

Subject: **INSTRUMENTS REGISTERED PURSUANT TO THE
CONDOMINIUM PROPERTY ACT**

BACKGROUND

After a certificate of title is issued for a condominium unit, the unit may be dealt with in the same manner and form as land held under the Land Titles Act and the provisions of that Act apply insofar as they do not conflict with the Condominium Property Act ("Act") or Regulation. (1) Essentially this means that any registrable instrument or caveat can be endorsed against the certificate of title for a unit.

As the title to common property is allocated in proportionate shares to the unit owners and these shares are included in the certificate of title for the units, interests, which affect common property, must generally be registered against all units. However, the Act provides that certain instruments, which affect either the common property or the condominium corporation, are to be registered against the condominium plan. An additional plan sheet has been added to all condominium plans for this purpose. (2)

REGISTRATION PROCEDURE

1. a) **Name of the Condominium Corporation** - Upon the registration of a condominium plan there is constituted a corporation under the name "Condominium Corporation No. _____" (the number is the number given to the plan on its registration). A corporation constituted prior to September 1, 2000, is under the name "The Owners: Condominium Plan No. _____" until a resolution by the Board of Directors is registered changing the name. The Companies Act and the Business Corporations Act do not apply to a condominium corporation. (3)

b) **Change of Name of Condominium Corporation Registered Prior to September 1, 2000** - A corporation may register either

- i) an original copy of the Board of Director's Resolution, changing its name or
- ii) an original letter from the Condominium Corporation stating that they have passed the required resolution and requesting that the name be changed.

In both instances, the name will be changed to Condominium Corporation No._____. (the number to be specified being the number given to the plan when the condominium plan was registered). (4) The document is registered on the additional plan sheet.

2. a) **Execution Requirements** - Pursuant to section 161 of the Land Titles Act, only one signature under seal of the corporation is required for examination purposes. Although section 14 of Appendix 1 to the Act provides that documents executed by the condominium corporation are to be signed by two members of the board under seal of the corporation or that one signature is acceptable if it is indicated in the document that there are not more than two members of the corporation, the original by-laws as outlined in Appendix 1 can be amended to alter the number of signatories required. (Form 31.1) of the Land Titles Forms Regulation, affidavit verifying corporate signing authority, **is not an acceptable substitute for the corporate seal.**)

b) As long as the name on the seal of the Condominium Corporation matches the name on the additional sheet, we can accept documents for registration, notwithstanding that the prescribed form makes reference to "Condominium Corporation No. _____".

3. **Change of Address for Service** - The address for service of a corporation may be changed by resolution of the board. A notice in the prescribed form ([FORM 7](#)) must be registered and a memorandum endorsed on the additional sheet. (5) The fee in Tariff Item 11(1) is charged.

4. **Notice of Change of Directors** - A condominium corporation is to have a board of directors (Board) that is constituted in accordance with the by-laws of the corporation. A condominium corporation must register within 30 days from the conclusion of the annual general meeting a notice (stating the names and addresses of the members of the Board) in the prescribed form ([FORM 8](#)). A corporation may also register a notice (following a change in membership of the Board, the name of the member of the Board or the address of a member of the Board) in the prescribed form ([FORM 8](#)). A memorandum of the notice is made on the additional plan sheet. (6) The fee in [Tariff item 11\(6\)](#) is charged.

5. **Change of By-laws** - On the registration of a condominium plan, the by-laws of the corporation are those set forth in Appendix 1 of the Act. (7) If a corporation existed on May 16, 1978 and that corporation was regulated by the by-laws as set forth in Appendix 2, Schedule A and B, it continues to be regulated by them until they are repealed or replaced by special resolution. (8) Any by-law may be amended, repealed or replaced by special resolution. A notice of the resolution in the prescribed form ([FORM 3](#)) must be registered and a memorandum made on the additional sheet. (9) If there is an indication on either the DRR or a written request stating that a change of by-laws has completely replaced a previously registered by-laws, the previously registered by-laws should be discharged. The fee in [Tariff item 11\(6\)](#) is charged.

6. **Disposition of Common Property** - Except as provided, a share in the common property is not to be disposed of or become subject to a charge except as appurtenant to the unit of an owner and a disposition or a charge on a unit operates to dispose of or charge that share in the common property without express reference to it. (10) Any document purporting to dispose of or charge common property independent of a unit is to be referred to the Surveys section.

a) **Transfer or Lease of Common Property** - A corporation may transfer or lease all or part of the common property if the transfer or lease is accompanied by a certificate in the prescribed form ([FORM 4](#)) evidencing the passing of a special resolution of the owners and the giving of consents of all other persons having interests in the land comprised in the instrument. The transfer or lease does not require the execution of or consent by any person having an interest in the common property. (11) Upon the registration of a transfer, a new certificate of title is issued free of all instruments or caveats and the plan is amended by deleting from it the disposed common property. (12) No memorandum of the transfer is made on the certificates of title to the units. Upon the registration of a lease, a memorandum is made on the additional sheet.

No memorandum of the lease is made on the certificates of title to the units. The procedures respecting transfers, leases and subdivision of land apply.

b) **Lease of Exclusive Use Areas** - There is no provision in the Act to register a lease of an exclusive use area granted pursuant to section 50 unless section 49 is complied with.

c) **Grant of Easement, Utility Right of Way or Restrictive Covenant Burdening the Common Property** - A corporation may execute an easement, a utility right of way (U.R.W.) or a restrictive covenant burdening the parcel (13) which is registrable if the easement, U.R.W. or restrictive covenant is accompanied by a certificate of the corporation in the prescribed form (FORM 6) evidencing the passing of a special resolution of the owners and the giving of consents of all other persons having interests in the land comprised in the instrument. The grantor must be the condominium corporation. The consent to or execution of the grant by any person having an interest in the common property is not required to be endorsed on the document. Upon registration of an easement, U.R.W. or restrictive covenant, the appropriate memorandum is made on the additional sheet. (14) The procedures on easements, U.R.W.'s and restrictive covenants apply.

d) **Grant of Easement or Restrictive Covenant Benefiting the Common Property** - A grant of an easement or a restrictive covenant benefiting the common property may be registered and a memorandum made on the additional sheet. For registration purposes, neither evidence nor a special resolution nor execution by the corporation is required. The grantee must be the condominium corporation. (15)

7. **Termination of Condominium** - The condominium status may be terminated by registering a notice of termination in the prescribed form (FORM 5). (16) The notice is to be referred to the Surveys section. Upon its registration, the following memorandum is endorsed on all the sheets including the additional sheet:

"CONDOMINIUM STATUS TERMINATED BY 852123456"

The certificates of title to the units are cancelled and a new title is issued to the owners as tenants in common in shares proportional to the unit factors of their respective units subject to the instruments and caveats endorsed on the unit titles. All instruments endorsed on the additional sheet except notices of change of by-laws and change of directors are carried forward to the new title.

The effect of termination is to create one parcel of land. Therefore if more than one lot was cancelled under the condominium plan, a descriptive plan is required to consolidate the lots. A plan cancellation by-law is also acceptable if the lots are in the same plan and block. If only 1 lot was cancelled or lots shown on a plan registered prior to July 1, 1950 were cancelled, then the old legal description can be used to create the new title. Subdivision approval is required if more than 1 title is required. The fee in [Tariff item 13](#) is charged for each title after the first, which is cancelled.

8. **Sale of Property Upon the Termination of the Condominium Corporation** - When the condominium status is being terminated, the corporation may be directed by a special resolution of the board to transfer the parcel or any part of it. The transfer under seal of the

corporation must be accompanied by a certificate in the prescribed form ([FORM 6](#)) evidencing the passing of a special resolution of the owners and the giving of consents of all other persons having interest in the land comprised in the instrument. The execution or consent of any person having an interest in the parcel is not required to be endorsed on the transfer. Before the transfer may be registered, it must be referred to the Surveys section and a memorandum of termination as shown in item 7 endorsed on all sheets including the additional sheet. Upon registration of the transfer, the certificates of title to the units are cancelled and a new certificate of title using the legal description of the parcel prior to the registration of the condominium plan is issued to the transferee free of any instruments or caveats.

9. Caveat by Corporation for Unpaid Contribution to the Expenses of the Corporation Levied on the Owner - A condominium corporation may file a caveat against the certificate of title to an owner's unit for the amount of the unpaid contribution to expenses of the corporation levied against the owner (usually referred to as condominium fees). ([17](#)) This includes interest on the unpaid balance of a contribution owing and a deposit levied under section 53(3) against an owner who rents his residential unit. ([18](#)) The charge created has the same priority from the date of registration as a mortgage under the Land Titles Act and may be enforced in the same manner as a mortgage. ([19](#)) The fee for filing the caveat is based on the amount of the unpaid contributions. ([20](#))

10. Order Appointing an Administrator - A certified copy of a court order appointing an administrator may be registered. ([21](#)) Use document particulars to enter:

"ORDER APPOINTING JOHN SMITH AS ADMINISTRATOR
OF CONDOMINIUM CORPORATION" ([22](#))

On the registration of any subsequent document, the order must be checked to ensure that the property party has executed the instrument on behalf of the condominium corporation. The fee in [Tariff item 11\(6\)](#) is charged.

11. Builders' Lien - If the owner of a condominium unit or the condominium corporation requests that work be done or materials be furnished to that unit, the lien is registered against the individual owner's certificate of title. If the condominium corporation requests that work be done or materials be furnished for the benefit of the common property generally, the lien is registered against the additional sheet. When a lien is registered against the additional sheet, a partial discharge as it pertains to the owner's unit and the owner's share in the common property may be registered. See procedure under [BUL-1](#). ([23](#))

12. Writs of Enforcement - Writs of Enforcement against a condominium corporation are endorsed on the additional sheet. See procedure under [WRE-1](#). ([24](#))

13. Caveat on Common Property - A caveat in respect of common property is not accepted for registration against the additional sheet but may be registered against the unit titles. ([25](#))

14. **Amendment of Condominium Plan Regarding Doors and Windows** - A corporation registered prior to September 1, 2000 may before September 1, 2002 register a special resolution amending the condominium plan so that the doors and windows cease to be part of common property and become a part of the unit. (26)

STATUTES AND CASE REFERENCES

Statute references are to the Condominium Property Act, R.S.A. 2000, c. C-22, unless otherwise indicated.

1. s. 5
2. s. 10, Condominium Property Regulation, Alberta Regulation 168/2000
3. s. 25
4. s. 62, S.A. 1996, c. 12
5. s. 73
6. s. 28; s.10, Condominium Property Regulation
7. s. 33
8. s. 1(x), s. 34
9. s. 32; s. 10 and 12, Condominium Property Regulation
10. s. 6(3)
11. s. 49
12. s. 14, Condominium Property Regulation
13. s. 52
14. s. 14, Condominium Property Regulation
15. s. 51
16. s. 60
17. s. 39(7)
18. s. 41
19. s. 39(8) and (9)
20. s. 133, Land Titles Act, R.S.A. 2000, c. L-4
21. s. 58
22. s. 15, Condominium Property Regulation
23. s. 78
24. s. 77; s. 10, Condominium Property Regulation
25. s. 6(3); s. 130, Land Titles Act
26. s. 72, Condominium Property Regulation