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## Phased development condominium

**A phased development condominium follows a defined order of separate phases. Each phase can have different specifications, but they all must be compatible and fit together after development because they will be managed by one condominium corporation.**

### Phased development disclosure statement

The phased development disclosure statement sets out the information that a buyer may wish to know about before buying their condominium unit. The disclosure statement lays out how many phases the development would take, including their timelines. It specifies the number, sizes, and types of units as well as the amenities to be built. It also details how the unit entitlements, voting rights, and common expenses could change after construction of each phase.

Although the disclosure statement includes a contingency plan in case the next phase can't be completed, the developer has a duty to complete each phase on time. The developer may extend or reduce deadlines up to six months; any changes by more than six months require consent from at least 75 per cent of the phased development's eligible voters.

### Disclosure to purchaser

The developer must deliver to the purchaser a copy of the registered phased development disclosure statement at the same time as they provide other standard documents and information.

The phased development disclosure statement lets purchasers and unit owners know what to expect about the condominium's extended development. It also gives the developer certainty that the development timeline won't be challenged as long as it's being followed.



## Condominium plan

The condominium plan can describe all the phases or just the initial phase. 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.

If the plan only outlines the initial phase, supplementary condominium plans have to be registered as subsequent phases are developed. No less than 30 days before registering the plan, the developer is required to give notice to the corporation and unit owners of the proposed registration of the supplementary condominium plan, along with proposed amendments to the declaration and its schedules.

Once the supplementary condominium plan is registered, the developer has five days to notify the corporation and unit owners about its registration as well as registration of the amended declaration and its schedules.

## Consent not required for supplementary condominium plan

The consent of the corporation, unit owners, as well as mortgagees and claimants is not required to register a supplementary condominium plan if the plan is consistent with the phased development disclosure statement. This also applies to the amended declaration and its schedules.

## Turning existing condominiums into phased developments

An application can be made to turn an existing condominium into a phased development if the developer has the consent of:

- the mortgagees and claimants registered against any unit; and
- at least 75 per cent of all eligible voters of the existing condominium.



## Transition of phases

After registration of the supplementary condominium plan, two temporary directors have to be added to the board, in addition to the directors required under the bylaws. If the next phase has one unit, only one temporary director is needed. The temporary directors hold their terms until the next annual general meeting.

For subsequent phases with more than two units, eligible voters of the subsequent phase can elect temporary directors within 90 days after the supplementary condominium plan is registered. With two units or less, the temporary director positions are automatically offered to the unit owners. If the unit owners turn down the offers or if not enough temporary directors are elected, the developer can appoint the remainder.

As soon as the supplementary condominium plan is registered, the board has 30 days to prepare a transitional budget that sets out estimated common expenses for the next 12 months.

Within six weeks of the first anniversary of the sale of the first unit in a subsequent phase, the corporation must hold a special general meeting to compare the estimated common expenses in the transitional budget to actual common expenses. This can also be done at an annual general meeting if it's scheduled within 90 days after the one-year anniversary of the first unit's sale.

## Bylaws throughout phases

The condominium corporation may make bylaws that deal with matters that may arise when two or more phases are concurrently being developed.

Bylaws typically carry forward from the previous phase into the next. Some bylaws on certain topics – such as the selling or renting of units – may be changed with written consent from the developer, or a special resolution (after the final supplementary plan is registered).

## Phased development delayed or not proceeding

If a phased development can't be completed in time, the developer must explain reasons in a written notice to the corporation, unit owners, mortgagees or financial claimants registered against a unit, and the approving authority.

The developer, a unit owner, the condominium corporation or an interested third party may apply to the Supreme Court if:

- the developer doesn't register the phase's required documents by the specified timeline;
- the developer doesn't complete a phase or the entire development by the specified timeline;
- any common property, exclusive use common property, common assets or exclusive use common assets are not completed and transferred to the corporation by the specified timeline; or
- the developer goes bankrupt or a receiver is appointed for the developer's assets.

Once the application is received, the Supreme Court can give an order dealing with any of the above matters, including:

- disposition of any building or land in a phase not proceeding as well as in the required amendments to the condominium plan;
- common property, common assets, and their exclusive use, including any improvements to them, in a phase not proceeding;
- title of land identified in the condominium plan for development in subsequent phases;
- issuance, cancellation or modification of titles and any resulting matter;
- disposition of any funds from bonds or letters of credit to secure completion of improvements to common property or common assets; or
- protection of the assets and interests of the developer, trustee in bankruptcy or an appointed receiver.



**⚠ Note:** this fact sheet is based on the *Condominium Act, 2015* and its Regulations which come into force October 1, 2022. It is intended as a simplified general resource and is not to be considered legal advice or legal opinion. Please seek legal advice about any specific issues.