



Condominium Act, 2015
Regulations Consultation
Mixed-use 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

Summary of the Proposed Condominium Regulations under the Condominium Act, 2015

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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MIXED USE CONDOMINIUMS

Under the *Condominium Act, 2015*, (the Act) a mixed-use development is a condominium with residential units and non-residential units. At present, there are few mixed-use condominiums in Yukon. A condominium corporation with residential and non-residential units can establish, in accordance with its bylaws, sections for each of these types of units and governance structures and provisions that are specific to the interests of the section. This can also help ensure a fair allocation of the costs associated with common elements that are used exclusively, or predominantly, by the unit owners in one section.

The Government of Yukon proposes that the regulations make provisions for:

- creating different sections within a condominium and the powers and duties of a section (e.g., establish a separate reserve fund for a section, establish rules that apply only to one section);
- administering each section;
- establishing the formula for expenses of a section (i.e., expenses that relate solely to units in a section are shared amongst the unit owners in that section), in a manner that reflects the portion of the total units that are residential and non-residential in the entire condominium development; and
- unit owners for a section being exclusively liable for judgements against a condominium corporation that arise only from the activity of that section.

1. Powers and duties of a section

It is proposed that the regulations state that a section, once established, has the same powers and duties as the condominium corporation to:

- establish its own operating fund and reserve fund for the common expenses of the section, which includes expenses relating to common property for the exclusive use of all units in the section;
- prepare a budget and collect condo fees and special levies from section unit owners;
- enter into contracts, sue or arbitrate on behalf of the section; and
- enforce the corporation's bylaws and rules that are relevant to the section.

The condominium corporation should be able to delegate some of its powers and duties to a section's board with their consent. The section would have the authority to obtain insurance for perils not already insured by the corporation or for amounts that are in excess of the amounts insured by the corporation. The section would have the same insurable interest in the property within the section as the corporation has.

Essentially, this would allow the sections to be governed in much the same manner as if there were two separate condominium corporations while continuing to reflect that both types of units are situated on one parcel of land.

2. Administration of sections

The Government of Yukon believes that the proposed regulations would state that the eligible voters in a section can elect a board of directors for the section. The section's board would have the same powers and duties with regards to the section as the corporation has in regards to the corporation as a whole. The directors of a section's board would remain eligible for election to the corporation's board.

- Disputes between sections or between a section and the corporation would be dealt with in accordance with section 120 of the Act, which provides that the dispute resolution process:
 - is voluntary;
 - does not confer on any person or body to make a binding decision; and
 - does not affect a person's powers, duties, or rights, including a right to start an action in court, or initiate arbitration.

3. Section unit's contributions

The proposed regulations would require that a section unit owner must contribute to the section's operating fund and reserve fund an amount equal to the unit entitlement of the unit divided by the total unit entitlement of all units in a section multiplied by the total contribution. If the unit owner was paying their condo fees to the section they would not also have to pay those condo fees to the overall condominium corporation.

4. Rules for a section

It is proposed that the regulations provide that a section's board can make rules respecting the section and its units as long as it does so in accordance with the provisions of section 107 of the Act, which governs the rule making authority of the corporation's board.

5. Liability of a section

The proposed regulations would prohibit a section from entering into a contract, suing, arbitrating or conducting proceedings in the name of the entire corporation. Furthermore, the proposed regulations would provide that the condominium corporation has no liability for any contract, arbitration, debt, costs made etc. by the section unless it is accepted by the corporation.

A judgement against a section is only against the unit owners of that section. A unit's share of the judgement is to be calculated in the same manner as the unit's contributions set out in the proposed regulations.

Discussion Questions

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

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

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?

