1974

c 133 The Condominium Amendment Act, 1974

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CHAPTER 133

An Act to amend The Condominium Act

Assented to February 14th, 1975

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 1 of The Condominium Act, being chapter 77 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clauses:

(ha) "declarant" means the owner or owners in fee simple of the land described in the description at the time of the registration of a declaration and description of the land, and includes any successor or assignee of such owner or owners but does not include a bona fide purchaser of a unit who actually pays fair market value or any successor or assignee of such purchaser;

(na) "proposed unit" means land described in an agreement of purchase and sale that provides for delivery to the purchaser of a deed or transfer capable of registration after a declaration and description have been registered in respect of the land.

2.—(1) Clause b of subsection 1 of section 3 of the said Act is repealed and the following substituted therefor:

(b) the consent, in the prescribed form, of every person having a registered charge, mortgage, lien, or other claim securing the payment of money against the land or interests appurtenant to the land described in the description, other than a municipality having a registered agreement with the owner of the land described in the description or with any predecessor in title of the owner.
(2) The said section 3 is amended by adding thereto the following subsections:

(5) Notwithstanding subsections 3 and 4, the corporation may by resolution of the board change its address for service and the change does not take effect until a notice thereof in the prescribed form is registered.

(6) The corporation on at least seven days notice to every owner, or an owner on at least seven days notice to the corporation and every other owner, may apply to a judge of the county or district court for an order amending the declaration or description and the judge, if he is satisfied that an amendment is necessary or desirable to correct a manifest error or inconsistency in the declaration or description or arising out of the carrying out of the intent and purpose of the declaration or description, may make the order.

(7) An amendment to a declaration or description made by an order under subsection 6 is ineffective until a certified copy of the order is registered.

3. — (1) Subsection 1 of section 5 of the said Act is amended by striking out "master of titles and every registrar of deeds" in the first line and inserting in lieu thereof "land registrar".

(2) Subsection 3 of the said section 5 is amended by striking out "master of titles and every registrar of deeds" in the first line and inserting in lieu thereof "land registrar".

4. The said Act is amended by adding thereto the following section:

8a.—(1) The corporation may, by by-law,

(a) lease any part of the common elements, except any part that the declaration specifies are to be used by the owners of one or more designated units and not by all the owners; and

(b) grant or transfer an easement or licence through the common elements.

(2) A lease or a grant or transfer of an easement or licence mentioned in subsection 1, signed by the authorized officers of the corporation under its seal, affects the interest of every owner in the common elements as if the lease, grant or transfer had been executed by him, and shall have attached thereto an affidavit of one of the officers stating that the lease, grant or transfer was authorized by a by-law of the corporation.
5.—(1) Subsection 2 of section 9 of the said Act is repealed and the following substituted therefor:

(2) The land registrar shall assign a name to each corporation or proposed corporation in accordance with the regulations.

(2) Subsection 7 of the said section 9 is repealed and the following substituted therefor:

(7) If a vacancy in the membership of the board occurs, the majority of the remaining members of the board may appoint any person qualified to be a member of the board under the declaration or by-laws to fill the vacancy for the remainder of the term.

(7a) Any director may be removed before the expiration of his term by a vote of members who together own a majority of the units and the members may elect any person qualified to be a member of the board under the declaration or by-laws for the remainder of the term of the director removed.

6. The said Act is further amended by adding thereto the following sections:

9a.—(1) A corporation shall hold an annual meeting of the members not more than three months after the registration of the declaration and description, and subsequently not more than fifteen months after the holding of the last preceding annual meeting, and at such meeting any member of the corporation or any mortgagee or chargee entitled to vote shall have an opportunity to raise any matter relevant to the affairs and business of the corporation.

(2) The board may at any time call a meeting of the members of the corporation for the transaction of any business, the nature of which shall be specified in the notice calling the meeting.

(3) The board shall, upon receipt of a requisition in writing made by members of the corporation who together own at least 25 per cent of the common elements, call and hold a meeting of the members of the corporation and if the meeting is not called and held within thirty days of receipt of the requisition, any of the requisitionists may call the meeting, and in such case, the meeting shall be held within sixty days of receipt of the requisition.
Requisition Notice

(4) The requisition shall state the nature of the business to be presented at the meeting, and shall be signed by the requisitionists and deposited at the address for service of the corporation.

(5) At least ten days written notice of every meeting of the members of the corporation specifying the place, the date and the hour thereof and the nature of the business to be presented shall be given to each member and to each mortgagee or chargee entitled to vote, personally or by prepaid mail addressed to him at the address provided under subsection 6.

(6) The corporation shall maintain a record upon which shall be entered each owner or mortgagee or chargee who notifies the corporation of his entitlement to vote and of his address for service and the notice of a meeting required by subsection 5 shall be deemed to be sufficiently given if given in accordance with subsection 5 to those persons entered on the record twelve days before the date of the meeting.

(7) A mortgagee or chargee who receives a notice shall, in order to be entitled to exercise the right of the owner to vote or to consent, notify the corporation and the owner of his intention to exercise such right at least two days before the date specified in the notice for the meeting.

9b.—(1) The board elected at a time when the declarant owns a majority of the units shall, not more than twenty-one days after the declarant ceases to be the registered owner of a majority of the units, call a meeting of the members of the corporation to elect a new board of directors, and such meeting shall be held within twenty-one days after the calling of the meeting.

(2) If the meeting referred to in subsection 1 is not called within the time provided for by that subsection, any member of the corporation or any mortgagee or chargee entitled to vote may call the meeting.

7. Subsection 1 of section 10 of the said Act is amended by adding thereto the following clause:

(6a) authorizing the borrowing of money to carry out the objects and duties of the corporation.

8. Subsection 1 of section 11 of the said Act is amended by striking out "owners" in the second line and inserting in lieu
9. The said Act is further amended by adding thereto the following section:

11a. No corporation or servant or agent of a corporation shall restrict reasonable access to the property by candidates, canvassers or their authorized representatives, for election to the House of Commons, the Legislative Assembly, any office in a municipal government or school board for the purpose of canvassing or distributing election material.

10. Subsection 4 of section 13 of the said Act is repealed and the following substituted therefor:

(4) Where an owner defaults in his obligation to contribute to the corporation towards the common expenses in the proportion allocated to his unit, the corporation has a lien for the unpaid amount against that unit and its appurtenant common interest.

(4a) The lien mentioned in subsection 4 expires three months after the default that gave rise to the lien first occurred unless the corporation within that time registers a notice of lien in the prescribed form.

(4b) Any person acquiring an interest in a unit from an owner may, with the consent of the owner, request the corporation to give a certificate in the prescribed form in respect of the common expenses of the owner and of default in payment thereof, if any, by the owner, and the certificate binds the corporation as against the person requesting the certificate in respect of any default or otherwise shown in the certificate, as of the day it is given.

(4c) The corporation shall give the certificate requested under subsection 4b within seven days after its receipt of the request therefor and where the corporation fails to give the certificate within the time prescribed, the corporation shall be deemed, as against the person requesting the certificate, to have given a certificate stating no default.

11. Section 14 of the said Act is amended by adding thereto the following subsection:

(1a) A grant or transfer of an easement to the corporation is as effective as if the corporation owns land capable of being benefited by the easement.

12. The said Act is further amended by adding thereto the following sections:
15a. The corporation may, by a vote of members who own 66-2/3 per cent of the common elements, terminate, on giving sixty days notice in writing, any agreement between the corporation and any person for the management of the property entered into at a time when the majority of the members of the board of directors were elected when the declarant was the registered owner of a majority of the units.

INVESTIGATION OF RECORDS

15b.—(1) Every person in receipt of money paid by or on behalf of an owner for the payment of common expenses shall, upon reasonable notice and during normal business hours, make available for examination by the corporation or any owner, mortgagee or chargee, all records relating to the disposition of such money.

(2) Upon application to a judge of a county or district court by the corporation or any owner, mortgagee or chargee, the judge, if satisfied that the application is made in good faith and that it is prima facie in the best interests of the applicant to do so, may make an order, upon such terms as to the costs of the investigation or audit or otherwise as he considers proper, appointing an inspector to make such investigation of the affairs of any person in receipt of money mentioned in subsection 1 and to make such audit of the accounts and records of such person as the judge considers necessary.

(3) An inspector appointed under subsection 2 has the powers of a commission under Part II of The Public Inquiries Act, 1971, which Part applies to such investigation or audit as if it were an inquiry under that Act.

(4) All money received for the payment of common expenses relating to a property after the 1st day of April, 1975 shall be held by the person in receipt thereof in trust for the performance of the duties and obligations in respect of which the money is paid, and he shall pay such money into a separate account at a chartered bank or trust company or a loan company authorized by law to receive money on deposit or a Province of Ontario Savings Office and shall designate the account as a trust account.

13.—(1) Subsection 1 of section 23 of the said Act is amended by striking out “Supreme Court” in the fourth line and inserting in lieu thereof “county or district court”.

s. 23 (1), amended
(2) Section 23 of the said Act is amended by adding thereto the following subsection:

(2a) The lessee of a unit is subject to the duties imposed by this Act, the declaration and the by-laws, on an owner, except those duties respecting common expenses, and this section applies in the same manner as to an owner and where the lessee is in contravention of an order under this section, the court may terminate the lease.

14. The said Act is further amended by adding thereto the following sections:

SALE AND LEASE OF UNITS

24a.—(1) Every agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes shall be deemed to contain,

(a) a covenant by the vendor to take all reasonable steps to register a declaration and description in respect of the property in which the unit is included without delay;

(b) a covenant by the vendor to take all reasonable steps to sell the other residential units included in the property without delay other than any units mentioned in a statement under clause c of subsection 1 of section 24d; and

(c) a covenant by the vendor to take all reasonable steps to deliver to the purchaser a registrable deed or transfer of the unit without delay.

(2) Notwithstanding any provision to the contrary contained therein, an agreement of purchase and sale of a proposed unit for residential purposes shall not be terminated by the proposed declarant only by reason of the failure to register the declaration and description within a period of time specified in the agreement, unless the purchaser consents to the termination in writing.

(3) Notwithstanding subsection 2, the proposed declarant may apply to a judge of a county or district court and the judge may by order terminate the agreement if he is satisfied that,

(a) the proposed declarant has taken all reasonable steps to register a declaration and description;

(b) a declaration and description cannot be registered within a reasonable period of time; and
(c) the failure and inability to register a declaration and description is caused by circumstances beyond the control of the proposed declarant.

(4) The judge may, in an order under subsection 3, provide that a declaration and description shall not be registered in respect of the property in which the proposed unit is included during such period as he specifies in the order.

(5) An order under subsection 3 is ineffective until a certified copy thereof is registered.

(6) Where an agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes permits or requires the purchaser to take possession of or occupy the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the money paid in respect of such right or obligation to the proposed declarant shall be credited as payments of the purchase price unless the agreement states that the money or any part of it will not be so credited.

24b.—(1) An agreement of purchase and sale entered into by a declarant of a unit for residential purposes is not binding on the purchaser unless the declarant has previously delivered to the purchaser a copy of,

(a) the declaration;

(b) those parts of the description showing,

(i) the perimeter of the horizontal surface of the land and the perimeter of the buildings,

(ii) the shape and dimensions of the unit, the boundaries of the unit by reference to the buildings and the approximate location of the unit in relation to the other units and the buildings, and

(iii) any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;

(c) a statement of the recreational or other amenities intended to be provided by the declarant for the enjoyment of the owners and of the conditions, if any, that apply to the provision of such amenities;
(d) any by-laws or any rules governing the use of common elements;

(e) any agreement for the management of the property or insurance trust agreement; and

(f) where the agreement for purchase and sale is entered into within the year immediately following the registration of the declaration and description, a budget statement prepared by the declarant for the year immediately following the registration of the declaration and description setting out the common expenses, the proposed amount of each expense, particulars of the service to be provided and the amount to be contributed by the purchaser for the year.

(2) An agreement of purchase and sale entered into by a proposed declarant for a proposed unit for residential purposes shall not be binding on the purchaser unless the proposed declarant has previously delivered to the purchaser a copy of,

(a) the proposed declaration;

(b) those parts of the proposed description showing,

(i) the perimeter of the horizontal surface of the land and perimeter of the buildings,

(ii) the shape and dimensions of the unit, the boundaries of the unit by reference to the buildings and the approximate location of the units in relation to the other units and the buildings, and

(iii) any parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;

(c) a statement of the recreational or other amenities intended to be provided by the declarant for the enjoyment of the owners and of the conditions, if any, that apply to the provision of such amenities;

(d) any proposed by-laws or any proposed rules governing the use of common elements;

(e) any agreement or proposed agreement for the management of the property or insurance trust agreement; and

(f) a budget statement prepared by the proposed declarant for the year immediately following the registration of the declaration and description setting
Further disclosure before transfer of title

Inaccurate statement of common expenses

Application of section

s. 24c. enacted

Trust money

out the common expenses, the proposed amount of each expense, particulars of the service to be provided and the amount to be contributed by the purchaser for the year.

(3) Where an agreement of purchase and sale to which subsection 2 applies has been entered into, the proposed declarant shall, at least ten days before delivering a deed or transfer for the unit to the purchaser, deliver to the purchaser a further copy of each document or instrument mentioned in subsection 1 or confirmation that the document or instrument is identical in all substantial or material respects to a corresponding document or instrument previously delivered to him under subsection 2.

(4) Where the total amount incurred for the common expenses provided for in the statement mentioned in clause f of subsection 1 or clause f of subsection 2 exceeds the total of the proposed amounts set out in the statement, the declarant shall forthwith pay to the corporation the amount of the excess except in respect of increased expenses attributable to the termination of an agreement under section 15a.

(5) This section does not apply to agreements of purchase and sale entered into before the 1st day of April, 1975.

15. The said Act is further amended by adding thereto the following section:

24c.—(1) All money received by or on behalf of a proposed declarant from a purchaser on account of a sale or an agreement for the purchase and sale of a proposed unit for residential purposes before the registration of the declaration and description, other than money paid as rent or as an occupancy charge, shall be held in trust by the person receiving such money for the person entitled thereto in respect of the agreement and such money shall be held in a separate account designated as a trust account at a chartered bank or trust company or loan company authorized by law to receive money on deposit or a Province of Ontario Savings Office until,

(a) its disposition to the person entitled thereto; or

(b) delivery of prescribed security to the purchaser for repayment.

(2) Where an agreement of purchase and sale referred to in subsection 1 is terminated and the purchaser is entitled to the return of any money paid under the agreement, the proposed declarant shall pay to the purchaser interest on such money at the prescribed rate.
(3) Subject to subsection 2, where a purchaser of a proposed unit under an agreement of purchase and sale referred to in subsection 1 enters into possession or occupation of the unit before a deed or transfer of the unit acceptable for registration is delivered to him, the proposed declarant shall pay interest at the prescribed rate on all money received by him on account of the purchase price from the day the purchaser enters into possession or occupation until the day a deed or transfer acceptable for registration is delivered to him.

(4) Subject to subsections 2 and 3, the proposed declarant is entitled to any interest earned on the money required to be held in trust under subsection 1.

(5) This section does not apply in respect of money received before the day on which section 15 of The Condominium Amendment Act, 1974 comes into force.

16. The said Act is further amended by adding thereto the following sections:

24d.—(1) A declarant or proposed declarant shall not grant a lease of a unit or proposed unit for residential purposes unless,

(a) the lessee has entered into a bona fide agreement to purchase the unit;

(b) the lease grants to the lessee a bona fide option to purchase the unit;

(c) every agreement of purchase and sale of a unit included in the property includes a statement that the unit to be included in the lease is or will be leased and specifies the uses that are or will be permitted by the lease; or

(d) written notice of the lessor's intention to lease the unit has been given to every purchaser under an agreement of purchase and sale, registered owner and mortgagee and chargee entitled to vote, and the period referred to in subsection 2 has expired or, where an application is made under subsection 2, it is finally disposed of.

(2) Any person notified under clause (d) of subsection 1 may, within twenty-one days after receiving the notice, and on written notice to the declarant, apply to a judge...
of a county or district court, and the judge, if he is of the opinion that the declarant has not taken all reasonable steps to sell the unit, may by order prohibit the declarant from leasing the unit or grant such other relief as he considers proper.

(3) The notice mentioned in clause d of subsection 1 shall specify the unit or units intended to be leased and the uses that will be permitted by the lease but need not set out any other terms or identify any proposed lessee.

(4) A declarant or proposed declarant may grant leases of a unit or proposed unit for residential purposes for a period in each case not exceeding two years, including renewals, provided that subsection 1 is complied with in respect of each lease.

(5) This section does not apply to the renewal of a lease of a unit or proposed unit entered into before any agreement of purchase and sale of any unit or proposed unit included in the property is entered into.

(6) In this section, "lease" includes a license to use or occupy and any agreement in the nature of a lease.

24c. Every person who knowingly contravenes section 11a, subsection 1 or 4 of section 15b, or subsection 1 of section 24c, or knowingly purports to enter into a lease in contravention of subsection 1 or 4 of section 24d, is guilty of an offence and on summary conviction is liable to a fine of,

(a) not more than $25,000, where the person is a corporation; or

(b) not more than $2,000, where the person is other than a corporation.

17. Clause k of subsection 1 of section 25 of the said Act is repealed and the following substituted therefor:

(k) governing funds intended for the payment of common expenses;

(l) requiring and governing the books, accounts and records that shall be kept by condominium corporations and requiring and governing the accounting to members of condominium corporations in such manner and at such times as are prescribed;

(m) exempting any class of person from this Act or the regulations or any provision thereof;
(n) prescribing security for the purposes of clause b of subsection 1 of section 24c;

(o) prescribing rates of interest that shall be paid on moneys required to be held in trust under this Act.

18. The said Act is further amended by adding thereto the following section:

LEASEHOLD CONDOMINIUMS

26.—(1) A person who is the lessee of land owned by and leased from the Crown or any agency of the Crown designated in the regulations for a term of not less than ninety-nine years may, with the consent of the Crown or the agency, register a declaration and description.

(2) The Crown or agency may enter into a lease of land with itself for the purposes of this section, in which case the lease shall not merge in the fee by operation of law.

(3) Upon the registration of a declaration and description under this section, the land and the interests appurtenant to the land described in the description are governed by this Act which, subject to subsection 6, applies mutatis mutandis thereto.

(4) The lessee from the Crown or agency who registers a declaration and description under this section may assign or transfer the leasehold estate in respect of each unit designated in the description and for the purposes of this Act he shall be deemed to be the declarant and the assignee shall be deemed to be the owner of the unit.

(5) Part IV of The Landlord and Tenant Act does not apply in respect of leases or assignments or transfers thereof that are subject to this section.

(6) The Lieutenant Governor in Council may make regulations,

(a) designating provisions of this Act that do not apply to properties in respect of which this section applies;

(b) making such modifications to the application of the provisions of this Act, other than this section, that apply to properties under this section as are considered necessary to adapt their application mutatis mutandis to leasehold condominium projects;
(c) providing for such matters as are considered necessary for the purpose of effecting condominium projects in respect of leasehold land that are equivalent to those provided for by this Act in respect of freehold land;

(d) designating agencies of the Crown for the purpose of subsection 1.

Commencement 19. (1) This Act, except sections 10, 15 and 18, comes into force on the 1st day of April, 1975.

Idem (2) Sections 10, 15 and 18 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title 20. This Act may be cited as The Condominium Amendment Act, 1974.