



*Condominium Act, 2015*  
**Regulations Consultation**  
**Guide for Condominium Owners/Buyers**

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

As part of the Yukon Government's effort to improve awareness among condominium owners and potential buyers in Yukon, the Government of Yukon has prepared this easy-to-read guide containing essential facts about some of the key provisions of the proposed *Condominium Act, 2015* regulations, which are currently being developed. This document outlines the roles, rights and responsibilities of owners or potential buyers of a condominium that are proposed to be included in the *Condominium Act, 2015* regulations. For greater detail on the proposed provisions, please refer to the proposed condominium regulations summary documents.

This guide includes information on proposed provisions, such as:

- how condominium corporations are governed;
- owners' rights and responsibilities;
- care and maintenance of common elements of a condominium corporation; and
- an owners entitlement to specific information from the developer or condominium corporation.

#### 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 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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### GUIDE FOR CONDOMINIUM OWNERS

#### 1. Governance

It is proposed that the General Regulations will include requirements for condominium governance. While condominium developments provide many advantages, unit owners are required to work together to manage the maintenance and repairs to the complexes and to establish rules that residents must follow (e.g., regarding pet ownership, renters, shared costs, condominium fees, cleaning, fines and other charges). While the *Condominium Act, 2015* sets out the majority of these rules, the regulations would provide greater detail in respect of some matters.

#### Summary of Proposed Provisions

The regulations would include provisions concerning the roles, requirements and rights of condominium owners, such as:

- the way an owner's unit entitlement is calculated. The Government of Yukon suggests the unit entitlements would use square footage as a starting point but would also be reflective of other factors such as whether a unit owner enjoyed exclusive use common property (i.e., a parking space), or had unit features which incurred disproportionate costs for the corporation, (i.e., a corner unit with more windows). The guiding principle would be that the allocation for each unit should be fair when viewed in comparison to those of the other units;
- voting entitlement—all unit owners in residential condominiums would be entitled to one vote, while those in mixed residential and non-residential developments will have voting entitlements that reflect the proportion of residential units to units overall, and whether or not the residential and non-residential units are organized into self-governing sections;
- allowing voting by proxy;
- the way that monthly condo fees are calculated, which would have an impact upon the amount a unit owner pays. Condo fees would include the total of the estimated annual common expenses, plus the estimated annual contributions to other various funds that the condominium corporation establishes or maintains (i.e., the reserve fund, and potentially other funds as well). The annual total would then be divided by 12 to get a monthly amount and that monthly amount would then be multiplied by each owner's unit entitlement to determine the condo fee for that unit; and
- the amount of interest a condominium corporation can charge on any late fees. It is proposed that this amount be 18 per cent per year.

### 2. Reserve Fund

Reserve fund requirements are often a challenging issue for condominium unit owners because they are a monthly cost that the owner must pay as part of their condo fees in anticipation of future rather than present costs. A reserve fund is a special fund that covers the cost of expensive repairs which are not needed annually and go beyond regular maintenance, such as roof repair, or heating system replacements at end of life cycle.

Some condominiums in Yukon already have reserve funds established while some do not. The *Condominium Act, 2015* will require that in the case of condominium developments created after the Act comes into effect, the developer will establish the reserve fund, but after the condominium corporation takes responsibility for the management of the condominium it is responsible to ensure the reserve fund's maintenance. In the case of existing condominiums, the corporation will have three years from the date that the Act comes into effect to establish the reserve fund.

Requiring a condominium corporation to maintain a reserve fund is a key consumer protection element of the Act. The lack of reserve fund requirements in the current Act was identified several times during the Act's public consultation as a reason that people may not want to buy condominiums.

Following the first public consultations, the Government of Yukon carried out research into best practices in other jurisdictions with the objective of ensuring that the proper amount for a reserve fund can be established and determining who would be qualified to complete a reserve fund study.

### Summary of Proposed Provisions

Drawing on best practices in other jurisdictions and current case law, the Government of Yukon suggests that the *Condominium Act, 2015* regulations include provisions concerning the roles, requirements and rights of condominium owners. These provisions would require that:

- every condominium corporation to establish a reserve fund. This reserve fund must be adequate to pay for major repairs and replacement of common elements and any assets of the corporation as they age (i.e., the next 25 years). These common elements, or assets, typically include the roof, the exterior of the building, underground parking garages, roads, sidewalks, heating and cooling equipment, plumbing, elevators and recreational facilities;
- the corporation is to obtain or update the reserve fund study before the date of first annual general meeting, and thereafter once every five years; and

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- the corporation is to give thirty (30) days' notice after obtaining a reserve fund study to all unit owners, and to also provide thirty (30) days notice prior to charging a reserve fund contribution fee, which could be charged as part of the condo fee or as a special levy

### 3. Phased Condominiums

The regulations will also set out the requirements for 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 of the phases must fit neatly together after development is complete because they will be managed by only one condominium corporation.

Phased condominium developments are sometimes preferred by developers because this method can facilitate the cost of financing a large condominium project. Currently in Yukon, there are no rules on how phased condominiums must be developed. This leads to the possibility that the nature of the development can shift during the completion of the phases and the final development may not meet the commitments made to those who purchased units during an earlier phase. Changes to common property elements (e.g., recreation facility, parking area, siding, or fireplaces), types of unit (e.g., townhouses versus towers) or density (e.g., duplex versus four plex) were concerns raised during the original consultation for the *Condominium Act, 2015*.

### Summary of Proposed Provisions

The Government of Yukon proposes that the regulations include provisions concerning the roles, requirements and rights of developers and condominium unit owners, such as:

- requiring the developer to register a Phased Development Disclosure Statement at the same time as the declaration and survey plan are registered. The Phased Development Disclosure Statement would set out the manner in which the various phases will be developed including the number and type of units that will be developed and the amenities that will be constructed. A developer would be required to complete the development in accordance with the Phased Development Disclosure Statement unless the unit holders agree to an amendment;
- postponing the approval of bylaws that restrict rentals, pets, age of occupants, age for access to common property, and marketing of the units by the developer until all phases of the development are complete;

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- ensuring that unit owners from a subsequent phase can elect two temporary directors to the existing board of the condominium corporation within an identified period (such as 90 days) after a subsequent plan is registered. Their term would end at the next annual general meeting where the unit owners in the most recent phase would have an opportunity to vote for all board members;
- ensuring that the developer is required to deliver to a buyer 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.); and
- making sure that the developer completes all phases of the phased development and registers all documents within the time specified in the disclosure statement or, if no time is specified, two years for each phase and six years for the overall development. This is because buyers have a legitimate expectation that a development will be completed within a reasonable amount of time and should be able to take action to facilitate that end if development is unduly delayed. 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.

### 4. Bare-land condominiums

This type of condominium development appears similar to a conventional subdivision except the privately owned units are defined on the land itself rather than in respect of a building. A series of detached buildings that form a condominium could only be constructed on bare land units. Row-housing could be constructed as either bare land units or conventional units and it is important that an owner, or prospective owner, of a row house in a condominium development be aware of the circumstances of their particular row house.

### Summary of Proposed Provisions

The regulations would include provisions concerning the roles, requirements and rights of condominium owners, such as:

- allowing for the concept of managed property in the case of row-housing. This ensures that managed property, which is property which is actually part of an individual unit and so belongs to the owner of the unit but which also affects all the units (e.g., a shared roof, exterior finishing of the building, exterior doors and windows, heating, etc.)

is insured, managed and maintained by the entire corporation and not just one unit owner; and

- requiring the corporation to obtain insurance for the bare land development's managed property as if it were common property.

### 5. Condominium Conversions

The proposed regulations would also set out the requirements for conversions of existing buildings into condominiums, a practice sometimes referred to as “condominiumizing”. Such conversions are presently taking place in Yukon but the existing *Condominium Act* does not have any provisions to govern them. The *Condominium Act, 2015* establishes that the rules in respect of condominium conversions are to be set out in the regulations.

#### Summary of Proposed Provisions

The Government of Yukon believes that the regulations would include provisions concerning the roles, requirements and rights of condominium developers and owners and tenants of buildings that are being converted, such as:

- the developer would have to obtain a building assessment report to the satisfaction of an approving authority (e.g., a municipality or the Government of Yukon). The report would identify any matters that were not addressed during the conversion of the building and are still outstanding. The developer must include this report in the disclosure statement, which they are required to supply a copy to all buyers;
- the developer would be required to ensure that the building meets national building code standards;
- the developer would be required to set up a reserve fund that would include a higher amount of money in it than would be the case for a new building ; and
- the developer would be required to inform any tenant that the building is to be converted six months before an application for conversion to a condominium is submitted to the Land Titles Office. The developer must offer to sell the tenant the converted unit at the same price and terms that would be offered to a buyer that is not the tenant.

## 6. Leasehold land Condominiums

The new *Condominium Act, 2015* provides that public authorities can facilitate leasehold condominium housing on lands which they own, including Category A and B Settlement Land and fee simple Settlement Land, if that land is registered in the Land Titles Office.

### Summary of proposed provisions

The regulations would include provisions concerning the roles, requirements and rights of public authorities, lessees/developers and condominium unit owners, such as:

- nothing in the ground lease, or leasehold condominium agreement is enforceable against a condominium unit owner, or corporation unless it is also included in the plan, declaration, or in the owner's certificate of leasehold title;
- the unit owner owes a legal duty to the public authority in regards to complying with the Act, the regulations, and any bylaws or rules. If a unit owner does not comply with the legislation, bylaws or rules, the public authority could apply to the Yukon Supreme Court for an order to ensure compliance of that duty;
- the public authority cannot evict a unit owner or enter and take possession, unless they apply to the Supreme Court for an order to do so;
- the public authority is required to give two notices when the ground lease is to expire; one notice is to be provided five years before the ground lease expires, and the second notice is to be given six months before the expiry date; and
- when the ground lease expires, the public authority could be required to pay the unit owner compensation. This amount could be equal to the fair market value of the leasehold unit owner's interest in the building unit and common property calculated as if it was not constructed on leased land.

## 7. Mixed-use condominiums

Under the Act, a mixed-use development is a condominium with residential units and non-residential units. The corporation can establish sections and governance for sections relating to matters that are specific to the interests of the section. This also permits a fair allocation of the costs associated with common elements that are used exclusively, or predominantly, by the unit owners in one section.

### Summary of proposed provisions

The proposed regulations would include provisions concerning the roles, requirements and rights of condominium owners, such as:

- providing sections within a condominium with the same powers and duties as the condominium corporation. This could include the power to establish their own operating fund and reserve fund, to prepare a budget and collect fees such as condo fees and special levies from owners of the section, enter into contracts, and enforce bylaws and rules.
- power to elect a board of directors which would have the same powers and duties in relation to the section as the corporation's board has to the entire corporation;
- ability for section unit owners to be eligible for election to the corporation's board;
- a corporation and section can set up a voluntary dispute resolution process in the bylaws as long as it follows the process set out in section 120 of the Act;
- establishing the formula for expenses of a section (i.e., for expenses that relate solely to units in a section that are shared by the unit owners in that section); and
- ability for a section to make rules for the section as long as they are in compliance with the provisions of s.107 of the Act and the rules of the corporation.

### 8. General Matters

These proposed provisions would cover general matters in the regulations including the requirements for creating condominiums and for condominium governance.

#### Summary of proposed provisions

The proposed regulations could include provisions concerning the roles, requirements and rights of condominium developers and unit owners, such as:

- the amount a purchaser can holdback pending completion of the unit, or common property, could be 10 percent of the gross purchase price of the unit;

- in addition to the documents the developer must provide to buyers under s.54 of the Act (e.g., agreement, financial statements, etc.), the developer could also be required to provide the corporation's budget, property insurance details, details on any court-filed or issued claim, and any information of security;
- the developer is required to include in the agreement the purchaser's right to cancel the agreements within a 10-day period. This 10-day period clock starts once the agreement has been signed and all of the documents the developer is required to provide are given to the purchaser;
- the purchaser must give the notice to cancel the agreement in writing;
- the developer must hold all money provided by the buyer in trust until a certificate of title is issued for the unit in the name of the buyer(s);
- the money held in trust could be required to be in the name of a lawyer, or licensed real estate agent in Yukon;
- the developer could be required to have a lawyer hold a certain amount of money in trust to ensure that the unit and common property are substantially completed within a reasonable time. A qualified person, which could include an engineer, architect, a member of the Appraisal Institute of Canada, and other professional deemed qualified to do this assessment, will determine this amount when the unit and common property are completed;
- establishing the meaning of family member for the purposes of section 109(1) of the Act, which ensures that no bylaws of a condominium corporation prohibits or limits the rental, or leasing, of a residential unit to a family member of the unit owner;
- establishing additional public authorities which would include Yukon First Nations who have Final and Self-Government Agreements, and the Yukon Housing Corporation; and
- exceptions to the rule that a developer cannot rent a unit to a purchaser before transferring the unit to the purchaser, which could include when an occupancy permit for the unit is issued, or a public authority has given approval to occupy the unit, or when the developer holds property insurance on the unit.

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

### Discussion Questions

1. Do you agree with the proposed content of the Condominium Act, 2015 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?