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Condominium Law Update

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Using Condominiums Safely and Effectively: Avoiding Unplanned Results

Condominium Law Update

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USING CONDOMINIUMS SAFELY AND EFFECTIVELY: AVOIDING UNPLANNED RESULTS

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INTRODUCTION

In Alberta, the term “Condominium Corporation” applies to a type of property ownership rather than to any distinct particular style of building. The term condominium in Alberta does not refer in any way to the physical structure of the building or building complex. It is created solely to manage the affairs of the condominium complex.

Condominiums involve a unique form of ownership. The majority of owners control the administration and management of property in a manner that may infringe upon certain property rights enjoyed by a fee simple owner of real property [*Condominium Plan No 7721806 v Gobeil*, 2011 ABQB 318 at para 9]. However, that authority is not unfettered.

There are nearly 8,000 condominium corporations in Alberta, representing hundreds of thousands of residents. Nearly 20 per cent of homes sold in Alberta through the Multiple Listing Service (“MLS”) are condominiums. Almost one in every three homes sold in Edmonton and Calgary through MLS are condominiums (eg. high-rise or low-rise apartment style units, townhouses, detached houses, stacked townhouses – any configuration of housing you can imagine) [Source: Service Alberta, Government of Alberta]. Non-residential condominiums can be industrial, commercial, retail, resorts, marinas and other recreational spaces.

A condominium corporation’s affairs are regulated by the *Condominium Property Act* (“Act”), the *Condominium Property Regulation*, AR 168/2000 (“*Condominium Property Regulation*”), and other documents known as the Condominium Plan and Bylaws (and sometimes Rules and Policy Statements).

The Alberta Court of Appeal has held that the scheme of the Act does not permit a court to impose what it considers to be fair on a case-by-case basis. The Act is designed to provide certainty to both owners and corporations. It achieves fairness in that way [*Condominium Plan No 8222909 v. Francis*, 2003 ABCA 234 at para 32 [“*Francis*”]].

A condominium property is made up of the units and the common property. Accordingly, condominium ownership has a dual nature: a condominium unit owner has freehold title to his or her unit and, at the same time, shares ownership of the common property of the condominium corporation with other owners. The developer will designate the parts of the property that are units. Everything else is common property. The common property could include both indoor and outdoor space, lobbies, parking garages, elevators and hallways.