

Condominium Act

CHAPTER 85 OF THE REVISED STATUTES, 1989

as amended by

1996, c. 33; 1998, c. 28; 1999, c. 5, s. 62;
2001, c. 6, s. 100; 2002, c. 10, ss. 2, 3; 2006, c. 16, ss. 4, 5
2009, c. 10; 2010, c. 46; 2017, c. 4, s. 78



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Published by Authority of the Speaker of the House of Assembly
Halifax

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**An Act Relating to the Ownership of
Individual Units in Multi-unit Buildings**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Condominium Act*. R.S., c. 85, s. 1.

Purpose

2 The purpose of this Act is to facilitate the division of land into parts that are to be owned individually, and parts that are to be owned in common, to provide for the use and management of such properties and to expedite dealings therewith, and this Act shall be construed in a manner to give the greatest effect to these objects. R.S., c. 85, s. 2.

Interpretation

3 (1) In this Act,

(a) “accepted for registration” means accepted for registration by the Registrar in accordance with this Act and “submitted for registration” means submitted for registration to the Registrar in accordance with this Act;

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

(c) “buildings” means the buildings, if any, included in a property;

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

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

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

(g) “common expenses” means the expenses incurred in the performance of the objects and duties of a corporation and any expenses specified as common expenses in a declaration;

(h) “common interest” means the interest in the common elements appurtenant to a unit;

(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;

(j) “corporation” means a corporation incorporated by this Act;

(k) “Court” means the Supreme Court of Nova Scotia;

(l) “declarant” means a person who owns the freehold estate in the land described in the description and who submits for registration pursuant to this Act a declaration and description that are registered pursuant to 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;

(m) “declaration” means the declaration specified in Section 11 and includes any amendments;

(n) “description” means the description specified in Section 12 as amended from time to time;

(o) “encumbrance” means a claim that secures the payment of money or the performance of any other obligation, and includes a mortgage and a lien;

(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;

(q) “owner” means the owner or owners of the freehold estate or estates in a unit and common interest, but does not include a mortgagee unless in possession;

(r) “prescribed” means prescribed by the regulations;

(s) “property” means the land and interests appurtenant to the land described in the description, and includes any land and interests appurtenant to land that are added to the common elements;

(t) “proposed unit” means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed or other conveyance capable of being registered after a declaration and description relating to the property including the land have been accepted for registration;

(u) “registered” means registered pursuant to the *Land Registration Act* or the *Registry Act*;

(v) “Registrar” means the Registrar of Condominiums;

(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;

(w) “surveyor” means a person authorized to practise surveying or to make a survey in the Province;

(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;

(x) “unit” means a part or parts of the land included in the description and designated as a unit by the description, and comprises

the space enclosed by its boundaries and all the material parts of the land within this space in accordance with the declaration and description.

(2) For the purposes of this Act, the ownership of land includes the ownership of space.

(3) In this Act, a person is the occupant of a unit if that person is, pursuant to an agreement, including a lease or a sub-lease, lawfully in possession of the unit but is not an owner of the unit. R.S., c. 85, s. 3; 1998, c. 28, s. 1; 2001, c. 6, s. 100; 2009, c. 10, s. 1.

PART I

ADMINISTRATION

Administration of Act

4 (1) The member of the Executive Council to whom the administration of this Act is assigned by the Governor in Council shall have the responsibility for the effective administration of this Act and shall be the Minister for the purposes of this Act.

(2) The Governor in Council may appoint a person to be Registrar of Condominiums to assist the Minister in the administration of this Act.

(3) The Minister may appoint a person to be Deputy Registrar of Condominiums who, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, shall perform the functions and may exercise all the powers of the Registrar.

(4) To assist the Registrar in performing the Registrar's functions there shall be appointed in accordance with the *Civil Service Act* such inspectors, clerks and other persons as are necessary.

(5) With the approval of the Minister, the Registrar may engage solicitors, engineers, surveyors and other professionally or technically qualified persons. R.S., c. 85, s. 4; 2009, c. 10, s. 2.

Functions of Registrar

5 It is the function of the Registrar and the Registrar has power to

(a) examine all documents, plans and other materials submitted to the Registrar in accordance with this Act or the regulations;

(b) perform the duties and functions and exercise the powers imposed or conferred upon the Registrar by this Act or the regulations;

(c) perform such other functions as are prescribed by the Minister or by the Governor in Council. R.S., c. 85, s. 5.

PART II

REGISTRATION

Requirements

6 (1) A property shall comprise only freehold land and interests, if any, appurtenant to that land.

(2) A declaration and description may be submitted for registration by or on behalf of the owner of the freehold estate in the land described in the description.

(3) A report on title, prepared in accordance with the regulations showing the owner by whom the declaration and description are being submitted for registration as the owner of the freehold interest in the land, shall be submitted to the Registrar before the declaration and description are accepted for registration.

(3A) There shall also be submitted with the declaration and description

(a) a plan of survey of the property, prepared by a surveyor in accordance with the regulations;

(b) proposed by-laws, of the corporation that would be created if the declaration and description are accepted for registration,

(i) governing the management of the property,

(ii) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units,

(iii) governing the use of the common elements,

(iv) regulating the maintenance of the units and common elements,

(v) governing the use and management of the assets of the corporation,

(vi) respecting the board,

(vii) specifying the duties of the corporation,

(viii) regulating the assessment and collection of contributions towards the common expenses, and

(ix) respecting the conduct generally of the affairs of the corporation; and

(c) any information that the Registrar thinks is necessary for the purpose of the submission.

(4) There shall also be submitted with the declaration and description an appointment in a form acceptable to the Registrar giving the name and address of a recognized agent resident within the Province, service upon whom of any summons, process, notice or other document shall be deemed to be sufficient service upon the corporation.

(5) Upon acceptance of a declaration and description for registration, the land and the interests appurtenant to the land described in the description are governed by this Act. R.S., c. 85, s. 6; 1998, c. 28, s. 2.

Duties of Registrar

7 (1) Upon acceptance of all documents, including the declaration and description, required by this Act to be submitted for registration, the Registrar shall

(a) assign a name to the corporation in accordance with subsection (2) of Section 13;

(b) endorse on each document a certificate of acceptance for registration;

(c) retain one copy of each of the documents so endorsed in the office of the Registrar; and

(d) deliver a copy of each of the documents so endorsed to

(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*,

(ii) the Registrar of Joint Stock Companies who shall file the same, together with the form of appointment of agent, in accordance with the regulations, and

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

(2) Notwithstanding subsection (1), the copy of the documents delivered to the registrar of deeds shall include an additional copy of the plans and diagrams, and the copy of the documents delivered to the Registrar of Joint Stock Companies shall not include those plans and diagrams. R.S., c. 85, s. 7; 1998, c. 28, s. 3; 2006, c. 16, s. 4; 2009, c. 10, s. 3.

Phased-development condominium

8 (1) A phased-development condominium is exempt from the subdivision-approval requirements of the *Municipal Government Act* if the phased-development condominium meets the requirements, if any, prescribed by the regulations.

(2) The acceptance for registration of a phase of a phased-development condominium constitutes a subdivision of land and creates a lot as described in the description of that phase.

(3) Upon the acceptance for registration of each subsequent phase of a phased-development condominium, the subsequent phase is consolidated into one lot with all phases of the phased-development condominium previously accepted for registration.

(4) Where a phased-development condominium was accepted for registration before the coming into force of this Section, a failure to comply with the subdivision-approval requirements of the *Municipal Government Act*, or the former *Planning Act*, or a regulation or by-law made thereunder does not affect the creation of a title or interest in real property conveyed, or purported to have been conveyed, by deed, lease, mortgage or other instrument. 2002, c. 10, s. 2.

Condominium Corporations Register

9 (1) Every registrar of deeds shall register only such declarations, descriptions, by-laws, notices of termination and other instruments as may be received from the Registrar.

(2) and (3) *repealed 2009, c. 10, s. 4.*

(4) In any instrument relating to a unit and common interest, other than the description, it is a sufficient description thereof if the name of the corporation and the unit number are included.

(5) Except as otherwise provided by this Act and the regulations, the *Registry Act* or the *Land Registration Act*, as the case may be[,] applies in respect of property governed by this Act. R.S., c. 85, s. 9; 2001, c. 6, s. 100; 2006, c. 16, s. 5; 2009, c. 10, s. 4.

Registrar to maintain records

10 The Registrar of Joint Stock Companies shall maintain such records relating to condominium corporations as the Governor in Council may prescribe. R.S., c. 85, s. 10.

PART III

DECLARATION AND DESCRIPTION

Contents and amendment of declaration

11 (1) A declaration shall not be registered unless it is executed by the owner or owners of the land and interests appurtenant to the land described in the description as shown in the report on title and unless it contains

(a) a statement of intention that the land and interests appurtenant to the land described in the description be governed by this Act;

(b) the consent of all persons

(i) who have registered encumbrances against the land described in the description,

(ii) who have interests appurtenant to the land described in the description, and

(iii) 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,

which consent may not unreasonably be withheld, or a court order dispensing with consent;

(c) a statement, expressed in percentages allocated to the units, of the proportions of the common interests;

(d) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to contribute to the common expenses; and

(e) a statement, expressed in percentages allocated to the units, of the proportions in which the owners are to have voting rights in the corporation.

(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.

(2) In addition to the matters mentioned in subsection (1), a declaration shall contain

(a) a specification of common expenses;

(b) a specification of any 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;

(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;

(c) provisions respecting the occupation and use of the units and common elements;

(d) provisions restricting gifts, leases and sales of the units and common interests;

(e) a specification of the number, qualification, nomination, election, term of office, compensation and removal of members of the board, and the meetings, quorum, functions and officers of the board;

(f) a specification of duties of the corporation consistent with its objects;

(g) a specification of the duties of the corporation and the rights of the owners if all or part of the property is expropriated;

(h) a specification of the majority required to make by-laws of the corporation;

(i) provisions regulating the assessment and collection of contributions towards the common expenses;

(j) a specification of the majority required to make substantial changes in the common elements and the assets of the corporation;

(k) *repealed 1998, c. 28, s. 5.*

(l) a specification of any allocation of the obligations to repair and to maintain the units and common elements;

(m) a specification of the percentage of substantial damage to the buildings and a specification of the majority required to authorize repairs pursuant to Section 36;

(n) a specification of the majority required for a sale of the property or of part of the common elements;

(o) a specification of the voting majority required to permit the corporation to lease part of the common elements;

(p) a specification of the majority required for the termination of the government of the property by this Act;

(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);

(q) any other matters concerning the property.

(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.

(3) A declaration may contain a provision that divides the units into two or more classes.

(3A) Where a declaration divides the units into classes pursuant to subsection (3),

(a) the declaration may contain more than one provision pursuant to any one or more of clauses (a) to (e) of subsection (1) and (a) to (q) of subsection (2) and limit the application of each of the provisions to one or more of the classes;

(b) the corporation may make more than one set of by-laws and limit the application of each set of by-laws to one or more of the classes.

(3B) The declaration may be amended only with the consent of the owners of at least eighty per cent of the common elements.

(3C) Notwithstanding subsection (3B), the Registrar may accept for registration an amendment to the declaration without the consent referred to in that subsection in order to correct a grammatical, clerical, typographical or printing error or an error in mathematics.

(3D) Where an amendment is made pursuant to subsection (3C), the Registrar shall deal with the amendment as provided in Section 7 and clauses (a) and (c) of subsection (4) does not apply to the amendment.

(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.

(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.

(4A) Until a copy of the amendment is registered, the amendment is ineffective.

(5) Upon submission and acceptance for registration, the Registrar shall deal with the amendment as provided in clauses 7(1)(b), (c) and (d).

(6) No provision contained in a declaration pursuant to clause (c) or (d) of subsection (2) shall discriminate because of any characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5 of the *Human Rights Act*. R.S., c. 85, s. 11; 1998, c. 28, s. 5; 2009, c. 10, s. 5; 2010, c. 46, s. 1.

Contents and approval of description

12 (1) A description shall contain the following prepared in accordance with the regulations:

- (a) a plan of survey showing the perimeter of the horizontal surface of the land and the perimeter of any buildings;
- (b) structural plans of any buildings;
- (ba) architectural plans for any buildings;
- (c) a specification of the boundaries of each unit by reference to the buildings, or if there are no buildings, by reference to the appropriate co-ordinate monument;
- (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, if any;
- (e) a certificate of a person who is authorized to practise architecture in the Province that all buildings have been constructed substantially in accordance with the architectural plans and, if there are structural plans, a certificate of a person who is authorized to practise engineering, as defined in the *Engineering Profession Act*, that all buildings have been constructed substantially in accordance with the structural plans;
- (f) if no buildings are included in a property, a certificate of a surveyor that the horizontal boundaries of the units have been monumented on the ground in the prescribed manner and that the diagrams of the units are substantially accurate and substantially in accordance with the monuments so placed; and
- (g) a description of any interests appurtenant to the land that are included in the property.

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

(3) The description may be amended only with the consent of the owners of at least eighty per cent of the common elements.

(4) Notwithstanding subsection (3), the Registrar may accept for registration an amendment to a description that is registered without the consent referred to in that subsection in order to correct a grammatical, clerical, typographical or printing error or an error in mathematics and shall deal with the amendment as provided in Section 7. R.S., c. 85, s. 12; revision corrected 1997; 1998, c. 28, s. 6; 2009, c. 10, s. 6.

Exception

12A (1) Notwithstanding Sections 11 and 12, the Registrar shall accept for registration a declaration and description of a phased-development condominium if the declaration and description contain the information prescribed by regulation.

(2) Subsection (1) does not apply in respect of a condominium accepted for registration before this Section comes into force. 1996, c. 33, s. 1.

Phased-development exception

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. 2009, c. 10, s. 7.

Further exception

12B (1) Notwithstanding Sections 11 and 12, the Registrar shall accept for registration a declaration and description of a bare-land condominium or a mixed-use condominium if the declaration and description contain the information prescribed by regulation.

(2) Subsection (1) does not apply in respect of a condominium accepted for registration before this Section comes into force. 1998, c. 28, s. 7.

Registrar may require information

12C The Registrar may require from any person such information that is necessary for the administration of the Act respecting any document that is required to be filed or registered under this Act. 1998, c. 28, s. 7.

Confirmation of services and utilities

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 neces-

sary for the intended use of the development as set out in the declaration and description. 2009, c. 10, s. 8.

PART IV

THE CORPORATION

Creation and name

13 (1) The acceptance for registration of a declaration and description creates a corporation whose members are the owners from time to time.

(1A) When a declaration and description are accepted for registration, each proposed by-law that was submitted to the Registrar with the description and declaration is a by-law of the corporation that is created by the acceptance of the declaration and description for registration, until it is repealed, replaced or amended pursuant to Section 23.

(2) When a declaration and description are accepted for registration, the Registrar shall assign a name to the corporation comprised of the following components:

(a) the district name of the registry district in which the property is located;

(b) the words “Condominium Corporation”; and

(c) the abbreviation “No.” together with a number that is the next available consecutive number in the list of condominium corporations for that registry district maintained by the Registrar in accordance with the regulations.

(3) The Acts named in the Schedule to this Act do not apply to the corporation. R.S., c. 85, s. 13; 1998, c. 28, s. 8.

Objects and powers

14 (1) The objects of the corporation are to manage the property and any assets of the corporation.

(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) The corporation shall have all corporate powers and all corporate capacities necessary to enable it to do all such acts and things as are incidental or conducive to or consequential upon the attainment of its objects as set out in subsection (1) including, without limiting the generality of the powers and capacities of the corporation, but subject to this Act, the declaration and the by-laws, the power to lease any part of the common elements.

(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)~~(3B);
- (d) execute any document required to be filed with the Registrar.

(4) A lease granted pursuant to clause (c) of subsection (3) has the same effect as if it were granted by all the owners of the common elements to which the grant of lease relates.

(5) Where units are consolidated pursuant to clause (e) of subsection (3),

- (a) the proportions of the common interests with respect to the consolidated unit is equal to the proportions of the common interest with respect to all the units that were consolidated;
- (b) the proportion in which the owner of the consolidated unit is to contribute to the common expenses is equal to the proportion in which all the owners of the units that were consolidated were to contribute to the common expenses; and

(c) the proportion in which the owner of the consolidated unit is to have voting rights in the corporation is equal to the proportion in which all the owners of the units that were consolidated had voting rights in the corporation,

and the consolidation takes effect when the certificate of consolidation, as prescribed by the regulations, is filed with and accepted by the Registrar. R.S., c. 85, s. 14; 1998, c. 28, s. 9; 2009, c. 10, s. 9.

Quorum

14A (1) A quorum for the transaction of business at a meeting of the members of the corporation is the presence, either in person or by proxy, of the owners of at least thirty per cent of the common elements.

(2) No business shall be transacted at a meeting of the members of the corporation unless a quorum is present at the commencement of business. 1998, c. 28, s. 10.

Initial board of directors

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. 2009, c. 10, s. 10.

Limits on unit purchase agreements

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). 2009, c. 10, s. 10.

Board of directors

15 (1) The affairs of the corporation shall be managed by a board of directors, consisting of three persons or such greater number as the declaration or by-laws may provide, elected by the members of the corporation.

(1A) Notwithstanding subsection (1), where the declarant has not ceased to own all the units, the board of directors shall be chosen in the following manner:

(a) the declarant shall appoint that proportion of the total number of directors that the number of units still owned by the declarant bears to the total number of units in the property, except that where the number so arrived at is not a whole number, the declarant shall appoint that number of directors that is equal to the lower of the nearest two whole numbers;

(b) the members of the corporation, other than the declarant, shall elect the remaining directors.

(1B) Notwithstanding subsection (1A), that subsection does not apply where

(a) at a meeting of the members of the corporation at which a board of directors is chosen, a resolution is passed by the affirmative vote of at least sixty-six and two-thirds per cent of the members present in person or by proxy, that the entire board be elected by the members of the corporation; or

(b) the number arrived at by multiplying the total number of directors by the percentage of the units that the declarant has not ceased to own is less than one half.

(2) The term of the members of the board shall be three years or such lesser period as the declaration or by-laws may provide, but the members of the board may continue to act until their successors are elected, and members are eligible for re-election.

(3) If a vacancy in the membership of the board occurs, a new member shall be elected by the members of the corporation.

(3A) Notwithstanding subsection (3), if a vacancy in the membership of the board occurs and, at the time the vacancy is filled, subsection (1A) applies, the vacancy shall be filled in a manner that would result in the proportion of the members of the board who are appointed by the declarant being the same as the proportion of members of the board who would have been appointed by the declarant if a new board had been chosen in accordance with subsection (1A) at the time the vacancy was filled.

(4) A quorum for the transaction of business is a majority of the members of the board or such greater number as the declaration or by-laws may provide.

(5) The acts of a member of the board or an officer of the board are valid notwithstanding any defect that may afterwards be discovered in that person's election or qualifications.

(6) The declaration or the by-laws may specify and regulate the qualifications, nomination, election, compensation and removal of members of the board, and the meetings, functions and officers of the board. R.S., c. 85, s. 15; 1998, c. 28, s. 11.

Qualifications

15A (1) No person shall be elected to the office of director or hold office as a director if that person

- (a) has not attained the age of majority; or
- (b) is not an owner.

(2) Where the declarant is entitled to appoint a person as a director, clause (b) of subsection (1) does not apply with respect to that appointment. 1998, c. 28, s. 12.

Removal of director

15B (1) A person may be removed from the office of director by a majority of the votes cast in favour of the removal at a meeting of the members at which the voting is on the basis of one vote per member.

(2) Where a vote is being taken pursuant to subsection (1), the declarant as a member has one vote. 1998, c. 28, s. 12.

Effect of defect in election or appointment

15C No act of a person is invalid by reason only of a defect in the election or appointment of that person as a director or officer or the lack of any qualification for that office. 1998, c. 28, s. 12.

Duties

15D (1) Every director and officer of the corporation shall, in exercising the powers and discharging the duties of office,

- (a) act honestly and in good faith;
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
- (c) act in the best interest of the corporation when discharging the duties of the director or officer's office.

(2) A director is not liable under subsection (1) if the director relies 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) the report or opinion of a person whose profession lends credibility to the report or opinion. 1998, c. 28, s. 12; 2009, c. 10, s. 11.

Indemnification of directors and officers

15E The by-laws of the corporation may provide that every director and officer of the corporation and that person's heirs, executors, administrators 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 that person for or in respect of anything done or permitted by that person in respect of the execution of the duties of office; and

(b) all other costs, charges and expenses that person sustains or incurs in respect of the affairs of the corporation. 1998, c. 28, s. 12.

Duty to disclose

15F (1) A director of the 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.

(2) A disclosure of an interest in a contract or transaction or a proposed contract or transaction is sufficient if it is a general notice disclosing that the director

(a) is also a director or officer of a party to a contract or transaction or a proposed contract or transaction with the corporation; or

(b) has a material interest in a party to a contract or transaction or a proposed contract or transaction with the corporation.

(3) Subsection (1) does not apply to a contract or transaction unless both it and the director's interest are material.

(4) Notwithstanding subsection (2), if the contract or transaction or proposed contract or transaction to which subsection (1) applies involves the purchase or sale of real or personal property by or to the corporation, the director shall disclose

(a) the cost of the property to the purchaser; and

(b) if acquired by the seller within five years before the date of the contract or transaction or the proposed contract or transaction, the cost of the property to the seller, to the extent to which the interest or information is within the director's knowledge or control.

(5) The disclosure required by this Section shall be made

(a) at the meeting of the directors at which the contract or transaction or the proposed contract or transaction is first considered;

(b) where the director is not, at the date of the meeting, interested in the contract or transaction or the proposed contract or transaction, at the next meeting of the directors held after the director became interested;

(c) where 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) where the contract or transaction or the proposed contract or transaction is one that, in the ordinary course of the business of the corporation, 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.

(6) The board shall enter the disclosure made by a director pursuant to this Section in the minutes of the meeting of the board at which the disclosure was made.

(7) The director shall not 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 interest of the director in it

(a) is or would be limited solely to liability insurance against liability incurred as a result of acting as a director or officer of the corporation 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 corporation, if the director has been appointed to the first board by the declarant.

(8) A director who complies with this Section and who is acting honestly and in good faith at the time the contract or transaction is entered into is not accountable to the corporation or 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 interest of the director 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 the owners duly called for that purpose; and

(b) the nature and extent of the interest of the director in the contract or transaction are declared and disclosed in reasonable detail in the notice calling the meeting. 1998, c. 28, s. 12.

Appointment of recognized agent

16 The board, whenever it deems advisable, may appoint a recognized agent in substitution of the agent previously appointed by submitting for registration a form of appointment in prescribed form under its corporate seal, and the Registrar shall accept any such form of appointment for registration and shall file the same duly endorsed with the Registrar of Joint Stock Companies in accordance with the regulations. R.S., c. 85, s. 16.

Items to be provided to corporation

17 When the declarant ceases to own a majority of the units in the property, the declarant shall provide to the corporation, without charge,

- (a) the seal of the corporation;
- (b) the minute book for the corporation, containing the most current copies of the declaration, by-laws, rules and regulations and any amendments thereto;
- (c) a copy of any agreement entered into by the corporation or the declarant or the representatives of the declarant on behalf of the corporation, including any management contract, deed, lease or licence;
- (d) any existing warranty or guarantee for any equipment, fixture or chattel included in the sale of either the units or common elements that is not protected by a warranty or guarantee given directly to a unit purchaser;
- (e) any as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
- (f) any original specifications indicating thereon all material changes;
- (g) any plans for underground site service, site grading, drainage and landscaping, together with any cable-television drawings;
- (h) any plans and information not mentioned in clauses (e), (f) and (g) but relevant to the future repair or maintenance of the property;
- (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

(i) any other items that the Governor in Council may prescribe. R.S., c. 85, s. 17; 1998, c. 28, s. 13; 2009, c. 10, s. 12.

Duties of corporation

18 (1) The corporation shall keep adequate records, and any member of the corporation may inspect the records on reasonable notice and at any reasonable time.

(1A) In this Section, “records” includes financial records, minutes of meetings of the members of the corporation and its board, the declaration, by-laws and rules, all items referred to in Section 17, any reserve fund study, all agreements entered into by the corporation, disclosures of conflicts of interest and all other records that are specified in the by-laws of the corporation.

(1B) 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 the Province, Canada or any other jurisdiction to which the corporation is subject.

(1C) Upon receiving a written request and reasonable notice, the corporation shall permit any owner or an agent of an owner, duly authorized in writing, to examine the records of the corporation at any reasonable time.

(1D) The corporation shall, within a reasonable time, provide a copy of any record to a person examining the records, if the person so requests and pays a reasonable fee to compensate the corporation for the labour and copying charges.

(2) The corporation has a duty to effect compliance by the owners with this Act, the declaration and the by-laws.

(3) *repealed 1998, c. 28, s. 14.*

(4) Each member of the corporation, and each person having an encumbrance against a unit and common interest, has the right to the performance of any duty of the corporation specified by this Act, the declaration and the by-laws. R.S., c. 85, s. 18; 1998, c. 28, s. 14.

Sharing in assets of corporation

19 (1) *repealed 1998, c. 28, s. 15.*

(2) The members of the corporation 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. R.S., c. 85, s. 19; 1998, c. 28, s. 15.

Judgment against corporation

20 (1) A judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose for a portion of the judgment determined by the proportions specified in the declaration for sharing the common expenses.

(2) Any such owner may be discharged from such a judgment by payment to the claimant of a portion of the judgment debt and costs determined by the proportions specified in the declaration for sharing the common expenses, and upon such payment being made, the holder of the judgment shall give to the owner a discharge in accordance with the regulations. R.S., c. 85, s. 20.

Corporation may bring action

21 Any action with respect to the common elements may be brought by the corporation and a judgment for the payment of money in favour of the corporation in such an action is an asset of the corporation. R.S., c. 85, s. 21.

Winding up

22 (1) When the owners and the property cease to be governed by this Act, an order for winding up shall be deemed to have been made and registered under the *Companies Winding Up Act* and, subject to the provisions of subsection (2), that Act shall apply *mutatis mutandis* to the winding up of the corporation.

(2) The following provisions apply to the winding up of a condominium corporation:

(a) the liquidator or liquidators or some of them may be appointed from the members of the board;

(b) the Court may make any order that it deems just and equitable concerning the management of the property before sale, including any order relating to the payment by the owners of municipal taxes and of expenses that would have been common expenses had the property not ceased to be governed by this Act;

(c) the assets of the corporation shall be used to pay any claims for the payment of money against the corporation; and

(d) the remainder of the assets of the corporation shall be distributed among the members of the corporation in the same proportions as the proportions of their common interests. R.S., c. 85, s. 22.

By-laws

23 (1) The corporation, by a vote of members who own at least sixty per cent of the common elements, may make by-laws

(a) governing the management of the property;

(b) governing the use of units or any of them for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and other units;

(c) governing the use of the common elements;

(d) regulating the maintenance of the units and common elements;

(e) governing the use and management of the assets of the corporation;

(f) respecting the board;

(g) specifying duties of the corporation;

(h) regulating the assessment and collection of contributions towards the common expenses;

(i) respecting the conduct generally of the affairs of the corporation.

(2) The by-laws shall be reasonable and consistent with this Act, the *Human Rights Act* and the declaration.

(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.

(2AA) The Governor in Council may prescribe standard sets of by-laws for corporations and, where there are no by-laws made by a corporation pursuant to this Act that are in effect, the standard set of by-laws so prescribed for that corporation are the by-laws of that corporation.

(2B) The Governor in Council may prescribe standard by-laws pursuant to subsection (2A) for different classes of corporations and prescribe different standard by-laws for different classes of corporations.

(3) When a by-law is made by the corporation, the corporation shall submit for registration a copy of the by-law together with a certificate in prescribed form executed by the corporation that the by-law was made in accordance with this Act, the declaration and the by-laws, and the Registrar shall accept such by-law and certificate for registration.

(4) Upon acceptance for registration, the Registrar shall deal with the by-law as provided in clauses 7(1)(b), (c) and (d) but, until the copy and certificate are accepted for registration, the by-law is ineffective.

(5) No by-law or amendment or repeal thereof is capable of operating to prohibit or restrict the devolution of a unit, or any transfer, lease, mortgage or other dealing therewith, or to destroy or modify any easement implied or created pursuant to this Act. R.S., c. 85, s. 23; 1998, c. 28, s. 16; 2009, c. 10, s. 13.

Rules for use of common elements

24 (1) The by-laws may provide for the making of rules by the owners respecting the use of the common elements for the purpose of preventing unreasonable interference with the use and enjoyment of the units and common elements.

(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.

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

(3) The rules shall be complied with and enforced in the same manner as the by-laws. R.S., c. 85, s. 24; 2009, c. 10, s. 14.

PART IVA

FINANCIAL REPORTING AND AUDITOR

Audited annual financial statements

24A Every corporation shall cause audited annual financial statements to be prepared showing its assets and liabilities and its income and expenses and containing such other information, and being in such form, as prescribed by the regulations and shall furnish such statements to the Registrar and make such statements available to each of its members. 1998, c. 28, s. 17; 2009, c. 10, s. 15.

Exception

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. 2009, c. 10, s. 16.

Duties of owners

25 (1) This Section does not apply with respect to a corporation that has, as one of its objects, the management of a property consisting of less than ten units.

(2) At each annual meeting held after this Section comes into force, the owners shall

- (a) set the fiscal year of the corporation; and
- (b) appoint an auditor of the corporation to hold office until the close of the next annual meeting.

(3) Where the owners do not

- (a) set the fiscal year; or
- (b) appoint an auditor,

the board may do so.

(4) No person shall be appointed or act as auditor of a corporation who is a director, officer, employee or manager of the corporation, has an interest in contracts of the corporation, or is a partner, employer or employee of any director, officer, employee or manager of the corporation.

(5) No person shall be appointed or hold office as auditor of a corporation unless that person is licensed as a public accountant pursuant to the *Public Accountants Act*.

(6) Where an auditor is not appointed at an annual meeting, the auditor in office continues in office until a successor is appointed.

(7) Notwithstanding anything contained in this Section, the owners may remove an auditor in accordance with any contract of employment made between the corporation and the auditor or any provision of law respecting the employment.

(8) The remuneration of an auditor appointed by the owners shall be fixed by the owners, or by the board if it is authorized to do so by the owners, and the remuneration of an auditor appointed by the board shall be fixed by the board.

(9) If for any reason no auditor is appointed, the Court may, on the application of an owner, appoint an auditor to hold office until the close of the next annual meeting and may fix the remuneration to be paid by the corporation for the services of that auditor.

(10) The corporation shall give a person appointed as auditor notice in writing of the appointment forthwith after the appointment is made. R.S., c. 85, s. 25; revision corrected 1997.

Duties and powers of auditor

26 (1) The auditor shall make such examinations as enable him to report to the owners as required by subsection (2).

(2) The auditor shall make a report to the owners on the comparative financial statements including a balance sheet, statement of retained earnings, income statement and statement of changes in financial position to be laid before the corporation at each annual meeting during the term of office of the auditor, and shall state in the report whether, in the opinion of that auditor, the financial statements referred to therein present fairly the financial position of the corporation and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any.

(3) Where a report prepared pursuant to subsection (2) does not contain the unqualified opinion required thereby, the auditor shall state in the report the reasons therefor.

(4) The auditor of a corporation shall have access at all times to all records, documents, accounts and vouchers of the corporation and may require from the directors, officers and employees of the corporation such information and explanations as, in the opinion of that auditor, are necessary to enable that auditor to report pursuant to subsection (2).

(5) The auditor of a corporation may attend any meeting of owners and receive all notices and other communications related to any meeting that an owner is entitled to receive and be heard at any meeting that the auditor attends on any part of the business of the meeting that concerns him as auditor.

(6) At any meeting of the owners, the auditor, if present, shall answer inquiries concerning the basis upon which that auditor formed the opinion given in the report made pursuant to subsection (2).

(7) The financial statement shall be approved by the board and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, and the auditor's report shall be attached to or accompany the financial statement.

(8) The corporation shall, ten days or more before the annual meeting of owners, send by prepaid mail or deliver to each owner at that owner's latest address as shown on the records of the corporation and shall file with the Registrar a copy of the financial statement and a copy of the auditor's report.

- (9) The board shall lay before each annual meeting of owners
- (a) a financial statement made in accordance with generally accepted accounting principles;
 - (b) the report of the auditor to the owners; and
 - (c) such further information respecting the financial position of the corporation as the by-laws of the corporation require. R.S., c. 85, s. 26.

PART V

CONDOMINIUMS

Units and common interests

27 (1) Units and common interests are real property for all purposes.

(2) Subject to this Act, the declaration and the by-laws, each owner is entitled to exclusive ownership and use of that person's unit.

(3) No condition shall be permitted to exist and no activity shall be carried on in any unit or the common elements that are likely to damage the property.

(4) The corporation or any person authorized by the corporation may enter any unit at any reasonable time to perform the objects and duties of the corporation. R.S., c. 85, s. 27.

Common elements

28 (1) The owners are tenants in common of the common elements.

(2) An undivided interest in the common elements is appurtenant to each unit.

(3) The proportions of the common interests are those expressed in the declaration.

(4) Subject to this Act, the declaration and the by-laws, each owner may make reasonable use of the common elements.

(5) The ownership of a unit shall not be separated from the ownership of the common interest and any instrument dealing with a unit shall operate to deal with the common interest appurtenant thereto without express reference thereto.

(6) Except as provided by this Act, the common elements shall not be partitioned or divided.

(7) No encumbrance is enforceable against the common elements after the declaration and description are accepted for registration.

(8) Where but for subsection (7) an encumbrance would be enforceable against the common elements, the encumbrance is enforceable against all the units and common interests.

(9) Any unit and common interest may be discharged from such an encumbrance by payment to the claimant of a portion of the sum claimed determined by the proportions specified in the declaration for sharing the common expenses.

(10) Upon payment of a portion of the encumbrance sufficient to discharge a unit and common interest, the claimant shall give to the owner a discharge of that unit and common interest in accordance with the regulations.

(11) For the purpose of municipal assessment and taxation, each unit and common interest constitute a parcel, and the common elements do not constitute a parcel.

(12) For the purpose of determining liability resulting from breach of the duties of an occupier of land, the corporation is the occupier of the common elements and the owners are not occupiers of the common elements. R.S., c. 85, s. 28.

Easements

- 29** (1) The following easements are appurtenant to each unit:
- (a) first: where a building or any part of a building
 - (i) moves after acceptance of the declaration and description for registration, or
 - (ii) after having been damaged and repaired, is not restored to the position occupied at the time of acceptance of the declaration and description for registration, an easement for exclusive use and occupation in accordance with this Act,

the declaration and the by-laws, 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 acceptance of the description for registration and not at the time of acceptance for registration;

(b) second: an easement for the provision of any service through any installation in the common elements or any other unit; and

(c) third: an easement for support and shelter by the common elements and any other unit capable of providing support and shelter.

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

(a) first: an easement for the provision of any service through any installation in any unit; and

(b) second: an easement for support and shelter by any unit capable of providing support and shelter.

(3) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied or created by this Act. R.S., c. 85, s. 29.

Amalgamation

29A In Sections 29B and 29C,

(a) “amalgamated corporation” means a corporation that is formed as a result of an amalgamation pursuant to Sections 29B and 29C;

(b) “amalgamating corporation” means a corporation that is amalgamated with one or more other corporations pursuant to Sections 29B and 29C. 1998, c. 28, s. 18.

Registration of amalgamation documents

29B (1) Subject to the regulations, two or more corporations may amalgamate by registering a declaration and description if

(a) they have complied with subsections (2) and (3) and all requirements prescribed by the regulations; and

(b) the owners of at least eighty per cent of the units of each corporation vote in favour of approving the declaration and description.

(2) The board of each amalgamating corporation shall call a meeting of the owners for the purpose of approving the declaration and description.

(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 first year of operations of the amalgamated corporation;

(b) a copy of all proposed by-laws and rules of the amalgamated corporation;

(c) a status certificate for each amalgamating corporation in a form approved by the Registrar;

(d) the report of the auditor of each of the amalgamating corporations on the last annual financial statements of that corporation, if it is not included in the status certificate; and

(e) such additional statements or information prescribed by the regulations.

(4) The declaration of an amalgamated corporation shall not be registered unless it is executed by the officers of each of the amalgamating corporations duly authorized to sign on behalf of the amalgamating corporation.

(5) Part VIA does not apply to an amalgamation carried out pursuant to this Section but does apply to an amalgamated corporation. 1998, c. 28, s. 18.

Effect of registration

29C (1) On registration of a declaration and description for an amalgamated corporation,

(a) the amalgamating corporations are amalgamated and continue as one corporation under a new name assigned in accordance with Section 13;

(b) the units and common interests of the amalgamating corporations are continued as units and common interests in the amalgamated corporation;

(c) all encumbrances that affected the common elements of the amalgamating corporations are continued as encumbrances that affect the common elements of the amalgamated corporation;

(d) all declarations, descriptions, by-laws and rules of the amalgamating corporations cease to apply;

(e) the members of the amalgamating corporations are the first members of the amalgamated corporation;

(f) the directors of the amalgamating corporations are the first directors of the amalgamated corporation;

(g) all the property and rights of the amalgamating corporations are the property and rights of the amalgamated corporation

and all the obligations and liabilities of the amalgamating corporations are the obligations and liabilities of the amalgamated corporation; and

(h) the amalgamated corporation replaces the amalgamating corporations as a party in any action or proceeding to which the amalgamating corporation is a party.

(2) Where the amalgamated corporation has, as one of its objects, the management of a property consisting of ten or more units, the directors shall, immediately following the registration and description for the corporation, appoint one or more auditors to hold office until the close of the meeting of owners held pursuant to subsection (3).

(3) The first directors of an amalgamated corporation hold office until the members elect their successors at a meeting which the first directors shall call and hold within sixty days following the registration of the declaration and description for the corporation and such election shall be held on the basis of one vote per member.

(4) At the meeting referred to in subsection (3) the owners shall appoint successors to the auditors mentioned in subsection (2) and Sections 25 and 26 apply to the successors. 1998, c. 28, s. 18; 2009, c. 10, s. 17.

Duties of owners

30 (1) Each owner is bound by and shall comply with this Act, the declaration and the by-laws.

(2) Each owner has a right to the compliance by the other owners with this Act, the declaration and the by-laws.

(3) The corporation, and any person having an encumbrance against any unit and common interest, has a right to the compliance by the owners with this Act, the declaration and the by-laws. R.S., c. 85, s. 30.

Financial provisions

31 (1) The corporation

(a) shall establish an operating fund for the payment of the common expenses to which fund the owners shall contribute in proportions specified in the declaration;

(b) *repealed 1998, c. 28, s. 19.*

(c) shall assess and collect the owner's contributions towards the common expenses and the reserve fund established by the corporation pursuant to subsection (1A) and any contingency fund established by the corporation pursuant to subsection (4A) as regulated by the declaration and the by-laws;

- (d) shall pay the common expenses;
- (e) has the right to recover from any owner
 - (i) the unpaid amount of any assessment,
 - (ii) any sum of money expended by it for repairs to, or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building comprising the unit of that owner, and
 - (iii) any sum of money expended by it for repairs done by it pursuant to subsection (6) of Section 35 for the owner;
- (f) on the application of an owner or a purchaser of a unit and common interest, shall issue an estoppel certificate to which is attached copies of the declaration and by-laws of the corporation in which it shall certify
 - (i) the amount of any assessment and accounts owing by the owner to the corporation, and for which the corporation has a lien or right of lien against the unit and common interest of the owner,
 - (ii) the manner in which the assessment and accounts are payable,
 - (iii) the extent to which the assessment and accounts have been paid by the owner,
 - (iv) the unit identified by unit number, level number, condominium corporation number and any applicable civic and suite numbers,
 - (v) the name, address and telephone number of the condominium management company or manager,
 - (vi) the names and addresses of the officers of the corporation,
 - (vii) the current amount of common expenses, and whether they are prepaid or collected in default,
 - (viii) how the reserve fund is collected and, if collected as a percentage of common expenses, what that percentage is,
 - (ix) the balance of the reserve fund,
 - (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,

(xi) any major capital expenditures that are planned by the corporation,

(xii) any lawsuits that have been instituted or are pending by the corporation or against the corporation,

(xiii) the debt carried by the corporation from previous expenditures,

(xiv) fire insurance, public liability and directors' liability insurance coverage and the amount or value of each policy,

(xv) the content of any proposed by-laws, proposed amendments to existing by-laws or proposed amendments to the declaration;[,]

(xvi) the name of each person who owns ten per cent or more of the common elements;[,]

(xvii) as to such other matters as the Governor in Council may prescribe,

and in favour of any person dealing with that owner, the certificate is conclusive proof of the matters certified therein; and

(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.

(1A) The corporation shall establish and maintain a reserve fund for major repair and replacement of the common elements and assets of the corporation including, where applicable and without limiting the generality of the foregoing, roofs, exteriors of buildings, roads, sidewalks, sewers, heating, electrical and plumbing systems; [and] elevators, laundry, recreational and parking facilities.

(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.

(1C) Where a corporation was created pursuant to this Act before the coming into force of this subsection and has, as one of its objects, the management of a property consisting of ten or more units, the corporation shall, within two years after the coming into force of this subsection, cause a reserve-fund study

respecting the corporation to be completed in accordance with subsection (1E) and to be filed with the Registrar no later than thirty days after it is completed.

(1D) Where a declaration and description are submitted for registration after the coming into force of this subsection, and the corporation that would be created as a result of the registration of the declaration and description would have, as one of its objects, the management of a property consisting of ten or more units, the person submitting the declaration and description shall file with the Registrar a reserve-fund study respecting the corporation, completed in accordance with subsection (1E) and, notwithstanding any other provision of this Act, the Registrar shall not accept the declaration and description for registration until the reserve-fund study is filed.

(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.

(1E) A reserve-fund study respecting a corporation that is required by this Act to be filed shall be completed in the manner and form, contain such information, opinions and recommendations and be prepared by such person or a member of such class of persons as prescribed by the regulations.

(1F) Where this Section requires that a reserve fund study respecting a corporation be filed, that corporation shall, within each ten-year period after the expiry of the time limited for filing a reserve fund study, cause a reserve-fund study to be completed in accordance with subsection (1E) and to be filed with the Registrar no later than thirty days after it is completed.

(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.

(1G) Where a reserve-fund study respecting a corporation is filed in accordance with this Section and the amount of the reserve fund of the corporation

is less than the minimum amount that the reserve-fund study recommends that the fund ought to be, the corporation shall assess and collect contributions from the owners in an amount that will result in the reserve-fund amount recommended by the study being achieved within such period of time as is recommended in the study and continuing to be at least the minimum amount recommended in the reserve-fund study.

(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.

(2) Any fund set up for any of the purposes mentioned in subsection (1A) is and is deemed to be a reserve fund notwithstanding that it may not be so designated.

(3) No part of a reserve fund shall be used except for the purposes for which the fund was established.

(4) The reserve fund constitutes an asset of the corporation and shall not be distributed to any owner except upon termination of the government of the property pursuant to this Act.

(4A) The corporation may establish a contingency fund to be used for such purposes as provided in the by-laws.

(5) The obligation of an owner to contribute towards the common expenses, the reserve fund and any contingency fund shall not be avoided by waiver of the right to use the common elements or by abandonment.

(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.

(6) Where an owner defaults in the owner's obligation to pay to the corporation any amount the corporation has the right to recover pursuant to clause (e) of subsection (1), the corporation has a lien for the unpaid amount against the unit and common interest of that owner.

(7) The liens referred to in subsection (6), subsection (3) of Section 33 and subsection (10) of Section 35 shall be payable in priority to all other liens, charges or mortgages in respect of the unit and the common interest, other than a lien for taxes or a lien for money due to the Nova Scotia Power Corporation for the supply of electric power and energy.

(7A) The liens referred to in subsection (6), subsection (3) of Section 33 and subsection (10) of Section 35 ~~is~~ [are] not a charge against the unit and the common interest of any unit registered pursuant to the *Land Registration Act* until a certificate evidencing the lien has been recorded in the register of the unit.

(7B) The corporation may record a notice of the liens referred to in subsection (6), subsection (3) of Section 33 and subsection (10) of Section 35 in the parcel register of any unit to which the lien applies and shall thereupon serve the owner of the unit with a copy of the lien and recording particulars.

(7C) Upon satisfaction of a lien including payment of the fees for recording the lien and the release, the corporation shall record a release of the lien in the parcel register of the unit.

(8) Every mortgagee, judgment creditor or other person having any lien, charge or encumbrance upon or against a unit and the common interest subject to the liens mentioned in subsection (6), subsection (3) of Section 33 and subsection (10) of Section 35 may, at any time after the liens ~~arises~~ [arise], pay to the corporation the amount of the liens, together with all interest and expenses and add the amount so paid to that person's mortgage, judgment or other security, and shall have in respect thereto the same rights, remedies and privileges against the unit and the common interest as the mortgagee, judgment creditor or other person has by virtue of or under the security held by the mortgagee, judgment creditor or other person and the mortgagee, judgment creditor or other person may also sue for and recover in an action for debt the amount so paid, together with interest thereon, against the person primarily liable to pay such amount.

(9) A lien may be enforced in the same manner as a mortgage and the Rules of the Supreme Court respecting foreclosure shall apply *mutatis mutandis*.

(10) Upon payment of the unpaid amount, the corporation shall give the owner a discharge in the prescribed form. R.S., c. 85, s. 31; 1998, c. 28, s. 19; 1998, c. 28, s. 19; 2001, c. 6, s. 100; 2009, c. 10, s. 18.

Changes in common elements or assets

32 (1) The corporation, by a vote of members who own eighty per cent, or such greater percentage as is specified in the declaration, of the common elements, may make any substantial addition, alteration or improvement to or renovation of the common elements or may make any substantial change in the assets of the corporation, and the corporation, by a vote of a majority of the members, may make any other addition, alteration or improvement to or renovation of the common elements or may make any other change in the assets of the corporation.

(2) The cost of any addition, alteration or improvement to or renovation of the common elements and the cost of any substantial change in the assets of the corporation are common expenses.

(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.

(4) *repealed 1998, c. 28, s. 20.*

R.S., c. 85, s. 32; 1998, c. 28, s. 20; 2009, c. 10, s. 19.

Dispute resolution

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*, 2009, c. 10, s. 20.

Arbitration

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. 2009, c. 10, s. 20.

Insurance

34 (1) The corporation shall insure its liability to repair the units and common elements after damage resulting from fire, and such other risks as may be specified by the declaration or the by-laws, to the extent required by the declaration or the by-laws and, for that purpose, the corporation has an insurable interest to the replacement value of the units and common elements.

(2) Notwithstanding subsection (1) and the *Insurance Act*, or any other law relating to insurance, an owner may insure the owner's unit in respect of any damage in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of the owner's unit.

(3) Any payment by an insurer under a policy of insurance entered into pursuant to subsection (2), shall be made to the mortgagees if the mortgagees, or any of them, so require, in order of their priorities and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.

(4) A policy of insurance issued to a corporation under the authority of subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same building under the authority of subsection (1).

(5) A policy of insurance issued to an owner under the authority of subsection (2) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same unit under the authority of subsection (2).

(6) Subsections (1) and (2) do not restrict the capacity of any person to insure otherwise than as provided in those subsections. R.S., c. 85, s. 34.

Maintenance and repairs

35 (1) For the purposes of this Act, the obligation to repair after damage and to maintain are mutually exclusive, and the obligation to repair after damage does not include the repair of improvements made to units after acceptance for registration of the declaration and description.

(2) Subject to Section 36, the corporation shall repair the units and common elements after damage.

(3) The corporation shall maintain the common elements.

(4) Each owner shall maintain that owner's unit.

(5) Notwithstanding subsections (2), (3) and (4), the declaration may provide that

(a) subject to Section 36, each owner shall repair that owner's unit after damage;

(b) the owners shall maintain the common elements or any part of the common elements; or

(c) the corporation shall maintain the units or any part of the units.

(6) The corporation shall make any repairs that an owner is obligated to make and that the owner does not make within a reasonable time.

(7) An owner shall be deemed to have consented to have repairs done to the owner's unit by the corporation pursuant to this Section.

(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. R.S., c. 85, s. 35; 2009, c. 10, s. 21.

Damage

36 (1) Where damage to the buildings occurs, the board shall determine within thirty days of the occurrence whether there has been substantial damage to the extent that the cost of repair would be twenty-five per cent, or such greater percentage as is specified in the declaration, of the value of the buildings immediately prior to the occurrence.

(2) Where there has been a determination that there has been substantial damage as provided in subsection (1) and owners who own eighty per cent of the common elements, or such greater percentages as is specified in the declaration, vote for repair within sixty days of the determination, the corporation shall repair.

(3) Where on a vote the owners do not vote for repair, the corporation shall, within ten days of the vote, submit for registration a notice of termination in the prescribed form and the Registrar shall accept the notice for registration.

(4) *repealed 2009, c. 10, s. 22.*

(5) Upon the acceptance for registration of a notice of termination pursuant to subsection (3), the provisions of Section 42 apply. R.S., c. 85, s. 36; 2009, c. 10, s. 22.

Disbursement of insurance proceeds when vote not to repair

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. 2009, c. 10, s. 23.

Voting

37 (1) The owners have voting rights in the corporation in the proportions specified in this Act and in the declaration.

(2) Notwithstanding any authorization, including a provision in any agreement, mortgage or charge that is made on, before or after the coming into force of this subsection, the holder of a mortgage or charge on a unit may not exercise any right that another person has, by reason of being the owner of a unit, to vote or consent, unless the holder of the mortgage or charge is a mortgagee in possession.

(2A) For greater certainty, nothing in subsection (2) invalidates any vote that was cast or any consent that was given before the coming into force of this subsection.

(3) Any powers of voting conferred by, or any consent required to be given or document required to be executed pursuant to this Act, the declaration or the by-laws by an owner may be exercised, given or executed

(a) in the case of an owner who is an infant, by the owner's guardian;

(aa) in the case of an owner who is the subject of a representation order under the *Adult Capacity and Decision-making Act* that applies to the owner's real property, by the owner's representative;

(b) in any other case by the person who for the time being is authorized by law to control the owner's property.

(4) Where the Court, upon application of the corporation or of any owner, is satisfied that there is no person capable or willing or reasonably available to exercise the power of voting, giving consent or executing a document, in respect of a unit, the Court

(a) in cases where unanimous vote or unanimous consent is required by this Act, the declaration or the by-laws, shall; and

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

authorize some other fit and proper person to exercise the power of voting, to give the consent or to execute the document, in respect of the unit. R.S., c. 85, s. 37; 1998, c. 28, s. 22; 2017, c. 4, s. 78.

Enforcement

38 (1) Where a duty imposed by this Act, the declaration or the by-laws is not performed, the corporation, any owner, or any person having an encumbrance against a unit and common interest may apply to the Court for an order directing the performance of the duty.

(2) The Court may by order direct performance of the duty, and may include in the order any provisions that the Court considers appropriate in the circumstances including

(a) the appointment of an administrator for such time, and on such terms and conditions, as it deems necessary; and

(b) the payment of costs.

(3) An administrator appointed pursuant to subsection (2)

(a) to the exclusion of the corporation, has such powers and duties of the corporation as the Court shall order;

(b) has the right to delegate any of the powers so vested in the administrator; and

(c) shall be paid for the administrator's services by the corporation, which payments are common expenses.

(4) Nothing in this Section restricts the remedies otherwise available for failure to perform any duty imposed by this Act. R.S., c. 85, s. 38.

Expropriation of property

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. 2009, c. 10, s. 24.

PART VI

SALE OF THE PROPERTY
AND THE COMMON ELEMENTS**Sale of property**

40 (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.

(4) Subject to subsection (5), the owners share the proceeds of the sale in the same proportions as their common interests.

(5) Where a sale is made pursuant to this Section, any owner who dissented may elect to have the fair market value of the property at the time of the sale determined by arbitration under the *Commercial Arbitration Act* by serving notice to that effect on the corporation within ten days after the vote, and the owner who served the notice 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.

(6) Where the proceeds of the sale are inadequate to pay the amount determined pursuant to subsection (5), each of the owners who voted for the sale is liable for a portion of the deficiency determined by the proportions of their common interests. R.S., c. 85, s. 40; 1998, c. 28, s. 24; 2009, c. 10, s. 25.

PART VIA

TERMINATION

Termination of government of property

41 (1) Termination of the government of the property by this Act may be authorized

(a) by a vote of owners who own one hundred per cent of the common elements;

(b) by the consent of the persons having registered claims against the property, created after the acceptance for registration of the declaration and description.

(2) Where termination of the government of the property by this Act is authorized pursuant to subsection (1), the corporation shall submit for registration a notice of termination in the prescribed form, executed by all the owners and all the persons having registered claims against the property created after the acceptance for registration of the declaration and description together with a supplementary report on title in prescribed form showing the persons signing the notice to be all the owners and persons having registered claims and the Registrar shall accept such notice for registration. R.S., c. 85, s. 41; 1998, c. 28, s. 26.

Effect of acceptance of termination notice

42 Upon acceptance for registration of a notice of termination pursuant to subsection (2) of Section 41 or subsection (3) of Section 36,

(a) the government of the property by this Act is terminated;

(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 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;

(d) encumbrances against each unit and common interest created after the acceptance for registration of the declaration and description are claims against the interest 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 acceptance for registration of the notice of termination; and

(e) all claims against the property created after the acceptance for registration of the declaration and description, other than the encumbrances mentioned in clause (d), are extinguished. R.S., c. 85, s. 42; 2009, c. 10, s. 26.

Application to Court for termination order

43 (1) A corporation, any owner or any person having an encumbrance against a unit and common interest may apply to the Court for an order terminating the government of the property by this Act.

(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 and, in determining whether the termination would be just and equitable, the Court shall have regard to

(a) the scheme and intent of this Act;

(b) the probability of unfairness to one or more owners if termination is not ordered; and

(c) the probability of confusion and uncertainty in the affairs of the corporation or the owners if termination is not ordered.

(3) Where an order of termination is made pursuant to subsection (2), the Court may include in the order any provisions that the Court considers appropriate in the circumstances.

(4) A copy of any order granted pursuant to this Section shall be submitted for registration and the Registrar shall accept such copy for registration. R.S., c. 85, s. 43.

PART VII

GENERAL

Contents of agreement of purchase and sale

44 (1) Every agreement of purchase and sale respecting

- (a) a unit, where the agreement is entered into by a declarant as vendor; or
- (b) a proposed unit,

shall contain such provisions as the Governor in Council may prescribe by regulation.

(2) Where any provision is prescribed pursuant to subsection (1), that provision is and is deemed to be part of every agreement of purchase and sale for which the provision is prescribed notwithstanding any agreement, waiver, declaration or other statement to the contrary.

(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. R.S., c. 85, s. 44; 2009, c. 10, s. 27.

Deemed covenant

44A Notwithstanding any agreement, waiver, declaration or other statement to the contrary, every agreement under which the occupant of a unit is in possession of the unit is deemed to include a covenant whereby the occupant agrees with the person who grants the right to possess the unit that the occupant shall comply with this Act, the regulations, the declaration that applies to the unit and the by-laws and rules of the corporation that has the management of the property that includes the unit. 1998, c. 28, s. 27.

Corporation budget provided by declarant

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 proceeding 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 proceeding 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 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. 2009, c. 10, s. 28.

Breach by tenant

44C (1) Where a tenant of an owner fails to comply with the corporations 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. 2009, c. 10, s. 28.

Application to Director of Residential Tenancies

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 corporations 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 17A(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 17A. 2009, c. 10, s. 28; 2010, c. 46, s. 2.

Applicability of certain enactments

45 (1) The Governor in Council may, by regulation, provide that the *Planning Act* and regulations and by-laws made thereunder shall apply to a property or land intended to be included in a property only to the extent specified in the regulation.

(2) The *Securities Act* does not apply to the sale of units and common interests.

(3) When a property is governed by this Act, the *Partition Act* does not apply to that property or the owners.

(4) The corporation, unless it is the plaintiff, shall be a defendant in any action commenced under the *Quieting Titles Act* where the land in respect of which the property right is claimed is part of a property governed by this Act. R.S., c. 85, s. 45.

Penalty for failure to file information

45A (1) A corporation that fails to file with the Registrar a financial statement pursuant to Section 24A or a reserve-fund study pursuant to Section 31, and that does not do so within ten days after receiving a notice from the Registrar requiring that corporation to do so, is liable to a penalty in such amount, not less than one thousand dollars or more than ten thousand dollars as provided in the regulations, to be recovered on behalf of Her Majesty in right of the Province for the use of the Province.

(2) A notice given pursuant to subsection (1) shall be given in the manner provided in the regulations.

(3) A penalty due to Her Majesty under subsection (1) shall be paid to the Minister of Finance and the Minister of Finance may sue for and recover the penalty in the name of Her Majesty in right of the Province in an action in any court as if the amount were a debt.

(4) The Registrar may waive a penalty that a corporation would otherwise be liable to pay under this Section under such circumstances as are prescribed by the regulations. 1998, c. 28, s. 28.

Regulations

- 46 (1) The Governor in Council may make regulations
- (a) classifying properties for the purposes of the regulations;
 - (b) defining the class or classes of property which may be accepted for registration by the Registrar;
 - (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;
 - (bb) to (bd) *repealed 2009, c. 10, s. 29.*
 - (be) prescribing the conditions a phased-development condominium must meet, and prescribing the information or documents to be provided to the Registrar, in order to be exempt from the subdivision-approval requirements of the *Municipal Government Act*;
 - (c) prescribing the duties of officers appointed pursuant to the *Registry Act* or *Land Registration Act* and of the Registrar of Joint Stock Companies for the purposes of this Act;
 - (d) governing the method of describing in instruments a property or any part of a property;
 - (e) governing surveys, structural and architectural plans, descriptions and diagrams, and prescribing procedures for their registration and amendment;
 - (f) requiring, in respect of any class of properties, in lieu of or in addition to the requirements of Section 12, surveys of the properties showing the units and common elements;
 - (g) respecting the registration and recording of declarations, descriptions, by-laws, notices of termination and other instruments;
 - (h) respecting the names of corporations;
 - (i) respecting additions to the common elements;
 - (j) *repealed 2009, c. 10, s. 29.*

(k) prescribing matters to be certified in a certificate issued pursuant to clause (f) of subsection (1) of Section 31;

(l) prescribing provisions that are required to be included in agreements of purchase and sale respecting units;

(la) prescribing the form of a plan of survey to be submitted pursuant to subsection (3A) of Section 6;

(lb) prescribing the manner and form of a reserve-fund study required by Section 31, the information and opinions and recommendations to be contained in such study and the person or class of persons who is to prepare such study;

(lc) prescribing who may be arbitrators for the purpose of Section 33A;

(ld) respecting the consolidation of units pursuant to clause (g) of subsection (3) of Section 14;

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

(le) setting the amount of the penalty for the purpose of Section 45A, with power to prescribe different penalties for different classes of corporations, prescribing the manner in which a notice shall be given pursuant to that Section and prescribing the circumstances under which the Registrar may waive the penalty;

(lf) prescribing the form and content of financial statements for the purpose of Section 24A, with power to prescribe different forms and requirements for different classes of condominium corporations;

(lg) prescribing the form and contents of a certificate of consolidation for the purpose of subsection (5) of Section 14;

(lh) prescribing forms of substituted service for the purpose of subsection (4) of Section 33;

(li) for the purpose of subsections (2A) and (2B) of Section 23, prescribing standard by-laws for corporations with power to prescribe different classes of corporations and to prescribe different standard by-laws for each class of corporation;

(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;

(m) prescribing forms and providing for their use;

(ma) defining any word or expression used but not defined in this Act;

(n) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) Any provision of any regulation may be made to apply to all properties or to any class of properties.

(3) A regulation made pursuant to clause (l) of subsection (1) may be made to apply to either one or both of those classes of agreements of purchase and sale referred to in subsection (1) of Section 44.

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. R.S., c. 85, s. 46; 1996, c. 33, s. 2; 1998, c. 28, s. 29; 2001, c. 6, s. 100; 2002, c. 10, s. 3; 2009, c. 10, s. 29; 2010, c. 46, s. 3.

SCHEDULE

Companies Act
Corporations Miscellaneous Provisions Act
Corporations Registration Act

R.S., c. 85

condominium

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Corporation Tax Act
Societies Act

R.S., c. 85, Sch.
