection 113 (3) if the requirements of that subsection are met. 1998, c. 19, s. 154 (6).

## **PART XII**

### **VACANT LAND CONDOMINIUM CORPORATIONS**

Creation

**155.** (1) Subject to the regulations made under this Act, a declarant may register a declaration and description that create a corporation in which, at the time of the registration,

- (a) one or more units are not part of a building or structure and do not include any part of a building or structure; and
- (b) none of the units are located above or below any other unit. 1998, c. 19, s. 155 (1).

Type of corporation

(2) The type of corporation created by the registration of declaration and description under subsection (1) shall be known as a vacant land condominium corporation. 1998, c. 19, s. 155 (2).

Requirements for registration

(3) A declaration and description for a vacant land condominium corporation shall not be registered unless the registration would create a freehold condominium corporation that is not a common elements condominium corporation or, except as provided in the regulations made under this Act, a phased condominium corporation. 1998, c. 19, s. 155 (3).

Application

(4) Subject to this Part, Parts I to IX and XIV apply with necessary modifications to a vacant land condominium corporation. 1998, c. 19, s. 155 (4).

Other corporations

(5) This Part does not apply to a corporation that is not a vacant land condominium corporation. 1998, c. 19, s. 155 (5).

#### Contents of declaration

**156.** (1) If a unit in a vacant land condominium corporation is to include a building or structure constructed after the registration of the declaration and description, the declaration may contain restrictions with respect to,

- (a) the size, location, construction standards, quality of materials and appearance of the building or structure;
- (b) architectural standards and construction design standards of the building or structure;
- (c) the time of commencement and completion of construction of the building or structure; and
- (d) the minimum maintenance requirements for the building or structure. 1998, c. 19, s. 156 (1).

#### Permitted restrictions

(2) A restriction contained in the declaration shall be consistent with the conditions imposed by the approval authority in approving or exempting the description under section 9. 1998, c. 19, s. 156 (2).

#### Contents of description

**157.** (1) A description of a vacant land condominium corporation shall contain,

- (a) a plan of survey showing the perimeter of the horizontal surface of the land, the perimeter of the buildings and structures on the common elements and the boundaries of each unit;
- (b) subject to section 158, architectural plans of the buildings and structures included in the common elements and, if there are any, structural plans of them;
- (c) subject to section 158, a certificate of an architect that the buildings included in the common elements have been constructed in accordance with the regulations and, if there are structural plans, a certificate of an engineer that the buildings have been constructed in accordance with the regulations;
- (d) a description of all interests appurtenant to the land that are included in the property; and
- (e) all other material that the regulations made under this Act require. 1998, c. 19, s. 157 (1).

### Application

(2) Subsection 8 (1) and clause 8 (3) (b) do not apply to vacant land condominium corporations. 1998, c. 19, s. 157 (2).

### Buildings on common elements

**158.** (1) A declaration and description of a vacant land condominium corporation that show buildings, structures, facilities and services to be included in the common elements shall not be registered unless,

- (a) all buildings, structures, facilities and services shown in the declaration and description to be included in the common elements have been completed, installed and provided in accordance with the regulations made under this Act; or
- (b) the declarant provides to a person or body, including an approval authority, specified by the municipality in which the land is situated, or the Minister of Municipal Affairs and Housing if the land is not situated in a municipality, a bond or other security that is acceptable to the municipality or the Minister, as the case may be, and that is sufficient to ensure that,
  - (i) the buildings and structures will be completed and installed in accordance with the regulations made under this Act,
  - (ii) the facilities and services will be installed and provided, and
  - (iii) the items described in clauses 157 (1) (b) and (c) will be included in an amendment to the description. 1998, c. 19, s. 158 (1).

### Partial release

(2) The person holding the bond or other security may provide a partial release of it to the declarant with the consent of the municipality or the Minister of Municipal Affairs and Housing, as the case may be. 1998, c. 19, s. 158 (2).

### Full release

- (3) The person holding the bond or other security shall not release it in full until,
  - (a) all the buildings, structures, facilities and services to be included in the common elements have been completed and installed in accordance with the regulations made under this Act; and
  - (b) the declarant has registered an amendment to the description consisting of the items described in clauses 157 (1) (b), (c) and (e). 1998, c. 19, s. 158 (3).



#### Consent of owners not required

(4) Section 107 does not apply to an amendment to the description if the amendment complies with clause (3) (b). 1998, c. 19, s. 158 (4).

#### Status of buildings in corporation

**159.** (1) The buildings and structures located on a unit or on the common elements of a vacant land condominium corporation, whether or not the buildings and structures had been constructed at the time of the registration of the declaration and description, are real property and form part of the unit or common elements respectively. 1998, c. 19, s. 159 (1).

#### Insurance

(2) The corporation is exempt from the obligation to obtain and maintain the insurance described in section 99 for buildings and structures located on a unit. 1998, c. 19, s. 159 (2).

#### Owner to insure

(3) The owner of a unit shall obtain and maintain the insurance for damage to the unit that, but for subsection (2), the corporation would have had to obtain with respect to the unit. 1998, c. 19, s. 159 (3).

#### By-laws

**160.** In addition to the power to make, amend or repeal by-laws under subsection 56 (1), the board of a vacant land condominium corporation may, subject to section 56, make, amend or repeal by-laws, not contrary to the declaration, specifying minimum maintenance requirements for a unit or a building or structure located on a unit. 1998, c. 19, s. 160.

#### Disclosure statement

**161.** (1) Before delivering the first disclosure statement mentioned in section 72, the declarant with respect to a unit or a proposed unit in a vacant land condominium corporation shall request from the municipality in which the land is situated or from the Minister of Municipal Affairs and Housing if the land is not situated in a municipality, a statement of the services provided by the municipality or the Minister, as the case may be, including the construction and maintenance of roads. 1998, c. 19, s. 161 (1).

#### Contents

(2) In addition to the material required under subsection 72 (3), a disclosure statement relating to the purchase of a unit or a proposed unit in a vacant land condominium corporation shall include,

- (a) whatever statement that the declarant has received from the municipality or the Minister of Municipal Affairs and Housing, as the case may be, in response to a request; and
- (b) all other material that the regulations made under this Act require. 1998, c. 19, s. 161 (2).

#### If no statement received

(3) If the declarant has not received any statement in response to a request within 30 days of making it, the disclosure statement shall contain a statement that the declarant has requested a statement under subsection (1) but has not received any statement in response to the request. 1998, c. 19, s. 161 (3).

#### Repair and maintenance

**162.** (1) Subject to the regulations made under this Act, sections 89, 90, 91 and 92 do not apply to a vacant land condominium corporation. 1998, c. 19, s. 162 (1).

#### Extent of obligations

(2) For the purpose of this section, the obligation to repair after damage includes the obligation to repair and replace after damage or failure and the obligation to maintain includes the obligation to repair after normal wear and tear but does not include the obligation to repair after damage. 1998, c. 19, s. 162 (2).

#### Common elements

(3) A vacant land condominium corporation shall maintain the common elements and repair them after damage. 1998, c. 19, s. 162 (3).

#### Units

(4) The owner of a unit in a vacant land condominium corporation shall maintain the owner's unit and repair it after damage. 1998, c. 19, s. 162 (4).

#### Work done for owner

(5) If an owner of a unit in a vacant land condominium corporation fails to maintain the owner's unit within a reasonable time or to repair it within a reasonable time after damage, the corporation may maintain or repair the unit, as the case may be. 1998, c. 19, s. 162 (5).

#### Cost

(6) An owner shall be deemed to have consented to the repairs or maintenance carried out by the corporation and the cost of the work shall be added to the owner's contribution to the common expenses. 1998, c. 19, s. 162 (6).

#### Substantial damage

**163.** (1) If the board of a vacant land condominium corporation determines under section 123 that substantial damage has occurred to a building located on a unit and the owners do not vote for termination under that section, the owner of the unit may elect,

- (a) not to repair the damage; or
- (b) to replace the building with a different building, subject to this Act, the declaration and the by-laws. 1998, c. 19, s. 163 (1).

#### Owner's duty

(2) An owner of a unit who elects not to repair the damage shall, as closely as is reasonably possible, restore the land on which the building was located to the state that the land was in immediately before the construction of the building. 1998, c. 19, s. 163 (2).

#### Restoration done by corporation

(3) If the owner of the unit does not do the restoration within a reasonable time, the corporation may do it. 1998, c. 19, s. 163 (3).

#### Cost

(4) The owner shall be deemed to have consented to the restoration done by the corporation and the cost of the restoration shall be added to the owner's contribution to the common expenses. 1998, c. 19, s. 163 (4).

### **PART XIII LEASEHOLD CONDOMINIUM CORPORATIONS**

#### Creation

**164.** (1) Subject to the regulations made under this Act, a declarant may register a declaration and description that divide the leasehold estate in the land described in the description into units and common elements. 1998, c. 19, s. 164 (1).

#### Type

(2) The type of corporation created by the registration of a declaration and description under subsection (1) shall be known as a leasehold condominium corporation. 1998, c. 19, s. 164 (2).

#### Application

(3) Subject to this Part, Parts I to IX and XIV apply with necessary modifications to a leasehold condominium corporation. 1998, c. 19, s. 164 (3).

#### Other corporations

(4) This Part does not apply to a corporation that is not a leasehold condominium corporation. 1998, c. 19, s. 164 (4).

#### Leasehold interest of owners

**165.** (1) Each leasehold interest in a unit in a leasehold condominium corporation and its appurtenant common interest is valid even if the lessor is the owner of the leasehold interest and in that case the legal title and the leasehold interest shall be deemed not to merge. 1998, c. 19, s. 165 (1).

#### Same term

(2) All leasehold interests in units in a leasehold condominium corporation and their appurtenant common interests shall be for the same term. 1998, c. 19, s. 165 (2).

#### Term before renewal

(3) The term of the leasehold interests before a renewal under section 174 shall be not less than 40 years less a day and not more than 99 years as specified in the declaration. 1998, c. 19, s. 165 (3).

#### Lessor's consent not required

(4) The owner of a unit in a leasehold condominium corporation may, without the consent of the lessor, transfer, mortgage, lease or otherwise deal with the leasehold interest in the unit. 1998, c. 19, s. 165 (4).

#### Transfer of unit

(5) The owner of a unit in a leasehold condominium corporation may not transfer less than the whole leasehold interest in the unit and its appurtenant common interest. 1998, c. 19, s. 165 (5).

#### Form of transfer

(6) A leasehold interest in a unit in a leasehold condominium corporation shall be transferred in accordance with section 105 of the *Land Titles Act*, even if the land included in a leasehold condominium corporation is situated within the boundaries of a registry division. 1998, c. 19, s. 165 (6).

#### Application of *Tenant Protection Act, 1997*

(7) The *Tenant Protection Act, 1997* does not apply to the leasehold interest of an owner of a unit in a leasehold condominium corporation and its appurtenant common interest but does apply to a lease of an owner's leasehold interest in a unit. 1998, c. 19, s. 165 (8).

(8) SPENT: 1998, c. 19, s. 165 (8).

### Declaration

**166.** (1) A declaration for a leasehold condominium corporation shall not be registered unless it is executed by the lessor. 1998, c. 19, s. 166 (1).

### Contents

(2) In addition to the requirements of subsection 7 (2), a declaration for a leasehold condominium corporation shall contain,

- (a) a statement of the term of the leasehold interests of the owners;
- (b) a schedule setting out the amount of rent for the property payable by the corporation on behalf of the owners to the lessor and the times at which the rent is payable for at least the first five years immediately following the registration of the declaration and description;
- (c) a formula to determine the amount of rent for the property payable by the corporation on behalf of the owners to the lessor and the times at which the rent is payable during the remainder of the term of the owners' leasehold interests following the time for which the schedule described in clause (b) states the amount of rent payable;
- (d) a schedule of all provisions of the leasehold interests that affect the property, the corporation and the owners; and
- (e) all other material that the regulations made under this Act require. 1998, c. 19, s. 166 (2).

### Leasehold interests in property

(3) Provisions of the leasehold interests in the property are not binding on the property, the corporation or the owners unless the declaration sets them out and states that they are binding. 1998, c. 19, s. 166 (3).

### Amendment of declaration

(4) An amendment to the declaration that affects the leasehold interests in the property is not effective unless the lessor has consented in writing to the amendment. 1998, c. 19, s. 166 (4).

### Description

**167.** (1) In addition to the requirements of section 8, a description for a leasehold condominium corporation shall contain all other material that the regulations made under this Act require. 1998, c. 19, s. 167 (1).

### Registration

(2) In addition to the requirements of section 8 and subject to the regulations made under this Act, a description for a leasehold condominium corporation shall not be registered unless the buildings and improvements to the property form part of the property. 1998, c. 19, s. 167 (2).

### Amendment to description

(3) An amendment to the description that affects the leasehold interests in the property is not effective unless the lessor has consented in writing to the amendment. 1998, c. 19, s. 167 (3).

### Leasehold estate in property

**168.** (1) A leasehold condominium corporation shall, on behalf of the owners, exercise all rights and perform all obligations of the owners with respect to the leasehold estate in the property. 1998, c. 19, s. 168 (1).

### Same

(2) The owners shall not exercise the rights or perform the obligations mentioned in subsection (1). 1998, c. 19, s. 168 (2).

### Mediation

(3) The lessor and the corporation shall be deemed to have agreed that either party may submit to mediation a disagreement on the interpretation of the provisions of the leasehold interests in the property that bind the property. 1998, c. 19, s. 168 (3).

### Application of s. 132

(4) If the lessor or the corporation submits a disagreement to mediation, section 132 applies to it. 1998, c. 19, s. 168 (4).

### Disclosure statement

**169.** In addition to the matters mentioned in subsection 72 (3), a disclosure statement in the case of a leasehold condominium corporation shall include,

- (a) a statement by the declarant whether the provisions of the leasehold interests in the property are in good standing and have not been breached; and
- (b) all other material that the regulations made under this Act require. 1998, c. 19, s. 169.

### Status certificate

**170.** In addition to the material mentioned in subsection 76 (1), a status certificate in the case of a leasehold condominium corporation shall include,

- (a) a statement by the corporation whether the provisions of the leasehold interests in the property are in good standing and have not been breached;
- (b) a statement by the corporation whether the lessor has applied for a termination order under section 173; and
- (c) all other material that the regulations made under the Act require. 1998, c. 19, s. 170.

#### Rent for property

**171.** (1) The rent for the property that a leasehold condominium corporation is required to pay to the lessor on behalf of the owners and all other amounts necessary to comply with the provisions of the leasehold interest affecting the property are a common expense. 1998, c. 19, s. 171 (1).

#### Contribution of owners

(2) The corporation shall collect from each owner, as part of the owner's contribution to the common expenses, a portion of the rent and the amounts described in subsection (1) based on the proportion of contributions to the common expenses for the owner's unit set out in the declaration. 1998, c. 19, s. 171 (2).

#### Payment to lessor

(3) The corporation shall remit to the lessor, from the contributions collected from the owners under subsection (2), the amounts to which the lessor is entitled under the provisions of the leasehold interest affecting the property. 1998, c. 19, s. 171 (3).

#### Consent of lessor for termination

**172.** A leasehold condominium corporation shall not register a notice of termination under section 122 or 123 or sell the property or a part of the common elements under section 124 unless the lessor has consented to and executed the notice or the agreement of purchase and sale, as the case may be. 1998, c. 19, s. 172.

#### Termination by lessor

**173.** (1) The lessor shall not terminate a leasehold interest in a unit in a leasehold condominium corporation unless the lessor has been granted an order terminating the leasehold interests in all of the units. 1998, c. 19, s. 173 (1).

#### Application

(2) The lessor may make an application to the Ontario Court (General Division) for an order terminating all of the leasehold interests, if a leasehold condominium corporation,

**Note: On the day Part XIII comes into force, subsection (2) is amended by the Statutes of Ontario, 2000, chapter 26, Schedule B, subsection 7 (7) by striking out**

**“Ontario Court (General Division)” and substituting “Superior Court of Justice”.**  
**See: 2000, c. 26, Sched. B, ss. 7 (7), 20 (9).**

- (a) has failed to remit to the lessor the amounts to which the lessor is entitled under the provisions of the leasehold interest affecting the property; or
- (b) has failed to comply with a court order. 1998, c. 19, s. 173 (2).

#### Grounds for order

(3) On an application, the court may make an order if it is satisfied that the order is just and equitable, having regard to the scheme and intent of this Act and the interests of all persons that would be affected by the order. 1998, c. 19, s. 173 (3).

#### Contents of order

(4) The order may provide that all of the leasehold interests are terminated subject to the conditions set out in the order or may contain any other provision that the court considers appropriate in the circumstances. 1998, c. 19, s. 173 (4).

#### Registration of order

(5) If the court makes an order terminating all of the leasehold interests, the lessor shall register the order. 1998, c. 19, s. 173 (5).

#### Expiration of leasehold interests

**174.** (1) At least five years before the end of the term of the leasehold interests in the units in a leasehold condominium corporation, the lessor shall give the corporation,

- (a) a written notice of intention to renew all the leasehold interests that sets out the provisions applicable to the renewal; or
- (b) a written notice of intention not to renew all the leasehold interests. 1998, c. 19, s. 174 (1).

#### Term of renewal

(2) A renewal of the leasehold interests shall be for at least 10 years or the greater term specified in the notice. 1998, c. 19, s. 174 (2).

#### Notice to owners

(3) Upon receiving the notice, the corporation shall send a copy of it to the owners. 1998, c. 19, s. 174 (3).

#### Failure to give notice

(4) If the lessor does not give the required notice, the lessor shall be deemed to have given the notice required to renew the leasehold interests for 10 years subject to the same



provisions that govern the leasehold interests before the renewal and the corporation shall send a notice of that fact to the owners. 1998, c. 19, s. 174 (4).

#### Owners' vote for termination

(5) The leasehold interests shall be renewed for the term and subject to the provisions specified in the notice or the deemed notice, as the case may be, unless the owners who own at least 80 per cent of the units cast a vote against the renewal no later than one year after the notice or the deemed notice, as the case may be, was given to the corporation. 1998, c. 19, s. 174 (5).

#### Notice of termination

(6) The corporation shall give notice to the lessor if, under subsection (5), the owners vote against the renewal. 1998, c. 19, s. 174 (6).

#### Registration of notice

(7) The lessor shall prepare a notice in the form prescribed by the Minister stating whether the leasehold interests have been renewed or not and register the notice in,

- (a) the land titles division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office has a land titles division; or
- (b) the registry division of the land registry office within the boundaries of which division the land described in the description is situated, if the land registry office does not have a land titles division. 1998, c. 19, s. 174 (7).

#### New provisions upon renewal

(8) If the leasehold interests are renewed subject to provisions that are different from those that applied before the renewal, the declaration shall be deemed to be amended to contain the provisions that apply upon the renewal and the corporation shall register a copy of the provisions as an amendment to the declaration. 1998, c. 19, s. 174 (8).

#### Consent of owners not required

(9) Section 107 does not apply to an amendment to the declaration if the amendment complies with subsection (8). 1998, c. 19, s. 174 (9).

#### Effect of termination or expiration

**175.** (1) In the case of a leasehold condominium corporation, upon the registration of a notice of termination under section 122 or 123, the registration of a deed to the property under section 124, expropriation under section 126, the registration of an order under section 128 or 173 (or such other date, if any, specified in the registered order) or the registration of a notice under section 174 that the leasehold interests in the units have not been renewed (or such other date, if any, specified in the registered notice),

- (a) this Act ceases to govern the property;
- (b) the leasehold interests in the units are terminated;
- (c) claims against the leasehold interests that do not secure the payment of money are extinguished, unless the lessor consented to their registration, in which case they are continued against the lessor's interest; and
- (d) claims against the leasehold interests that secure the payment of money are claims against the persons who were owners of the leasehold interests immediately before the termination of those interests, and not against the land. 1998, c. 19, s. 175 (1).

#### Same

(2) Section 127 does not apply to a leasehold condominium corporation. 1998, c. 19, s. 175 (2).

#### Appointment of trustee

(3) Despite section 129, before the time at which this Act ceases to govern the property, the corporation shall appoint a trustee to pay out the money remaining in the corporation's reserve fund in accordance with this section. 1998, c. 19, s. 175 (3).

#### Distribution of money

(4) When this Act ceases to govern the property, the trustee shall pay out the money remaining in the reserve fund at that time in accordance with the following priorities:

1. To the lessor, the amount, if any, that is required to repair damage to the property that has not been repaired.
2. To each of the owners, a share of the balance in the same proportion as their common interests, subject to subsection (5). 1998, c. 19, s. 175 (4).

#### Payment of secured claims

(5) Before paying out a share of money payable to an owner, the trustee shall deduct from the share the amount of claims against the owner that secure the payment of money and shall remit the deduction to the persons entitled to the claims. 1998, c. 19, s. 175 (5).

## **PART XIV GENERAL**

#### Act prevails

**176.** This Act applies despite any agreement to the contrary. 1998, c. 19, s. 176.

## Regulations

**177.** (1) The Lieutenant Governor in Council may make regulations,

1. classifying corporations, properties or persons for the purposes of the regulations;
2. specifying prohibitions, restrictions and other requirements that apply to the registration of a declaration and description in respect of any type of corporation;
3. specifying requirements for the construction of the buildings described in a description for the purpose of a certificate mentioned in clause 8 (1) (e) or 157 (1) (c);
4. specifying material to be included in a declaration, a description, a report of a performance audit mentioned in subsection 44 (8), a table of contents, a disclosure statement, a budget statement, a status certificate, an agreement described in clause 98 (1) (b) or a notice of meeting mentioned in subsection 120 (3);
5. specifying deficiencies for the purpose of a performance audit under section 44 and governing the obligations of the person who conducts the audit;
6. requiring corporations to keep books, accounts and records and governing the books, accounts and records that corporations are required to keep;
7. governing the determination of occupancy standards under section 57;
8. specifying the form and content of financial statements and audit reports;
9. prescribing rates of interest payable under this Act, including rates of interest that shall be paid on money required to be held in trust under this Act;
10. governing funds intended for the payment of common expenses;
11. classifying reserve fund studies for the purposes of section 94;
12. governing the contents of any or all classes of reserve fund studies, the standards that shall be observed in conducting them and the times at which they shall be conducted;
13. prescribing the persons who may conduct any or all classes of reserve fund studies and specifying the qualifications of the persons and the affiliations for the purposes of subsection 94 (6) that disentitle the persons from conducting the reserve fund studies;

14. governing the cost mentioned in clause 97 (2) (c);
15. specifying restrictions on the right of corporations to amalgamate under section 120 and requirements for corporations to fulfill in order to amalgamate;
16. specifying restrictions on the right of a declarant to register a declaration and description to create a common elements condominium corporation, a vacant land condominium corporation or a leasehold condominium corporation and specifying requirements for the declarant to fulfill in order to make the registrations, including requirements for the purpose of section 157;
17. respecting the manner in which a common interest attaches to an owner's parcel of land for the purpose of subsection 139 (3);
18. specifying restrictions on the right of a declarant to register an amendment to a declaration and description required for creating a phase in a phased condominium corporation and specifying requirements for the declarant to fulfill in order to make the registrations;
19. governing the manner in which sections 89, 90, 91 and 92 apply to a vacant land condominium corporation;
20. prescribing the amounts of fees that are payable or chargeable under this Act;
21. prescribing forms, other than forms mentioned in this Act as forms prescribed by the Minister, and providing for their use;
22. prescribing any matter mentioned in this Act as prescribed, other than forms mentioned in this Act as forms prescribed by the Minister;
23. respecting any matter that this Act mentions may be or shall be dealt with in the regulations;
24. exempting any class of corporations, properties or persons from any provision of this Act or the regulations;
25. respecting any matter necessary or advisable to carry out the intent and purpose of this Act. 1998, c. 19, s. 177 (1).

#### Minister's regulations

- (2) The Minister may make regulations,

1. respecting the registration and recording of declarations, descriptions, amendments to declarations or descriptions, by-laws, notices of termination and other instruments;
2. governing the method of describing land or any interest in land in instruments affecting a property or part of a property;
3. governing surveys, plans, specifications, certificates, descriptions and diagrams, and prescribing procedures for their registration and amendment;
4. prescribing the duties of officers appointed under the *Land Titles Act* or the *Registry Act* for the purpose of this Act;
5. requiring the payment of fees to officers appointed under the *Land Titles Act* or the *Registry Act* and prescribing the amounts of the fees;
6. respecting the names of corporations and requiring that the name of a corporation indicate whether the corporation is a freehold, leasehold, common elements, phased or vacant land condominium corporation;
7. governing the circumstances and the manner in which the *Corporations Information Act* is to apply to corporations, including the time at which that Act is to apply;
8. requiring that a description in respect of any class of properties contain a survey of the properties showing the units and common elements, in lieu of or in addition to the requirements of section 8;
9. prescribing the material required to be contained in the certificate as to the status of an amalgamating corporation for the purpose of clause 120 (3) (c);
10. prescribing forms described in this Act as forms prescribed by the Minister and providing for their use. 1998, c. 19, s. 177 (2).

#### Application of regulations

- (3) A provision of a regulation may be made to apply to,
  - (a) all corporations or any class or type of corporations;
  - (b) all properties or any class of properties; or
  - (c) all persons or any class of persons. 1998, c. 19, s. 177 (3).

**Note:** Corporations created under the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, are continued as corporations under this Act.

A corporation's lien that was created under the *Condominium Act* for the default of an owner in the obligation to contribute to the common expenses is continued as a lien under subsection 85 (1) of this Act. See: 1998, c. 19, ss. 178, 187.

**Note:** If the corporation was created under the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, section 43 does not apply and section 26 of that Act, as it existed immediately before the repeal of that Act, continues to apply.

Section 55 of the *Condominium Act*, as it existed immediately before the repeal of that Act, continues to apply with respect to contraventions of subsection 26 (3) of that Act. See: 1998, c. 19, ss. 179, 187.

**Note:** If, on or before the day sections 44, 72 to 75 and 78 to 82 come into force, the declarant with respect to a corporation has entered into one or more agreements of purchase and sale for a unit or proposed unit in the corporation, those sections do not apply and subject to subsection 180 (2) of the Statutes of Ontario, 1998, chapter 19, sections 51 to 54 of the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, except for subsection 52 (5) of that Act, as those sections existed immediately before the repeal of that Act, continue to apply.

For the purposes of subsection 52 (2) of the *Condominium Act*, a change to the information required to be contained in a disclosure statement that arises only as a result of the coming into force of this Act does not constitute a material amendment to the disclosure statement.

Section 55 of the *Condominium Act*, as it existed immediately before the repeal of that Act, continues to apply with respect to contraventions of subsection 52 (5), (6), or 53 (1) of that Act. See: 1998, c. 19, ss. 180, 187.

**Note:** If, at the time section 99 comes into force, the corporation has entered into an insurance policy under section 27 of the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, that has not expired, section 99 does not apply and section 27 of that Act, as it existed immediately before the repeal of that Act, continues to apply.

Despite subsection 181 (1) of the Statutes of Ontario, 1998, chapter 19, section 99 applies if the corporation renews an insurance policy described in that subsection after section 99 comes into force. See: 1998, c. 19, ss. 181, 187.

**Note:** If the corporation has entered into an agreement described in sections 111 and 112 before those sections come into force, those sections do not apply and section 39 of the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, as that section existed immediately before the repeal of that Act, continues to apply. See: 1998, c. 19, ss. 182, 187.

**Note:** Despite the repeal of the *Condominium Act*, being chapter C.26 of the Revised Statutes of Ontario, 1990, the Lieutenant Governor in Council may by regulation revoke regulations made under section 59 of that Act, as that section read immediately before the repeal of that Act, if the Minister makes a regulation under subsection 177 (2) that is inconsistent with those regulations. See: 1998, c. 19, ss. 183, 187.

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