Discussion Guide: Proposals for Condominium Property Regulation Affecting Developers and New Condominiums

Prepared by Service Alberta, Consumer Programs
May 2015

Table of Contents

Introduction

On December 10, 2014, Bill 9, the *Condominium Property Amendment Act, 2014* was passed in the Legislative Assembly of Alberta, with amendments coming into force upon proclamation. Before the majority of the amendments in Bill 9 can be proclaimed, corresponding regulations must be developed to further clarify the changes and outline the operational details of new regulatory requirements. Service Alberta (SA) is now working on amendments to the regulations to support the framework set out in the amended *Condominium Property Act* (CPA).

Proposed amendments to the regulations are based on stakeholder feedback obtained through the public consultation survey, recommendations developed during the Task Team meetings held in the fall of 2013 and discussions on Bill 13 (the predecessor to Bill 9). In addition, SA conducted further research into legislation in other Canadian provinces, notably BC, Manitoba and Ontario, as well as international jurisdictions.

In addition to this discussion, the following activities will take place in the next few months:

- Discussions of proposed amendments to the Condominium Property Regulation (CPR) related to governance, reserve funds and insurance policies;
- Development of new Dispute Tribunal regulations;
- RECA-led discussions on education, standards of practice and licensing requirements for condominium managers;
- Development and updating of education and information tools for purchasers, unit owners, boards and key stakeholders.

About this Guide

As part of the process of developing the regulations, Service Alberta is holding sessions with key stakeholder representatives to discuss proposed changes to the Condominium Property Regulation. Many of these representatives participated in the earlier CPA Task Group meetings 2013 and 2014.

The intent of this guide is to receive stakeholder input on issues asscociated with new condominiums, which will be addressed in the regulations, so that Service Alberta can adjust where necessary before to seeking approval for the policies. Service Alberta will take into account stakeholder views on the practicality of the proposals and whether any of the proposals could have unintended consequences.

This Guide was developed to assist stakeholders in providing focused responses to proposals during the meeting planned for late May. Discussion of proposed amendments will focus on workability of proposed changes; unintended consequences of proposed changes and identification of any gaps or omissions.

The discussion questions in this Guide are organized as follows:

- Questions 1 to 5 are related to information and documents to be provided to purchasers.
- Questions 6 to 8 are related to prescribed trustees, trust accounts, and records related to condominium purchases.
- Questions 9 to 10 are related to transfer of records and information from the interim boad to first elected board.

Each set of proposals is preceded by an introduction to establish context , followed by an exerpt from the amended CPA to identify the relationship between the Act and the proposed regulation. The proposals are then followed by a set of clarifying questions. Discussion will be recorded during the session, and individual stakeholders may also wish to provide written reponses, for additional clarity.

In addition to participation in the group discussion, stakeholders may provide written responses. Responses may be submitted by e-mail to **condoreview@gov.ab.ca**. Service Alberta needs to receive any written responses by **June 12, 2015** in order to consider them fully.

Information and documents provided to purchasers:

1. Building Assessment Report (BAR) requirements for conversions

The BAR for conversions will enhance protection for purchasers similar to what has been done for purchasers of new condominiums under the *New Home Buyer Protection Act* (NHBPA). 'Conversion' is defined in Bill 9 as an existing building that, at any time before the registration of the condominium plan, was occupied in whole or in part by any person including a tenant, subject to exclusions.

The BAR, prepared by a qualified professional, will inform a purchaser's decision to buy in a converted condominium by identifying observable defects and deficiencies for the structures and delivery systems found in the common property and other property of the corporation, as prepared by a qualified professional. Similar to the NHBPA, Bill 9 describes qualified professionals as professional engineers, professional technologists and registered architects.

BAR requirements that are to be contained in the condominium regulations will only apply to converted buildings not already captured by the NHBPA. Service Alberta is working with staff from the Municipal Affairs ministry as Municipal Affairs refines its guidance on BAR requirements in the NHBPA and regulations. Requirements in the Condominium Property Regulation will take that guidance into account.

Bill 9 provisions

12(1) A developer shall not sell or agree to sell a unit or a proposed unit unless the developer has delivered to the purchaser a copy of ….

(j) if the unit is a conversion unit,

(i) a summary, in the prescribed form, of the deficiencies identified in the building assessment report prepared under section 21.1 or under the *New Home Buyer Protection Act*, as the case may be, and

(ii) the reserve fund report required by the regulations; …..

12(3) A purchaser of a unit may, within 10 days of receiving a summary of the deficiencies identified in the building assessment report referred to in subsection (1)(j)(i), request in writing a copy of

the building assessment report prepared under section 21.1 or under the *New Home Buyer Protection Act*, as the case may be, and the developer shall provide a copy of the report to the purchaser within 10 days of receiving the request.

…..

21.1(1) This section applies to a conversion in respect of a building that is not subject to the *New Home Buyer Protection Act*.

(2) A developer shall, in respect of a conversion, arrange for the preparation of a building assessment report by a professional engineer, professional technologist or registered architect for real property of the corporation, the common property and managed property.

(3) A building assessment report must be prepared in accordance with the regulations.

Proposal(s)
Establish content and requirements of the Building Assessment Report (BAR) done for conversions. Requirements would be similar to section 4 of the *New Home Buyer Protect Act's* General Regulation for preparation of building assessment reports done for conversions, while recognizing that the building contstruction is already completed, and the person preparing the BAR is not able to directly observe the various delivery and distribution systems or the materials beneath the building envelope. Specific proposals are provided in Attachment 1.

Questions for discussion:

a) Is there any aspect of the proposed approach that is not feasible?
b) Please identify any unintended consequences of the proposed approach.

2. Disclosure of occupancy date

Open disclosure and transparency around the anticipated completion schedule of a condominium project is mutually beneficial for consumers and developers. It gives purchasers a clear understanding of how long they are obligated to maintain financial and other commitments (e.g. housing arrangements), and helps developers manage purchaser expectations. The proposed occupancy disclosure scheme is based on Ontario's Delayed Occupancy Warranty Program, except that the Alberta scheme is not affiliated with warranty. Under the proposed model, purchasers would be given a fixed occupancy date or a tentative occupancy and a final "drop dead" date as part of the disclosure package. A fixed or final occupancy date may only be extended if:

a) parties mutually agree to a future date;
b) purchaser exercises proposed rescission rights, as set out in proposals 2.3 and 2.4, below;
c) an 'unavoidable delay' occurs.

A "fixed" occupancy date would indicate that a unit will be ready for occupancy on or before a precise date. It would operate as though there was just one final occupancy date (and if the developer misses it, rescission rights are triggered as below).

A “tentative” occupancy date would be the earliest point in a range of potential dates where a purchaser may take occupancy.

The tentative occupancy date may be extended one or more times by the developer, without penalty, provided that the purchaser is given proper notice of the delay, and occupancy is delivered on or before the final occupancy date.

An Occupancy Disclosure Logic Model is provided separately, to assist in visualizing the sequence and flow of events.

Other key features of proposal:

- Purchasers would receive minimum notice of the date of occupancy or, in the case of a delay, a notice of delay and minimum notice of the new date on which occupancy is to take place.
- Parties may extend the occupancy date beyond the final date by way of mutual agreement.
- Purchasers may exercise rescission rights if unit is not ready within 30 days of the final occupancy date, or if the developer fails to provide notice of an occupancy delay.
- If the tentative occupancy date is extended and remains within the final occupancy date period, but the developer provides late notice, the purchaser will not be entitled to rescind the agreement but may take the matter to Court for remedy. The likelihood that such an action would be brought before Court is dependent on the length of the delay and damages suffered by the purchaser.
- Developer may extend all critical dates in the event of an ‘unavoidable delay’ [*defined in proposals section*].
- Changes in the occupancy date(s) do not constitute a ‘material change.’

Bill 9 provisions:

12(1**)** A developer shall not sell or agree to sell a unit or a proposed unit unless the developer has delivered to the purchaser a copy of

…

(k) a statement prepared in accordance with the regulations setting out a fixed date or range of dates by which the purchaser may commence occupancy of the unit;

Proposal(s)
2.1 Developer is to provide purchasers with one of two forms (to be set out in the Regulation, or specified by the Director) stating either the fixed occupancy date, or the tentative and final occupancy date (see Attachment 2). Form must be included in the package of documents and information provided under the new section 12(1). [*Sample forms are provided in Attachment 2*]
2.2 If the unit will not be ready within 30 days of the tentative occupancy date, the developer must provide, in writing, a ‘Notice of Delay’ to the purchaser at least 60 days prior to the initial date and disclose a new tentative occupancy date.

2.3 If the unit will not be ready within 30 days of the fixed or final occupancy date, the developer must provide, in writing, a 'Notice of Delay' to the purchaser. At this time, the purchaser can immediately rescind the purchase agreement until a new final date is proposed by the developer.

Notice

2.4 Where a tentative occupancy date is moved but no notice is provided to the purchaser of such, the purchaser may rescind the agreement.

2.5 Where a tentative occupancy date is moved but the notice is provided late, the purchaser may take the matter to Court for remedy.

Unavoidable Delay Definition:

2.6 "Unavoidable delay" means an event that delays occupancy, limited to a strike, fire, explosion, flood or act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Developer and are not caused or contributed to by the fault of the Developer.

Questions for discussion:

a) Is there any aspect of the proposed approach that is not feasible?
b) From a perspective that balances purchaser needs with the realities that developers must deal with, what is a **reasonable** maximum length of time between the tentative occupancy date and the final date?
c) In a situation where a purchaser may take the matter to Court for a remedy if a tentative occupancy date is moved and notice is provided late, should the remedy be for damages?
    a. What additonal remedies should the purchaser be able to seek?
d) If there are repeated changes to the tentative occupancy date, what remedy or remedies should the purchaser be able to seek?
e) Should the definition of "unavoidable delay" take into account any other events or circumstances that contribute to a delay?
    a. What is an acceptable duration for an unavoidable delay, and at what point should a purchaser be entitled to compensation or be able to seek an alternate remedy?
f) Please identify any unintended consequences of the proposed approach.

3. First Budget requirements

The budget will give purchasers of new condominiums a more accurate picture of the true costs of operating a condominium on an annual basis, and will assist them in deciding whether they can afford the monthly condo fees they are expected to pay. A standard budget protocol will also create a level playing field among condominium developers, relative to their respective proposed budgets, due to the fact that all developers will be obligated to produce an initial budget covering similar expenditures, and determine the estimated condominium fees on the basis of that budget.

The proposed budget requirements are based on provisions in Ontario's and British Columbia's condominium and real estate marketing legislation, respectively.

Under the proposal, developers would prepare and disclose a budget for a 12 month period to purchasers as part of the information and documents to be provided under section 12(1). The initial budget would include a mandatory reserve fund category, with a minimum contribution of **15 percent** of the total estimated expenditures for the corporation. The reserve fund contribution would remain at 15 percent until such time that a reserve fund study is completed and a funding plan is implemented.

To provide realistic budget information, developers may not defer expenses that would ordinarily arise in the first year of the corporation's operation. Furthermore, expenses that are reasonably expected to arise in subsequent years must be disclosed, to the best of the developer's knowledge. Provisions would be included to allow for budget updating.

Bill 9 provisions:

12(1) A developer shall not sell or agree to sell a unit or a proposed unit unless the developer has delivered to the purchaser a copy of …

(l) the most recent budget or proposed budget of the corporation prepared in accordance with the regulations; …

Proposal(s)
3.1 Developers must prepare a proposed budget for the corporation for a 12-month period beginning on the date specified in the budget. 3.1.1 The budget must contain the following information: • The projected total revenue and expenses of the condominium corporation; • For each type of expense, a description of the service or amenity to which it relates, including but not limited to specific amounts for maintenance and repairs, insurance premiums, utility services, condominium management services, legal and/or accounting services; • A description of any service or expense that might reasonably be expected to become a common expense after the year in which the budget is prepared, and the projected amount for those services or expenses; • The contribution to the reserve fund, which must be at least 15% of the corporation's total estimated expenses; • The name of the individual and/or the accounting firm that prepared the budget; • The date on which the budget was prepared. 3.1.2 A new budget must be prepared for the year following the period specified in the budget and each year thereafter, until a board os elected under section 29 of the Act. 3.1.3 If the development is to be built in phases, and a subsequent phase is ready for occupancy during the budget year, the developer must update the budget and provide a copy of the revised budget within a specified time period. 3.1.4 Inconsistencies between estimated and actual expenses and updates to the proposed or first budget do not constitute a material change (see Issue 5 below). 3.2 If the expenses accrued by the corporation in its first year of operation are 15% or more than the operating expenses estimated in the proposed budget, the developer must pay the difference to the corporation within 60 days after the **first annual general meeting**.

Questions for discussion:

a) Is there any aspect of the proposed approach that is not feasible?
b) Should examples of repair and maintenance be included in the regulation under proposal 3.1.1, second bullet, through a list initiated by the phrase "including but not limited to" followed by a list of common expenses (e.g. lawn care; snow removal; cleaning of stairways, hallways, parkade)?
    a. If yes, what additional kinds of maintenance and repairs should be included in the list of examples?
c) Is a 15% variance between the estimated and actual expenses a reasonable amount to permit? If "no" – what would be an appropriate percentage?
d) Under what circumstances, if any, should a developer NOT be required to pay to the corporation the difference between the actual and estimated operating expenses?
e) What are the "pros" and the "cons" of setting 60 days from the first annual general meeting as the timeframe for developer to pay the difference between the estimated and actual accrued expenses for the first year of operation?
f) Please identify any unintended consequences of the proposed approach.

4. Additional purchase disclosure

To ensure purchasers have a better understanding of what they are getting into when buying a new condominium unit, purchasers would benefit from receiving additional information about the developer and project specific information including the number of buildings and units, whether any units are intended for commercial use, parking details, and whether any private water, sewage, electricity and gas facilities exist on a bare land parcel.

It is proposed that the disclosure information outlined under the section 12(1) of the Act and new information set forth in the Regulation be combined into a single comprehensive package known as the 'Disclosure Statement.'

Bill 9 provisions:
12(1) A developer shall not sell or agree to sell a unit or a proposed unit unless the developer has delivered to the purchaser a copy of …

(m) any other information or documents prescribed by the regulations.

Proposal(s)
The developer shall deliver to every person who purchases a unit or a proposed unit a disclosure statement containing all of the documents and information required under section 12(1) and (2) and in this section. • A purchaser's rescission rights under s.13 apply to the disclosure statement. • A disclosure statement shall specify the date on which it is made and shall contain a table of contents itemizing all of the information and documents in s. 12 and set out in this section of the regulations. Additional disclosures: 1) if the corporation is a leasehold condominium corporation, the term of the lease and any other notable aspects of the lease. 2) the name and address for service of the developer and the legal land description of the property or the

proposed property;

3) the name and address for service of the prescribed trustee who holds deposits under 14(6), if applicable
4) a general description of the buildings and structures the developer intends to construct on the entire parcel, including the number of units, buildings and recreational and other amenities that are anticipated together with all conditions that apply to the provision of amenities;
5) a statement whether a building on the property or a unit or a proposed unit has been converted from a previous use and the nature of the previous use;
6) a statement whether one or more units or proposed units is intended for commercial or other purposes not ancillary to residential purposes;
7) a statement setting out any fees or charges, if any, that the corporation is required to pay the developer or a third party for the use of any units or proposed units or any other property located on the parcel, or any service that will be provided to the corporation;
8) if construction of any amenities is incomplete, a schedule of the proposed commencement and completion dates;
9) Proof that the developer has a registered interest in the land upon which the condominium is to be developed or a statement that the developer has no registered interest in the land, as the case may be;
10) A statement setting out information about the buyer's right to pursue remedies set out in this regulation in the event of a material change;
11) a statement that specifies:
    a. the number and type of parking space(s) located on the common property or property of the corporation and other exclusive possession areas that are assigned to the unit being purchased
    b. charges associated with use of the parking space and exclusive possession area;

12) In the case of a bare land development, a description of any facilities located on the parcel and a description of any utilities, services or other costs that the corporation must pay for, including provisions for water, sewage, electricity and natural gas, and the estimated cost of maintaining, servicing or replacing these facilities and utilities.

Questions for discussion:

a) Is there any aspect of the proposed approach that is not feasible?
b) Please identify any unintended consequences of the proposed approach.
c) Please identify any other information that would be of value to purchasers.

5. Material change

Changes are often made to a project between the pre-construction phase and closing. Typically, purchase agreements contain clauses that permit the developer to modify certain aspects of the units, building and common facilitates. Such changes may be immaterial to a purchase but in some cases, they can affect the use or value of the project or unit being purchased. Based on a review and interjurisdictional research conducted in support of the *Condominium Property Amendment Act*, SA recommended that the concept of “material change” be codified in the CPA, and regulations be developed to provide a standard definition and rules governing the disclosure of material changes and purchaser remedies.

In meetings with developers and legal advisors regarding Bill 13, definitions for "material change" from a variety of jurisdictions were discussed. Stakeholders expressed interest in Ontario's definition but raised concerns about remedies that might provide purchasers with automatic right to rescind the purchase contract.

SA committed to conducting further research and to providing an opportunity for further discussion of the definition, proposed notice requirements and the remedies for purchasers.

Bill 9 provisions:

13.1(1) If at any time before a purchaser takes possession of a unit there is a material change in the information and documents provided by the developer to the purchaser under section 12, the developer shall deliver a written notice to the purchaser.

(2) The notice required under subsection (1) must clearly identify all changes that in the reasonable belief of the developer may be material changes, and summarize the particulars of them.

(3) The developer shall in accordance with the regulations deliver the notice required under subsection (1) to the purchaser within a reasonable time after the material change occurs and, in any event, before the day the purchaser takes possession of the unit.

(4) Where a material change referred to in subsection (1) occurs, the purchaser may exercise any of the remedies provided under the regulations.

Section 81 [*The Lieutenant Governor in Council may make regulations*] is amended …

(l) by adding the following after clause (u.1):

…

(u.92) defining any word or expression that is used but not defined in this Act.

Proposal(s)
Definition 5.1 Define 'material change' as a) "a change or a series of changes that a reasonable purchaser, on an objective basis, would have regarded collectively as sufficiently important to the decision to purchase a unit or proposed unit and, b) that it is likely that the purchaser would not have entered into an agreement of purchase and sale for the unit or the proposed unit or would have exercised the right to rescind such an agreement of purchase and sale under section 13, if the disclosure documents or purchase agreement had contained the change or series of changes." **Notice of Material Change** 5.2 Purchasers have the right to be notified of material change. • A developer must notify purchasers of a material change as soon as the developer becomes aware that a material change has occurred. **Remedies for purchasers** 5.3 Because "material change" will vary with circumstances, court action is a logical remedy for resolving disputes where a material change is believed to have taken place.

- Onus would be on the purchaser, and purchaser must take action by making an application to court within a specified time frame.
- Purchaser may "before receiving title to the unit being purchased, make an application to the Court for a determination as to whether the change or changes constitute a material change within 30 days of the latest of…"
- If the developer does not disclose material change and a purchaser discovers a material change after transfer of title, the purchaser should have right to apply to court to seek damages up to one year from the transfer of title.
    - This provides incentive for a developer to disclose, while the one-year timeframe provides a degree of certainty that potential for disputes is not open-ended.

Exemptions

5.4 Exemptions from material change:

- Changes to the budget and discrepancies between the estimated and actual condo fees do not constitute a material change.

Questions for discussion:

a) For proposal 5.2, which of the following options best addresses the intention of "as soon as possible":
    a. "within a reasonable time" after material change occurs (similar to BC's Real Estate Marketing Act) , or
    b. notice within a specific time frame (e.g. within 10 days) after the material occurs
    c. What are the pros and cons of each option?
b) For proposal 5.3, in the second bulleted item, what should be the triggering event or events that start the 30-day period for the purchaser to make an application for a determination of material change?
c) To assist with developing regulatory wording that supports consistency in marketplace practices and court (or tribunal) decisions:
    a. please identy types of project changes that would be considered a material change.
    b. please identify types of project changes that would be suitable for exemption from the definition of material change.
d) Manitoba's amended *Condominium Regulation* provides a comprehensive set of forms that developers are to use in providing various types of notice and disclosure to purchasers and that purchasers are to use in providing notice to developers. What would be the pros and cons of using a standardized disclosure form, developed by government, to provide notice of material change to purchasers?
e) What are the pros and cons of listing the types of changes identified in response to questions c, d and e within the regulation?
f) Is there any aspect of the proposed approach that is not feasible?
g) Please identify any unintended consequences of the proposed approach(es).

Payments held in trust:

6. Prescribed trustee

The CPA permits a developer to use a plan, agreement, scheme or arrangement approved by the Minister to protect condominium purchase deposits. Purchasers' deposits under these programs are secured by the deposit insurance protection of developers' warranty providers. A number of developers in Alberta are not enrolled in a deposit insurance protection program and must, therefore, place and maintain deposits in trust until title to a unit transfers to the purchaser. As a means of increasing protection of purchasers' deposits, Bill 9 stipulates that trustees of a prescribed class must handle monies held in trust under section 14 of the CPA. Upon further review and analysis, SA proposes that lawyers who are authorised to practice law in Alberta are the appropriate professionals to fulfill the role of trustee.

Bill 9 provisions:

Section 14 is amended

(a) in subsections (3), (4) and (5) by adding "or prescribed trustee, as the case may be," after "developer";

(b) by repealing subsection (6) and substituting the following:

(6) A developer who receives money that is to be held in trust under this section shall, within 3 days of receiving it, exclusive of holidays and Saturdays, deposit the money into a trust account maintained in a financial institution in Alberta.

(c) by adding the following after subsection (6):

(6.1) A trust account referred to in subsection (6) must be maintained by a prescribed trustee.

Section 81 [The Lieutenant Governor in Council may make regulations] is amended in clause (d) by adding the following after subclause (v):

…

(v.2) prescribing trustees and their duties in respect of trust accounts

Lawyers were selected for their high standards of professional conduct, liability insurance, and experience providing trustee services in accordance with the Law Society's extensive guidelines.

Proposal(s)
Classes of prescribed trustee 6.1 "Prescribed trustee" means (a) Persons authorised to practice law in Alberta (such as a developer's or purchaser's lawyer), or (b) A law firm, a sole proprietorship, or a professional corporation composed of people described in (a) **Notification to purchaser** 6.2 Stipulate that the trustee must notify the purchaser when the purchaser's deposit is placed in trust. • Require prominent notification to purchaser of this trustee obligation, similar to notification of purchaser's right of rescission under s. 12.2(a) **Release of trust money to developer** 6.3 A trustee must release trust monies to the developer if the developer certifies in writing or provides

evidence to the satisfaction of the trustee that:

- the certificate of title to the unit is issued in the name of the purchaser and the units or related common property are substantially completed, as determined by a cost consultant in accordance with s.14 (4) and (5) of the CPA;
- the developer elects to terminate the purchase agreement on the basis that the purchaser fails to pay a subsequent deposit or other fees or the balance of the purchase price as required by the purchase agreement;

Release of trust money to a purchaser

6.4 A trustee must release trust monies to the purchaser if

- The purchaser exercises rescission rights in accordance with the Act or the Regulations
- The purchase agreement to which the money relates has been terminated by mutual agreement of the purchaser and developer

Other conditions triggering release of trust monies

6.5 A trustee must release trust monies to the designated recipient if

- The money was paid into the trust in error;
- The money must be released in accordance with a court order;
- The money must be paid to court;
- the money must be released in accordance with the *Unclaimed Personal Property and Vested Property Act.*

In all cases:

- Money deposited in trust must not be released during the 10 day rescission period.
- Money held in a trust account pursuant to this section is not, while in the fund or while being transferred to or from the fund, liable to demand, seizure or detention under any legal process (Reference from Funeral Services Act).

Evidence of compliance

6.6 Within 10 days of receiving payment of the money, the developer or trustee, as the case may be, shall provide to the purchaser a notice setting out the amount deposited into the trust account.

Note: developer should also have to notify purchaser of money paid out of the trust account to the developer.

Questions for discussion:

a) Is there any aspect of the proposed approach that is not feasible?
b) What kinds of documentation is necessary to provide to the trustee to prove that conditions such as the following have been met:
    a. units and common property being substantially complete?
    b. purchaser failure to pay subsequent deposits or balances?
    c. termination of agreement by mutual agreement?
c) Please identify any unintended consequences of the proposed approach(es).

7. Record keeping for trust accounts

The Regulation will contain trust account record keeping requirements and list the circumstances under which money must be paid out of trust to the developer or to the purchaser. To better protect

purchasers' deposits, specific records need to be maintained and specified practices followed, regarding the trust accounts where the deposits are held. The proposed requirements are similar to the trust account provisions for tenants' security deposits under the *Residential Tenancies Act*, and the requirements for regulated businesses under the *Fair Trading Act*.

Bill 9 provisions:

Section 14 is amended

(d) by repealing subsection (7) and substituting the following:

(7) A developer or prescribed trustee, as the case may be, who is in possession or control of money that is to be held in trust under this section shall ensure that the money is kept on deposit in Alberta.

(7.1) A developer or prescribed trustee, as the case may be, who is in possession or control of money that is to be held in trust under this section shall comply with the requirements respecting trust accounts established by the regulations.

(e) in subsection (8) by adding ", if any," after "that money".

Section 81 [The Lieutenant Governor in Council may make regulations….] is amended in clause (d) by adding the following after subclause (v):

(v.1) respecting trust accounts, including, without limitation, regulations respecting

(A) the administration of trust accounts;

(B) the records to be kept respecting trust accounts and the period of time that those records are to be maintained, and

(C) the audit of trust accounts.

Proposal(s)
7.1 A developer or prescribed trustee, as the case may be, who is authorized under this section to operate a trust account shall keep complete and accurate financial records and maintain a separate record for each purchaser, including the name of the person on whose behalf the trustee is acting, of • all money received by the developer, including the date the money was received, the amount received and the name of each purchaser; • all money placed into trust or received in trust and the date on which it was placed /received; • the amount of money held in trust; • the name and location of the financial institution where the money is held; • interest earned on money held in trust, and • disbursements made from money received or held in trust. 7.2 A developer or a prescribed trustee, as the case may be may not co-mingle trust account deposits with other income or other business accounts. • This provision is similar to the *Residential Tenancies Act*(RTA), which specifies that a landlord shall deposit only money that is a security deposit into the trust account. A number of the regulations under the *Fair Trading Act* (FTA) have similar requirements for maintaining separate trust accounts. 7.3 A developer or a prescribed trustee, as the case may be must keep records for a period of **5 years** from the date on which money is paid out of the trust account .

Questions for discussion:

a) Is there any aspect of the proposed approach that is not feasible?
b) Please identify any unintended consequences of the proposed approach.

8. Record keeping, other documents

Bill 9 amends the CPA by adding section 78.02, which requires that any record or document required to be created or maintained under the CPA or the regulations must be available for inspection by an inspector. Greater clarity for all parties could be achieved if the regulations specify the time period for retention. This would align the amended CPA with other consumer protection legislation in Alberta (e.g. *Charitable Fund-raising Act* (CFRA), *Real Estate Act*, *Fair Trading Act* and respective regulations)

Bill 9 provisions:

78.02(1) Any record or document required to be created or maintained under this Act or the regulations must be available for inspection by an inspector.

(2) An inspector may, at any reasonable time, enter the business premises of a developer and inspect the operation and records and documents of the developer for the purpose of determining whether this Act or the regulations are being complied with.

Proposal(s)
Any record or document required to be available for inspection under section 78.02 of the Act must be retained for a period of 5 years from the time that it was created.

NOTE: Various sections of the regulation include lists of documents that must be created or maintained, in addition to the documents required under various sections of the Act. The final content of those sections of the regulation may differ from the proposals in this Guide, depending on stakeholder feedback. Rather than embedding a list of specific documents in the legislation at this time, SA proposes to develop a guidance document that will contain a comprehensive list of documents required under both the Act and the regulations for developers and other stakeholders to use for reference.

Questions for discussion:

a) Is there any aspect of the proposed approach that is not feasible?
b) Please identify any unintended consequences of the proposed change(s).

Amendments to support transition from interim to first elected board

9. Transfer of information to first elected board

The effective administration of a condominium corporation requires appropriate documentation of corporate activities and keeping records. This 'corporate memory' is particularly important where the

corporation's internal management turns over from one board to the next, and new board members do not have direct knowledge of the former board member's activities. The new board members depend on records kept by the former board to know the corporation's past activities, such as board decisions, and corporate agreements, obligations, authorizations, rights, entitlements, and so forth.

On the whole, if the new board members do not have access to documentation and records of past activities, it can be difficult for the board to make appropriately informed decisions. Without informative records, the corporation is put in a difficult position of having legal rights and obligations that it may not fully know about, or may not be able to prove. It may also be exposed to unnecessary liability, that could be mitigated if the documentation and records had been kept.

Section 46 of the current Act provides a list of documents to be provided to the corporation not later than 180 days from the day the condominium plan is registered. The provisions in Bill 9 retain the original list, and modify the turnover date to become the meeting held under section 29. The section 29 meeting takes place within 90 days from the date when the certificates of title to 50% of the units have been issued in the name of the purchasers. This change in the turn-over date for documents helps to ensure that the board elected by the new unit owners will be able to take custody of the corporate history.

Bill 9 provisions:

16.1(1) The developer shall, at the meeting of the corporation convened under section 29, provide to the corporation without charge the original or a copy of the following documents:

(a) all warranties and guarantees on the real and personal property of the corporation, the common property and managed property;

(b) the

(i) structural, electrical, mechanical and architectural working drawings and specifications, and

(ii) as built drawings, that exist for the real property of the corporation, the common property and managed property;

(c) the plans that exist showing the location of underground utility services, sewer pipes and cable television lines located on the parcel;

(d) all agreements to which the corporation is a party;

(e) all certificates, approvals and permits issued by a municipal authority, a person accredited by the Administrator under the *Safety Codes Act*, the Government or an agent of the Government that relate to the real property of the corporation, the common property and managed property;

(f) any building assessment report required under the *New Home Buyer Protection Act* or, in the case of a conversion, required under section 21.1;

(g) any reserve fund report required by the regulations;

(h) **any other prescribed document**.

(2) The interim board shall, at the meeting of the corporation convened under section 29, provide to the corporation without charge the original or a copy of all resolutions, minutes and other records and documents of the interim board.

Proposal(s)
Documents and information a developer must transfer to the first elected board under s.29 (in addition to list in s.16.1): 9.1 copies of all plans that were required to obtain a building permit and any amendments to the building permit plans, including working drawings, filed with the municipal authority; 9.2 a statement setting out any outstanding violations pursuant to the Alberta Building Code, Safety Codes Act, or municipal bylaws; 9.3 the details of any oral agreements amending or altering written agreements entered into by or on behalf of the corporation; 9.4 a copy of the condominium plan registered at the land title office; 9.5 names, addresses and contact information of all contractors, subcontractors and persons who supplied labour or materials to the project, or in the case of a condominium converted from a previous use, the same information for all contractors, subcontractors and persons who supplied labour or materials to the project after the developer acquired title to the property; 9.6 all manuals, schematic drawings, operating instructions, service guides, manufacturers' documentation and other similar information respecting the construction, installation, operation, maintenance, repair and servicing of any common property or real and personal property of the corporation, including any records of service and repairs to the property; 9.7 any document in the developer's possession that indicates the actual location of a pipe, wire, cable, chute, duct or other facility for the passage or provision of systems or services, if the owner developer has reason to believe that the pipe, wire, cable, chute, duct or other facility is not located as shown on a plan or plan amendment filed with the issuer of the building permit and includes record drawings. 9.8 a statement setting out any resolutions of the interim board and copies of any minutes of the interim board or general meeting of the owners, including the results of any votes; 9.9 a list of interim board directors; 9.10 a current list of all owners, with their unit addresses, mailing addresses if different, unit numbers as shown on the condominium plan, parking stall and storage locker numbers, if any, and unit factors for the units; 9.11 the names and addresses of mortgagees who have given written notice to the corporation under section 26(3) of the Act; 9.12 the names of any tenants, unit number being occupied by those tenants and any deposits taken from owners of the rental units; 9.13 any rules, other than the bylaws, governing the corporation; 9.14 any unsatisfied judgment by a court or proceeding in which the corporation is a party to and any legal opinions obtained by the corporation; 9.15 a list of any outstanding notices of unresolved violations of building code or other municipal orders; 9.16 the budget(s) or proposed budget and any financial statement for the corporation's current year and for previous years;

9.17 records pertaining to bank, trust company, treasury, or credit union accounts holding the reserve fund, operating funds and any other funds of the corporation;

9.18 any tax records of the corporation;

9.19 the particulars of any exclusive possession areas or copies of any leases, licences or other instruments granting an owner the right to exclusive possession (in accordance with s.50);

9.20 a copy of any easement or restrictive covenants burdening the condominium parcel (see s.52(1));

9.21 copies of all insurance policies obtained by or on behalf of the corporation and the related certificates.

Questions for discussion:

a) Is there any aspect of the proposed approach that is not feasible?
b) Please identify any unintended consequences of the proposed approach.
c) What additional documents, or other items, should be on the list?
d) Should any documents be removed from the list, and if so, for what reason?

10. Exemption for specified agreements

Section 17.1(1) in Bill 9 allows for exemptions from the new termination provision for certain developer-initiated agreements. In previous discussions with CHBA there was mention of three types of agreements that would be suitable for exemption: easements, mutual use agreements and tele-communications agreements.

Bill 9 provisions:

17.1(1) **Except as otherwise provided in section 17 and the regulations**, a corporation may terminate an agreement within 12 months after the time at which its board first consists of directors who were elected when persons who were at arm's length from the developer owned or held units representing more than 50% of the total unit factors for all the units.

(2) Subsection (1) applies despite any term to the contrary in the agreement to be terminated.

(3) To terminate an agreement under this section, the corporation must give written notice of the termination date to the other party to the agreement at least 60 days, or any shorter period specified in the agreement, before the termination date.

(4) Where a corporation terminates an agreement under this section, the corporation is not liable to the other party to the agreement by reason only of the termination of the agreement under this section.

Proposal(s)
Exempt easements, mutual use agreements and tele-communications agreements from the provisions that permit the first elected board to cancel agreements entered into by the developer or the interim board.

Questions for discussion:

a) Is there any aspect of the proposed approach that is not feasible?
b) It would be helpful for Service Alberta to know why termination of certain agreements would be problematic for industry and if there are any examples of other types of agreements that should be considered for exemption.
    a. What types of agreements, if any, should be added to the agreements listed above?
    b. Are there particular parties or kinds of parties to agreements (e.g. municipality; neighboring landowner; public utility) should be exempted from the board's right to cancel a developer-made agreement?
    c. What would be the consequences to the condominium project if the suggested agreements are cancelled by the elected board?
c) Please identify any unintended consequences of the proposed change(s).

Attachment 1: Preparation of BAR done for conversions

NOTE: terms that are not defined have the definitions in the *New Home Buyer Protection Act*.

1. In the case of a conversion, a developer must arrange for one or more qualified persons identified in s.21.1(2) [*amended CPA*] to prepare a building assessment report for the common property, managed property and the real property of the corporation, not earlier than 180 days before the sale or offering for sale of a unit in the building;

2. A building assessment report must contain the following:

(a) the identification and description, estimated age and projected life expectancy of
  (i) the delivery and distribution systems in the building,
  (ii) the visible mechanical systems in the building,
  (iii) the visible parts of the building envelope,
  (iv) the visible surface water drainage system around the building, and
  (v) the visible load-bearing parts in the building as the building was built;

(b) the name and qualifications of the person(s) preparing the BAR;

(c) the identification of any part of the building identified in subsection 2(a) which, although no defect is visible, on the basis of visual or other evidence collected during the qualified person's investigation of the building, merits additional investigation in the qualified person's professional opinion;

(d) the identification of any observable defects in or damage to the building resulting from any observable defect in each delivery and distribution system, the building envelope and any mechanical systems, and of the load-bearing parts in the building;

(e) a report on an inspection of the common property and managed property, if any, and the real property of the corporation, if any;

(f) the results of a survey of any occupants of the building at the time of the inspection referred to in clause (d) of the building of any observed defects or deficiencies in or damage to the building resulting from any defect or deficiency in
  (i) any delivery and distribution system,
  (ii) the building envelope,
  (iii) the load-bearing parts in the building;

3. For greater certainty, the list in section 2 requires descriptions of every existing
  (a) delivery and distribution system and mechanical system that serve two or more units,
  (b) roofing and and any visible venting for attic space and soffits, and cladding
  (c) water control system, including
    (i) eavestroughing,
    (ii) balcony membranes and sealants,
    (iii) grade and landscaping drainage courses.

(d) the projected life expectancy may be the typical life expectancy for items of a similar type to those which exist, and may be expressed in a range of possible life expectancies.

4. Prescribed information that must be included in the **BAR summary** given to purchasers under s.12(1)(j):
   - Identification of any observed defects and damages;
   - Identify all parts where further investigation is recommended;
     - (note: delivery and distribution systems need to be inspected only if they serve 2 or more units)
   - a synopsis of the survey of building occupants.

5. Summary must be prepared by one of the persons retained to complete the BAR.

6. Both the summary and the BAR must contain a statement to the effect that descriptions of the estimated costs of repairs to or replacement of of any depreciating property, including any delivery and distribution systems, any mechanical system in the building, drainage systems, etc. are to be found in the reserve fund report referred to in section 12(1)(j)(ii) of the Act [*i.e. amended CPA*].

Attachment 2: Statement of occupancy dates

Form #

Statement of Occupancy Dates

(Range of Occupancy Dates)

This statement of Occupancy Dates forms part of the documents and information that must be provided to a purchaser as part of the sale or offering of a sale of a unit or proposed unit in accordance with section 12(1) of the *Condominium Property Act* and section xx of the Condominium Property Regulation. **The developer must complete all blank fields set out below**.

Property Address:_____

Developer's Name: _____

Purchaser's Name:_____

1. **Critical Dates**
   The Tentative Occupancy Date, which is the date that the Developer agrees the condominium unit will be completed and ready for occupancy, is:

   The___day of_____, 20____.

   If the Developer cannot provide occupancy within **30 days after** the first Tentative Occupancy Date, the developer must provide a 'Notice of Delayed Occupancy' to the Purchaser as soon as the Developer knows that it will be unable to provide occupancy by the first Tentative Occupancy Date or at least **60 days** before that date, whichever happens sooner, setting out the reasons for the delay, the status of construction and a Delayed Occupancy Date or the Final Occupancy Date (new move-in date).

   The Tentative Occupancy Date may be extended one or more times with written notice to the purchaser, but any new date or dates cannot exceed the Final Occupancy Date.

   The Final Occupancy Date, which is the latest date by which the Developer agrees to provide Occupancy, is:

   The___day of_____, 20____.

2. Purchaser's Termination Period

If the condominium unit is not ready for occupancy within **30 days after** the Final Occupancy Date and the Developer and the Purchaser have not otherwise mutually agreed, in writing, to a later occupancy date the purchaser has **up to 10 days** to rescind the purchase agreement. The developer must, within **15 days** of receiving the written notice of rescission from the Purchaser, return to the Purchaser all of the monies paid in respect of the purchase of the condominium unit, including deposits **and any upgrades or extras**.

Purchaser may terminate the purchase agreement by:

The___day of_____, 20____.

3. Unavoidable Delay

If an Unavoidable Delay occurs, the Developer may extend the Tentative and Final Occupancy Dates by no more than the length of the Unavoidable Delay Period, without agreement by the Purchaser and in accordance with section XX of the Condominium Property Regulation.

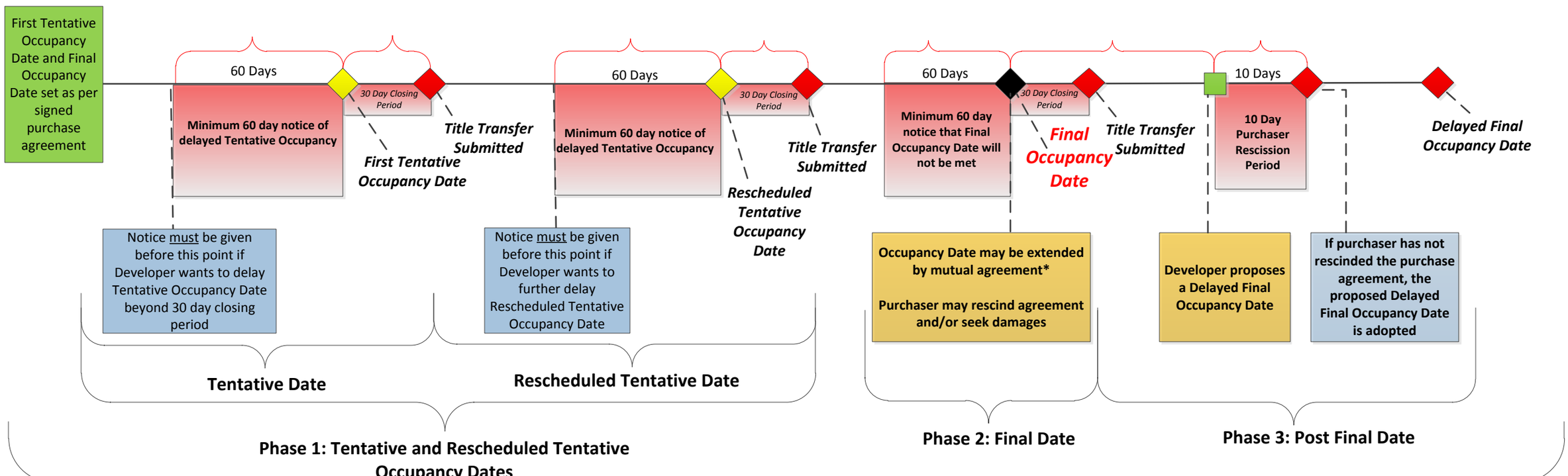
If the Developer wishes to extend the Critical Dates on account of an Unavoidable Delay, the Developer shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay and an estimate of the duration of delay and the new occupancy date.

Unavoidable Delay means an event that delays occupancy which is a strike, fire, explosion, flood or act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Developer and are not caused or contributed to by the fault of the Developer.

Occupancy Disclosure Logic Model (Draft)

Remedies

If notice of delay is provided late (during this period) purchaser may apply to Courts for remedy (damages).	If notice of delayed occupancy is not provided before First Tentative Occupancy Date, purchaser may rescind agreement.	If notice of delay is provided late (during this period) purchaser may apply to Courts for remedy (damages).	If notice of delayed occupancy is not provided before Rescheduled Tentative Occupancy Date, purchaser may rescind agreement.	If notice of delayed Final Occupancy Date is not provided, purchaser may rescind agreement and/or apply to Courts for remedy (damages).	**If Final Occupancy Date is not met, purchaser has right to rescind the purchase agreement (regardless of whether notice is provided) until Developer proposes Delayed Final Occupancy Date.**	Rescission remains available to purchaser for an additional 10 days from date developer proposes a Delayed Final Occupancy Date.



Unavoidable Delay and Mutual Extension

During any phase the Developer may experience an unavoidable delay, (natural disaster or other emergency as prescribed in Regulation) whereby the Developer may extend the Final Occupancy Date only as long as necessary given the nature and timing of the unavoidable delay. The Developer must also notify the purchaser as soon as reasonably practicable where an unavoidable delay will impact the final occupancy date, provide an estimate of how long a delay will last and provide written notice as soon as the delay has ended.

*Developer and Purchaser may mutually extend Final Occupancy Date at any time.

V.5 Updated: May 15, 2015