

CHECKLISTS OF RIGHTS, DUTIES AND TASKS UNDER THE ACT

Disclaimer: The following checklists have been designed as convenient guides to locating the governing provision. Please refer to the indicated section within each checklist for full particulars.

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Checklists 1 — Residential Condominium Corporations

Generally, the Act does away with the distinction between residential and non-residential (i.e., commercial) condominium units, and the legal rights and responsibilities of the owners of each type are equivalent. However, the distinction is maintained for the following purposes:

- s. 8(3) A description for residential units must include reference to the buildings or other monuments
- s. 9(4) Special requirements regarding conversion of used premises to a residential condominium corporation
- s. 22(8) Provisions regarding telecommunications easements
- s. 44(8) The obligation to carry out performance audits
- s. 51(5) The rights of owner-occupied unit owners to elect a board member
- s. 57(1) The enactment of an occupancy standard by-law
- s. 78(1) The developer's obligation to take all reasonable steps to sell unsold units
- s. 84 The priority of liens for arrears of common expenses registered prior to May 5, 2001
- s. 89(5) The reserve fund component of the common expense component of the occupancy fee must be paid to the condominium corporation in the seventh month after the purchaser has been in occupancy of his or her unit
- s. 134(4) Termination by court order of a residential lease
- s. 153 Phased condominium corporations must have a performance audit for each phase.

Checklists 2 — Duties of a Board of Directors in the First Year After Registration

The following is a list of the duties and responsibilities of the board of a condominium corporation in the year following the registration of the declaration and description under the Act. (See Checklists #8, 34)

- s. 43 Turn-over meeting must be held and turn-over obligations complied with (see Checklist #11). Note: additional requirements for phased condominium corporations (see ss. 152, 153)
- s. 44 Between 6 and 10 months after registration, a performance audit must be carried out and results must be filed with Tarion Warranty Corporation and/or the developer within 12 months of registration.
- s. 55 Records as defined by the Act and by-laws must be maintained
- s. 75(2) Collect from declarant the amount of any shortfall in the first year budget
- s. 76 Prepare and issue status certificates
- s. 80(5) Where owners were in occupancy for longer than 6 months, the reserve fund component of the common expenses portion of the occupancy fee (see budget) is payable to the condominium corporation

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- s. 85 Collect common expenses and ensure arrears are liened as applicable
- s. 94 Conduct a reserve fund study
- s. 94 Develop a reserve fund plan and advise owners
- s. 99 Ensure appropriate insurance is in place
- ss. 111–114 Review agreements to which the corporation is a party to determine whether any should be terminated
- s. 115 Maintain reserve and operating accounts and ensure that monies are invested in accordance with the express provisions of the Act
- s. 119 Ensure compliance with the Act, declaration, by-laws and rules
- s. 171 Payment of rent for ground lease in leasehold condominium corporation

Checklists 3 — Priority Business for Boards

The Act imposes many requirements on the board. Here are a number of agenda items boards must, or should, consider.

Strongly Recommended Actions

1. A by-law defining the “standard unit” for the purposes of determining the corporation's repair obligations should be passed and registered before the condominium corporation's insurance comes up for renewal (s. 99(6)).
2. A by-law setting out the procedures for holding mediations and arbitrations between the corporation and the owners should be passed (s. 56(1)(o)).
3. Before making major decisions, the board should obtain the written opinion of a lawyer, public accountant, engineer, appraiser or other qualified professional, depending on the subject-matter of the decision, to minimize the risk of personal liability (s. 37).
4. Insure in accordance with the Act and by-laws (ss. 38, 99 and 100).

By-laws and Resolutions Worth Considering

1. An occupancy standards by-law limiting the number of occupants per unit, or providing for reasonable compensation to be paid to the condominium corporation for the effects of overcrowding in a unit (ss. 56 and 57).
2. A resolution terminating an unfavourable cable and other telecommunications agreement with providers, where the agreement was signed more than 10 years ago and the corporation's declaration and description was registered more than 10 years ago (s. 22).
3. An updated, general by-law incorporating powers permitted under the Act.
4. Joint by-laws and rules with other condominium corporations regarding the operation and use of shared facilities (ss. 58 and 59).
5. Investigating the possibility of amalgamating with other condominium corporations to reduce overhead costs (s. 12).
6. A by-law extending the circumstances when the amount of the insurance deductible or the cost of repairing damage to a unit may be added to the owner's common expenses (s. 56(1)(i)).
7. A by-law restricting the use of common elements by non-residents (s. 56(1)(k)).

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8. A by-law allowing the corporation to object to property tax assessments of units (s. 56(1)(b)).

Checklists 4 — Board of Directors

Generally, the day-to-day operation of a condominium corporation is delegated by the board of directors to a property manager. However, the Act expressly requires the board to directly engage itself in the following matters:

Board Meetings

- s. 35(1) In addition to the meetings of directors required by the corporation's by-laws, a quorum of the directors may, at any time, call a meeting for transaction of any business
- s. 35(2) Person calling board meeting must give written notice of meeting to every director of corporation
 - (a) at least 10 days before the day of the meeting, unless the by-laws specify otherwise; and
 - (b) by delivering it to the director personally or by sending it by prepaid mail, courier delivery or electronic communication addressed to the director at the latest address as shown on the records of the corporation, unless the by-laws specify otherwise
- s. 35(3) Notice must state time and place of board meeting and agenda of business
- s. 35(4) Director attending meeting deemed to waive right to object to failure to give required notice, unless director expressly objects to failure at meeting
- s. 35(5) Board meeting may be held by teleconference or another form of communications system allowing directors to participate concurrently if
 - (a) the by-laws authorize those means for holding a meeting of the directors; and
 - (b) all directors of the corporation consent to the means used for holding the meeting
- s. 55(1) Minute book containing minutes of board to be kept
- s. 56(1)(b) Board may pass by-law to regulate board meetings, form of board meetings and quorum and functions of board

Powers and Business of Board

- s. 22(2) Resolutions re telecommunications agreements
- s. 32(1) Board transacts business of corporation only at meeting of directors
- s. 36(1), (2)(c) Appoint officers
- s. 56(1), 59(1) Resolution to make, amend or repeal specified by-laws — See Checklist #19
- s. 58(1), 59(1) Board may make, amend or repeal rules respecting use of common elements and units — See also Checklist #19
- s. 97(2) Resolution to make an addition, alteration or improvement to common elements, a change in assets of corporation or a change in service that corporation provides to owners — See Checklists #28 and 29

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- s. 108 Board may change address for service or mailing address
- ss. 111(1), 112, 154(1) Resolution to terminate agreements — See Checklist #34
- s. 115(6) Board may invest all or any part of money in corporation's general accounts
- Board Duties**
- s. 34(4) Where vacancy results in insufficient directors to constitute quorum, remaining directors must call and hold owners' meeting to fill all vacancies within 30 days of losing quorum
- s. 44(1) Conduct a performance audit
- s. 45(2) Board must hold a general meeting of owners not more than three months after registration of declaration and description
- s. 45(4) Board may at any time call meeting of owners for transaction of any business
- s. 46(4) Where requisition from at least 15 per cent of owners received, Board must comply with request to either add business to agenda for next meeting, or call and hold meeting of owners
- s. 60(1) Board must appoint auditor if owners fail to appoint auditor
- s. 62 Board must fix remuneration of auditor
- s. 66(3) Financial statements must be approved by board
- s. 66(4) Approval to be evidenced by signature
- s. 69(1) Board must place before each annual general meeting (a) financial statements; (b) auditor's report; and (c) further information that by-laws require
- s. 71(1) Board must amend financial statements if facts come to attention of directors or officers after annual general meeting requiring material adjustment to financial statements presented at meeting
- s. 71(4) Board must give notice
- s. 75(5) After receiving audited financial statements for period covered by budget statement, board must, within 30 days of receiving audited financial statements, give written notice to declarant of shortfall
- s. 94(1) Board must conduct a reserve fund study — See Checklist #27
- s. 107(3), (4) Board must call meeting of owners to consider proposed amendment to declaration or description
- s. 120(2) Where condominiums corporations seeking to amalgamate, each board must call meeting of respective owners to consider declaration and description amalgamating the corporations — See Checklist #36
- s. 123(3) If damage occurs to building or a structure located on the property that may be substantial — See Checklist #26

Checklists 5 — Directors

Persons who serve as directors of condominium corporations assume a great responsibility, although the Act contains provisions designed to protect those who act in good faith. This checklist sets out the provisions of the Act of particular relevance to individual directors.

Checklists of Rights, Duties and Tasks Under the Act

Qualifications and Term

- s. 29(1) Persons cannot serve as director if they are
- under eighteen years of age
 - undischarged bankrupt
 - mentally incompetent
- s. 29(2) A person immediately ceases to be director if
- they become undischarged bankrupt or mentally incompetent; or
 - certificate of lien registered against a unit owned by director, and director does not obtain discharge of the lien within 90 days
- s. 30(1) Person not to be elected or appointed as director unless person consent
- s. 30(2) Person is deemed to consent if present at meeting when elected or appointed and does not refuse to act as director
- s. 30(3) Person who is not present at meeting may be elected or appointed as director if written consent to act received before meeting or within 10 days after meeting
- s. 30(4) Election or appointment of person as director without express or deemed consent is ineffective
- s. 31(1) Term is three years or such lesser period as by-laws may provide
Exception: Directors appointed to the first board of directors under s. 42(1)
- s. 31(2) Director may continue to act beyond term until successor is elected
- s. 33(1) Director may be removed before expiration of the director's term of office by a vote of the owners at a meeting duly called for such purpose where the owners of more than 50 per cent of all units in corporation vote in favour of removal
Note: Director appointed by declarant to first board can only be removed by declarant
- s. 33(2) Owners may elect, at same meeting, qualified person as replacement for remainder of term of removed director, in accordance with by-law
- s. 34(4) Where vacancy results in insufficient directors to constitute quorum, remaining directors must call and hold owners' meeting to fill all vacancies within 30 days of losing quorum
- s. 34(7) Vacancy resulting from increase in number of directors to be filled only by election at meeting of owners duly called for that purpose, and directors so elected must not act until registration of by-law
- s. 37(2) Acts of directors or officers valid despite any defect afterwards discovered in that person's election, appointment or qualifications
- s. 51(6) Where at least 15 per cent of units are owner-occupied units at time of turn-over meeting required under s. 43, only owners of owner-occupied units may elect or remove persons from board
- s. 51(8) *Exception:* Director elected by owner-occupied units under s. 51(6) may be removed before expiration of term where owners of more than 50 per cent of all of owner-occupied units in corporation vote in favour of removal

Checklists of Rights, Duties and Tasks Under the Act

Standard of Care

- s. 37(1) Every director must
- (a) act honestly and in good faith; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances
- s. 37(3) Director not liable for breach of above duties if director acts in accordance with standard
- s. 38(1) By-laws may indemnify director and his or her heirs, executors, administrators, estate trustees and other legal personal representatives may from time to time be indemnified and saved harmless by the corporation from and against
- (a) any liability and all costs, charges and expenses that director sustains or incurs in respect of any action, suit or proceeding that is proposed or commenced against director for or in respect of anything that director has done, omitted to do or permitted in respect of the execution of duties of office; and
 - (b) all other costs, charges and expenses that director sustains or incurs in respect of affairs of corporation
- s. 38(2) *Exception:* No director to be indemnified in respect of any liability, costs, charges or expenses that director sustains or incurs in or about action, suit or other proceeding as a result of which director is adjudged to be in breach of duty to act honestly and in good faith
- s. 39 Director's liability insurance must be purchased and maintained, if reasonably available, by condominium corporation against matters discussed in s. 38 except those incurred as a result of director's breach of duty to act honestly and in good faith
- s. 40(1) Director's conflict of interest
- s. 40(2) Both contract or transaction and director's interest in it must be material
- s. 40(3) Conflict regarding purchase of property
- s. 40(4) When disclosure must be made
- s. 40(6) Director not to be present during discussion at meeting or vote
- s. 40(7) Effect of disclosure
- s. 40(8) Director who has acted honestly and in good faith is not accountable to corporation
- s. 137(2) It is an offence to knowingly cause, authorize, permit, participate in or acquiesce in commission by corporation of offence under Act

Checklists 6 — Officers

This table identifies the powers and duties of officers of the corporation as identified by the Act.

- s. 36(1), (2) President to be elected from among directors (mandatory)
Secretary to be appointed or elected (mandatory)
- s. 36(2)(c) One or more vice-presidents or other officers may be appointed or elected (optional)
- s. 36(3) Same person may hold two or more offices

Checklists of Rights, Duties and Tasks Under the Act

A number of specific duties are mentioned in the Act:

- s. 21(2) • Sign lease, grant, transfer or release with respect to part of common elements
- s. 56(9) • Certify copy of each by-law of corporation as a true copy
- s. 107(6) • Make certificate that amendment to declaration or description complies with the requirements of this section
- s. 120(4) • Sign declaration of amalgamated corporation in order to effect its registration
- s. 122(2) • Sign notice of termination (Notice of Termination (Under Subsection 122(2) of the *Condominium Act, 1998*) (formerly O. Reg. 49/01, Form 13)) upon consent of owners
- s. 123(8) • Sign notice of termination (Notice of Termination (Under Subsection 123(8) of the *Condominium Act, 1998*) (formerly O. Reg. 49/01, Form 14)) with consent of owners after substantial damage to building or structure
- s. 124(3) • Sign certificate in the matter of a sale of property or part of common elements (Certificate in the Matter of a Sale (Under Subsection 124(3) of the *Condominium Act, 1998*) (formerly O. Reg. 49/01, Form 15))

s. 37(1) A number of general duties are:

- To act honestly and in good faith; and
 - To exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, in exercising powers and discharging duties of office
 - To comply with Act, declaration, by-laws and rules
- s. 119(1) • To comply with Act, declaration, by-laws and rules
- s. 37(2) Officer's acts are valid despite any defect that may afterwards be discovered in his or her election, appointment or qualifications
- s. 38(1) Corporation may pass by-laws requiring it to indemnify and save harmless every officer (and officer's heirs and assigns)
- s. 39 Corporation may purchase liability insurance and maintain if reasonably available
- s. 41(1) Officer (who is not a director) with a conflict of interest
- ss. 40(7), (8), 41(3) Officer not accountable to corporation or owners for any profit or gain realized from contract
- s. 56(1)(d) Board may make, amend or repeal by-laws governing appointment, remuneration, functions, duties, resignation and removal of officers and the security
- s. 61(a) Officers are not to act as auditor of corporation
- s. 68(2) Majority of audit committee members not to consist of officers or employees of corporation
- s. 137(2) It is an offence to knowingly cause, authorize, permit, participate in or acquiesce in commission by corporation of offence under Act

Checklists of Rights, Duties and Tasks Under the Act

Checklists 7 — First Board of Directors/Declarant Board

Immediately after registration of the condominium corporation, the declarant directly manages the corporation. The first board is appointed by the declarant, and manages the corporation until the turn-over meeting at which time the owners elect new board members. The statutory provisions governing the declarant board are set out below.

Declarant Board

- s. 33(1) First board of directors not subject to general rule governing removal of directors
- s. 40(6) Declarant-appointed directors are not subject to conflict of interest provisions
- s. 42(1) Board appointed by declarant within 10 days after registration of declaration and description
- s. 42(3) Term of office lasts until new board elected at turn-over meeting
- s. 42(2) Declarant may revoke appointment of individual members and appoint new directors to hold office until turn-over meeting
- s. 42(4) First board consists of three persons, or more if declaration so provides
- s. 42(5) Written resolution valid where adopted by first board if signed by all directors
- s. 42(6) First board to call and hold meeting of owners to elect two directors by later of:
 - (a) 30th day after transfer of at least 20 per cent of units, and
 - (b) 90th day after declarant transfers first unit
- s. 42(8) Two directors elected to first board by owners other than declarant
- s. 42(9) Quorum for election is those owners who own 25 per cent of units not owned by declarant
- s. 42(10) Determination of quorum
- s. 42(11) Directors to hold office in addition to directors appointed to first board
- s. 43(1) First board to call owners' meeting to elect new directors not more than 21 days after declarant ceases to be registered owner of majority of the units
- s. 43(2) If first board does not call meeting within required time, owner or mortgagee may call meeting
- s. 43(3) Meeting to be held within 21 days after it is called

Checklists 8 — Turn-over Documents

At the turn-over meeting, s. 43(4) requires the developer to hand over to the board elected at that meeting the following items:

- 1. Corporate Seal
- (Seal of the corporation);
- 2. Minute Book and Rules

Received

☐
☐

Checklists of Rights, Duties and Tasks Under the Act

Received

- (Minute book for the corporation, containing registered copies of the declaration and by-laws, as well as the most current copies of the rules and minutes of the meetings of the board and owners);
- 3. Agreements ☐
 - (Copies of all agreements entered into by the corporation, the developer, or the developer's representatives on behalf of the corporation, including the management contracts, deeds, leases, licences and easements);
- 4. Insurance Agreement and Policies ☐
 - (All policies of insurance and the related certificates or memoranda of insurance and all insurance trust agreements);
- 5. Bills of Sale ☐
 - (Bills of sale or transfers for all items that are assets of the corporation but not part of the property);
- 6. Records (Owners, Mortgagees, Leases) ☐
 - (Records of owners and mortgagees and any notices of leases);
- 7. Records (Units, Employees) ☐
 - (All records that the corporation has relating to employees and individual units).

Within 30 Days after the Turn-over Meeting

The developer is also required to turn over to the new board within 30 days of the turn-over meeting all those items set out in s. 43(5). They are as follows:

- 1. Warranties and Guarantees ☐
 - (For all the equipment, fixtures and chattels included in the sale of either the units or common elements that are not protected by warranties which have been given to individual purchasers);
- 2. Building Plans ☐

Received

Checklists of Rights, Duties and Tasks Under the Act

Received

- (The "as-built" architectural, structural, engineering, mechanical, electrical and plumbing plans);
3. Building Specifications ☐
- (The "as-built" specifications, indicating all substantive changes, if any, from the original specifications);
4. Other Plans ☐
- (All existing plans for the underground site services, site grading, drainage and landscaping, and television, radio or other communications services);
5. Repair and Maintenance Plans ☐
- (All other plans not mentioned above that are relevant to the repair or maintenance of the property);
6. Proof of Tarrion Warranty Corporation Enrolment and Inspection Reports ☐
- (If the property is subject to the *Ontario New Home Warranties Plan Act*, proof that the units and common elements have been enrolled in the plan and a copy of all final inspection reports that the Warranty Corporation requires be carried out on the common elements);
7. Maintenance and Repair Obligations ☐
- (Table depicting the maintenance and repair obligations and indicating whether the unit owner or the corporation is responsible therefor);
8. Standard Unit Schedule ☐
- (Schedule setting out what constitutes a standard unit for each class of unit that the developer specifies for the purpose of determining who is responsible for repairing improvements after damage and insuring them);
9. Financial Records ☐
- (All financial records of the corporation and the developer relating to the operation of the corporation from the date of registration of the declaration and description);

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Received

10. First-Year Reserve Fund Study ☐
- (If the turn-over meeting is held more than nine months after the registration of the declaration and description the reserve fund study that must be carried out within the first year after registration; the cost of this will be the condominium corporation's);
11. Other Reserve Fund Studies ☐
- (All reserve fund studies that are completed or required to be completed at the time the meeting is held, other than the study that is required within the year following the creation of the corporation; the cost of this will be the condominium corporation's);
12. Disclosure Statement ☐
- (Copy of the most current disclosure statement delivered to a purchaser of a unit pursuant to s. 72);
13. Audited Statement ☐
- (Copy of audited financial statement for the corporation as of the last day of the month in which the meeting is held; the cost of this will be the condominium corporation's).

Checklists 9 — Notices Required by the Act

Before certain actions can be taken, the following provisions of the Act indicate the circumstances where a notice must be sent to designated persons and, to be effective, what the notice must contain.

- s. 19 Giving reasonable notice for entry to unit or exclusive-use common elements
- s. 23(2) Before legal action commenced by corporation — to persons on the record
- s. 24(2) Notice of expropriation received by corporation — to persons on the record within 15 days of receipt
- s. 25 Notice under the *Planning Act* received by corporation — to persons on the record within 15 days of receipt
- s. 35(2), (3) To directors, of time and place of directors' meeting and business to be discussed. at least 10 days prior to meeting, unless by-laws provide otherwise
- s. 46(2) Delivery of requisition for owner's meeting
- s. 47(1) Notice of meetings at least 15 days prior to meeting
- s. 47(5) Notice of meetings to owners and mortgagees on record 20 days prior to meeting

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- s. 47(6) Notice for purposes other than meetings to owners and mortgagees on record 5 days prior to giving notice
- s. 47(7) Service on owner personally, prepaid mail delivery to unit or mail box, electronic communication, subject to conditions
- s. 47(8) Service on mortgagee personally, prepaid mail, electronic communication subject to conditions
- s. 47(9) Content of notice to owners — See also Checklist #10
- s. 47(10) No vote on matters of which owners have not been given notice on agenda, unless routine procedure
- s. 48 Mortgagee's intention to vote at a meeting of the corporation — 4 days' written notice prior to meeting to the corporation and the owner
- s. 54 Notice to an owner or mortgagee validly given in accordance with s. 47(7) or (8)
- s. 58(6)(a)–(c) Notice of rules enacted by the board
- s. 63(7) Notice for meeting to remove auditor
- s. 69(2) Notice of annual meeting must include financial statements and auditor's report
- s. 70(2) Notice of any meeting must be given to the auditor
- s. 70(3) The corporation or an owner can require the auditor or the former auditor, on 5 days' notice, to attend a meeting (see s. (4)). Notice by owner to auditor and corporation
- s. 73(2) Notice by purchaser to developer of rescission within 10 days of receipt of disclosure statement or of date of receipt of accepted copy of agreement of purchase and sale, whichever is later
- s. 74(1)–(4) Developer to deliver a revised disclosure statement or notice of material change clearly identifying material changes to purchaser within reasonable time after change occurs and no later than 10 days before deed is delivered
- s. 74(7) Purchaser shall give written notice of rescission when material change notification is given, within 10 days to developer or developer's solicitor.
- s. 75(5) Within 30 days after receiving the first-year audited statements the board shall give written notice to the developer of the amount of any budget shortfall subject to transition provisions
- s. 85(4), (5) Written notice by personal service or prepaid mail to owner at address on record (Notice of Lien to Owner (formerly O. Reg. 48/01, Form 14)) at least 10 days before registration of lien
- s. 85(7) Notice to owner of discharge of lien (Discharge of Certificate of Lien (formerly O. Reg. 49/01, Form 7)) upon payment of amounts owing
- s. 86(3), (4) Notice of lien delivered to mortgagee at last known address on or before day the lien is registered
- s. 87 Notice to tenant and owner re tenant's payment of rent — to tenant by mail at unit and to owner personally or by mail at address on record

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- s. 94(9)(a) Notice to owners within 15 days of the board completing the proposed reserve fund plan (135 days in total from date study received) — summary of study and of plan — how plan differs from study
- s. 94(9)(b) Notice to auditor of study, copy of the plan and the notice sent to owners
- s. 97(3) Notice of change in assets services or common elements to owners. Requires estimated cost; plan to pay for it; owner's right to requisition a meeting and copies of ss. 97(3) and 46
- s. 98 Owner's change to non-exclusive use common elements. Notice must be given under s. 97 — a copy of the agreement between the corporation and the owner must be included
- s. 107(2) Notice for a meeting to approve an amendment to the declaration or description
- s. 107(2)(f) Notice to mortgagees on record of a proposed amendment to the declaration
- s. 108 Notice of change of address of service or mailing in prescribed form to be registered in Land Registry Office
- s. 109(2) 15 days' notice of an application to amend a declaration or description — See Checklist #33
- s. 111(2) 60 days' notice in writing of termination must be given to a management company
- s. 112(3) 60 days' notice in writing to the other party to terminate agreements entered into by the declarant-controlled board
- s. 114 60 days' written notice to an insurance trustee to terminate agreement
- s. 120(3) Notice of meeting to consider amalgamation — See Checklist #36
- s. 123(5) Notice that the board has determined there is substantial damage to the condominium property — See Checklist #26
- s. 130 The board must send a summary of an inspector's report to owners

Checklists 10 — Notice to Owners

Where notice to owners is required to be given under the Act (see Checklist #9), s. 47 sets out the following rules for how and to whom notice must be given:

Record of Names and Addresses for Service to be Kept

1. The corporation has to maintain a record containing the names of unit owners who have notified the corporation of the owner's name and address for service, and the name of each mortgage lender that has both the right to vote under the mortgage and has given written notice to the corporation.
2. Record cannot be used for any purposes other than those set out in the Act.
3. Corporation may want to consider using a standard form that allows owners to consent to service by fax or e-mail.
4. Onus is on owner and mortgage lender to notify corporation of changes in his, her or its address for service.

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Form and Content of Notice

1. Notice must be in writing.
2. For a meeting of owners, notice must indicate (a) the time, date and location of meeting, (b) nature of the business to be dealt with, including copies of proposed changes to declaration, by-laws, rules and agreements, and (c) where meeting is in response to a requisition by owners, a copy of the requisition (see Checklist #12).

To Whom Notice Must be Given

1. For a meeting of owners, notice is given to everyone whose names appear on the record of the corporation 20 days before the day of the meeting.
2. If notice required for a purpose other than calling a meeting of owners, it must be sent to everybody whose names appear on the record 5 days before notice is sent out.

Time When Notice Must be Delivered

1. If a meeting of owners is called, notice is given at least 15 days before the day of the meeting.

How Service on Owners and Mortgagees Can be Effected

1. Personal (i.e., hand-to-hand) delivery.
2. Regular mail to address on record.
3. Fax, e-mail or other electronic transmission, where owner has consented to such method.
4. Deposit at owner's unit or mailbox in the building. This method cannot be used if owner has requested different form of service in writing, or if owner's address for service on the record is not address of the owner's unit.

Effect of Irregularities in Giving Notice

1. Only matters disclosed in notice may be dealt with at meeting.
2. Personal attendance at meeting or representation by proxy constitutes waiver of notice.

Checklists 11 — Meetings of Owners

Meetings of unit owners of the condominium corporation can be called in the following circumstances and/or for the following purposes:

- | | |
|----------|---|
| s. 28(1) | Election of directors |
| s. 33(1) | Removal of director |
| s. 34(4) | Election of directors where there is no quorum of board within 30 days of losing quorum |
| s. 34(5) | An owner may call the meeting if the board does not |
| s. 40(8) | Confirmation of contract where director/officer discloses an interest |
| s. 42(6) | The first board shall call and hold the first meeting of owners by the later of:
(a) the 30th day after developer has transferred the title of 20 per cent of units and;
(b) the 90th day after developer transfers the title of the first unit |

Checklists of Rights, Duties and Tasks Under the Act

- | | |
|-----------|--|
| s. 42(7) | If by the day set for the meetings under s. 42(6) the developer no longer owns a majority of units and the developer advises the first board accordingly in writing, the meeting under s. 42(6) need not be held |
| s. 42(8) | For owners, other than the developer, to elect two members to the board at the meeting called pursuant to s. 42(6) |
| s. 43 | The turn-over meeting is to be called and held within 42 days after the developer ceases to be the registered owner of a majority of the units |
| s. 45 | The first general meeting of owners is to be held no later than 3 months after registration — each annual general meeting (AGM) thereafter must be held within 6 months of the corporation's financial year-end |
| s. 45(4) | Called by board for other purposes |
| s. 46 | Owner's requisitioned meetings (requisitionists must be on the record of owners and entitled to vote) |
| s. 46(4) | Requisitionists can request either that the issue be placed on the agenda for the AGM or the requisitioned meeting must be held within 35 days of receipt of the requisition |
| s. 46(5) | If the board does not call the requisitioned meeting, any owner can call the meeting within 45 days |
| s. 56(10) | To approve and/or amend by-laws |
| s. 58(5) | To amend or repeal rules |
| s. 58(7) | To approve a rule where a requisitioned meeting has been called |
| s. 59 | Joint by-laws and/or rules in conformity with ss. 56(10) and 58(7) can be approved at a joint meeting of two or more condominium corporations |
| s. 59(5) | To repeal a joint by-law |
| s. 60(1) | First meeting of owners; appointment of an auditor |
| s. 63(1) | To remove an auditor |
| s. 63(2) | To appoint a new auditor |
| s. 107(2) | To approve an amendment to the declaration |
| s. 120 | To approve an amalgamation of two or more leasehold or freehold condominium corporations |
| s. 121(3) | To elect new directors for an amalgamated corporation |
| s. 121(4) | To appoint auditors for the amalgamated corporation within 60 days of the amalgamation |
| s. 123(6) | A requisitioned meeting when owners receive notice of substantial damage |

Checklist 12 — Requisitioning a Meeting of Owners

Section 46 of the Act gives several opportunities to owners to "requisition" meetings, i.e., force the board to call and hold an owners' meeting (see Checklist #11). The procedure is as follows:

1. Written requisition signed by owners who own at least 15 per cent of the units.

Checklists of Rights, Duties and Tasks Under the Act

2. Owners signing requisition must be listed as owners on the record and entitled to vote.
3. Requisition must state nature of the business to be presented at the meeting. If purpose of meeting is to remove directors, their names and the reasons for seeking their removal must be included, and whether any director to be removed is owner-occupied units' representative.
4. Requisition must either be served personally or by registered mail on board president or secretary, or deposited at the corporate address for service as set out.
5. Board must call and hold owners' meeting within 35 days of receiving requisition, unless owners seeking meeting consent to delay until the next AGM.
6. If board fails to call meeting within the 35 days, any requisitionist may call meeting, which must be held within 45 days of being called. Owners are entitled to reimbursement for costs of "calling" the meeting.

Checklist 13 — Quorum for Meetings

The quorum requirements for meetings under the Act do not vary.

- s. 42(9) Quorum for electing two directors to the pre-turn-over meeting board is 25 per cent of non-declarant owned units
- s. 50(1) Quorum for a meeting of owners is 25 per cent of the units entitled to vote
- The owners entitled to vote are:
- (a) those who are entitled to receive notice of the meeting and who are on the record 20 days before the meeting is held (s. 47); and
 - (b) those who are not in arrears of common expenses 30 days prior to the meeting unless they have paid up the arrears prior to the meeting (ss. 49(1), (2) and 50(2))
- ss. 50(1), 56(1)(c) By-law may increase quorum requirement to $33\frac{1}{3}$ per cent of units of corporation if the by-law is enacted after May 5, 2001
- s. 50(3) Where one owner owns all of the units, that owner will constitute a quorum

Checklist 14 — Entitlement to Vote at Owners' Meeting

The owner of a condominium unit (or the mortgagee of the unit) is not automatically entitled to vote at meeting. The following represents statutory qualifications to the owner's right to vote.

- s. 42(8) Developer as owner of unsold units cannot vote for the two directors elected in accordance with s. 42(6) (shortly after transfers begin)
- s. 47(1) Owner must notify the corporation in writing of the owner's name and address for service at least 4 days before notice of the meeting is given, to be entitled to receive notice
- s. 48 Mortgagee can give 4 days' notice of intention to exercise the right to vote in place of an owner
- s. 49(1) Owner who is in arrears of common expense payments for 30 days or more at the time of the meeting cannot vote and does not constitute part of the quorum (s. 50(2))

Checklists of Rights, Duties and Tasks Under the Act

- s. 49(3) No owner shall vote in respect of unit intended for parking or storage purposes or the purpose of housing services or facilities or mechanical installations unless all the units are used for one or more of those purposes
- s. 51 Once 15 per cent of the condominium units are owner-occupied, the owner-occupied units will elect one position on the board. Owner-occupied units cannot have been leased within 60 days of the meeting

Checklist 15 — Proxies

Where an owner cannot vote in person at a meeting, he or she can appoint someone else (the "proxy") to vote on his or her behalf.

- s. 52(7) Proxy must be kept as a record of the corporation for 90 days after a meeting
- s. 52(4) Proxy must be for a particular meeting
- s. 52(5) Proxy for the election or removal of a director must name the directors for and against whom proxy is to vote
- s. 52(6) Proxy may be in the prescribed forms

Checklists 16 — Voting Percentages

The general principle in voting by the owners at meetings is majority rule, of a quorum of 25 per cent of the owners of units entitled to vote (s. 53), but exceptions are set out in the Act for voting on particular issues. The quorum remains the same unless the condominium corporation has enacted a by-law increasing the quorum to $33\frac{1}{3}$ per cent.

- s. 33(1) Removal of directors — owners of more than 50 per cent of all units in the corporation vote in favour
- s. 40(8) Directors' interest in a contract can be confirmed by $\frac{2}{3}$ of the votes cast at a meeting of owners
- s. 41 Officer's interest in a contract can be confirmed by $\frac{2}{3}$ of the votes cast at a meeting of owners
- s. 45(1) Any matter not specifically dealt with by the Act, which requires owner approval is to be approved by a vote of owners only at a meeting of owners
- s. 51(4) The owners of all the units shall be entitled to vote to elect and remove each member of the board
- s. 51(6) One board member shall be elected only by owners of the owner-occupied units where at least 15 per cent of the units are owner-occupied
- s. 51(8) Removal of "owner-occupied units' board member" by vote in favour of 50 per cent +1 of owner-occupied units
- s. 53 All questions under the Act unless the Act states otherwise are determined by a majority of votes cast by owners present in person or by proxy, if there is a quorum
- s. 56(10) By-laws are confirmed with or without variation by the owners of a majority of the units of the corporation voting in favour of the by-law (exception: a developer's proposed by-laws under s. 56(11))

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- s. 58(5) Rules can be amended or repealed by a majority of votes cast by owners of the units at a meeting
- s. 58(7) Rules are approved by a majority of votes cast where owners requisition a meeting to consider the rules
- s. 59(3) Joint by-laws are approved by a vote of the owners of the majority of the units of the corporations voting in favour at a meeting of each corporation
- s. 59(5) Joint by-laws are repealed by a vote in favour of the owners of a majority of the units of each corporation at a meeting
- s. 59(6) Joint rules are amended or repealed by a vote of owners at a meeting
- s. 59(8) If owners requisition a meeting concerning a joint rule, the rule is effective only if the majority of owners vote in favour of the rule at a joint meeting of the corporation or of each corporation
- s. 60(1) Appointment of the auditor is determined by the highest number of votes cast (exception: appointment at first annual meeting — s. 60(5))
- s. 63(1), (3) Removal and replacement of the auditor is by a majority vote of owners of units at a meeting called for that purpose
- s. 97(3) Change approved by the board (with notice to owners) in services, assets or common elements of the corporation will be defeated if a majority of owners of units at a requisitioned meeting vote against the change
- s. 97(4) Substantial change in services, assets or common elements of the corporation requires a vote in favour by the owners who own at least $66\frac{2}{3}$ per cent of the units in the corporation.
- s. 98(1)(c) Owner's substantial change to the non-exclusive use common elements requires a vote of owners who own at least $66\frac{2}{3}$ per cent of units in the corporation
- s. 107(2)(e) Amending the declaration may require the declarants' consent and generally requires the consent in writing of 80 per cent of the owners of units as of the date the board approved the resolution
- s. 107(2)(d) Amending the declaration may require the declarants' consent and requires the consent in writing of 90 per cent of owners of units on the date the board approved the resolution, where the change involves the percentages of contributions to common expenses or of ownership interests, the exclusive use common areas, or obligations to maintain and repair units and common elements
- s. 120(1)(b) Amalgamation of two or more corporations requires the consent in writing of 90 per cent of the owners as of the date of the meeting within 90 days of the date of the meeting
- s. 122 Termination of the condominium corporation requires 80 per cent of the owners of units to vote in favour of termination and 80 per cent of the encumbrancers as of the date of the vote to consent in writing
- s. 123 Where the condominium has sustained substantial damage, it may be terminated where 80 per cent of the owners of units vote in favour of termination

Checklists of Rights, Duties and Tasks Under the Act

- s. 124 Termination upon sale of all or part of the property requires a vote of owners who own at least 80 per cent of the units as of the date of the vote, the consent in writing of 80 per cent of encumbrancers as of the date of the vote, and consent of the owners whose exclusive use areas are involved

Checklists 17 — Mortgagee's Rights

The Act confers the following rights on mortgagees of the condominium project as a whole and mortgagees of individual units.

- s. 7(1)(b) Right to consent to the registration of a declaration and description
- s. 7(3) Consent cannot be withheld because of sales levels
- s. 23 Entitlement to notice of any action to be brought by the corporation
- s. 43(2) Mortgagee can call turn-over meeting if the developer fails to do so
- s. 47(1)(c) Notices required to be given to persons, or mortgagees on the record are to be given notice at the address on the record
- s. 47(8) How service of notice on a mortgagee is to be effected
- s. 48(1) Mortgagee has the right to vote if the mortgagee is entitled to receive notice (i.e., the mortgagee's name and address for service is on the record under s. 46(1)(c)(ii)) but it must notify the condominium corporation and the unit owner 4 days prior to the meeting
- s. 48(2) Mortgagee with priority has the right to vote
- s. 48(3) If the mortgagee with priority does not vote or consent, then the mortgagee with next priority can do so
- s. 48(4) If no mortgagee votes or consents, the owner may vote or consent under s. 51(1)
- s. 86 Arrears of common expenses have priority over mortgages
- s. 88 Mortgage of a condominium unit is deemed to contain implied terms
- s. 107(2) Mortgagee's consents are not required to an amendment to the declaration and/or description
- s. 122 Termination of a condominium — the corporation requires 80 per cent of the mortgagees to consent
- s. 124 Sale of all or part of the property requires 80 per cent of the mortgagees to consent
- s. 128 Mortgagee can apply to terminate the government of the property by the Act
- s. 130 Mortgagee can apply for the appointment of an inspector
- s. 131 Mortgagee can apply for the appointment of an administrator
- s. 134(1) Right to apply to the court for enforcement of the Act, declaration, by-laws and rules
- s. 135 Right to apply to court under the oppression remedy provisions
- s. 136 Obtaining of an order does not eliminate any other remedies available to a mortgagee

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- s. 139 Common expense lien, in a common element condominium corporation, will only have priority over a mortgagee where the mortgagee consented to the registration of the declaration and description or the lien

Checklist 18 — Records of the Corporation

The following sections detail the record-keeping requirements of the Act.

- s. 55 Lists records of the Corporation
- s. 52(7) Proxies, retention, 90 days
- s. 43(4), (5) Turn-over materials — see Checklist #8
- s. 44(8) Performance audit
- s. 47(2) Record of owners and mortgagees
- s. 83(3) Notices of unit rentals
- s. 94(8) Reserve fund studies and plans
- s. 130(5) Inspector's report
- s. 55(2) Financial records — retention — 6 years
- O. Reg. 48/01, s. 15 All status certificates issued within previous 10 years
- s. 55(4), (5) Records of a corporation do not include:
 - (a) employee records (*exception*: contracts with employees)
 - (b) litigation-related or insurance investigations involving the corporation
 - (c) owner/unit records (*exception*: unless requested by the unit owner, purchaser or mortgagee of the unit in question)
- s. 55(6) Copies, at a reasonable price (copying and labour), must be made available in reasonable time
- s. 55(8)-(10) Penalty for non-compliance — owner must claim in Small Claims Court — Small Claims Court can order production of records and award \$500
- s. 115(9) Person receiving money by or on behalf of the corporation (s. 115(1)) must keep records relating to the receipt and disposition of the money

Checklists 19 — By-laws and Rules

The general provision under which the board of directors may pass by-laws in specified areas is s. 56. However, throughout the Act there are other provisions that also authorize the making of by-laws on the same or other matters.

By-laws

- s. 21 Lease or licence over common elements — by-laws not necessary for certain telecommunication agreements
- s. 27(3) Increase or decrease number of board members
- s. 28(1) Election of directors
- s. 31 Shorter term for board members (less than three years)
- s. 35(5) Teleconferencing board meetings

Checklists of Rights, Duties and Tasks Under the Act

- s. 36(1) Officers in addition to president and secretary
- s. 36(2) Board shall elect president, appoint or elect a secretary and one or more vice-president(s) and other officers
- s. 38(1) Indemnification of board members
- s. 50 Increase owners' meeting quorum from 25 per cent to 33 1/3 per cent
- s. 56(1) General powers of the board of directors — establishing a procedure for nominating candidates to the board of directors
 - s. 56(1)(a) Provisions regarding the disqualification of directors
 - s. 56(1)(f) To object to property tax assessment on behalf of owner
 - s. 56(1)(h) To establish what constitutes a standard unit for insurance purposes
 - s. 56(1)(i) To establish circumstances under which the right to collect the deductible from an owner is available when damage is done to the owner's unit
 - s. 56(1)(j) To govern the maintenance of units and common elements (this is for older condominiums) — see s. 89(5) — provided they are not contrary to specific provisions in the declaration
 - s. 56(1)(k) To restrict use of common elements only to occupants of building
 - s. 56(1)(o) To establish procedure for mediation and arbitration of disputes
- s. 56(2) Remuneration of directors not to exceed three years
- s. 56(3) Borrowing authority where expenditure not shown in the budget
- s. 56(4) Realty tax assessment complaint without resulting liability for the board
- s. 57 To establish occupancy standards
- s. 59 Joint by-laws of one or more corporations
- s. 69(1)(c) To establish further financial information to be presented to AGM
- s. 99(1) Perils to be insured in addition to those specified in the Act

Rules

- s. 58(1) Board may make, amend or repeal rules respecting use of common elements and units — See also Checklist #4
- s. 58(6) Upon making, amending or repealing a rule, the board must give notice to owners that includes,
 - (a) copy of rule as made, amended or repealed;
 - (b) statement of date that board proposes rule will become effective; and
 - (c) statement that owners have right to requisition meeting under s. 46 and when rule becomes effective
- s. 59(1) Boards of two or more corporations may make, amend or repeal joint by-laws or rules governing use and maintenance of shared facilities and services
- s. 59(7) Upon making, amending or repealing a joint rule, the board of each corporation shall give a notice of the joint rule to its owners that includes,
 - (a) copy of rule as made, amended or repealed;

Checklists of Rights, Duties and Tasks Under the Act

- (b) statement of date that boards propose that rule will become effective; and
- (c) statement that owners have right to requisition meeting under s. 46 and when rule becomes effective

Checklists 20 — Disclosure to Purchasers of New Units

1. Table of contents for disclosure statement (s. 72(4)) located at front of the disclosure statement. A form, Disclosure Statement Table of Contents (formerly Form 12 of O. Reg. 48/01) is to indicate whether condominium documents or any other material in disclosure statement deal with any of the following matters and, if so, their location:

- Whether condominium is freehold (vacant, phased or common elements) or leasehold
- Whether the property or part thereof is or may be subject to the *Ontario New Home Warranties Plan Act* or the proposed units are intended to be enrolled in the Plan
- Whether any building or unit on the property has been converted from another use
- Whether one or more units may be used for a commercial or other purpose not ancillary to residential purposes (these would be uses other than parking or storage)
- Whether there are any provisions with respect to pets
- Whether there are any restrictions or standards regarding the occupancy or use of units or common elements based on the nature of the design of the facilities and services on the property or on other aspects of the buildings located on the property
- Number of units the developer intends to lease, to the nearest 25 per cent
- Whether the proportions expressed in percentages for contribution to common expenses or common interest appurtenant to the unit differ by more than 10 per cent from another unit of the same size, type and design
- Whether any unit is exempt from a cost which the other units have to bear
- Whether all or part of the common elements are subject to a lease or licence
- Whether parking spaces are a unit's common elements or exclusive use common elements and any restrictions on parking
- Whether there is any existing or proposed standard unit by-law
- Whether developer may provide major additional assets and property as specified
- Whether condominium corporation is required to purchase units or assets, acquire services or enter into agreements or leases with developer
- Whether developer holds adjoining lands, and developer plans for such lands
- Whether amalgamation with another condominium corporation is intended within 60 days of registration

For common elements condominium corporations only

- Whether an unseverable common interest is attached or will attach to the parcel of land
- Declaration containing list of inclusions in common elements

For vacant land condominium corporations only

- Restrictions on construction of building or structure on unit
- Statement of services to be provided by municipality

For phased condominium corporations only

- 10-year limit for creating a new phase after registration
- Disclosure statement containing information about each intended phase

Checklists of Rights, Duties and Tasks Under the Act

For leasehold condominium corporations only

- Leasehold interest provisions

2. Contents of disclosure statement (s. 72(3), O. Reg. 48/01, s. 17)

- Table of Contents (see above)
- Whether the condominium is a freehold condominium and of what type, or leasehold
- Name and municipal address of the developer and mailing address and if available, the municipal address of the property
- General description of the property including the types and number of buildings, units and recreational and other amenities together with any conditions that apply to the provision of amenities
- If the developer has applied to convert the property from rental to condominium under s. 9(4), a summary of any reports (i.e., a reserve fund or performance audit) that the approval authority has required be made and any agreements that have been imposed by the approval authority as a condition of approval
- Whether the property or part thereof is covered by the *Ontario New Home Warranties Plan Act* or whether the developer has enrolled or intends to enrol the proposed units and common elements in the Plan
- Whether any building on the property or a unit or proposed unit has been converted from a previous use
- Whether any units may be used for commercial or other purposes other than ancillary residential use
- Portion of units or proposed units which the developer or proposed developer intends to market in blocks of units to investors
- Statement of the portion of units to nearest 25 per cent which developer intends to lease
- Where construction of amenities is not completed, a schedule of proposed commencement and completion dates
- List of the amenities developer intends to provide during the s. 80 interim occupancy period (see also s. 72(3)(d))
- Copy of the proposed or existing declaration, by-laws, rules and insurance trust agreement
- Brief narrative description of the significant features of any agreements or proposed agreements between the corporation and another corporation as well as any referred to in ss. 111 to 114; the only agreement for which a brief narrative description is required and a copy of the full agreement delivered is the insurance trust agreement, if any
- Whether to developer's knowledge the corporation intends to amalgamate the corporation with another one or the developer's intention is to do so within 60 days of the date of registering the declaration and description of the corporation
- If amalgamation is intended, a copy of the proposed declaration, description, by-laws and rules for the amalgamated corporation
- Copy of the budget statement for the one-year period immediately following registration of declaration and description (see below)
- If declaration and description were registered more than one year previously, a copy of the current year's budget
- Statement of fees and charges the corporation is required to pay the developer
- Copy of ss. 73 and 74 of Act
- Statement of developer's entitlement to retain excess interest earned on trust monies

Checklists of Rights, Duties and Tasks Under the Act

- Whether part of common elements may be used for non-residential purposes
- Copy of schedule setting out what constitutes a standard unit, if no standard unit by-law
- Whether visitor parking available on property or elsewhere, whether visitors must pay for parking and expected costs
- Major additional assets and property developer may provide
- What units or assets, services or agreements or leases with developer condominium corporation required to purchase, acquire or enter into
- Developer's intentions for adjoining lands it holds
- List of inclusions in common elements of common elements condominium corporations

For vacant land condominium corporations only

- Restrictions on construction of building or structure on unit
- Statement of services to be provided by municipality

For phased condominium corporations only

- Information about each intended phase

3. Contents of budget statement (s. 72(6))

- The common expenses of the corporation
- The proposed amount of each expense, including:
 - (a) the cost of the reserve fund study required for the year — see s. 94(4),
 - (b) the cost of the performance audit — see s. 44, and
 - (c) the cost of preparing audited financial statements, as of the last day of the month in which the turn-over meeting was held, within 60 days after the turn-over meeting required by s. 43, if the corporation is registered after May 5, 2001 — see s. 43(7)
- Particulars of the type, frequency and level of services to be provided
- The projected common expense contribution for each type of unit
- The portion of the common expenses to be paid into the reserve fund
- The status of all pending lawsuits material to the property of which the developer has actual knowledge and that may affect the property upon registering the declaration and description
- The amounts of any fees, charges, rents or other revenues to be paid to or by the corporation or by any of the owners for the use of the common elements or other facilities related to the property, unless a s. 43 turn-over meeting has been held
- The services provided by or expenses paid for by the developer, that are not included in the budget, which may become common expenses, and the projected amount of expense attributable to each of these service or expense for each type of unit
- The amount in all reserve funds at the end of the current fiscal year (modified, the section now clarifies that the developer must disclose how much is expected to be in the reserve fund at the end of the first year after registration)
- The most recent reserve fund study, if any

Checklists 21 — Status Certificate

Condominium corporations must deliver a status certificate to those requesting it.

Checklists of Rights, Duties and Tasks Under the Act

The corporation is required to deliver the certificate within 10 days of the request. Up to a maximum of \$100, including HST, can be charged for the certificate by the corporation. The statements and other information that must be included (s. 76(1)) plus additional requirements as set out in the Status Certificate form (formerly O. Reg. 48/01, Form 13) are as follows:

- (a) Common expenses for the unit and any arrears;
- (b) Increased common expenses for the unit and the reasons for the increase(s);
- (c) Any assessments levied against the unit for the purposes of increasing the reserve fund since the last budget and the reasons for the assessment(s);
- (d) Address for service of the corporation;
- (e) Names and addresses for service of the directors and officers of the corporation;
- (f) Current declaration, by-laws and rules of the corporation (attached*);
- (g) Copies of any applications made to the court to amend the declaration (attached);
- (h) Any outstanding judgments against the corporation and the status of all legal actions to which the corporation is a party;
- (i) Current budget, the last audited financial statements (s. 66(2)) and the auditor's report (s. 67) (attached);
- (j) List of agreements under ss. 111-113 inclusive which were entered into by the developer and still in existence.
- (k) Standard unit schedule provided by declarant for condominium corporation registered after May 5, 2001 (attached);
- (l) Statement as to the right of person requesting the certificate to see the agreements referred to in (j) (see s. 76(7), (8));
- (m) Whether the unit owner is a party to a cost allocation agreement regarding changes to the common elements and whether the unit is in compliance (s. 98);
- (n) Statement as to the most recent reserve fund study and updates to it, the amount in the reserve fund as at the end of the month no earlier than 90 days of the date of the request, and current plans if any to increase the reserve fund (s. 94(8));
- (o) Substantial changes to the services, assets or common elements of the corporation which board has proposed but not implemented and the purpose of the changes;
- (p) Number of units for which the corporation has received notice of lease in the year prior to the request for the certificates (s. 83(3));
- (q) Certificate or memorandum of the current insurance policies (attached);
- (r) Amounts the corporation has added to the common expenses of the unit pursuant to the Act;
- (s) Statement as to whether the court has appointed an inspector under s. 131; and
- (t) Special requirements for phased condominium corporations (s. 148) and leasehold condominium corporations (s. 149).

*"Attached" means the document referred to must be included with the Status Certificate.

Checklists of Rights, Duties and Tasks Under the Act

Checklists 22 — Rights and Duties of Purchaser of Condominium Unit

When buying a new condominium unit from a developer, a purchaser is conferred a number of rights under the Act which may not be in the agreement of purchase of sale.

- s. 78 To seek an order requiring the developer to register the condominium corporation, sell remaining units and hold money in trust for the corporation
- s. 80(3) On occupancy to pay the purchase price in full if election to pay all cash is made within the 10-day rescission period
- s. 80(8) To an adjustment on realty taxes if overpaid
- s. 80(9) Vendor has the right to an adjustment on realty taxes if underpaid
- s. 81 To have all purchase money held in trust including money for a reservation agreement. This does not apply to money paid for personalty or occupancy fee
- s. 81(6) To evidence of written compliance regarding purchase monies being held in trust within 10 days of payment of money
- s. 82 To prescribed interest on all money paid on account of the purchase price of a unit from the date money is paid until occupancy
- s. 82(4) To receive the interest either on occupancy or delivery of a deed if — on delivery of deed, the prescribed rate is compounded from the date of occupancy to the date of delivery of the deed

As well, a purchaser of a condominium unit has rights under the *Ontario New Home Warranties Plan Act* and Regulations, including the following:

- ONHWP, ss. 13, 14 Compensation for breach of warranties: fitness of construction; that the home is free of major structural defects; and against water penetration and inadequate substitutions (Reg. 892, ss. 14-16, 18-19, 20-21, 23(3)) and delayed occupancy (O. Reg. 165/08).

Checklists 23 — Leasing

Where a condominium unit owner leases his or her unit to a tenant or grants interim occupancy to a purchaser before final closing, the rights and responsibilities of the parties are affected under the Act in the following ways:

- s. 51(6) Owner-occupied units are entitled to elect one of the directors
- s. 80(1) Interim occupancy is acknowledged in the Act
- s. 80(4) Calculation of the interim occupancy fee
- s. 80(6) The rights and duties of the developer during interim occupancy
- s. 80(10) Applicability of the *Residential Tenancies Act, 2006*
- s. 83 Notice of lease, terminations of lease and record of notices
- s. 87(1) Tenant is required to pay rent to the condominium corporation when notice is delivered that the owner is in arrears of common expenses
- s. 119(1) Tenants are bound by the Act and the condominium documents
- s. 119(2) Owners have to take reasonable steps to ensure their tenants comply with the Act and the condominium documents
- s. 119(3) Actions for enforcement can be brought against tenants

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- s. 134(4) Court can terminate a tenancy where the court has issued an order and the tenant has not complied or the tenant fails to remit rent pursuant to a notice under s. 87(1)

Checklists 24 — Common Expenses Beyond Monthly Contributions

Under s. 84 of the Act, each owner is responsible for paying his or her share of the common expenses in the percentage set out in the declaration. This generally takes the form of a monthly payment to the corporation to cover the budgeted expenses. However, the Act authorizes the following additional amounts to be added to common expenses:

- s. 57(4), (5) An assessment against units for overcrowding
- s. 56(1) Extended deductible recovery as in s. 105(2) and (3) or where there is damage to the owner's unit
- s. 57 Surcharge for infractions of occupancy standards
- s. 7(4)(a) Common expenses specified in the declaration
- s. 92(1) Cost of repair after damage to units and exclusive use common elements or parts thereof if the owner is obligated to repair in the declaration and refuses;
- s. 92(2) Cost of maintaining the common elements or parts thereof (including exclusive use common elements) if the owner is obligated to maintain in the declaration and refuses;
- s. 92(3) Cost of maintaining a unit where the owner is obligated to maintain in the Act and there is a threat of damage or injury, and the owner refuses
- s. 98(4) Costs, charges and expenses for non-compliance with an agreement allowing an owner to modify common elements
- s. 125(7) Amount of any deficiency between what the corporation agrees to sell property for and what a mediator decides is fair market value. The differential will be payable by the remaining owners to the dissenting owners as determined by the proportion of their common interests
- s. 134(5) Order as to damages or costs against an owner or occupier of a unit, together with the excess amount that the corporation actually spent in obtaining the court order, can be added to the unit's contribution to common expenses
- s. 162 Cost incurred by a vacant land condominium corporation of maintenance and/or repair to a vacant land condominium unit if damage was not done by the unit owner
- s. 163 Cost incurred by a vacant land condominium corporation in restoring buildings on a vacant land unit, where buildings are damaged and the vacant land condominium unit owner fails to restore

Checklist 25 — Liens for Common Expenses

Where an owner is in default in the payment of common expenses, the corporation is granted a lien against the unit upon the following conditions:

- s. 85 The corporation can only recover in addition, interest, reasonable legal costs, and expenses as part of the lien

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- s. 85(4) The corporation must notify the unit owner 10 days prior to registration of the lien by sending notification by prepaid mail to the address on the corporation's register under s. 47(2) or personal delivery
- s. 85(7) The corporation must notify the owner of discharge of the lien
- s. 86(4) The corporation must notify the mortgagee on or before registration of the lien by registered mail or personal delivery to the last known address of the encumbrancer
- s. 87 Notice to tenant to pay rent where the unit is in arrears of common expenses
- s. 87(5) Rental payment to the corporation has priority over any notice of attornment issued by a mortgagee
- s. 88(2) Corporation is required to prepare a pay-out statement free of charge for the mortgagee
- s. 139 A common elements condominium corporation lien applies against the parcel of tied land (POTL) and only has priority over a mortgage registered on title when the declaration and description are registered if the mortgagee consented to the registration of the declaration and description

Checklists 26 — Repair and Maintenance

Generally

While repair and maintenance duties can be modified in the declaration, the Act apportions responsibilities between the corporation and the owners in the following manner.

- s. 89(1) Corporation is responsible for repairing and, if necessary, replacing the units and common elements after damage (unless the declaration provides differently (s. 91) or the corporation is terminated due to substantial damage to the property (s. 123))
- s. 89(2) Corporation's obligation to repair and/or replace after damage does not include any improvements made to a unit
- s. 89(3) What constitutes an improvement shall be determined by reference to the standard unit
- s. 89(4) Until the corporation passes a standard unit by-law, corporations registered prior to May 5, 2001 continue to have the obligation to repair betterments and improvements made to a unit before the condominium was registered
- s. 89(5) Corporation can create obligations for maintenance and repair by by-law as long as they do not contradict what is explicitly set out in the declaration and they comply with the Act
- s. 90(1) Corporation maintains the common elements and the owners maintain the units, unless the declaration provides differently
- s. 90(2) Maintenance is defined to include repair after normal wear and tear, but not repair after damage
- s. 91 Obligations to maintain and/or repair after damage set out in ss. 89(1) and 90(1) can be allocated differently in a corporation's declaration

Checklists of Rights, Duties and Tasks Under the Act

The statutory provisions for allocating the obligations for maintenance and repair after damage are as follows:

- (a) Subject to any decision as to whether the buildings have been substantially damaged, each owner shall repair the owner's unit after damage.
 - (b) The owners shall maintain the common elements or any part of the common elements.
 - (c) The owners shall maintain and repair after damage the exclusive use common areas appurtenant to their units.
 - (d) The corporation shall maintain the units or any parts of the units.
- s. 92(1) Corporation can repair a unit and/or common elements after damage if the owner has the obligation to repair after damage and does not do repairs within reasonable time
 - s. 92(2) Corporation can do maintenance work to the owner's exclusive use common elements or any part of them, which the owner has an obligation to maintain, if the owner fails to do so within a reasonable time
 - s. 92(3) Corporation can do maintenance work (including repair unless it is repair after damage) to an owner's unit, where the owner has that obligation and the owner does not do the maintenance, and there is a potential risk of injury or damage to persons or property if it is not maintained
 - s. 92(4) Costs of maintenance and/or repair to a unit or common elements, which the corporation does because an owner has failed to do so if it is done in accordance with this section, can be collected as common expenses
 - s. 97 Where the corporation uses materials to maintain and/or repair that are reasonably close in quality to the original or as is appropriate with current standards, the work will not be considered a change or alteration to the common elements
 - s. 123(3) If damage occurs to a building or a structure located on the property that may be substantial
 - s. 123(4) Based on such estimates, board must then determine whether there has been substantial damage
 - s. 123(5), (6) If board determines there has been substantial damage, board must give notice of such determination to owners specifying that,
 - (a) owners have the right within 30 days to requisition a meeting of owners; and
 - (b) board is required to register notice terminating government of property by *Condominium Act, 1998* if 80 per cent of owners vote to terminate
 - s. 123(7) Board must register Notice of Termination (Under Subsection 123(8) of the *Condominium Act, 1998*) (formerly O. Reg. 49/01, Form 14) terminating government of property by *Condominium Act* if at least 80 per cent of owners vote to terminate
 - s. 123(9) Board must register Notice of Termination within 30 days of vote in favour of termination

Checklists of Rights, Duties and Tasks Under the Act

- s. 124(3) When a sale of the property of the corporation or part of the common elements takes place, board must deliver a deed and a Certificate in the Matter of a Sale (formerly O. Reg. 49/01, Form 15)
- s. 130(5) Board must send a summary of inspector's report to owners

Vacant Land Condominium Corporations (VLCCs)

- s. 162(1) Sections 89 to 92 inclusive do not apply to VLCCs
- s. 162(2) Obligation to repair after damage includes repair and replacement after damage or failure
Obligation to maintain includes repair after normal wear and tear but not to repair after damage
- s. 162(3) Corporation shall maintain and repair the common elements
- s. 162(4) Unit owners shall maintain and repair the units
- s. 162(5) Costs incurred by the condominium corporation in doing maintenance and/or repair that is the unit owner's responsibility can be collected as common expenses

Checklists 27 — Reserve Fund

To accurately determine the appropriate size of the reserve fund, the Act requires that a reserve fund study be conducted for existing and new condominiums.

- s. 80(5) The reserve fund component of the common expenses component of the occupancy fee is payable to the corporation if a purchaser is in occupancy beyond six months
- s. 93(5) Contributions vary depending on whether a study has been done — corporation must do a study unless the regulations specify otherwise
- s. 93(6) Contributions to the reserve fund are the greater of the amount specified in the study or 10 per cent of the total for common expense contributions
- s. 93(7) Interest earned stays in the reserve fund
- s. 94 Corporation must do periodic reserve fund studies
- Three classes of studies: comprehensive study, updated study based on a site inspection, and updated study not based on a site inspection (O. Reg. 48/01, Part IV)
 - Each consists of physical analysis and financial analysis
 - Existing corporation must conduct comprehensive study within three years of May 5, 2001
 - New corporations must conduct comprehensive study within three years of registration
 - Subsequent studies must be conducted within three years of previous study
 - Only certified appraisers, architects, engineering technologists, reserve planner and engineers, or B. Tech (Architectural Science) graduates, professional surveyors or architectural technologists may conduct study

Checklists of Rights, Duties and Tasks Under the Act

- Interested parties, including directors, officers, property managers or their spouses or same-sex partners or children are disqualified
- s. 94(7) Cost of the study can be charged to the reserve fund
- s. 94(8) Within 120 days of receiving a reserve fund study, the board must propose a plan for funding which ensures that within a prescribed time and requirements, there will be adequate amounts
- s. 94(9) 15 days after proposing plan, the board must give to the owners and the auditor notice of the summary of the study and the proposed plan as well as a statement as to where the study and plan differ
- s. 94(10) Plan implementation occurs 30 days after the notice was sent to the owners and the auditor. A total of 165 days elapses from the date the study was received until the plan is implemented
- s. 95(2) Board can spend reserve fund moneys for reserve purpose without the consent of the owners
- s. 115(4) Corporation must establish a separate reserve fund account and pay moneys into it
- s. 115(5) The Act sets out how reserve fund moneys can be invested; defines "eligible" security to mean bond, debenture, GIC, deposit receipt, deposit note, certificate of deposit, term deposit or other similar instrument that is
- (a) issued or guaranteed by the government of Canada or of any province;
 - (b) issued by an institution located in Ontario and insured by the CDIC; or
 - (c) a prescribed class of security
- s. 115(7) Reserve fund moneys can be invested in eligible securities if they are held in the name of the corporation or held in a segregated account in the name of the corporation by a member of the IDA and is insured by the CIPF
- s. 115(8) Before investing, the board must have developed an investment plan based on the anticipated cash requirements of the reserve fund as set out in the most recent reserve fund study

Checklist 28 — Changes to Common Elements, Assets or Services

The board is entitled to change the common elements, an asset of the corporation or the services provided to the owners as follows:

Changes Without Notice

- s. 97(1) "Change" includes change of service
Maintenance and/or repair if using comparable materials to the originals — will not be considered a change within the meaning of this section
- s. 97(2) "Change" includes changes in services
Any change required to comply with a s. 113 agreement (cost-sharing), a statute, regulations or by-laws;

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If the board determines the change must be made to avoid imminent damage to property or assets; or

If subject to regulations — the estimated cost in any month or other prescribed period is no greater than \$1,000 and 1 per cent of the annual budgeted common expenses for the year

Changes With Notice

- s. 97(3) "Change" includes change of service
- Notice to owners must include (i) estimated cost, (ii) how the corporation intends to pay for it, (iii) a statement of the owners' right to requisition a meeting and (iv) a copy of s. 97 and s. 46 (regarding requisition of meetings)
- Change becomes effective if no requisition is received or if a requisition is received and a meeting is held and the owners do not vote against it
- s. 97(4) Substantial change requires 66 $\frac{2}{3}$ per cent approval of owners all units at a meeting
- s. 97(6) Definition of "substantial" — if the estimated total cost of the change is:
- (a) 10 per cent of the budgeted common expenses; or
 - (b) the board elects to treat it as substantial

Checklists 29 — Common Elements — Changes Made by Owners

The Act contemplates changes to the common elements being made by individual unit owners, subject to the following procedures:

- s. 98(1) Owners can make changes to the common elements, if not contrary to the Act or the declaration if
- (a) the board approves the change by resolution
 - (b) the board and the owner have entered into an agreement that:
 - (i) allocates the cost of the change between the corporation and the owner,
 - (ii) sets out the parties' duties re maintenance and/or repair and the associated costs, including insurance,
 - (iii) sets out any matters required by the regulations
 - (c) the board complies with provision in s. 97(2) where the change is to non-exclusive common elements, i.e., either
 - (i) board resolution without notice to owners,
 - (ii) change with notice to owners of change and owners' right to requisition meeting,
 - (iii) vote of owners is obtained if the change is substantial
 - (d) the corporation must include a copy of the agreement between the corporation and the owner in the notice to owners, which is required under s. 97(3) or (4)
- s. 98(2) Where owners want to make changes to exclusive use common elements, the board must be satisfied that:
- (a) there is no adverse impact on other units,

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- (b) there is no additional expense to the corporation,
- (c) the change will not detract from the appearance of the buildings,
- (d) the change will not affect structural integrity, and
- (e) the change does not contravene the declaration or prescribed requirements

If satisfied with (a) through (e), board need not give notice to owners

- s. 98(3) Agreement regarding changes to the common elements is only effective when parties have
- (a) entered into an agreement,
 - (b) the board has by resolution approved it, and
 - (c) s. 97 notice and/or approval, if necessary, has been complied with
- s. 97(5) Agreement regarding changes to the common elements binds the owner and successors in title and must be registered on the title to the unit

Checklist 30 — Property Insurance

The Act establishes the terms under which the corporation is required to insure the common elements and the units. The Act provides as follows:

- s. 89(5) For existing corporations, if no by-law defining the standard unit is enacted the provisions of s. 27 of the 1990 Act continue to apply as to insurance responsibility for improvements and betterments
- s. 99(3) Insurance cannot be excluded for damage caused by faulty or improper material, workmanship or design that would have been insured but for the exclusion
- s. 99(4) Improvements to the unit are excluded from the corporation's coverage for condominium corporations created after May 5, 2001
- s. 99(5) Improvements for condominium corporations created after May 5, 2001 are determined by what constitutes a "standard unit" either as done by by-law or as delivered by the developer at turn-over (s. 43(5)(h))
- s. 99(6) The Act recognizes that replacement cost insurance allows for a deductible
- s. 100(1) Even if an insurance trust agreement specifies otherwise, if proceeds are less than 15 per cent of replacement cost of the property, the proceeds are payable to the corporation or as it directs
- s. 100(2) Proceeds must be used to repair the property unless owners have voted to terminate
- s. 100(3) Proceeds from Tarion Warranty Corporation claim must be used to repair deficiency
- s. 105 The deductible is recognized as being a limitation on replacement cost coverage
- (a) subject to (2) and (3) the deductible is a common expense of the corporation
 - (b) damage if caused by the act or omission of an owner — if done to the unit, the deductible is payable by the unit owner

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- (c) a by-law can be enacted to extend the circumstances where damage to the unit is not caused by either an owner's or the corporation's act or omission but the corporation wants the unit to be responsible for the deductible

- s. 114 The corporation has the right to terminate an insurance trust agreement on 60 days' written notice

Checklist 31 — Declaration

The declaration, along with the description, is one of the two constitutional documents of a condominium corporation, the registration of which will create the corporation.

Required Contents

- s. 7(2)(a) Statement that *Condominium Act* governs land and interests appurtenant to land as described in description
- s. 7(2)(b) Consent of every person having registered mortgage against land or interests appurtenant to land;
- s. 7(3) Consent not to be withheld by reason only of failure of declarant to enter into specified number of agreements of purchase and sale for sale of proposed units
- s. 7(2)(c) Statement of proportions, expressed in percentages, of common interests appurtenant to units
- s. 7(2)(d) Statement of proportions, expressed in percentages allocated to units, in which owners are to contribute to common expenses
- s. 7(2)(e) Address for service, municipal address for corporation, if available, and mailing address of corporation if different
- s. 7(2)(f) Specification of all parts of common elements to be used by owners of one or more designated units and not by all owners — i.e., exclusive use common elements
- s. 7(2)(g) Statement of all conditions that approval (planning) authority, in granting approval or exemption of description under s. 9 of the Act, requires
- Reg., s. 5(1)(c) First page contains statement that registration of declaration and description will create a standard condominium corporation
- Reg., s. 5(1)(d) Schedules A, B, C, D, E, F and G (see below)

Optional Contents

- s. 7(4)(a) Common expenses of the corporation
- s. 7(4)(b) Conditions or restrictions with respect to occupation and use of units or common elements
- s. 7(4)(c) Conditions or restrictions with respect to gifts, leases and sales of units and common interests
- s. 7(4)(d) List of responsibilities of corporation consistent with its objects and duties
- s. 7(4)(e) Description of allocation of obligations to maintain units and common elements and to repair them after damage

Checklists of Rights, Duties and Tasks Under the Act

Checklists 32 — Description

The description, along with the declaration, is one of the two constitutional documents of a condominium corporation, the registration of which will create the corporation. The required contents and organization of a description are set out below. References are to sections of the Act, O. Reg. 49/01 (Reg.) or O. Reg. 48/01.

- Reg., s. 2(2) First sheet in description, other than amendment to description, to be perimeter plan of survey and to include index that shows, for each Part of description,
- (a) number of Part;
- (b) number of sheets in Part or, if Part does not contain any sheets, indication "NIL" or "RIEN"; and
- (c) brief explanation of contents of Part
- Reg., s. 2(1)(a) Part I — Perimeter plan of survey and separate sheets of plans of survey that designate units, if any
- s. 8(1)(a) Plan of survey to show perimeter of horizontal surface of land and perimeter of buildings
- Reg., s. 3 Plans of survey must be prepared from current survey and be in accordance with O. Reg. 49/01
- Reg., s. 4(1) If description registered to effect amalgamation and properties of amalgamating corporations are not contiguous, each sheet of perimeter plan of survey in description shall include key plan illustrating the locations of properties of amalgamating corporations in relation to one another
- Reg., s. 4(2) Perimeter plan of survey for common elements of condominium corporation must show perimeter of structures on common elements
- s. 8(1)(g) Description of all interests appurtenant to land that are included in property
- Reg., s. 11(2) Each sheet of perimeter plan of survey must show the form with the Schedule of Appurtenant and Subservient Interests (formerly O. Reg. 48/01, Form 3), immediately below notation "Declaration registered as Number"
- Reg., s. 10(1) All interests that are appurtenant to property, or that will be upon registration of declaration and description, must be shown on perimeter plan of survey in light, broken or unbroken, lines of uniform width and be labelled unless they are,
- (a) described as subdivision unit as defined in s. 1(1) of O. Reg. 43/96; or
- (b) described in instrument registered with approval of examiner of surveys
- Reg., s. 10(2) All easements and similar interests to which property is subject, or will be upon registration of declaration and description, must be shown on perimeter plan of survey in light, broken or unbroken, lines of uniform width and be labelled
- Reg., s. 10(3) Easements merging in law upon registration of declaration and description, as set out in solicitor's statement in Schedule A to declaration, do not have to be shown on perimeter plan of survey.
- Reg., s. 11(1) Each sheet of plans of survey, except for sheets of exclusive use portions survey, must show specified certificates and notations

Checklists of Rights, Duties and Tasks Under the Act

- . 8(1)(c) Specification of unit boundaries by reference to buildings or other monuments
- Reg., s. 5(4) Such specification must be shown on plan views and cross sections, but no plan view or cross section is required for more than one unit with identical boundaries to other units
- Reg., s. 5(5) Plan views and cross sections must be shown on sheets of plans of survey that designate the units or, if impractical to do so, on separate sheet of plans of survey
- Reg., s. 5(6) If plan views and cross sections are shown on separate sheet of plans of survey, sheets of plans of survey that designate units must include cross-reference to separate sheet
- . 8(1)(d) Diagrams showing shape and dimensions of each unit and approximate location of each unit in relation to other units and buildings
- Reg., s. 5(2) The unit diagrams must be shown on,
- (a) perimeter plan of survey, except in case of a phased condominium corporation;
 - (b) separate sheets of plans of survey that designate units; or
 - (c) perimeter plan of survey, except in case of phased condominium corporation, and separate sheets of plans of survey that designate units
- Reg., s. 5(3) Sheets of plans of survey that designate units must refer to Schedule C of declaration
- Reg., s. 5(7) Section or perspective drawings, sufficiently accurate to portray vertical relationship of all levels, must be drawn on each sheet of plans of survey designating units
- . 8(1)(f) Certificate signed by licensed surveyor stating that diagrams of units are substantially accurate
- Reg., s. 2(1)(b) Part II — Exclusive use portions survey, if property includes exclusive use portions
- Reg., s. 5(7) Section or perspective drawings, sufficiently accurate to portray vertical relationship of all levels, must be drawn on each sheet of plans of survey showing exclusive use portions
- Reg., s. 11(3) Each sheet of exclusive use portions survey must show,
- identification of condominium plan except for number assigned as part of the name of the corporation; and
 - Surveyor's Certificate form (Under Clause 11(1)(c) of Ontario Regulation 49/01 of the *Condominium Act, 1998*) (formerly O. Reg. 48/01, Form 5) signed by surveyor stating that sheet of that survey accurately shows extent and location of portions
- Reg., s. 2(1)(c); s. 2(1)(b) Part III — Architectural plans, if any
- Reg., s. 13 Plans consist of copies of architectural drawings of buildings on property prepared by certified architect, or drawings that contain sufficient information to enable buildings to be constructed
- Reg., s. 13(3) Each sheet of architectural plans must show identification of condominium plan except for number assigned as part of name of corporation

Checklists of Rights, Duties and Tasks Under the Act

- O. Reg. 48/01, s. 9(2) Description not to contain architectural plans if it contains structural plans and Schedule G to declaration does not contain certificate of architect
- s. 8(1)(e) Must include certificate of architect that all buildings have been constructed in accordance with regulations
- Note: the architect's certificate is now required to be in Schedule G of the declaration (O. Reg. 48/01, s. 5(8))
- Reg., s. 15 Must not include any notes, words or symbols that indicate that the right to make or distribute copies is in any way restricted
- Reg., s. 2(1)(d); s. 8(1)(e) Part IV — Structural plans, if any
- Reg., s. 14 Plans consist of copies of structural engineering drawings of buildings on property prepared by professional engineer
- s. 8(1)(e) If there are structural plans, certificate of engineer that all buildings have been constructed in accordance with regulations
- Reg., s. 15 Must not include any notes, words or symbols that indicate that the right to make or distribute copies is in any way restricted
- Reg., s. 2(1)(e) Other Parts may be added as surveyor preparing plans of survey considers appropriate.

Checklists 33 — Amendments to Declaration and/or Description

The declaration and/or description of a condominium corporation may be amended by the following procedures:

- s. 107(2)(a) The board must approve amendment by resolution in writing
- s. 107(2)(b) The developer must approve the amendment in writing if
- (a) at the time the board approved the amendment, the developer had not transferred all of the units (except telecommunications units — s. 22(5)); and
 - (b) less than 3 years has lapsed since the later of the registration of the declaration and description and the date the developer entered into the first agreement of purchase and sale
- s. 107(2)(c) The board has held a meeting of owners and the requisite percentage of votes has been achieved; the notice of the meeting must include the proposed amendment
- s. 107(2)(d) For s. 7(2)(c), (d), (f) or s. 4(e) — the owners of at least 90 per cent of the units have consented in writing, or
- s. 107(2)(e) In cases other than (d) the owners of at least 80 per cent of the units have consented in writing, and
- s. 107(2)(f) Notice to mortgagees on record
- s. 107(5) Registration is required for the amendment to be effective — the amendment cannot be registered until at least 30 days have elapsed since notice was given to the mortgagees
- s. 107(6) The amendment must be accompanied by a prescribed certificate of compliance
- s. 109 Court application to amend the declaration and/or description