



# **BILL NO. 38**

*Government Bill*

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*1st Session, 61st General Assembly  
Nova Scotia  
58 Elizabeth II, 2009*

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## **An Act to Amend Chapter 85 of the Revised Statutes, 1989, the Condominium Act**

CHAPTER 10  
ACTS OF 2009

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
NOVEMBER 5, 2009**

The Honourable Ramona Jennex  
*Service Nova Scotia and Municipal Relations*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 85  
of the Revised Statutes, 1989,  
the Condominium Act**

Be it enacted by the Governor and Assembly as follows:

**1 Subsection 3(1) of Chapter 85 of the Revised Statutes, 1989, the *Condominium Act*, as amended by Chapter 28 of the Acts of 1998 and Chapter 6 of the Acts of 2001, is further amended by**

**(a) adding immediately after clause (i) the following clause:**

(i) “contingency fund” means a fund established by a corporation to pay common expenses of the corporation that may exceed the corporation’s operating budget;

**(b) adding immediately after clause (o) the following clause:**

(p) “exclusive-use common element” means a common element that is assigned in the declaration to a specific unit or units for the exclusive use of the owners of such unit or units;

**(c) adding immediately after clause (v) the following clause:**

(va) “report on title” means a statement of registered and recorded interests that has been issued under the *Land Registration Act* or any other proof satisfactory to the Registrar;

**and**

**(d) adding immediately after clause (w) the following clause:**

(wa) “tenant” means a person who has entered into an agreement with an owner to possess or occupy a residential unit in a corporation and has paid or agreed to pay rent to the owner;

**2 Subsection 4(5) of Chapter 85 is amended by striking out “Governor in Council” in the first and second lines and substituting “Minister”.**

**3 Subsection 7(1) of Chapter 85, as amended by Chapter 28, is further amended by**

**(a) striking out “in the prescribed form” in the second and third lines of clause (b);**

**(b) striking out subclause (d)(i) and substituting the following clause:**

(i) the registrar of deeds for the registration district in which the property is located, who shall register or record the documents in accordance with the *Registry Act* or the *Land Registration Act*,

**(c) adding “and” immediately after subclause (ii); and**

**(d) striking out subclauses (d)(iii) and (iv) and substituting the following:**

(iii) the owner by whom documents were submitted for registration for the corporation's records.

**4 Subsections 9(2) and (3) of Chapter 85 are repealed.**

**5 (1) Clause 11(1)(b) of Chapter 85 is repealed and the following clauses substituted:**

(b) a statutory declaration, in the prescribed form, from the declarant confirming that at least forty-five days before the date of the declaration every person who has a registered benefit on the property has received written notice of the application for registration, in the prescribed form, and that a certificate of *lis pendens* has not been recorded against the property;

(ba) the consent of all persons whose land is subject to an easement registered under the *Registry Act* or recorded under the *Land Registration Act* in favour of the land described in the description;

**(2) Section 11 of Chapter 85, as amended by Chapter 28, is further amended by adding immediately after subsection (1) the following subsection:**

(1A) Where a *lis pendens* has been recorded against the property, the Registrar shall not accept the declaration and description for registration until such time as the Registrar is satisfied the *lis pendens* has been removed from the parcel register and the declarant has provided such other information as the Registrar may require.

**(3) Subsection 11(2) of Chapter 85, as amended by Chapter 28, is further amended by**

**(a) adding immediately after clause (b) the following clause:**

(ba) a list of all exclusive-use common elements, if any, together with a list of the units that have been assigned such exclusive-use common elements;

**and**

**(b) adding immediately after clause (p) the following clauses:**

(pa) specifications of the boundaries of the unit;

(pb) a statement of any services, including water and sewage, that are required for the operation of the property but are not provided by a municipality or are not contained within the boundaries of the property;

(pc) a copy of all applicable easements or any agreements respecting the provision of services referred to in clause (pb);

**(4) Section 11 of Chapter 85, as amended by Chapter 28, is further amended by adding immediately after subsection (2) the following subsection:**

(2A) A declaration filed after the coming into force of this subsection must contain a description of a standard unit for each class of units.

**(5) Subsection 11(3C) of Chapter 85, as enacted by Chapter 28, is amended by striking out “amend” in the second line and substituting “accept for registration an amendment to”.**

**(6) Subsection 11(3D) of Chapter 85, as enacted by Chapter 28, is amended by**

**(a) striking out “it is deemed to have been accepted for registration,” in the second and third lines; and**

**(b) adding “clauses (a) and (c) of” immediately after “and” in the fourth line.**

**(7) Section 11 of Chapter 85, as amended by Chapter 28, is further amended by adding immediately after subsection (3D) the following subsection:**

(3E) Unless otherwise specified in a declaration, the exterior surface referred to in the boundary of a unit is deemed to be the visible surface.

**(8) Subsection 11(4) of Chapter 85 is repealed and the following subsection substituted:**

(4) When a declaration is amended, the corporation shall provide, in a form satisfactory to the Registrar,

(a) proof as to which persons are the owners of the units;

(b) a copy of the amendment; and

(c) proof of consent of the owners representing at least eighty per cent of the common elements.

**(9) Subsection 11(5) of Chapter 85 is amended by striking out “Section 8” in the last line and substituting “clauses 7(1)(b), (c) and (d)”.**

**6 (1) Subsection 12(1) of Chapter 85, as amended by Chapter 28, is further amended by**

**(a) striking out “the buildings, if any” in the last line of clause (a) and substituting “any buildings”;**

**(b) striking out “the buildings, if any” in the first and second lines of clause (b) and substituting “any buildings”; and**

**(c) adding immediately after clause (b) the following clause:**

(ba) architectural plans for any buildings;

**(2) Subsection 12(2) of Chapter 85 is repealed and the following subsection substituted:**

(2) A description must not be accepted for registration by the Registrar unless it satisfies the requirements of the Act and regulations.

**(3) Subsection 12(3) of Chapter 85, as enacted by Chapter 28, is amended by striking out “fifty-one” in the second line and substituting “eighty”.**

**(4) Section 12(4) of Chapter 85, as enacted by Chapter 28, is amended by striking out “amend” in the second line and substituting “accept for registration an amendment to”.**

**7 Chapter 85 is further amended by adding immediately after Section 12A the following Section:**

12AA (1) A declaration and description for a phased development must not be accepted for registration unless

(a) the property reserved for future phases is bound by a covenant, in a form and manner prescribed by regulations, that the property

(i) can only be used for a purpose that is materially similar to the purpose stated in the declaration and description that is being submitted for acceptance for registration, and

(ii) satisfies any applicable municipal land-use by-law or development agreement; and

(b) at time of acceptance for registration of the declaration, the declarant provides the Registrar with a document in registrable or recordable form as required by the *Land Registration Act* assigning the interest holder for the restrictive covenant from the declarant to the corporation, to take effect on acceptance for registration of the declaration.

(2) Where the declarant does not proceed with a subsequent phase or phases, the covenant in subsection (1) may be removed with the consent of owners representing at least eighty per cent of the common elements in the corporation in the completed phase or phases.

**8 Chapter 85 is further amended by adding immediately after Section 12C the following Section:**

12D The declarant shall provide to the Registrar any other document or confirmation that the Registrar deems necessary to ensure that a proposed corporation can exist with access to water and sewage services or such other services and utilities as may be prescribed by regulation, if such services or utilities are necessary for the intended use of the development as set out in the declaration and description.

**9 (1) Section 14 of Chapter 85, as amended by Chapter 28, is further amended by adding immediately after subsection (1) the following subsections:**

(1A) Notwithstanding subsection (2), a corporation may not enter into an agreement for the management of the corporation that has a term that exceeds two years.

(1B) Notwithstanding any term of an agreement between a corporation and a person for the management of the corporation that was entered into before the board of directors was elected in accordance with this Act, the agreement

may be terminated upon sixty days' notice without any legal liability to the corporation.

(1C) Notwithstanding subsection (1A), upon a vote of owners representing at least sixty-six and two-thirds per cent of the common elements that has occurred after the board of directors was elected in accordance with this Act authorizing a contract longer than two years, the corporation may enter into a management contract in excess of two years.

**(2) Subsection 14(3) of Chapter 85 is repealed and the following subsections substituted:**

(3) With the consent of owners representing at least sixty-six and two-thirds per cent of the common elements, a corporation may

(a) acquire by purchase, gift, devise, bequest or any other means personal property and sell, mortgage, hypothecate, pledge, convey or otherwise deal with such personal property, including any future right to be paid money as a result of a levy made pursuant to this Act, in order to secure repayment of money borrowed by it or the payment or performance of any of its obligations;

(b) borrow money;

(c) grant leases of the common elements;

(d) make capital expenditures;

(e) subject to the regulations, consolidate into one unit two or more adjacent units that are included in the property that is managed by the corporation;

(f) subject to the regulations, divide one unit, that is included in the property that is managed by the corporation and was previously consolidated under clause (e), into two or more units;

(g) levy special assessments for extraordinary common-element expenses.

(3A) Notwithstanding subsection (3), a corporation is not required to obtain approval of the owners representing at least sixty-six and two-thirds per cent of the common elements to acquire or dispose of personal property if the personal property has a market value of less than

(a) an amount set out in the corporation's by-laws; or

(b) where the by-laws are silent as to an amount, the lesser of

(i) two thousand five hundred dollars, and

(ii) five per cent of the corporation's annual budget.

(3B) With the consent of owners of at least eighty per cent of the common elements, a corporation may

(a) acquire real property by purchase, gift, devise, bequest or any other means;

(b) sell, mortgage, convey or otherwise deal with any such real property;

(c) grant or discharge easements affecting the common elements.

(3C) No real property or interest in real property acquired or disposed of by a corporation may be incorporated into or removed from the common elements, as the case may be, until

(a) proof of the necessary consents and such other information as the Registrar may require has been provided; and

(b) amended survey plans and legal descriptions have been accepted for registration.

(3D) When consent of the owners of the common elements has been obtained in accordance with this Act, and the execution of a document by an owner is not otherwise required by this Act, the board may, on behalf of the owners,

(a) accept a grant of easement or covenant benefiting the common elements;

(b) accept a discharge of an easement burdening the common elements;

(c) execute any document required to complete a transaction contemplated by subsection (3) or 3(B);

(d) execute any document required to be filed with the Registrar.

**(3) Subsection 14(4) of Chapter 85, as enacted by Chapter 28, is amended by**

**(a) striking out “An easement or” in the first line and substituting “A”;**

**(b) striking out “(d) or (e)” in the second line and substituting “(c)”;** and

**(c) striking out “easement or” in the third line.**

**(4) Subsection 14(5) of Chapter 85, as enacted by Chapter 28, is amended by striking out “(g)” in the second line and substituting “(e)”.**

**10 Chapter 85 is further amended by adding immediately after Section 14A the following Sections:**

14B (1) The declarant shall notify, in the prescribed form, the Registrar of the names of the board members appointed by the declarant at the time the declaration and description are submitted for registration and such people are the initial board of the directors of the corporation.

(2) The board of directors of a corporation shall be elected at a general meeting of the members, which meeting must be held within forty-five days of the date in which the declarant ceases to own more than fifty per cent of the units.

14C (1) Notwithstanding Section 14, a corporation shall not enter into an agreement for the purchase of more than one unit in the corporation until a board of directors has been elected in accordance with this Act.



(2) Notwithstanding subsection (1), where at least one purchase and sale agreement for a unit in a corporation has been executed before the coming into force of this Section and the purchase and sale agreement contains a provision that the corporation may purchase more than one unit in the corporation, the corporation is not subject to subsection (1).

**11 Subsection 15D(1) of Chapter 85, as enacted by Chapter 28, is amended by**

- (a) striking out “and” at the end of clause (a);**
- (b) striking out the period at the end of clause (b) and substituting “; and”; and**
- (c) adding immediately after clause (b) the following clause:**

(c) act in the best interest of the corporation when discharging the duties of the director or officer’s office.

**12 Section 17 of Chapter 85, as amended by Chapter 28, is further amended by**

- (a) striking out “and” at the end of clause (h); and**
- (b) adding immediately after clause (h) the following clauses:**

(ha) the name, address and telephone number of the declarant and any subcontractor that performed work on the property;

(hb) the name, address and telephone number of any architect or engineer responsible for overseeing the designing or construction of the property;

(hc) all documents pertaining to the fire, sound and insulation rating of all structures on the property;

(hd) a description and copy of all warranties, including warranties for common elements and units;

(he) all information pertaining to bank, trust company, or credit union accounts holding the reserve fund and any other fund of the condominium;

(hf) copies of all financial statements prepared respecting the reserve or other fund;

(hg) a list of all the units in the property, an indication for each unit whether it is sold or unsold and the names and addresses of the unit owners for sold units;

(hh) a list of all units in the property that have not been sold and are subject to an executed purchase and sale agreement;

(hi) a list of all units in the building that are being rented, together with the names of the renters and copies of any applicable rental agreements;

(hj) a complete copy of documents, including any amendments, filed with the Registrar to obtain registration under the Act, that are not otherwise required to be disclosed under this subsection; and

**13 (1) Section 23 of Chapter 85, as amended by Chapter 28, is further amended by renumbering subsection (2A) as (2AA) and adding immediately before that subsection the following subsection:**

(2A) By-laws adopted by a corporation pursuant to subsection (1) are not required to contain provisions found in the corporation's declaration, but may provide additional details, if such details are not inconsistent with the declaration.

**(2) Subsection 23(2A) of Chapter 85, as enacted by Chapter 28 and renumbered as subsection (2AA), is amended by striking out "for that corporation" in the fifth line.**

**(3) Section 23(4) of Chapter 85 is amended by striking out "Section 8" in the second line and substituting "clauses 7(1)(b), (c) and (d)".**

**14 Section 24 of Chapter 85 is amended by adding immediately after subsection (1) the following subsections:**

(1A) The board of directors may propose new rules or amend or repeal existing rules respecting the use of the common elements to promote safety and security of the members and property or to prevent unreasonable interference with the use and enjoyment of the units and common elements.

(1B) A rule proposed to be made, amended or repealed by the board of directors is not effective until such time as the board provides the members of the corporation with notice of the proposed rule in the prescribed form, which notice must include a form to allow the unit member to object to the rule.

(1C) Where the board does not receive a notice of objection within ten days of delivery of the notice of rule, the rule is in force until it is ratified by a majority of the members present at the next general meeting of the members with the requisite quorum.

(1D) Where a board receives a notice of objection from an owner, the proposed rule has no force and effect unless the rule is ratified by a majority of the members present at the next general meeting of the members with the requisite quorum.

(1E) A rule that is not ratified at a meeting pursuant to subsection (1C) is of no further force or effect.

**15 Section 24A of Chapter 85, as enacted by Chapter 28, is amended by**

- (a) striking out "The" in the first line and substituting "Every"; and**
- (b) adding "audited" immediately after "cause" in the first line.**

**16 Chapter 85 is further amended by adding immediately after Section 24A the following Section:**

24B Notwithstanding Section 24A, a corporation, that has as one of its objects the management of a property consisting of less than ten units, is not required to have its annual financial statements audited.

**17 Clause 29C(1)(a) of Chapter 85, as enacted by Chapter 28, is amended by adding “under a new name assigned in accordance with Section 13” immediately after “corporation” in the last line.**

**18 (1) Subsection 31(1) of Chapter 85, as amended by Chapter 28, is further amended by**

**(a) striking out “by an action for debt” in the first and second lines of clause (e);**

**(b) striking out subclause (f)(x) and substituting the following sub-clauses:**

(x) any special assessments that are forthcoming or contemplated by the corporation within twelve months of the date of the estoppel certificate,

(xa) copies of the minutes of all meetings of the board of directors and meetings of the members of the corporation held within the previous twenty-four months,

**(c) striking out the period at the end of clause (f) and substituting “; and”; and**

**(d) adding immediately after clause (f) the following clause:**

(g) in the case of a phased-development condominium, in addition to the items mentioned in clause (f), shall attach to the estoppel certificate a copy of any information relating to the phases provided by the declarant to the owners.

**(2) Subsection 31(1B) of Chapter 85 is repealed and the following subsection substituted:**

(1B) Where a corporation has as one of its objects, the management of a property consisting of less than ten units, the corporation shall assess and collect the owners' contributions to the reserve fund in an amount that would result in the amount of the reserve fund being, within five years after this subsection comes into force or, where the corporation is created on or after the coming into force of this subsection, within five years after the corporation is created, one hundred per cent of the total amount assessed annually to owners for common expenses.

**(3) Section 31 of Chapter 85, as amended by Chapter 28 and Chapter 6 of the Acts of 2001, is further amended by adding immediately after subsection (1D) the following subsection:**

(1DA) Notwithstanding subsection (1D), where a declaration and description are submitted for an existing building that is being converted to a condominium corporation, regardless of the number of units to be created, the declarant shall prepare and submit a reserve fund study before the declaration and description for the property can be accepted for registration.

**(4) Section 31 of Chapter 85, as amended by Chapter 28 and Chapter 6, is further amended by adding immediately after subsection 31(1F) the following subsections:**

(1FA) Where this Section requires a reserve fund study respecting a corporation to be filed, the board of directors of the corporation shall provide a copy of the status certificate and the master reserve fund study spreadsheet portions of the reserve fund study to each of the members of the corporation no later than sixty days after the reserve fund study has been completed.

(1FB) The board of directors shall make the full reserve fund study available for viewing by any member of the corporation on reasonable notice and at any reasonable time.

(1FC) Notwithstanding (1F) or the regulations, where a declarant has filed a reserve fund study pursuant to subsection (1DA) and the corporation created will have as one of its objects the management of a property consisting of less than ten units, the corporation is not required to update the reserve fund study completed pursuant to subsection (1DA) or have subsequent reserve fund studies or updates completed.

**(5) Subsection 31(1H) is repealed and the following subsections substituted:**

(1H) Notwithstanding (1G), where a declarant has filed a reserve fund study pursuant to subsection (1DA) and the corporation created will have as one of its objects the management of a property consisting of less than ten units, the corporation is not required to comply with the provisions of subsection (1G).

(1HA) All contributions collected for a reserve fund must be paid into the reserve fund and used only for those purposes referred to in subsection (1A) and the reserve fund must be deposited and maintained in a chartered bank in the Province or, where the principal amount is one hundred per cent guaranteed, invested in securities in which trustees are permitted by law to invest trust funds.

(1HB) Notwithstanding subsection (1HA), where an existing reserve fund has been invested in compliance with this Act before the coming into force of this subsection, such investment does not require a one hundred per cent guarantee of the principal amount until the maturity of the investment or, where there is no maturity date, within eighteen months of this subsection coming into force.

**(6) Subsection 31(5A) of Chapter 85 is repealed and the following subsections substituted:**

(5A) When a contribution to the contingency fund is required, the owner of every unit is required to contribute to the fund in the same proportion of the unit's common interest as specified in the corporation's declaration.

(5B) Any surplus in the operating budget of a corporation at the end of the fiscal year of the corporation must be

- (a) paid into the reserve fund;
- (b) paid into the contingency fund; or

(c) applied against future common expenses, but must not, other than on termination, be distributed to the owners.

**(7) Section 31(7) of Chapter 85 is amended by**

**(a) striking out “lien” in the first line and substituting “liens”; and**

**(b) adding “, subsection (3) of Section 33 and subsection (10) of Section 35” immediately after “(6)” in the first line.**

**(8) Subsection 31(7A) of Chapter 85, as enacted by Chapter 6 of the Acts of 2001, is amended by**

**(a) striking out “lien” in the first line and substituting “liens”; and**

**(b) adding “, subsection (3) of Section 33 and subsection (10) of Section 35” immediately after “(6)” in the first line.**

**(9) Subsection 31(7B) of Chapter 85, as enacted by Chapter 6 of the Acts of 2001, is amended by**

**(a) striking out “lien” in the first line and substituting “liens”; and**

**(b) adding “, subsection (3) of Section 33 and subsection (10) of Section 35” immediately after “(6)” in the second line.**

**(10) Subsection 31(7C) of Chapter 85, as enacted by Chapter 6 of the Acts of 2001, is amended by striking out “the” in the first line and substituting “a”.**

**(11) Subsection 31(8) of Chapter 85 is amended by**

**(a) striking out “lien” in the third line and substituting “liens”;**

**(b) adding “, subsection (3) of Section 33 and subsection (10) of Section 35” immediately after “(6)” in the fourth line; and**

**(c) striking out “lien” in the fourth line and in the fifth line and substituting in each case “liens”.**

**(12) Subsection (9) of Chapter 85 is amended by striking out “The” in the first line and substituting “A”.**

**19 Section 32 of Chapter 85, as amended by Chapter 28, is further amended by adding immediately after subsection (2) the following subsection:**

(3) In this Section, “substantial change” means a change, the amount of which is equal to twenty-five per cent or more of the appraised value of the property.

**20 Section 33 of Chapter 85 is repealed and the following Sections substituted:**

33 (1) The Governor in Council may make regulations respecting a process for resolving disputes between an owner and a corporation respecting a breach of the corporation’s by-laws made pursuant to clause (b) or (c) of subsection (1) of Section 23 or the failure of a corporation to effect compliance with subsection (1), (1B),

(1C) or (1D) of Section 18, subsection (3) of Section 24, Section 24A or subsection (9) of Section 26, including

- (a) the appointment of persons to hear disputes and appeals and the powers and authorities of such persons;
- (b) the notice requirements and fees required to be paid respecting the hearing or appeal of a dispute;
- (c) the scope of orders that may be issued by persons appointed to hear disputes or appeals under the regulations;
- (d) maximum fines that may be levied against a party;
- (e) an award of costs against a party;
- (f) establishing a process for appeals.

(2) Any order issued pursuant to the regulations made under subsection (1) may, for the purpose of the enforcement of the order, be registered by a party with the Supreme Court of Nova Scotia and shall be enforced in the same manner as a judgment of that Court.

(3) Where an order is made under the regulations requiring a unit owner to pay the corporation any amount of money and the unit owner fails to make such payment, the corporation has a lien for the unpaid amount against the unit and the common interests of that owner.

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

33A (1) Except as provided by this Section, the *Commercial Arbitration Act* applies to every arbitration carried out pursuant to this Section.

- (2) Notwithstanding the *Commercial Arbitration Act*, where
  - (a) the corporation and an owner of a unit that is part of the property managed by the corporation;
  - (b) the corporation and any person who has agreed with the corporation to manage the property;
  - (c) the corporation and any other corporation created pursuant to this Act;
  - (d) the corporation and the occupier of a unit that is part of the property managed by the corporation;
  - (e) an owner of a unit and the occupier of any other unit that is part of the same property that includes the unit of the owner; or
  - (f) two or more owners of units that are part of the property managed by the corporation,

are parties to a dispute on any matter to which this Act applies, other than termination of the property and those matters for which regulations have been made pursuant to Section 33, but also including a dispute between a board and an owner of a unit that is part of the property managed by the corporation, as to whether a decision or any proposed action by the board is prejudicial to the property or the corporation, any of

the parties may give to the other party or parties and to the Registrar notice that the party giving the notice intends to have the dispute arbitrated by a single arbitrator appointed by the Registrar and, when the notice is given, the parties are deemed, for the purpose of the *Commercial Arbitration Act*, to have entered into a written agreement to submit the differences between or among them arising from the dispute to arbitration by a single arbitrator appointed by the Registrar pursuant to this Act.

(3) Where a notice is given to the Registrar pursuant to subsection (2), the Registrar shall appoint the arbitrator from a list of persons prescribed by the regulations, and the parties are deemed to have consented to the use of mediation by the arbitrator.

(4) Service of a notice pursuant to this Section may be made by personal service, registered mail or substituted service as prescribed by the regulations.

(5) Where a notice is mailed pursuant to subsection (4), it is deemed to be given within seven days after it is mailed, unless the contrary is proved.

**21 Section 35 of Chapter 85 is amended by adding immediately after subsection (7) the following subsections:**

(8) The corporation has the right to recover all costs, including insurance deductibles, paid by the corporation for any repairs that the corporation makes to a unit pursuant to subsection (6).

(9) The corporation may recover any insurance deductible in respect to damage to any unit or common elements from an owner if that owner is responsible for the damage.

(10) Where an owner defaults in the owner's obligation to pay the corporation any amount the corporation has the right to recover pursuant to subsections (8) and (9), the corporation has a lien for the unpaid amount against the unit and the common interests of that owner.

**22 (1) Subsection 36(4) of Chapter 85 is repealed.**

**(2) Subsection 36(5) of Chapter 85 is amended by striking out "or (4)" in the second line.**

**23 Chapter 85 is further amended by adding immediately after Section 36 the following Section:**

36A (1) Where there has been a vote pursuant to Section 36 and the owners have voted not to repair, each owner of a unit shall provide the board with

(a) a certificate of title from a lawyer practising in the Province certifying to the board the title of the unit and all encumbrances registered or recorded affecting the unit;

(b) a current pay-out statement for any encumbrances registered or recorded affecting the unit; and

(c) any other proof required by the board to determine a person that is entitled to the proceeds from the unit.

(2) Upon receipt of the insurance proceeds and the information in subsection (1), the board shall pay from the insurance proceeds any encumbrancer in order of priority and the remainder, if any, to the owner.

(3) Where no claim is made for proceeds for a unit after six months from the date of the vote, the board may apply to the Nova Scotia Supreme Court *ex parte* for an order for payment of the money into court, and the Court may upon such notice, if any, as it thinks necessary make an order accordingly.

(4) The Court may fix the costs incurred in connection with an application or order made under subsection (3) and may order them to be paid out of the proceeds for the unit or by the corporation or otherwise as it deems just.

(5) A payment made pursuant to an order under subsection (3) discharges the corporation to the extent of the amount paid.

**24 Section 39 is repealed and the following Section substituted:**

39 (1) Where all of a property is expropriated,

(a) the corporation shall file a notice of the expropriation with the Registrar in the form and manner prescribed; and

(b) upon filing such notice the governance of the property by the Act is terminated.

(2) Where a part of the common elements of a corporation is expropriated,

(a) the corporation shall file a notice of the expropriations with the Registrar in the form and manner prescribed; and

(b) that part of the common elements that has been expropriated is no longer governed by the Act.

(3) Where one or more units, but less than the whole property, is expropriated, such unit or units continue to be governed by the Act unless the corporation files a notice of the expropriation in the form and manner prescribed by the regulations.

(4) Where one or more units has been expropriated and such unit or units are no longer governed by the Act, the corporation shall

(a) divide the ownership of the common elements, voting rights and responsibility for expenses that were assigned to the unit or units that were expropriated among the remaining units in proportion to their current ownership of the common elements; and

(b) submit to the Registrar an amended declaration to reflect the reallocation of the common elements among the remaining units.



**25 (1) Subsections 40(1) to (3) of Chapter 85 are repealed and the following subsections substituted:**

(1) Sale of any part of the property or any part of the common elements may be authorized by a vote of owners who own at least eighty per cent of the common elements.

(2) Where the owners of at least eighty per cent of the common elements have consented to a sale pursuant to subsection (1), the board, on behalf of the owners, shall

(a) execute the necessary conveyance documents and any other documents, including amendments to the corporation's declaration, legal descriptions and survey plans, that are required to complete the authorized sale of the property or common elements; and

(b) submit to the Registrar for registration

(i) the documents referred to in clause (a),

(ii) a supplementary report on title in a form acceptable to the Registrar, and

(iii) proof, in a form satisfactory to the Registrar, of consent of the owners representing at least eighty per cent of the common elements.

(3) Upon the acceptance for registration of the instruments referred to in subsection (2), and where the property is being conveyed to a person other than an owner,

(a) the application of this Act is terminated with respect to the part of the property or part of the common elements, as the case may be, that is being conveyed pursuant to subsection (2);

(b) claims against the property that is being conveyed pursuant to subsection (2), that were created before the acceptance for registration of the declaration and description, are as effective as if the declaration and description had not been accepted for registration; and

(c) judgments and mortgages against that part of the property or the part of the common elements, as the case may be, created after the acceptance for registration of the declaration and description are extinguished.

(3A) Upon the acceptance for registration of the instruments referred to subsection (2) and where the property is being conveyed to an owner, judgments and mortgages against that part of the property or common elements, as the case may be, created after the acceptance for registration of the declaration and description are extinguished.

**(2) Subsection 40(5) of Chapter 85 is amended by adding "Commercial" immediately before "Arbitration" in the third line.**

**26 Section 42 of Chapter 85 is amended by striking out "or (4)" in the third line.**

**27 Section 44 of Chapter 85 is amended by adding immediately after subsection (2) the following subsections:**

(3) A purchase and sale agreement for a proposed unit in a corporation must not contain a provision that requires a purchaser to occupy the proposed unit before registration of the corporation and transfer of title from the declarant to the purchaser.

(4) Notwithstanding subsection (3), where a corporation has not been registered on or before the closing date in the purchase and sale agreement, the purchaser and declarant may agree that a purchaser may occupy a proposed unit before the registration and transfer of title from the declarant to the purchaser.

(5) A purchaser who agrees to occupy a proposed unit pursuant to subsection (4) may, subject to the regulations, be charged an occupancy fee, which fee must be disclosed in the purchase and sale agreement, but no other fee is payable to the declarant for the occupation of the unit.

**28 Chapter 85 is further amended by adding immediately after Section 44A the following Sections:**

44B (1) The declarant shall provide a copy of the budget for the corporation for its first year of operation with any purchase and sale agreement that the declarant enters into for a unit or proposed unit in the corporation.

(2) The declarant shall provide an identical budget for all purchase and sale agreements entered into for units or proposed units in the corporation.

(3) The solicitor for the declarant shall hold in trust from the proceeds of the sale of the first unit in the corporation, or subsequent units if required, an amount of money equal to ten per cent of the budget provided by the declarant to the purchaser, and that amount must be held in trust for the benefit of the corporation in the event of a claim pursuant to subsection (5).

(4) The owner of each unit in the corporation, including the declarant, shall pay condominium fees for such unit based on the budget prepared by the declarant, commencing on the date of registration of the declaration and description.

(5) A corporation may make a claim against the declarant for the amount, if any, by which expenses of the corporation in the twelve months preceding the registration of the declaration and description exceed the budget provided by the declarant pursuant to subsection (1) by more than ten per cent.

(6) Notwithstanding subsection (5) a declarant is not liable to the corporation for any amount by which the expenses of the corporation in the twelve months preceding the registration of the declaration and description exceed the budget provided by the declarant pursuant to subsection (1) by more than ten per cent, if such expenses were not reasonably foreseen by the declarant at the time the budget was provided with the first purchase and sale agreement for a unit or proposed unit in the corporation.

(7) A claim made by a corporation pursuant to subsection (5) must be made within fifteen months of the date of registration of the declaration and description and must be served upon the declarant and its solicitor by any means that affords proof of delivery.

(8) Where the solicitor for the declarant is not served with a claim pursuant to this Section within fifteen months of the date of registration of the declaration and description, the solicitor for the declarant may release the proceeds held in trust to the declarant.

44C (1) Where a tenant of an owner fails to comply with the corporation's declarations, by-laws, or common-element rules, the corporation may issue a notice to the owner and the tenant, in the manner prescribed, advising of the breach.

(2) After receiving a notice pursuant to subsection (1), where an owner fails to remedy a breach of the corporation's declaration, by-laws or common-element rules to the satisfaction of the board within the time periods set out in the regulations, the board may make an application pursuant to Section 13 of the *Residential Tenancies Act* and Section 44C of this Act.

44D (1) Notwithstanding the *Residential Tenancies Act*, a condominium corporation, after complying with Section 44C may make an application to the Director of Residential Tenancies in the manner set out in Section 13 of that Act in respect of any tenancy agreement between an owner of the common elements of the corporation and its tenant to determine if there has been a breach of the corporation's declaration, by-laws or common-element rules.

(2) Upon an application being pursuant to Section 13 of the *Residential Tenancies Act* and served in accordance with that Act, the Director may exercise the duties and powers set out in Section 16 of that Act and may make an order pursuant to clause 17(e) terminating the tenancy on a date specified in the order and order the tenant to vacate the unit on that date if the Director is satisfied that there has been a breach of the corporation's declaration, by-laws or common-element rules and such breach warrants an order pursuant to clause (e) of Section 17.

**29 (1) Subsection 46(1) of Chapter 85, as amended by Chapter 33 of the Acts of 1996, Chapter 28, Chapter 6 and Chapter 10 of the Acts of 2002, is further amended by**

**(a) striking out clauses (ba), (bb), (bc) and (bd) and substituting the following clause:**

(ba) respecting phased-development condominiums, bare-land condominiums, mixed-use condominiums and recreational condominiums, including

(i) the information to be contained in the declaration and description,

(ii) the disclosure of information, and

(iii) exemptions from specific provisions of the Act;

**(b) adding "and architectural" immediately after "structural" in the first line of clause (e);**

**(c) striking out clause (j);**

**(d) adding immediately after clause (ld) the following clause:**

(lda) respecting the division of units pursuant to clause (f) of subsection (3) of Section 14;

and

(e) **adding immediately after clause (li) the following clauses:**

(lj) prescribing the manner of a covenant under subsection (1) of Section 12AA;

(lk) specifying services and utilities for the purpose of Section 12D;

(ll) prescribing additional requirements for reserve fund studies required when declaration and descriptions are filed under subsection (1DA) of Section 31;

(lm) prescribing procedures to be followed by parties that make an application pursuant to Section 33A;

(ln) prescribing the manner of notices required pursuant to Section 39;

(lo) prescribing the content of any notices to be given pursuant to Section 44C and time limits for the purpose of subsection (2) of Section 44C;

(lp) prescribing requirements that two or more corporations must meet to amalgamate;

(lq) prescribing the fees for registering a document or providing a service;

(lr) prescribing the requirements for consolidating two or more units;

(ls) describing the content to be included in the definition of a “standard unit” in a declaration;

(lt) prescribing the requirement to add a unit or units to an existing corporation;

(lu) prescribing terms and conditions to which occupancy fees under subsection 44(5) are subject and the maximum amount or rate of such fees;

**(2) Section 46, as amended by Chapter 33 of the Acts of 1996, Chapter 28, Chapter 6 and Chapter 10 of the Acts of 2002, is further amended by adding immediately after subsection (3) the following subsection:**

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

**30 Subsection 86(1) of Chapter 6 of the Acts of 2001, the *Land Registration Act*, as enacted by Chapter 19 of the Acts of 2008, is amended by**

**(a) striking out “or” at the end of clause (h);**

**(b) striking out the period at the end of clause (i) and substituting “; or”; and**

**(c) adding immediately following clause (i) the following clause:**

(j) resulting from a loss sustained by anyone as a result of non-compliance with Section 12AA of the *Condominium Act*.

**31** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

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