

## **CONDOMINIUM FACT SHEET:**

### **BYLAWS**

#### **What is the applicable legislation?**

The current Act is [\*The Condominium Property Act, 1993\*](#).

The current Regulations are [\*The Condominium Property Regulations, 2001\*](#).

Both the Act and the Regulations contain all recent amendments and are available on the Queen's Printer website at [www.qp.gov.sk.ca](http://www.qp.gov.sk.ca).

#### **Can someone in government assist me with an interpretation of our corporation's bylaws?**

No. The interpretation of bylaws is the provision of legal advice. Lawyers employed by the government are unable to provide you with specific legal advice and therefore cannot assist you with the interpretation of your bylaws. If you are unable to resolve your concerns on your own, it is recommended that you seek legal counsel.

#### **What are bylaws?**

Bylaws are a way that an organization or group regulates its own activities. The Act permits a condominium corporation to make bylaws to govern control, management, administration, use and enjoyment of the units and of the common property and facilities. Condominium bylaws commonly regulate activities that are legal, including activities such as smoking and pet ownership.

*Section 44 of the Act*

#### **Do all condominium corporations have bylaws?**

Starting when titles are issued for a condominium plan, bylaws prescribed in the Regulations come into force in relation to that condominium plan. Condominium corporations have the authority to change these bylaws from time to time.

*Section 45 and 46 of the Act.*

## **What does a bylaw do?**

Bylaws regulate the corporation's operations and activities, and are binding on the corporation and the owners.

### *Section 44 of the Act*

## **What can a bylaw not do?**

A bylaw cannot:

- be passed if it is contrary to the Act or the condominium plan;
- prohibit or restrict the devolution of units or any transfer, lease, mortgage, or other dealing with any unit; and
- destroy or modify any easement implied or created by the Act.

### *Sections 44(2) and 47(2) of the Act*

## **What can be the subject matters of the bylaws?**

The corporation may pass bylaws that govern:

- the board including:
  - the number of board members;
  - the qualifications required to be a board member;
  - how board members are nominated;
  - how an election to the board occurs;
  - the remuneration of board members;
  - the term of office of board members;
  - the filing of vacancies of the members of the board;
  - a meeting of the board;
  - the quorum for a board meeting; and
  - the functions of the board;
- the manner of conducting a vote;
- agents, officers and employees of the corporation including:
  - how they are appointed;
  - their remuneration;
  - their functions;
  - their duties;
  - how they are removed; and
  - whether they must provide security to the corporation;
- the management, control, administration, use and enjoyment of the units, common property and common facilities;
- maintenance of common property and common facilities;
- any requirement of the corporation to maintain all or any portion of any unit;
- the use and management of the assets of the corporation;

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- the establishment of any fees, not exceeding amounts set out in the Regulations, that may be levied by the corporation for:
  - the use of certain common property, common facilities or services units; and
  - administration and services;
- the duties of the corporation;
- the assessment and collection of contributions for:
  - common expenses;
  - common expense funds; and
  - reserve funds;
- the establishment of exclusive use areas;
- the borrowing of money to carry out the objects and duties of the corporation;
- the establishment of standard unit descriptions;
- the ability of a corporation to designate an insurance trustee and responsibilities of the insurance trustee;
- the conduct of the affairs of the corporation;
- the establishment and governing of sectors; and
- the carrying out of anything required or permitted to be done by the corporation pursuant to the Act.

*Section 47 of the Act*

**What if there is a conflict between a bylaw and the Act?**

Bylaws cannot override the Act or the plan. Any bylaw passed that is contrary to the Act or plan is invalid.

*Subsection 47(2) of the Act*

**Our corporation does not have the bylaws, what does that mean?**

The bylaws prescribed in the Regulations come into force upon issuance of titles to individual condominium units, and remain in effect until the corporation passes its own bylaws and files those bylaws at the Corporate Registry. If you want to add to, cancel or amend the bylaws in force, the corporation must pass a special resolution.

*Sections 45 & 46 of the Act*

**How does a corporation create a bylaw?**

The corporation may create a bylaw by a special resolution.

*Section 46 of the Act*

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### **What is a special resolution?**

It is a resolution that is approved by a majority of not less than two-thirds of the persons entitled to exercise voting powers as conferred by the Act or the bylaws of the corporation. This vote can be exercised by being present personally at a meeting, by proxy, by signing the resolution or a combination of any of the above.

*Clause 2(1)(z) of the Act*

### **Who is entitled to vote?**

All owners have a right to vote, and in some circumstances, mortgage lenders do as well. For more detail see the fact sheet on Meetings and Voting.

*Sections 41, 41.1 and 42 of the Act*

### **What do we do once we have made, amended or repealed bylaws?**

Once you have made, amended or repealed bylaws, they must be filed with the Director of the Corporations at [Information Services Corporation](#) (ISC) using Form AA. You may contact ISC Customer Support toll free at 1-866-275-4721 or by email at [corporateregistry@isc.ca](mailto:corporateregistry@isc.ca) for assistance. Bylaws are not in force and should not be enforced by the corporation until filed with the Director of Corporations.

*Subsection 46(3) of the Act*

### **What does the Corporate Registry do with our bylaws?**

The Corporate Registry reviews the bylaws for key features and then files them. Examples of inappropriate bylaws that may result in a rejection are:

- fines and penalties being charged that are not in connection with an application under section 99 of the Act;
- enforcing of anything other than a bylaw including rules, regulations and policies;
- age restrictions or restrictions of an owner's ability to rent his or her unit (*clause 44(2)(a) of the Act*);
- restrictions on voting for any reason other than being in arrears in contributions (*section 41 of the Act*);
- proxies that last longer than six months (*clause 41.1(2)(a) of the Act*);
- prohibitions against election advertising (*section 36.1 of the Act*);
- changing the special resolution requirement to create, amend or repeal bylaws (*section 46 of the Act*);
- charging interest at a rate exceeding 23% per annum (*section 66.2 of the Regulations*); and
- charging more than \$200 for an estoppel certificate (*subsection 66.1(2) of the Regulations*).

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The date of the filing of bylaws is noted on your corporate profile report in the Corporate Registry and copies of filed bylaws can be obtained for a fee. It is important to note that filing your bylaws at the Corporate Registry does not ensure that they are valid. If you want to ensure that you have valid bylaws that are compliant with the legislation, it is recommended that you obtain legal advice.

#### *Subsection 46(3) of the Act*

#### **How do we know if we are operating under the standard bylaws or have passed new bylaws?**

You can ask a member of your condominium board for a copy of your bylaws as a corporation is obligated to provide a copy of its bylaws, upon request, to an owner or anyone authorized by an owner in writing. If you are not sure what bylaws are in force, you can consult the Corporate Registry at [Information Services Corporation](#) (ISC) because the bylaws must be filed at the Corporate Registry to come into force. You may contact ISC Customer Support toll free at 1-866-275-4721 or [corporateregistry@isc.ca](mailto:corporateregistry@isc.ca) for assistance in determining what bylaws are on file, and obtain a copy for a fee. If nothing has been filed, you are operating under the standard bylaws in the Regulations.

#### *Subsection 44(4) of the Act*

#### **Why would you create a sector?**

The ability for a condominium corporation to pass bylaws respecting sectors is intended to allow a condominium corporation to be governed in sectors where different rules may apply to each sector. A good example of when sectors may be appropriate would be a development made up of three different areas: a low-rise building containing units used for commercial purposes, a high rise building with apartment style units for residential purposes and several townhouse style units used for residential purposes. If it wanted, the condominium corporation could pass bylaws that establish three sectors: a commercial sector, an apartment style residential sector and a townhouse residential sector. This would allow each sector to govern itself independently where appropriate, with common administration and governance for issues that they hold in common.

#### **How does a corporation create a sector?**

By unanimous written consent, a corporation may make, amend or repeal bylaws that establish:

- sectors;
- the allocation of units, common facilities and common property to a sector; and
- the control, management, administration, use and enjoyment of the units, common property or common facilities within a sector.

If the resolution to create a sector receives at least 80% approval, the bylaw may still be effective. To be effective, the corporation has to serve a notice in writing on every owner who did not vote or who voted against the resolution, advising that 80% consent has been obtained, and describing the owner's right to object to the resolution by applying to court within 30 days of being served with the notice. If no owner applies to court within 30 days, the resolution is passed.

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Once the bylaw has been made, amended or repealed, it must be filed with the Director of Corporations at [Information Services Corporation](#) (ISC). You may contact ISC Customer Support toll free at 1-866-275-4721 or by email at [corporateregistry@isc.ca](mailto:corporateregistry@isc.ca) for assistance.

*Subsections 47.1(4)-(10) of the Act*

### **Can a sector make its own bylaws?**

Once a sector is created, the owners of a specific sector can make bylaws for that sector if they are consented to by two-thirds of the owners of that sector. However, sector bylaws cannot conflict with those bylaws made by the developer or the corporation.

*Clause 47(1)(m.1) and Section 47.1 of the Act*

### **If we have a sector, how many bylaws would the corporation need?**

You should have one set of bylaws at the corporate level that, at a minimum, establish the sectors and deal with the common administration and governance for issues that the sectors hold in common (e.g. votes that require unanimous consent). You will also have a set of bylaws for each established sector.

### **How is a bylaw enforced?**

A condominium corporation is responsible for the enforcement of its bylaws. The standard bylaws specifically authorize the condominium board to utilize legal proceedings to enforce its bylaws. If the condominium corporation is not enforcing its bylaws, you may want to explore the dispute resolution options available under Part X of the Act.

*Subsections 35(1), 99 of the Act, Bylaw No. 32, Regulations*

### **Are adult only or other age restrictions allowed in a condominium corporation?**

There is no clear authority for a condominium corporation to restrict the sale or ownership of units. Today, under *The Saskatchewan Human Rights Code*, individual owners can advertise their property for sale or rent to persons aged 55 or over. However, *The Condominium Property Act, 1993* does not allow condominium corporations to pass bylaws that restrict an owner's ability to sell, lease or otherwise deal with their property. This means that although the individual owner may choose to advertise a unit for sale or lease to persons age 55 or over, the condominium corporation may not have the ability to bind all owners to that restriction by passing a bylaw.

To further reflect this inability to restrict based on age, the Corporate Registry has, for the last few years, not allowed bylaws to be filed that attempt to restrict ownership or occupation to persons age 55 or over.

*Sections 10 and 11 of The Saskatchewan Human Rights Code  
Clause 44(2)(a) and subsection 47(2) of the Act*

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### **Will the inability to restrict by age be changing?**

The issue of age restrictions on condominiums was considered as part of the review of the Act and Regulations that occurred in 2011-2014. However, the Saskatchewan Government determined that there would be no changes to the Act or the Regulations permitting age limits to be imposed by condominium bylaws.

### **May I keep a pet in a condominium?**

Restrictions on pets may be included in your condominium corporation's bylaws. The standard bylaws do not contain any pet restrictions. However, the Act authorizes the use of bylaws to manage, control, and administer the use and enjoyment of the units, common property and common facilities. Bylaws prohibiting or restricting pets are commonly used by condo developments in order to control matters associated with pets including noise, odor, clean-up of feces and damage to property. As such, your corporation's bylaws may contain pet restrictions.

Note also that *The Condominium Property Act, 1993* must be interpreted in light of the laws of general application in Saskatchewan such as *The Saskatchewan Human Rights Code*, which addresses the regulation of certain service animals. Please see <http://saskatchewanhumanrights.ca/learn/policies/policy-on-service-animals> for the Human Rights Commission policy in this regard.

*Clause 47(1)(e) of the Act*

### **May I smoke in my condominium or on common property?**

Information regarding the ability to smoke in your condominium or on common property may be located in your condominium corporation's bylaws. The standard bylaws do not contain any smoking restrictions. However, the Act authorizes bylaws that govern the management, control, administration, use and enjoyment of the units, common property and common facilities. As such, your corporation's bylaws may contain some smoking restrictions.

There are also smoking restrictions found under *The Tobacco Control Act* and *The Tobacco Control Regulations*, and *The Cannabis Control (Saskatchewan) Act*. The restrictions in this legislation applicable to smoking in public places will apply to public areas within condominium corporations. *The Cannabis Control (Saskatchewan) Act* also allows the government to regulate consumption of cannabis in any place including a private place, by passing Regulations. However, restrictions have not been put in place in relation to consumption in private places to date.

Your municipality may also have rules regarding cannabis use and smoking in public places. There are also certain laws of general application that protect individuals from activities such as smoking that impact others in close proximity. If you are interested in pursuing further information on this, you should consult your municipality or a private lawyer.

*Clause 47(1)(e) of the Act, The Tobacco Control Act and The Tobacco Control Regulations, Clauses 2-14 and 2-15 of The Cannabis Control (Saskatchewan) Act*

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## **Can my condominium corporation make bylaws around the possession, cultivation or use of cannabis?**

A condominium unit is a private place where cannabis can legally be consumed under *The Cannabis Control (Saskatchewan) Act*, but a condominium corporation can pass bylaws that govern the management, control, administration, use and enjoyment of the units, common property and common facilities. As a result, bylaws can contain restrictions on the possession, cultivation, and use of cannabis within the condominium development, including within private units. This is similar to condominium bylaws that restrict cigarette smoking or vaping in private or on common property. More information about the regulation of cannabis is available at [www.saskatchewan.ca](http://www.saskatchewan.ca).

*Clause 2-14 of The Cannabis Control (Saskatchewan) Act*

## **Are there other laws that may apply to bylaws enacted by a condominium corporation?**

Although a condominium corporation is empowered to enact bylaws that are consistent with the Act and the condominium plan, there are other laws of general application that still apply within a condominium development, just as they apply elsewhere. For example:

- restrictions on pet ownership might be limited by specific Human Rights Code provisions regarding service animals;
- restrictions on cannabis possession, cultivation and use might be limited in the case of medically prescribed cannabis, which is not specifically regulated by *The Cannabis Control (Saskatchewan) Act*;
- Contract and tort laws such as breach of contract, nuisance and trespass may still prevail over a bylaw enacted by a condominium corporation. As a result, it is recommended that you seek the advice of a lawyer when drafting bylaws for your condominium corporation.

*Sections 10, 11 and 52 of The Saskatchewan Human Rights Code, The Cannabis Control (Saskatchewan) Act, s. 1-4*