

CONDOMINIUM RESERVE FUNDS

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COMPULSORY

Section 93 of the *Condominium Act, 1998* codifies reserve fund requirements. Establishing and maintaining the reserve fund remains compulsory. Section 115(2) makes it mandatory that the reserve fund account be maintained in a segregated fund. The fund, application of interest earned to the fund, and preparation and presentation of reserve fund operations statements are subject to annual audit review for every condominium corporation of more than 24 units.

AMOUNT

As under the old Act, all unit owners must contribute monthly towards the reserve fund in the proportions set out in the condominium declaration to a minimum of 10% of the operating budget. Now, however, all condominium corporation's must, within three years of May 5, 2001, have completed a reserve fund study. The contribution by owners must then comply with an implementation plan, to ensure that within ten years the corporation's fund is adequate to meet the reserve fund totals specified in the study.

ADEQUACY

The *Condominium Act* requires the contribution by owners to be adequate to fund future major repair and replacement of all capital components of the common elements. The adequacy of the amount in the reserve fund is beyond the scope of the annual audit, except to ensure that the annual statement of reserve fund operations "fairly presents the information contained in the reserve fund studies" (s. 67(5)).

PROFESSIONAL STUDY

To date, most condominium corporations have performed a professional reserve fund study. This study outlines life expectancy and estimated major repair and replacement costs. Then, considering the existing reserve fund amount, it calculates the amount of owner contribution required to ensure that at no point in the future will the fund drop below zero. It is essentially a professionally prepared long term repair and replacement budget.

The new Act requires a study to be performed by a qualified person. The new Regulations specify the qualifications and include professional engineer, architect, quantity surveyor, appraiser, and “certified reserve planner”. The new Form 15 set out in Regulation 48/01 specifies detailed information that is to be included in the reserve fund study.

USE OF RESERVE FUNDS

The *Condominium Act*, 1998 continues to prohibit use of reserve funds for other than major repair and replacement of the common elements and assets. They cannot be used to cover operating deficits. They cannot be used as collateral for a loan for non-reserve fund purposes. They cannot be paid out to vendors on the sale of their units. The funds are not designed for emergencies. The condominium corporation may wish to maintain a contingency fund for this latter purpose.

STRUCTURE

Condominium reserve funds have most often been blended funds, since the life expectancy assumptions in the reserve fund study cannot always be entirely accurate. Under the old Act, if the fund were separated into a carpet replacement fund and other individual funds, the carpet fund could not be used to restore exterior walls, even if carpet replacement were not necessary at that time. The new Act does not restrict funds in this way, but requires compliance with a reserve fund plan that must ensure the adequacy of the fund within ten years of the first reserve fund study under the new Act.

A plan must be prepared within 120 days of the corporation receiving the reserve fund study. The plan should include or be accompanied by an investment plan (see below). The plan will then be forwarded to owners and the auditor within a further 15 days, and implemented within a further 30 days. Upon implementation, the amount required by the plan shall be the new budgeted reserve fund portion of the monthly maintenance payment, and should be paid into the fund account on a monthly basis by the condominium corporation.

INVESTMENTS

The condominium reserve is a trust fund and must be invested in accordance with the parameters of Section 115 of the *Condominium Act, 1998* and the applicable by-laws of the condominium. Before investing reserve funds, the board shall “develop an investment plan based on the anticipated cash requirements of the reserve fund as set out in the most recent reserve fund study.”

The funds may then be invested directly by the condominium corporation, or on its behalf by a member of the Canadian Investment Dealers Association provided they are insured by the Canadian Investor Protection Fund. The investments are limited to “eligible securities” as defined in subsection 115(5) of the new Act.

In addition, a condominium can tailor an investment by-law to limit the eligible investment vehicles to ensure its security expectations are met, and/or to specify further considerations or restrictions in the implementation of its investment plan.

PENALTIES

Section 137 of the *Condominium Act, 2001* continues to provide a Provincial Offence carrying a \$25,000.00 fine for breach of the trust fund provisions of Section 115 of the *Act*. The fine can be imposed for failure to pay reserve funds into the trust account. Subsection 137(2) makes the Provincial Offence and fine apply to directors and officers of the condominium corporation if they “knowingly cause, authorize, permit, participate in or acquiesce in” the commission of the Offence.