



Condominium Act, 2015
Regulations Consultation
Phased Condominiums

Draft Regulatory Summary for Public Engagement



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NOTICE:

This is a detailed summary of proposed key elements of the regulations required in implement the Condominium Act, 2015. This summary is intended to facilitate dialogue about the proposed regulations and is not a definitive statement about the content of those regulations.



INTRODUCTION

What is a condominium?

A condominium is a type of ownership of land in which a corporation is created to facilitate that ownership. A condominium consists of:

- two or more units which have individual owners; and
- common property in which all of the unit owners have an ownership interest.

The condominium corporation and the unit owners have defined rights, authorities and responsibilities in respect of the units and the common property.



In conventional condominiums, a building is constructed on a parcel of land and the building comprises a number of units defined by boundaries established in relation to the floors, walls and ceilings of the building. The common property of the condominium usually includes the land and the parts of the building that are not part of an

individual unit. In bare land condominiums, the unit is actually defined by boundaries established in relation to the land itself and a detached building or a row house may be built on that unit. Row housing is a type of condominium development in which the individual dwelling units are houses attached to each other.

A phased condominium is one in which a conventional or bare land condominium is developed in a sequential manner in distinct phases. A leasehold condominium is developed on lands for which the developer or leasehold unit owner possesses only a leasehold interest in title. Leasehold condominiums can be developed only on land owned by public authorities such as the Government of Yukon, Yukon First Nations and municipalities, and only on land that is registered in the Yukon Land Titles Office.

A mixed-use condominium is a development that can have both residential and non-residential units.

How is a condominium created?

Both the condominium itself and the corporation for the condominium are created when a developer makes an application to create the condominium and registers the required



documents in the Land Titles Office. Those documents are identified in the *Condominium Act, 2015*, s.3, as a “condominium plan, a “declaration”, a “notice of bylaws”, a “notice of first directors”, a “notice of address for service” and “any other document or information required by the regulations”. It is likely that the type of additional information or documents required would differ depending upon the specialized type of condominium that is being created.

How do we know what property constitutes a condominium?

As part of the application to create a condominium, the developer will register a “condominium plan” in the Land Titles Office. The condominium plan is a plan of survey that shows the parcel of land being developed as a condominium and how it is divided into private units and common property. The condominium plan is also a subdivision plan for the purposes of the *Subdivision Act*.

How are units owned in a corporation?

When a person purchases a unit in a condominium, they own their unit and are shown as owner on a Condominium Certificate of Title in the Land Titles Office. Like regular land, condominium units may be mortgaged or sold. In the case of a leasehold condominium, it is the leasehold interest that is mortgaged or sold.

How are the rules for condominiums established?

In addition to following the relevant statutes and regulations, each condominium corporation must also follow the rules set out in the documents that must be registered with its originating application. Rules are usually set out in the declaration and the bylaws as well as in the documents required to be registered for specialized types of condominiums.

How are condominiums governed?

A condominium corporation is governed by a board of directors elected by its members. The members are the unit owners. The directors are responsible for ensuring the corporation complies with its legal obligations, ensuring its obligations for ongoing maintenance of the common property are performed to the standard required and paid for by the members and for making both short term and long term decisions about the management of the corporation as a going concern. The board of directors is also responsible for enforcing condominium bylaws and rules that create private law obligations.

Condominium legislation in Yukon

The new *Condominium Act, 2015*, was passed unanimously by the Yukon Legislature in May 2015, and received assent later that month. Like the *Land Titles Act, 2015*, it was developed

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with the participation of stakeholders including representatives of the real estate bar, Canada Lands Surveyors, the business community, condominium owners, the federal Surveyor General Branch and the Government of Yukon. Public engagement made a major contribution to the Act and strengthened the consumer protection components. Stakeholders were also publicly supportive of the new Act.

Stakeholders feel very strongly about modernizing the legislation. They have worked closely with department staff — and have generously donated their time — to help develop the policies to support the new regulations. Accordingly, the Government of Yukon wants them to be involved in the regulation development process.

The Government of Yukon is in the process of developing the first draft regulations to support the implementation of the *Condominium Act, 2015*. The following detailed proposals based on work with stakeholders, forms the basis of our public engagement.

Overview of Engagement

This engagement seeks to solicit feedback on the Yukon government's proposed approach to regulations to be created under the *Condominium Act, 2015*. The regulations will be used to govern important matters related to condominiums within Yukon. The Government of Yukon is undertaking discussions with First Nation governments and municipalities, stakeholders and the general public and will also be holding public meetings where officials will be available to present information and answer questions. The Government of Yukon welcomes comments from all Yukoners on this proposed approach. Please send any comments or feedback by January 25, 2019 to:

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PHASED CONDOMINIUMS



A phased condominium is one in which the condominium development is built in a sequential manner in distinct phases. Each separate phase has its own distinct provisions while being developed, but all must fit neatly together after development because they will be managed by one condominium corporation. Phased condominium developments are sometimes preferred by developers because building gradually can facilitate the financing of a development. However, at present in Yukon, there are no rules on how phased condominiums can be developed and that results in the possibility that the developer may change their mind about building the development in the manner originally promised to those who bought units in advance.

The regulations would set out how the interests of developers will be balanced with the interests of purchasers in ensuring that the development proceeds as promised. For instance, regulations would provide that:

- the development of phases must be in accordance with a disclosure statement and the plan of survey;
- there is a duty on behalf of the developer to disclose information regarding the phased development to the purchaser; and
- the units and common property in a phase must be substantially complete within a defined period of time and the overall development (all phases) must be substantially completed within a defined time.

1. Application for a phased development

The Government of Yukon proposes that a phased development disclosure statement must be registered at the same time as the other document required for condominium registration. As well, the condominium declaration and plan of survey must clearly identify that the condominium is a phased development.

The plan of survey for a phased condominium can show that the condominium has both bare land units and conventional units.

2. Phased development disclosure statement

The Government of Yukon proposes that the regulations would require the phased development disclosure statement to set out the information that a buyer may wish to know about before buying their condominium, including:

- a statement that the parcel is to be developed in phases;
- the minimum and maximum number of units in each phase and in the entire development;
- a description of the common property and any improvements to be done in each phase;
- a description of the units and common property in the first phase and later phases;
- an artist's rendering of all phases with a description of the proposed physical appearance of each phase and the architectural compatibility of the phases with each other and with the entire development;
- the approximate size of each unit;
- any restrictions or qualifications on the types of units and common property included in each phase;
- zoning use or uses of the units and common property for each phase;
- an explanation of what facilities completed in a subsequent phase will be available for the use of owners in the prior phases;
- the basis for allocating unit entitlements, which must be consistent for each phase and the entire phase's development, the range of what will be the minimum and maximum unit entitlements in the phased development, and the changes to the range upon each new phase;
- the basis for allocating common expenses among unit holders in each phase and on the completion of development, and to what extent the developer will contribute to them;
- a contingency plan describing what happens if any subsequent phase does not proceed and the effect of this on the unit owners' contribution for common expenses and the corporation's budget;
- certification by an approving officer stating that the planning authority has approved the elements in the phased development over which it has legal authority; and
- a declaration from the developer that the disclosure statement complies with this regulation.

3. Disclosure to purchaser for a phased development

It is also proposed that the regulations require the developer to deliver to the purchaser a copy of the registered phased development disclosure statement at the same time as they provide

the other information required under s. 54 of the *Condominium Act, 2015* (e.g., the agreement, budget for common expenses, financial statements, etc.).

4. Plan for a phased development

The regulations would provide that the initial plan of survey for a phased condominium is acceptable for registration even if it shows later phases only as one or more bare land units. As subsequent phases are developed, a plan for that phase, called a subsequent plan, which complies with sections 6 and 7 of the *Condominium Act, 2015* could be registered. No less than thirty (30) days before registering the plan, the developer would be required to give a notice to the condominium corporation and unit owners of the proposed registration of the subsequent plan and any resulting amendment to the declaration and its schedules.

The proposed regulations would state that an application to register a subsequent plan must include:

- a clear reference to all subsequent phases in the condominium plan;
- amendments to the declaration and its schedules if there are any changes to the common expenses, the allocation of common expenses or the unit entitlement;
- evidence satisfactory to the registrar that the application was delivered to the corporation; and
- a statutory declaration certifying that the supplementary plan, the amendments to declaration and schedules, and the application all comply with criteria set out in the phased development disclosure statement.

The unit owner's consent would not be required to register an amendment to the declaration and its schedules if the amendment is consistent with the phased development disclosure statement. The phased development disclosure statement gives the purchaser certainty as to the nature of the condominium over its extended development and gives the developer certainty that as long as they are developing in accordance with it, further consent from unit owners will not be required.

The regulations would provide that when a subsequent plan is registered:

- it is added to the previously registered plans for the phased development;
- the land shown in the supplementary plan is subdivided from the rest of the parcel not included in the phases for which plans have been registered;
- new unit owners become members of the condominium corporation; and
- common property in the supplementary plan becomes common property for all the phases.

The developer would have to notify the condominium corporation and each unit owner within 5 days after registering a supplementary plan that the plan was registered, and of any amendments that may have been made to the declaration and its schedules.

The proposed regulations would require that if a developer wants to develop an existing condominium into a phased development or wants to change a phased condominium in a manner not contemplated in the phased development disclosure statement, they must obtain the approval of at least 75 per cent of the eligible voters and the consent of all encumbrance holders. Only a developer would be able to register an amendment to the phased development disclosure statement before all the phases have been completed.

5. Duty to complete phased development on time

During consultations on the *Condominium Act, 2015* the Government of Yukon heard concerns from stakeholders that developers sometimes took a much longer time to complete the development than had originally been contemplated. Because of this, unit owners did not have access to finished common property, or were living in the development while construction was ongoing. It is therefore proposed that the regulations would require the developer to complete all phases of the phased development and register all documents within the time specified in the disclosure statement. This is because purchasers have relied on the representation that certain developments will take place within a reasonable amount of time when making the decision to purchase. If a time for completion is specified in the disclosure document, that timeline would apply. But if no time for completion is identified, the regulations could require that the developer complete each phase within two years of the date of registration of its subsequent plan and all phases within six years from the day that the condominium plan was first registered.

The regulations would still allow the developer to extend this period of time with the consent of all holders of encumbrances, and at least 75 per cent of all eligible voters.

6. Phased development not proceeding

If a phased development will not be proceeding or will not be completed within the time required under the regulations, the proposed regulations would require that the developer give written notice explaining why it is not proceeding to the planning authority, all holders of encumbrances, the condominium corporation, and the unit owners.

The proposed regulations would also provide that a developer, a unit owner, the condominium corporation or an interested third party may apply to the Court if:

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- the developer gives notice to the owners or the corporation that the developer will not complete either a phase or the development within the applicable time limits;
- the developer does not give notice but does not complete the development within the applicable time limits;
- the developer does not proceed with one or more phases;
- facilities or common property not transferred to the corporation or common property in a phase is not made available to unit owners within the time set out for completion in the declaration or, if the time is not set out, within six years;
- the developer is assigned into bankruptcy; or
- a receiver of the developer's assets is appointed.

Once the application is received, the Court could be given the clear authority to make an order about any matter arising from the non-completing of the phased development, including:

- the disposition of any building or land in a phase that is not going ahead;
- the direction on how any facilities and common property of a phase not proceeding may be made available;
- the vesting of title, in the name of the corporation or unit owners of any land, that requires the completion of a building or land included in the plan;
- the issuance, cancellation or modification of any certificate of title, reallocation of unit entitlements and any matter related to the application;
- direction on the use of any funds from a bond, letter of credit or security to secure the provision of common property; and
- the protection of assets and interests of the developer or the trustee in bankruptcy or appointed receiver.

It is not proposed that anything in the regulations would prevent a Court from consolidating or jointly hearing an application under this section with an application under the *Bankruptcy and Insolvency Act* (Canada).

7. Easements

An easement is a right to access, or to use land, that is owned by another person for a specified purpose or time. In condominiums, the corporation itself may have an easement over the units because they may have to enter upon a unit to make repairs. In phased condominiums, the developer of the subsequent phase may have to travel back

and forth over the common property and, in some cases, over the units included in the first phase while the subsequent phase is being completed. For that reason, it is proposed that an easement registered against a common property certificate for a phased development is deemed to be registered against the certificate of title for each unit in the initial phase and any other phases when a supplementary plan is registered. However, the regulations could also provide that the registrar may release an easement from a certificate of title if they are satisfied that the easement registered against a certificate of title of a unit does not affect the unit.

8. Bylaws during a phased development

The regulations would also provide that condominium corporations are not allowed to change the bylaws on any of the following matters (listed below) until after the first annual general meeting, which must be held after all of the subsequent plans have been filed and the supplementary plan is complete or, in the instance where a phased development is not completed, by an order from the court:

- pet ownership;
- restrictions on unit rental;
- age of occupants;
- age restrictions on access to common property; and
- marketing of the units by the developer.

Additionally, it is proposed that the regulations prohibit corporations from making bylaws that conflict with the phased development disclosure statement. The bylaws apply to each subsequent phase as its plan is registered.

9. Phase transition matters

The provisions of the *Condominium Act, 2015* in respect of the establishment of the elected board of the condominium corporation, shall apply to the first phase of the condominium as if it is the only phase. When a subsequent phase is registered, there will already be a condominium corporation in existence. The regulations would provide that the owners in the subsequent phase have some representation before board elections as the elections would be held at the next annual general meeting, which could be as long as a year away.

The proposed regulations could provide that within an identified period such as ninety (90) days after a subsequent plan is registered, the unit owners in that subsequent phase may elect two temporary directors to the condominium board. Their term would end at the next annual

general meeting during which the unit owners in the latest phase would be able to vote for the entire membership of the board

As well, the regulations could provide that thirty (30) days before a subsequent plan is registered, the condominium board would have to prepare a transitional budget showing the estimated common expenses of the entire condominium (including the subsequent phase) for the 12-month period starting on the day the subsequent plan is registered.

10. Holding a special general meeting after subsequent plan is registered

The proposed regulations would require that the condominium corporation hold a special general meeting to review the difference between the actual common expenses accrued and the estimated common expenses in the transitional budget within the six-week period following the 365th day after the sale of the first unit in that subsequent phase.

However, the condominium corporation would not have to hold that special general meeting if an annual general meeting is held within 90 days after the 365 days since the sale of the first unit. At that meeting, they would consider the comparison between the actual common expenses and the estimated common expenses detailed in the transitional budget.

Discussion Questions

1. Do you agree with the proposed content of the Phased Condominium Regulations?
 - Yes
 - No
 - Unsure

2. Are there additional provisions that you feel should be included in the regulations?

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Implementation Question

What is an appropriate date for the new Condominium Act, 2015 and regulations to come into force?

General Closing Question

Do you have any further comments or questions regarding the new Condominium Regulations that you would like to share with us?

