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Bill 106 Amendments to the *Condominium Act 1998* – An Analysis of the Proposed Changes to the Declarant’s Sale and Disclosure Obligations

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**Bill 106 Amendments to the Condominium Act, 1998: An Analysis of the Proposed
Changes to the Declarant's Sale and Disclosure Obligations**

by

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1. **INTRODUCTION**

The size and complexity of Ontario’s condominium market has changed dramatically since the enactment of the *Condominium Act, 1998* (the “**Act**”). In the 14-year period following the Act’s proclamation in 2001, the profusion of condominium projects in the Greater Toronto Area (and in other urban centres) that were spawned by the province’s Places to Grow legislation and ancillary land use policies resulted in condominium dwellings comprising more than half of all new homes under construction throughout the province. According to the Ministry of Government and Consumer Services (the “**Ministry**”), approximately 1.3 million Ontarians live in 700,000 condominium units in the province, up from 270,000 units in 2001. This means that approximately one in ten Ontarians live in a condominium.¹ As a by-product of the burgeoning condominium market, various shortcomings in the current condominium legislation were revealed, culminating in the Legislature’s decision to review the complex regulatory issues involving condominiums, and to ultimately revise the legislation governing condominium communities.

After years in the making, the Ministry released its much-anticipated proposed amendments to the Act on May 27, 2015. The newly proposed Bill 106, entitled “*Protecting Condominium Owners Act, 2015*,” is the product of an 18-month collaborative public engagement process that involved condominium owners, declarants, industry experts, and various stakeholders across the province. If passed in its present form, the proposed legislation will introduce substantial amendments to the Act [together with corresponding amendments to other legislation, such as the *Land Titles Act*, the *Ontario New Home Warranties Plan Act* (the “**ONHWPA**”), the *Planning Act*, and the *Building Code Act, 1992*], and it will also create the *Condominium Management Services Act* governing the licensing of condominium property managers.

The amendments proposed to the Act address five distinct areas of condominium law reform and administration, namely consumer protection, financial management, corporate governance,

¹ Ontario, Legislative Assembly, *Official Report of Debates (Hansard)* 41st Parl, 1st Sess, No 98 (15 September 2015) at 5068 [Hansard Debate].

dispute resolution, and condominium management. Under the proposed legislation, many important aspects of reform will be implemented through revised regulations in order to allow for greater flexibility in a rapidly changing market.

As its title suggests, an overarching objective of the proposed legislation is to enhance and strengthen consumer protection throughout the Act and, in doing so, support the needs of both current and future condominium owners in Ontario. The proposed legislation will result in several significant amendments to the provisions of the Act pertaining to a declarant's sale of any unit or proposed unit to a purchaser. The purpose of this paper is to highlight the key changes proposed to the declarant's sale and disclosure obligations that are outlined in Part V of the current condominium legislation.

2. **DISCLOSURE REQUIREMENTS**

The Condominium Guide - Section 71.1

The provincial government was cognizant of the fact that many purchasers of units are first-time condominium owners, with little or no experience living in a condominium environment (i.e. that has common amenities, facilities and/or services), and a dearth of knowledge about the operation and administration of a condominium, and no clear understanding of how condominium ownership differs from the ownership of freehold real estate. Accordingly, in an effort to improve awareness amongst condominium purchasers and owners, the proposed legislation requires the provincial government, or the newly proposed "Condominium Authority,"² to publish an easy-to-read condominium guide, containing general information about condominium living and the rights and obligations of owners, occupiers of units, and the board of directors of the condominium corporation.

The condominium guide is intended to explain, in simplified terms, the purchaser's statutory rescission rights (both initially and after a material change), as well as the process of interim occupancy and final closing, and to provide information on how condominiums are governed, and about the maintenance and repair of the units and common elements. Bill 106 confirms that different

² If enacted in its present form, the *Protecting Condominium Owners Act, 2015* will introduce Part I.1, allowing the Lieutenant Governor in Council to designate a not-for-profit corporation as the "**Condominium Authority**" and to specify provisions of the Act, and the regulations made thereunder, whose administration is delegated to the Condominium Authority.

versions of the condominium guide may be prepared, depending on the type of condominium corporation, and the persons or circumstances to which it applies. Declarants will be required to provide all unit purchasers with a copy of the condominium guide at the time of entering into an agreement of purchase and sale for any unit or proposed unit in the condominium.

The Disclosure Statement and Guide - Section 72 (1)

Under the current Act, a declarant must provide each purchaser of a unit or proposed unit with a disclosure statement that sets out certain prescribed information about the particular condominium project that is registered (or intended to be registered) by the declarant. The proposed legislation carries forward a declarant's obligation to deliver the disclosure statement, and adds the requirement to also deliver the condominium guide to each unit purchaser on or before entering into the agreement of purchase and sale. Pursuant to s. 73 (1) of the proposed legislation, purchasers will have ten days after receiving *both* of these documents to rescind the agreement of purchase and sale, and to correspondingly receive a full refund of all deposit monies so paid.

The proposed legislation also substitutes the word "declarant" in subsections 72 (1) and (2) with the words "**declarant, or a person acting on behalf of or for the benefit of the declarant.**" This amendment (which appears in several subsections throughout Part V of the Act³) is intended to ensure that any person or entity who purports to sell any unit or proposed unit in a condominium, but who does not (and will not) own the land upon which the condominium project is ultimately constructed and registered (and who will therefore not be a declarant, by definition), will not be able to evade the statutory disclosure obligations applicable to declarants, nor avoid the ten-day statutory rescission period afforded to any purchaser of a unit from a declarant. In essence, the proposed legislation seeks to ensure that all purchasers of new condominium units receive the statutory safeguards that the Act had originally contemplated. Section 177 (1) (4.2) expressly provides that the Lieutenant Governor in Council may make regulations governing when a person shall be deemed to be acting on behalf of (or for the benefit of) a declarant in respect of the purchase of a unit or proposed unit, or when a person shall be deemed not to be so acting.

³ See subsections 72.1, 78 (1) and (1.1), 79 (1) and (2), 81 (3), 82 (1), (3), (4), and (6).

The New Contents of the Disclosure Statement - Section 72 (3)

Disclosure statements vary widely from condominium project to project, and are occasionally difficult for condominium purchasers to thoroughly understand. In an effort to provide “smarter” disclosure, as opposed to simply “more” disclosure, the regulations under the proposed legislation will enable the government to standardize disclosure statements, in terms of both their form and content. The current requirement to include a table of contents, at the beginning of the disclosure statement, will be replaced with a summary that will have to be prepared in accordance with the requirements prescribed by the regulations.

While incorporating most (and modifying some) of the items required to be included under the current Act, the proposed legislation will add the following new matters to the list of items that a declarant must include in the disclosure statement, in an effort to enhance the purchaser’s knowledge and understanding of the proposed condominium project:

- a) In addition to indicating whether a corporation is a freehold or leasehold condominium corporation, the declarant will also be required to indicate whether the corporation is a phased condominium corporation. The purpose of this amendment is twofold. First, this amendment is intended to ensure that unit purchasers clearly understand, at the outset, what type or kind of condominium is being acquired, particularly since declarants and/or sales and marketing agents frequently use the term “phase” to describe a multi-phased development (without intending to refer to a phased condominium corporation, as defined in Part XI of the Act). Second, this amendment reflects the removal of the restriction or prohibition against the creation of one or more phases in a leasehold condominium, a common elements condominium, and a vacant land condominium respectively;
- b) If a disclosure statement pertains to the acquisition of a unit or proposed unit in a residential condominium conversion project,⁴ then the declarant will be required to:

⁴ A residential condominium conversion project is defined in s. 17.1 (1) of the ONHWPA as a project that consists of a property (or proposed property) that includes (or is proposed to include) units capable of being used as self-contained dwellings for year-round residential occupancy, and that contains pre-existing elements. In turn, the term “pre-existing elements” is defined in s. 17.1 (1) of the ONHWPA to mean or include the physical portions or components of a property that are (or will be) incorporated into a residential condominium conversion project by the commencement date of the project, and that physically existed before the applicable commencement date and whose primary use before said date was a use other than residential (or a prescribed) use.

- specifically indicate or confirm that the project is a residential condominium conversion project;
- provide a list of the pre-existing elements (as identified in the pre-existing elements fund study prepared by a qualified person in accordance with the prescribed criteria outlined in the regulations to the ONHWPA), together with a copy of the pre-existing elements fund study;
- include a statement that the statutory warranties provided by Tarion Warranty Corporation (hereinafter referred to as “**Tarion**”) pursuant to subsection 13 (1) (a) (i) of the ONHWPA do not apply to the pre-existing elements [and to provide a copy of the text of both subsections 13 (1) (a) (i) and 17.2 (1) of the ONHWPA]; and
- include a statement that the registrar of Tarion (the “**Registrar**”) has confirmed that the conditions set out in subsection 17.2 (1) of the ONHWPA have been satisfied (namely that each of the builder and the vendor of the residential condominium conversion project is registered with Tarion, and that the units and common elements of said project have also been enrolled with Tarion).

The purpose of this proposed amendment is to align the condominium disclosure statement with the proposed amendments to the ONHWPA, which will now extend Tarion warranty protection to certain residential condominium conversion projects, namely those proposed projects that have existing building structures or components that were never previously used or occupied for personal residence, and that have been examined and approved by the Registrar for future residential development. Such approval will only be forthcoming once the property assessment report for the residential condominium conversion project, as well as the capital replacement plan for same, along with the pre-existing elements fund study in connection therewith, have been submitted to Tarion by the proposed declarant, and have been approved by the Registrar in accordance with the prescribed criteria, such that the project qualifies for enrolment with Tarion. Not every proposed conversion project will qualify for Tarion warranty protection, particularly if the pre-existing elements are not in good condition or structurally sound sufficient to warrant the provision of Tarion coverage, nor if the proposed declarant has insufficient capital resources to fund a capital replacement plan for all the pre-existing elements (similar to a reserve fund that would cover the major

repair and replacement of same). Currently, Tarion does not extend warranty protection to any condominium conversion projects, and accordingly purchasers of units therein are exposed to the risk of potential construction deficiencies (both with respect to the pre-existing elements and the newly-constructed components), with recourse only against the declarant/vendor;

- c) In addition to the current requirement that the disclosure statement include a brief description of the significant features of the applicable management agreement (s. 111), all applicable servicing agreements (s. 112), any mutual use or reciprocal agreement (s. 113), any insurance trust agreement (s. 114), and any agreement between the condominium and any other condominium corporation, the proposed legislation will now require the disclosure statement to also include a brief description of the significant features of any shared facilities agreement involving the condominium, as described in s. 21.1.⁵ The purpose of this amendment is to bring the disclosure statement in line with the newly proposed requirement for condominiums to have shared facilities agreements in prescribed circumstances [which itself appears to be a direct legislative response to the decision in *Metropolitan Toronto Condominium Corporation No. 1272 v. Beach Developments (Phase II) Corp.* (2010), 98 R.P.R. (4th) 71, and affirmed on appeal in 2011 9 R.P.R. (5th) 165, where the condominium corporation in that case was obliged to pay 100% of the costs of operating, maintaining and/or repairing various ground floor areas, services and/or facilities that were also being used or shared by the owner of an adjacent commercial/retail freehold component and its tenants, but without the latter being obliged to contribute towards same due to the absence of a cost-sharing agreement that allocated the costs associated therewith];

⁵ Section 21.1 provides that if the proposed condominium will be sharing the use, maintenance, repair, insurance, operation or administration of any land, assets, facilities or services with another party, then they must enter into a shared facilities agreement that meets the prescribed requirements, and ensure that said agreement is registered on title. The regulations to the Act will prescribe provisions that must be included in such agreements, and unless the regulations provide otherwise, any easement or covenant (whether positive or negative in nature) set forth in a shared facilities agreement shall run with any real property that receives a benefit or is subject to a burden thereunder, and accordingly the shared facilities agreement will be binding on both the initial and subsequent property owners. This amendment is aimed at governing the manner in which shared facilities are used and maintained, and the allocation and payment of the costs associated therewith, and endeavours to create a standard practice in the condominium sector involving the operation, management and/or maintenance of shared facilities that will hopefully minimize future disputes regarding same.

- d) The declarant will also be required to include a statement (prepared in accordance with the requirements to be outlined in the regulations) of the circumstances that the declarant knows, or ought to know, may result in an increase in the common expenses after the expiry of the one-year period following the registration of the condominium. In addition, a declarant will have to disclose the amount of any potential increases in the common expenses that are likely to take place as a result of said circumstances. This provision is intended to respond to the criticism that projected first-year budgets do not accurately reflect the real costs that condominium corporations invariably incur in a typical year of operation, and is designed to thwart declarants from subsidizing some of the costs or expenses that would ordinarily be incurred by the condominium corporation, and/or intentionally deferring (and correspondingly excluding from the first-year operating budget) certain costs (such as elevator maintenance costs) that the condominium corporation will inevitably incur in subsequent years following the first anniversary of the registration of the condominium, solely for the purposes of artificially lowering the overall monthly common expenses in the first year in an effort to boost the sale of the condominium units in the project; and
- e) In addition to the requirement to include a copy of the condominium's budget for the current fiscal year, if more than one year has passed since the date of condominium registration, the declarant will now be required to include a copy of all amendments, if any, made to that budget. Furthermore, there will now be a concomitant obligation on the part of an existing condominium corporation to provide a copy of the current budget and any amendments made thereto, without charge, to the declarant [s. 72 (5)]. These new provisions seek to facilitate the delivery of the most current and accurate financial information to unit purchasers.

Changes Affecting the Budget Statement - Section 72 (6)

Under the proposed legislation, the budget statement must cover both the condominium corporation's general operating account and its reserve fund account, for the one year period immediately following the condominium's registration, and must be prepared in accordance with the requirements to be outlined in the regulations. While the content of the budget statement will likely remain largely unchanged, the proposed legislation will require the declarant to indicate the

portion of the common expenses that will be paid into the condominium's reserve fund, determined in accordance with the regulations, and whether there will be any increase in the common expenses, including the particulars of any such increases. Standardizing the format of budget statements will help to ensure that the information provided to unit purchasers is consistent, and will thereby facilitate comparisons between different condominium projects.

Additionally, in an effort to enhance accountability and transparency, s. 72.1 of the proposed legislation obliges the declarant to deliver a copy of the final first-year budget to each unit purchaser no later than ten days before the delivery of a registerable transfer of title to the purchased unit(s).

Material Changes to the Disclosure Statement - Section 74 (2)

The current Act provides purchasers of units (or proposed units) from a declarant with the statutory right to unilaterally terminate the agreement of purchase and sale in the event of a "material change" to the information contained (or that should have been contained) in the disclosure statement. The proposed legislation amends the definition of "material change" so as to expressly exclude:

- a) any increase in the common expenses originally disclosed to the unit purchaser that is less than ten percent thereof, or such other threshold as may be set out in the regulations;
- b) any increase in the common expenses that results from the application of any prescribed taxes, levies, or charges [presumably however, only those taxes, levies or charges that arise (or are imposed) after the initial disclosure statement has been issued]; and
- c) any other exception to the definition of material change, as may be prescribed by the regulations.

This ten-percent threshold reflects the prevailing rule-of-thumb for a material change, on a strictly quantitative basis, that has heretofore been utilized and adopted by the condominium industry. This amendment is intended to provide a clear and objective standard, for both declarants and unit purchasers, with respect to determining the materiality of any proposed common expense increase, and the corresponding rights and/or remedies (if any) emanating therefrom.

The Revised Disclosure Statement - Section 74 (4)

The current Act imposes a positive obligation on the declarant to deliver either a revised disclosure statement or a notice to the unit purchaser, whenever a material change occurs. Under the

proposed legislation, the declarant will be obliged to prepare the revised disclosure statement or the notice in accordance with the requirements outlined in the regulations, and must clearly identify all changes that the declarant reasonably believes are (or may be) material, and to summarize the particulars of same in the prescribed manner. The proposed legislation stipulates that the declarant is obliged to deliver the revised disclosure statement or notice to each unit purchaser “as soon as reasonably possible” (as opposed to “within a reasonable time”) after the material change occurs, and in any event, no later than ten days before the delivery of the deed/transfer to the purchaser. This requirement was clearly designed to prevent the declarant from attempting to thwart the purchaser’s exercise of his or her rescission rights (triggered by a material change) at a time when the purchaser is most vulnerable, namely by the declarant waiting until the purchaser has sold and vacated his or her home or has vacated his or her rented premises, and has taken possession of the condominium unit, before disclosing the material change, even though the material change was known by the declarant at an earlier time. The use of the phrase “as soon as reasonably possible” connotes a greater sense of urgency or immediacy than the current wording of the Act, and imposes an obligation upon the declarant to avoid any delay in communicating the material change(s) to all unit purchasers beyond that which is reasonable under the circumstances.

Monetary Remedy for Purchasers Who Do Not Receive an Updated Disclosure Statement - Section 74 (12)

The proposed legislation will allow a current or former purchaser to make an application to the Superior Court of Justice for an order compelling the declarant to compensate the applicant for any losses that he or she has incurred as a result of the declarant’s failure to comply with the disclosure requirements outlined in subsections 74 (1), (3), (4), (9) or (10) relating to material changes and the issuance of a revised disclosure statement or notice. Pursuant to s. 74 (12) of the proposed legislation, if the Court is satisfied that the declarant has, without reasonable excuse, failed to comply with its disclosure obligations regarding any material change(s), then the Court is expressly empowered to order that the declarant comply with said provisions, and may also compel the declarant to pay the applicant’s costs of the application, together with an additional amount not exceeding \$10,000. In providing this potential monetary remedy for purchasers, this new provision establishes an enforceable and meaningful consequence for any breach of a declarant’s obligation

to advise purchasers of a material change to the disclosure statement as soon as reasonably possible, and in doing so, enhances the protections afforded to condominium purchasers under the Act.

The Declarant's Accountability for the First Year Budget - Section 75

In an effort to make the condominium's finances more transparent, accountable and understandable, the proposed legislation requires every condominium to have an annual budget covering both its operating account and its reserve fund account. The declarant will be accountable to the condominium corporation for that portion of the condominium's budget (for its first fiscal year) that represents the one-year period immediately after registration. The declarant will be specifically required to stipulate in the first-year budget that portion of the common expenses which are to be paid into the condominium's reserve fund, and the regulations will govern how such reserve fund portion is to be calculated. Failure to comply with this obligation will render the declarant liable to the condominium corporation for any resulting deficiency in the reserve fund, determined in accordance with the requirements of the regulations.

Within 90 days (as opposed to 30 days under the current Act) of receiving the audited financial statements of the condominium corporation for the first year of its operation, the board will be required to compare the actual common expenses incurred, along with any corresponding revenues received, against the common expense figures projected by the declarant in the condominium's first annual budget, and to notify the declarant in writing of the "net deficit" amount required to be paid to the condominium corporation. Excluded from the foregoing deficit calculation will be the aggregate of all expenses attributable to the condominium's termination of any agreement under s. 111 or s. 112 of the Act, together with any amount that the declarant is required to pay in order to fund any shortfall in the total annual reserve fund contributions so required or determined in accordance with the regulations [under s. 75 (1.1)], and excluding any other prescribed amounts. As under the current Act, the declarant will be required to pay or reimburse the condominium corporation 30 days from the date of its receipt of the notice of the "net deficit" from the condominium corporation. Accordingly, under the proposed legislation, any resulting first-year budget deficit should be fully resolved between the declarant and the condominium corporation within 120 days of the board's receipt of the financial statements for the first year of its operation.

3. SALE OF UNITS

The Current Implied Covenants - Section 78 (1)

In the context of an agreement of purchase and sale of a unit or proposed unit entered into by the declarant (or by a person acting on behalf of, or for the benefit of, the declarant) before the registration of the condominium, the proposed legislation continues the concept of certain “implied covenants” which are deemed to be contained in such agreement of purchase and sale, namely:

- a) if the unit or proposed unit is for residential purposes, a covenant to take all reasonable steps to sell the other residential units without delay, except those units that the declarant intends to lease;
- b) a covenant to take all reasonable steps to deliver to the purchaser, without delay, a deed to the unit in registerable form; and
- c) a covenant to hold in trust for the condominium corporation all monies collected by the declarant from the purchaser on behalf of the corporation.

The Proposed New Implied Covenants - Section 78 (1.1)

The proposed legislation introduces three new additional deemed covenants in every agreement of purchase and sale of a unit or proposed unit entered into by the declarant (or by a person acting on behalf of, or for the benefit of, the declarant), and which covenants shall apply despite anything contained in any agreement or instrument (or in the declaration or by-laws) to the contrary, namely:

- a) that the purchaser shall not acquire an interest or right in any real or personal property that is intended for the collective use or enjoyment of the unit owners in the condominium;
- b) that the declarant shall not charge (and the purchaser shall not be contractually obliged to pay) any amount that is intended to be a projected or actual contribution to the condominium’s reserve fund, unless otherwise permitted under the Act; and
- c) that subject to subsection 23 (6), the purchaser shall not directly or indirectly indemnify, reimburse or otherwise compensate the declarant or a declarant affiliate⁶ for any remedies exercised by or on behalf of the condominium corporation against the declarant or a declarant affiliate.

⁶ A declarant affiliate is defined in s. 1(1) of the Act as a subsidiary of the declarant, a parent or holding body corporate of the declarant, or any other company affiliated with the declarant under s. 1(4) of the *Business Corporations Act*.

Declarants will be forbidden from circumventing the foregoing prohibitions or deemed covenants, inasmuch as s. 78 (1.3) expressly confirms that any provision in an agreement of purchase and sale which contravenes the covenants described in s. 78 (1.1) shall be void, and of no force or effect. Moreover, the regulations will specify what components of the condominium building must be owned by the condominium corporation or comprise part of the common elements, and in addition, the regulations will allow for some flexibility and exceptions to the foregoing prohibitions. For instance, the Ministry has stated that the regulations will likely allow a declarant to sell or lease to a condominium corporation certain “green energy” or energy-efficient equipment or facilities that are designed and intended to benefit the owners and residents of the condominium well after turnover, provided that the projected energy savings derived therefrom are equal to (or greater than) the total projected acquisition or leasing costs to be incurred by the condominium corporation in connection therewith.

Prohibition on the Purchaser Acquiring Property Intended for the Collective Use or Enjoyment of the Unit Owners

The first of these new deemed covenants is a direct legislative response to a number of cases in which condominium corporations tried, but judicially failed, to terminate agreements compelling them to purchase amenity-type units (such as a superintendent unit or guest-suite unit) from the declarant.⁷ The courts have repeatedly affirmed that such agreements are not inherently unfair, provided that all unit purchasers receive adequate disclosure of same at the time of entering into their respective agreements of purchase and sale. In *MTCC No. 1352 v. Newport Beach Development Inc.* (2012) 113 O. R. (3d) 673, the Ontario Court of Appeal confirmed that it is the declarant, as the developer of the condominium property, who defines the content, character, and structure of the condominium project through the filing of the declaration. In implementing the structure determined by the declarant, the first board of directors are neither acting as fiduciaries for the purchasers of the condominium units, nor obliged to endeavour to obtain the best possible agreement for the condominium corporation or for the unit owners. As first articulated in *Peel*

⁷ See, for instance, *MTCC No. 1352 v Newport Beach Development Inc.* (2012) 113 OR (3d) 673, *Lexington on the Green Inc. v Toronto Standard Condominium Corp. No. 1930* (2010) ONCA 751, and *Peel Condominium Corp. No. 417 v Tedley Homes Ltd.* (1997) 35 OR 257 [*Tedley Homes*].

Condominium Corp. No. 417 v. Tedley Homes Ltd. (1997) 35 O.R. 257, the role of the first board of directors is to “organize the affairs of the condominium in the manner anticipated by the declaration, and agreed to by the purchasers of the individual units,” so long as the directors are acting within the limits and constraints imposed by the Act.⁸ Consequently, in recent years, it has become common practice for declarants to unitize certain components of the building that could have formed part of the common elements of the condominium, and then sell or lease these components back to the condominium corporation. Opponents of this practice have suggested that the sale and leaseback of units and/or common element areas or facilities unfairly and artificially inflates the overall cost of the dwelling units, and has become an unnecessary source of tension within condominium communities. The proposed legislation reflects the provincial government’s view that this is ultimately not a fair practice to the consumer, but rather a hidden cost for prospective unit owners. Moreover, this new deemed covenant is intended to work hand and glove with s. 26.1 of the new legislation, which provides that despite anything to the contrary set forth in any declaration, by-law, agreement or instrument, the condominium corporation shall not acquire an interest or right in any unit, or in any real or personal property, except for nil consideration, unless the post-turnover board decides otherwise, or unless the regulations provide otherwise. In introducing the foregoing prohibitions, the proposed legislation seeks to foster greater transparency in the ultimate costs borne by dwelling unit owners, in an effort to maintain or sustain consumer confidence in the condominium market.

Prohibition on Charging the Purchaser Any Amount as a Contribution Towards the Reserve Fund

The second of these new deemed covenants endeavours to ensure that the declarant does not avoid or escape its obligation to establish a proper reserve fund at the outset of the condominium’s existence, nor attempt to reduce the amount that the declarant is obliged to contribute towards the condominium’s reserve fund, by having unit purchasers subsidize the declarant’s overall contributions thereto, pursuant to any provision in the agreement of purchase and sale which obliges the purchaser to pay an amount on account of (or towards) the condominium’s reserve fund as a closing adjustment, in addition to the balance of the purchase price so owing.

⁸ *Tedley Homes*, *supra* note 7 at para 19.

Prohibition on Requiring an Indemnity or Compensation from the Purchaser for the Condominium's Exercise of Any Remedies Against the Declarant

The third of these new deemed covenants reflects the Legislature's response to the appellate court ruling in *TSCC No. 2095 v. West Harbour City (I) Residences Corp.* (2014) 46 R.P.R. (5th) 1 (the "**West Harbour Case**"), involving the enforceability of a limited recourse agreement between the declarant and the condominium corporation which purported to limit the condominium's recourse for common element deficiency claims solely and exclusively to Tarion, and to correspondingly prevent the condominium corporation from pursuing any warranty claim in respect of the common elements through judicial intervention, but rather only through the processes and timelines administered by Tarion. In the West Harbour Case, there were also provisions in every agreement of purchase and sale which required the unit purchaser to indemnify the vendor/declarant for all costs and expenses incurred in the event that the limited recourse agreement was ultimately breached by the condominium corporation. Although the Ontario Court of Appeal upheld the enforceability of such a limited recourse agreement, the provincial government has taken the position that a condominium corporation should not be precluded from pursuing civil proceedings against the declarant for any common law claims (whether pertaining to any outstanding, incomplete or deficient construction work involving the common elements, or otherwise). Accordingly, s. 26.2 of the new legislation confirms the foregoing, by expressly providing that nothing contained in a declaration, by-law, agreement or instrument shall affect any remedy that the condominium corporation may have at law against a declarant, or a declarant affiliate, until the post-turnover board decides otherwise, or unless the regulations provide otherwise. The third deemed covenant in s. 78 (1.1) affirms the principle that unit purchasers should not be required to indemnify (or otherwise compensate) the declarant as a consequence of any proceedings initiated or pursued by the condominium corporation against the declarant, and expressly precludes recourse by the declarant against a unit purchaser for any costs or expenses incurred as a result of the condominium's exercise of any remedies against the declarant or a declarant affiliate.

4. CONCLUSION

On October 7, 2015, Bill 106 passed second reading in the Legislature with a vote of 88-0. At this juncture, Bill 106 has completed hearings and depositions made before the Standing

Committee for Finance and Economic Affairs, and to date only minor government housekeeping-related changes have been passed. Bill 106 presently awaits third reading and proclamation.

Many of the key amendments to the Act significantly rely upon regulation development, and it will likely involve a lengthy consultation process with various stakeholders in the condominium industry. The Ministry has advised that it is currently working on the extensive regulations contemplated in the Bill, including those designed to standardize declarations to make same easier for consumers to understand and review. Together, the proposed legislation and the regulations promulgated thereunder will establish additional safeguards for prospective unit owners who are relatively unfamiliar with the condominium process and the realities of purchasing and owning a new condominium. Addressing the needs of an ever-growing condominium community and supporting the long-term sustainability of condominium living are key to the Ministry's mandate.⁹

At this point in time, the Ministry has not provided an estimate as to when the proposed legislation is expected to come into force. However, as Bill 106 progresses through the Legislature towards enactment, condominium developers and their legal counsel should be mindful of the ways in which the proposed changes will impact the declarant's sale and disclosure obligations in the future.

⁹ Hansard Debate, *supra* note 1 at 5072.

Table of Concordance

This Table of Concordance sets out the proposed amendments to Part V of the *Condominium Act, 1998* (referred to throughout this paper as the “Act”). Each section of the current Act is matched side-by-side with its counterpart in Bill 106, *Protecting Condominium Owners Act, 2015*.

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
DISCLOSURE REQUIREMENTS			
	No equivalent	<u>71.1</u> (1)	<p><u>Condominium guide</u></p> <p><u>The Minister shall ensure that one or more condominium guides are prepared, each of which shall set out, if the Minister considers appropriate,</u></p> <ul style="list-style-type: none"> (a) <u>information for purchasers of units or proposed units;</u> (b) <u>information about the rights and obligations of owners, occupiers of units and the board in a corporation; and</u> (c) <u>such other matters that the Minister considers appropriate.</u>
	No equivalent	(2)	<p><u>Different versions</u></p> <p><u>A condominium guide may be prepared in different versions depending on the type of corporation, the persons or the circumstances to which it applies, all as the Minister may determine.</u></p>
	No equivalent	(3)	<p><u>Delegation to condominium authority</u></p> <p><u>If the condominium authority exists, the Minister may require the authority to prepare any of the condominium guides, subject to the Minister’s approval.</u></p>
72.	(1) Disclosure statement	72.	(1) Disclosure statement <u>and guide</u>
	The declarant shall deliver to every person who purchases a unit or a proposed unit from the declarant a copy of the current disclosure statement made by the declarant for the corporation of which the unit or proposed unit forms part.		<p>The declarant shall deliver to every person who purchases a unit or a proposed unit from the declarant <u>or a person acting on behalf of or for the benefit of the declarant a copy of,</u></p> <ul style="list-style-type: none"> (a) <u>the current disclosure statement made by the declarant for the corporation of which the unit or proposed unit forms part; and</u> (b) <u>the applicable condominium guide under section 71.1.</u>
(2)	Purchaser not bound	(2)	Purchaser not bound
	An agreement of purchase and sale of a unit or a proposed unit entered into by a declarant is not binding on the purchaser until the declarant has delivered to the purchaser a copy of the current disclosure statement.		An agreement of purchase and sale of a unit or a proposed unit entered into by a declarant <u>or a person acting on behalf of or for the benefit of the declarant</u> is not binding on the purchaser until the declarant has delivered to the purchaser a copy of the current disclosure statement <u>and the condominium guide in accordance with subsection (1).</u>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
<p>(3) Contents</p> <p>A disclosure statement shall specify the date on which it is made and shall contain,</p> <ul style="list-style-type: none"> (a) a table of contents prepared in accordance with subsection (4) and located at the beginning of the disclosure statement; (b) a statement indicating, <ul style="list-style-type: none"> (i) whether the corporation is a freehold condominium corporation or a leasehold condominium corporation, and (ii) if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is; (c) a statement of the name and municipal address of the declarant and the mailing address of the property or the proposed property and its municipal address if available; (d) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with all conditions that apply to the provision of amenities; (e) if the declarant has made an application for approval described in subsection 9 (4), a summary of the reports, if any, that the approval authority has required be made under subsection 9 (4) and the agreements, if any, that the approval authority has imposed under subsection 9 (5) as a condition of approval; 		<p>(3) Contents</p> <p>A disclosure statement shall <u>be prepared in accordance with the regulations</u> and shall contain,</p> <ul style="list-style-type: none"> (a) <u>a summary prepared in accordance with the prescribed requirements;</u> <u>(a.1) a statement specifying the date on which it is made;</u> (b) a statement indicating, <ul style="list-style-type: none"> (i) whether the corporation is a freehold condominium corporation or a leasehold condominium corporation; (ii) if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is; and <u>(iii) whether the corporation is a phased condominium corporation;</u> (c) a statement of the name and municipal address of the declarant and the mailing address of the property or the proposed property and its municipal address if available; (d) a general description of the property or proposed property including the types and number of buildings, units and recreational and other amenities together with all conditions that apply to the provision of amenities; (e) if the declarant has made an application for approval described in subsection 9 (4), a summary of the reports, if any, that the approval authority has required be made under subsection 9 (4) and the agreements, if any, that the approval authority has imposed under subsection 9 (5) as a condition of approval; 	
<i>Cont'd</i>		<i>Cont'd</i>	

<i>Condominium Act, 1998</i>	<i>Bill 106, Protecting Condominium Owners Act, 2015</i>
<p>(f) a statement indicating whether the property or part of the property is or may be subject to the <i>Ontario New Home Warranties Plan Act</i> or whether the declarant has enrolled or intends to enrol the proposed units and common elements in the Plan within the meaning of that Act in accordance with the regulations made under that Act;</p> <p>(g) a statement whether a building on the property or a unit or a proposed unit has been converted from a previous use;</p> <p>(h) a statement whether one or more units or proposed units may be used for commercial or other purposes not ancillary to residential purposes;</p> <p>(i) a statement of the portion of units or proposed units which the declarant intends to market in blocks of units to investors;</p> <p>(j) a statement of the portion of units or proposed units, to the nearest anticipated 25 per cent, that the declarant intends to lease;</p> <p style="text-align: right;"><i>Cont'd</i></p>	<p>(f) a statement indicating whether the property or part of the property is or may be subject to the <i>Ontario New Home Warranties Plan Act</i> or whether the declarant has enrolled or intends to enrol the proposed units and common elements in the Plan within the meaning of that Act in accordance with the regulations made under that Act;</p> <p><u>(f.1) if the disclosure statement is for a unit or proposed unit in a residential condominium conversion project, whether the corporation is a freehold condominium corporation or a leasehold condominium corporation:</u></p> <p>(i) <u>a statement that the project is a residential condominium conversion project,</u></p> <p>(ii) <u>a list of the pre-existing elements as identified in the pre-existing elements fund study,</u></p> <p>(iii) <u>a copy of the pre-existing elements fund study,</u></p> <p>(iv) <u>a statement that the 13 (1) (a) (i) of the <i>Ontario New Home Warranties Plan Act</i> does not apply to the pre-existing elements,</u></p> <p>(v) <u>a copy of the text of subclause 13 (1) (a) (i) and subsection 17.2 (1) of the <i>Ontario New Home Warranties Plan Act</i>, and</u></p> <p>(vi) <u>a statement that the Registrar, as defined in the <i>Ontario New Home Warranties Plan Act</i>, has confirmed that the conditions set out in subsection 17.2 (1) of the <i>Ontario New Home Warranties Plan Act</i> have been satisfied;</u></p> <p>(g) a statement whether a building on the property or a unit or a proposed unit has been converted from a previous use;</p> <p>(h) a statement whether one or more units or proposed units may be used for commercial or other purposes not ancillary to residential purposes;</p> <p>(i) a statement of the portion of units or proposed units which the declarant intends to market in blocks of units to investors;</p> <p>(j) a statement of the portion of units or proposed units, to the nearest anticipated 25 per cent, that the declarant intends to lease;</p> <p style="text-align: right;"><i>Cont'd</i></p>

<i>Condominium Act, 1998</i>	<i>Bill 106, Protecting Condominium Owners Act, 2015</i>
<p>(k) if construction of amenities is not completed, a schedule of the proposed commencement and completion dates;</p> <p>(l) a list of the amenities that the declarant proposes to provide to the purchaser during a period of interim occupancy of a proposed unit under section 80;</p> <p>(m) a copy of the existing or proposed declaration, by-laws, rules and insurance trust agreement, if any;</p> <p>(n) a brief description of the significant features of all agreements or proposed agreements mentioned in section 111, 112, 113 or 114 and of all agreements or proposed agreements between the corporation and another corporation;</p> <p>(o) a statement of whether, to the knowledge of the declarant, the corporation intends to amalgamate with another corporation or whether the declarant intends to cause the corporation to amalgamate with another corporation within 60 days of the date of registration of the declaration and description for the corporation;</p> <p>(p) if an amalgamation is intended under clause (o), a copy of the proposed declaration, description, by-laws and rules for the amalgamated corporation, if available;</p> <p>(q) a copy of the budget statement described in subsection (6);</p> <p style="text-align: right;"><i>Cont'd</i></p>	<p>(k) if construction of amenities is not completed, a schedule of the proposed commencement and completion dates;</p> <p>(l) a list of the amenities that the declarant proposes to provide to the purchaser during a period of interim occupancy of a proposed unit under section 80;</p> <p>(m) a copy of the existing or proposed declaration, by-laws, rules and insurance trust agreement, if any;</p> <p>(n) a brief description of the significant features of all agreements or proposed agreements mentioned in section <u>21.1</u>, 111, 112, 113 or 114 and of all agreements or proposed agreements between the corporation and another corporation;</p> <p>(o) a statement of whether, to the knowledge of the declarant, the corporation intends to amalgamate with another corporation or whether the declarant intends to cause the corporation to amalgamate with another corporation within 60 days of the date of registration of the declaration and description for the corporation;</p> <p>(p) if an amalgamation is intended under clause (o), a copy of the proposed declaration, description, by-laws and rules for the amalgamated corporation, if available;</p> <p>(q) a copy of the budget statement described in subsection (6), <u>unless the regulations provide otherwise;</u></p> <p><u>(q.1) a statement, prepared in accordance with the regulations, of the circumstances, as may be prescribed, that a declarant knows or ought to know may result in an increase in the common expenses mentioned in any part of subsection (6) after the one-year period immediately following the registration of the declaration and description;</u></p> <p><u>(q.2) a statement, prepared in accordance with the regulations, of the amount of any potential increase mentioned in clause (q.1) that is likely to take place as a result of any of the circumstances mentioned in that clause;</u></p> <p style="text-align: right;"><i>Cont'd</i></p>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	<p>(r) a copy of the budget of the corporation for the current fiscal year if more than one year has passed since the registration of the declaration and description for the corporation;</p> <p>(s) a statement setting out the fees or charges, if any, that the corporation is required to pay to the declarant or another person; and</p> <p>(t) all other material that the regulations made under this Act require.</p>		<p>(r) <u>if more than one year has passed since the registration of the declaration and description for the corporation</u>, a copy of the budget of the corporation for the current fiscal year <u>and a copy of all amendments, if any, made to that budget</u>;</p> <p>(s) a statement setting out the fees or charges, if any, that the corporation is required to pay to the declarant or another person; and</p> <p>(t) all other material that the regulations made under this Act require.</p>
(4)	<p>Table of contents</p> <p>The table of contents in the disclosure statement shall be in the prescribed form, shall indicate whether the declaration, by-laws, rules or the proposed declaration, by-laws or rules of the corporation or any other material in the disclosure statement deal with the following matters and, if so, shall indicate where the matters are dealt with:</p> <ol style="list-style-type: none"> 1. A statement indicating, <ol style="list-style-type: none"> (i) whether the corporation is a leasehold condominium corporation or a freehold condominium corporation, and (ii) if the corporation is a freehold condominium corporation, the type of freehold condominium corporation that it is. 2. The property or part of the property is or may be subject to the <i>Ontario New Home Warranties Plan Act</i> or the proposed units and common elements are enrolled or are intended to be enrolled in the Plan within the meaning of that Act in accordance with the regulations made under that Act. 3. A building on the property or a unit or a proposed unit has been converted from a previous use. 4. One or more units or proposed units may be used for commercial or other purposes not ancillary to residential purposes. 5. A provision exists with respect to pets on the property or the proposed property. 6. There exist restrictions or standards with respect to the occupancy or use of units or proposed units or the use of common elements or proposed common elements that are based on the nature or design of the facilities and services on the property or on other aspects of the buildings located on the property. <p style="text-align: right;"><i>Cont'd</i></p>		<p>No equivalent</p> <p style="text-align: right;"><i>Cont'd</i></p>

<i>Condominium Act, 1998</i>		Bill 106, <i>Protecting Condominium Owners Act, 2015</i>	
	<p>7. A statement of the portion of units or proposed units, to the nearest anticipated 25 per cent, that the declarant intends to lease.</p> <p>8. A statement whether the proportion, expressed in percentages, of the common interest appurtenant to any unit or proposed unit differs in an amount of 10 per cent or more from that appurtenant to any other unit or proposed unit of the same type, size and design.</p> <p>9. A statement whether the proportion, expressed in percentages, in which the owner of any unit or proposed unit is required to contribute to the common expenses differs in an amount of 10 per cent or more from that required of the owner of any other unit or proposed unit of the same type, size and design.</p> <p>10. A statement whether any unit or proposed unit is exempt from a cost attributable to the rest of the units or proposed units.</p> <p>11. Part or the whole of the common elements or the proposed common elements are subject to a lease or licence.</p> <p>12. A statement whether parking is allowed in or on a unit, on the common elements or on a part of the common elements of which an owner has exclusive use and a statement of the restrictions on parking.</p> <p>13. Any other statement specified in the regulations made under this Act.</p>		No equivalent
(5)	<p>Copy of budget</p> <p>On the request of the declarant, the corporation shall, promptly and without charge, provide a copy of its budget for the current fiscal year to the declarant.</p>	(5)	<p>Copy of budget, <u>etc.</u></p> <p>On the request of the declarant, the corporation shall, promptly and without charge, provide <u>the declarant with</u> a copy of its budget for the current fiscal year <u>and a copy of all amendments, if any, made to that budget.</u></p>
(6)	<p>Budget statement</p> <p>The budget statement is a statement for the one-year period immediately following the registration of the declaration and description and shall contain,</p> <p>(a) a statement of the common expenses of the corporation;</p>	(6)	<p>Budget statement</p> <p>The budget statement is a statement for the one-year period immediately following the registration of the declaration and description, and <u>it shall cover the corporation's general and reserve fund accounts, shall be prepared in accordance with the regulations and shall contain, subject to the regulations,</u></p> <p>(a) a statement of the common expenses of the corporation;</p>
	<i>Cont'd</i>		<i>Cont'd</i>

<i>Condominium Act, 1998</i>	<i>Bill 106, Protecting Condominium Owners Act, 2015</i>
<p>(b) a statement of the proposed amount of each expense of the corporation, including the cost of the reserve fund study required for the year, the cost of the performance audit under section 44 and the cost of preparing audited financial statements if subsection 43(7) requires the declarant to deliver them within one year following the registration of the declaration and description;</p> <p>(c) particulars of the type, frequency and level of the services to be provided;</p> <p>(d) a statement of the projected monthly common expense contribution for each type of unit;</p> <p>(e) a statement of the portion of the common expenses to be paid into a reserve fund;</p> <p>(f) a statement of the status of all pending lawsuits material to the property of which the declarant has actual knowledge and that may affect the property after the registration of a deed to the unit from the declarant to the purchaser;</p> <p>(g) a statement of the amounts of all current or expected fees, charges, rents or other revenue 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 turn over meeting has been held under section 43;</p> <p>(h) a statement of all services not included in the budget that the declarant provides, or expenses that the declarant pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;</p> <p>(i) a statement of the projected amounts in all reserve funds at the end of the current fiscal year;</p> <p style="text-align: right;"><i>Cont'd</i></p>	<p>(b) a statement of the proposed amount of each expense of the corporation, including the cost of the reserve fund study required for the year, the cost of the performance audit under section 44 and the cost of preparing audited financial statements if subsection 43(7) requires the declarant to deliver them within one year following the registration of the declaration and description;</p> <p>(c) particulars of the type, frequency and level of the services to be provided;</p> <p>(d) a statement of the projected monthly common expense contribution for each type of unit;</p> <p>(e) a statement of the portion of the common expenses to be paid into a reserve fund, <u>which shall be determined in accordance with the regulations;</u></p> <p>(f) a statement of the status of all pending lawsuits material to the property of which the declarant has actual knowledge and that may affect the property after the registration of a deed to the unit from the declarant to the purchaser;</p> <p>(g) a statement of the amounts of all current or expected fees, charges, rents or other revenue 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 turn over meeting has been held under section 43;</p> <p>(h) a statement of all services not included in the budget that the declarant provides, or expenses that the declarant pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense contribution attributable to each of those services or expenses for each type of unit;</p> <p>(i) a statement of the projected amounts in all reserve funds at the end of the current fiscal year;</p> <p><u>(i.1) a statement, prepared in accordance with the regulations, as to whether there will be any increase, as may be prescribed, in the amounts mentioned in this subsection and setting particulars of those increases;</u></p> <p style="text-align: right;"><i>Cont'd</i></p>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	(j) a summary of the most recent reserve fund study, if any; and (k) all other material that the regulations made under this Act require.		(j) a summary of the most recent reserve fund study, if any; and (k) all other material that the regulations made under this Act require.
	No equivalent	72.1	<u>Disclosure of budget</u> <u>If a person enters into an agreement to purchase a unit or a proposed unit from a declarant or a person acting on behalf of or for the benefit of the declarant, the declarant shall deliver to the purchaser, no later than 10 days before delivering to the purchaser a deed to the unit being purchased that is in registerable form, a copy of the budget mentioned in subsection 83.1 (3) for the corporation, unless the regulations provide otherwise.</u>
73. (1)	Rescission of agreement A purchaser who receives a disclosure statement under subsection 72 (1) may, in accordance with this section, rescind the agreement of purchase and sale before accepting a deed to the unit being purchased that is in registerable form.	73. (1)	Rescission of agreement A purchaser who receives a disclosure statement <u>and the condominium guide</u> under subsection 72 (1) may, in accordance with this section, rescind the agreement of purchase and sale before accepting a deed to the unit being purchased that is in registerable form.
(2)	Notice of rescission To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser's solicitor shall give a written notice of rescission to the declarant or to the declarant's solicitor who must receive the notice within 10 days of the later of, (a) the date that the purchaser receives the disclosure statement; and (b) the date that the purchaser receives a copy of the agreement of purchase and sale executed by the declarant and the purchaser.	(2)	Notice of rescission To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser's solicitor shall give a written notice of rescission to the declarant or to the declarant's solicitor who must receive the notice within 10 days of the <u>latest</u> of, (a) the date that the purchaser receives the disclosure statement; (b) <u>the date that the purchaser receives a copy of the applicable condominium guide under section 71.1; and</u> (c) the date that the purchaser receives a copy of the agreement of purchase and sale executed by the declarant and the purchaser.
(3)	Refund upon rescission If a declarant or the declarant's solicitor receives a notice of rescission from a purchaser under this section, the declarant shall promptly refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price, together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it.	(3)	Refund upon rescission If a declarant or the declarant's solicitor receives a notice of rescission from a purchaser under this section, the declarant shall promptly refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price, together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it.

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
<p>74.</p> <p>(1) Material changes in disclosure statement</p> <p>Whenever there is a material change in the information contained or required to be contained in a disclosure statement delivered to a purchaser under subsection 72 (1) or a revised disclosure statement or a notice delivered to a purchaser under this section, the declarant shall deliver a revised disclosure statement or notice to the purchaser.</p>	<p>74.</p> <p>(1) Material changes in disclosure statement</p> <p>Whenever there is a material change in the information contained or required to be contained in a disclosure statement delivered to a purchaser under subsection 72 (1) or a revised disclosure statement or a notice delivered to a purchaser under this section, the declarant shall deliver a revised disclosure statement or notice to the purchaser.</p>		
<p>(2) Definition</p> <p>In this section, “material change” means 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 in the corporation 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 73, if the disclosure statement had contained the change or series of changes, but does not include,</p> <ul style="list-style-type: none"> (a) a change in the contents of the budget of the corporation for the current fiscal year if more than one year has passed since the registration of the declaration and description for the corporation, (b) a substantial addition, alteration or improvement within the meaning of subsection 97 (6) that the corporation makes to the common elements after a turn-over meeting has been held under section 43, (c) a change in the portion of units or proposed units that the declarant intends to lease, (d) a change in the schedule of the proposed commencement and completion dates for the amenities of which construction had not been completed as of the date on which the disclosure statement was made, or (e) a change in the information contained in the statement described in subsection 161 (1) of the services provided by the municipality or the Minister of Municipal Affairs and Housing, as the case may be, as described in that subsection, if the unit or the proposed unit is in a vacant land condominium corporation. <p style="text-align: right;"><i>Cont’d</i></p>	<p>(2) Definition</p> <p>In this section, “material change” means 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 in the corporation 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 73, if the disclosure statement had contained the change or series of changes, but does not include,</p> <ul style="list-style-type: none"> (a) a change in the contents of the budget of the corporation for the current fiscal year if more than one year has passed since the registration of the declaration and description for the corporation, (b) a substantial modification within the meaning of subsection 97 (9), that is an addition, alteration or improvement that the corporation makes to the common elements after a turn-over meeting has been held under section 43, (c) a change in the portion of units or proposed units that the declarant intends to lease, (d) a change in the schedule of the proposed commencement and completion dates for the amenities of which construction had not been completed as of the date on which the disclosure statement was made, (e) a change in the information contained in the statement described in subsection 161 (1) of the services provided by the municipality or the Minister of Municipal Affairs and Housing, as the case may be, as described in that subsection, if the unit or the proposed unit is in a vacant land condominium corporation. <p style="text-align: right;"><i>Cont’d</i></p>		

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	No equivalent		(f) <u>except as is otherwise prescribed, an increase of less than 10 per cent in the common expenses mentioned in any part of subsection 72 (6), determined in accordance with the regulations,</u> (g) <u>except as is otherwise prescribed, an increase in the common expenses mentioned in any part of subsection 72 (6) if it is the result of the application, in the prescribed manner, of any prescribed taxes, levies or charges, or</u> (h) <u>anything that is prescribed.</u>
(3)	Contents of revised statement The revised disclosure statement or notice required under subsection (1) shall clearly identify all changes that in the reasonable belief of the declarant may be material changes and summarize the particulars of them.	(3)	Contents of revised statement The revised disclosure statement or notice required under subsection (1) shall <u>be prepared in accordance with the regulations,</u> shall clearly identify all changes that, in the reasonable belief of the declarant, <u>are or</u> may be material changes and <u>shall</u> summarize the particulars of them <u>in the prescribed manner.</u>
(4)	Time of delivery The declarant shall deliver the revised disclosure statement or notice to the purchaser within a reasonable time after the material change mentioned in subsection (1) occurs and, in any event, no later than 10 days before delivering to the purchaser a deed to the unit being purchased that is in registerable form.	(4)	Time of delivery The declarant shall deliver the revised disclosure statement or notice to the purchaser <u>as soon as reasonably possible</u> after the material change mentioned in subsection (1) occurs and, in any event, no later than 10 days before delivering to the purchaser a deed to the unit being purchased that is in registerable form.
(5)	Purchaser's application to court Within 10 days after receiving a revised disclosure statement or a notice under subsection (1), a purchaser may make an application to the Superior Court of Justice for a determination whether a change or a series of changes set out in the statement or notice is a material change.	(5)	Purchaser's application to court Within 10 days after receiving a revised disclosure statement or a notice under subsection (1), a purchaser may make an application to the Superior Court of Justice for a determination whether a change or a series of changes set out in the statement or notice is a material change.
(6)	Rescission after material change If a change or a series of changes set out in a revised disclosure statement or a notice delivered to a purchaser constitutes a material change or if a material change occurs that the declarant does not disclose in a revised disclosure statement or notice as required by subsection (1), the purchaser may, before accepting a deed to the unit being purchased that is in registerable form, rescind the agreement of purchase and sale within 10 days of the latest of,	(6)	Rescission after material change If a change or a series of changes set out in a revised disclosure statement or a notice delivered to a purchaser constitutes a material change or if a material change occurs that the declarant does not disclose in a revised disclosure statement or notice as required by subsection (1), the purchaser may, before accepting a deed to the unit being purchased that is in registerable form, rescind the agreement of purchase and sale within 10 days of the latest of,
	<i>Cont'd</i>		<i>Cont'd</i>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	<p>(a) the date on which the purchaser receives the revised disclosure statement or the notice, if the declarant delivered a revised disclosure statement or notice to the purchaser;</p> <p>(b) the date on which the purchaser becomes aware of a material change, if the declarant has not delivered a revised disclosure statement or notice to the purchaser as required by subsection (1) with respect to the change; and</p> <p>(c) the date on which the Superior Court of Justice makes a determination under subsection (5) or (8) that the change is material, if the purchaser or the declarant, as the case may be, has made an application for the determination.</p>		<p>(a) the date on which the purchaser receives the revised disclosure statement or the notice, if the declarant delivered a revised disclosure statement or notice to the purchaser;</p> <p>(b) the date on which the purchaser becomes aware of a material change, if the declarant has not delivered a revised disclosure statement or notice to the purchaser as required by subsection (1) with respect to the change; and</p> <p>(c) the date on which the Superior Court of Justice makes a determination under subsection (5) or (8) that the change is material, if the purchaser or the declarant, as the case may be, has made an application for the determination.</p>
(7)	Notice of rescission To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser's solicitor shall give a written notice of rescission to the declarant or to the declarant's solicitor.	(7)	Notice of rescission To rescind an agreement of purchase and sale under this section, a purchaser or the purchaser's solicitor shall give a written notice of rescission to the declarant or to the declarant's solicitor.
(8)	Declarant's application to court Within 10 days after receiving a notice of rescission, the declarant may make an application to the Superior Court of Justice for a determination whether the change or the series of changes on which the rescission is based constitutes a material change, if the purchaser has not already made an application for the determination under subsection (5).	(8)	Declarant's application to court Within 10 days after receiving a notice of rescission, the declarant may make an application to the Superior Court of Justice for a determination whether the change or the series of changes on which the rescission is based constitutes a material change, if the purchaser has not already made an application for the determination under subsection (5).
(9)	Refund upon rescission A declarant who receives a notice of rescission from a purchaser under this section shall refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price, together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it.	(9)	Refund upon rescission A declarant who receives a notice of rescission from a purchaser under this section shall refund, without penalty or charge, to the purchaser, all money received from the purchaser under the agreement and credited towards the purchase price, together with interest on the money calculated at the prescribed rate from the date that the declarant received the money until the date the declarant refunds it.
(10)	Time of refund The declarant shall make the refund, (a) within 10 days after receiving a notice of rescission, if neither the purchaser nor the declarant has made an application for a determination described in subsection (5) or (8) respectively; or	(10)	Time of refund The declarant shall make the refund, (a) within 10 days after receiving a notice of rescission, if neither the purchaser nor the declarant has made an application for a determination described in subsection (5) or (8) respectively; or
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<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	(b) within 10 days after the court makes a determination that the change is material, if the purchaser has made an application under subsection (5) or the declarant has made an application under subsection (8).		(b) within 10 days after the court makes a determination that the change is material, if the purchaser has made an application under subsection (5) or the declarant has made an application under subsection (8).
	No equivalent	(11)	<u>Application</u> <u>A person who is or was a purchaser may make an application to the Superior Court of Justice for an order under subsection (12).</u>
	No equivalent	(12)	<u>Court order</u> <u>The court, if satisfied that the declarant has, without reasonable excuse, failed to comply with subsection (1), (3), (4), (9) or (10),</u> <ul style="list-style-type: none"> (a) <u>shall order that the declarant pay damages to the person for the loss that the person incurred as a result of the declarant's acts of non-compliance with subsection (1), (3), (4), (9) or (10), as the case may be;</u> (b) <u>shall order that the declarant pay the person's costs of the application;</u> (c) <u>may order the declarant to pay to the person an additional amount not to exceed \$10,000; and</u> (d) <u>may order the declarant to comply with subsection (1), (3), (4), (9) or (10), as the case may be.</u>
75. (1)	Accountability for budget statement The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description.	75. (1)	<u>Declarant's accountability for first year</u> The declarant is accountable to the corporation under this section for, <ul style="list-style-type: none"> (a) <u>the statement mentioned in clause 72 (6) (e) that is required to be contained in the budget statement described in subsection 72 (6); and</u> (b) <u>the portion of the budget of the corporation for its first fiscal year required by subsection 83.1 (3) that represents the one-year period immediately after the registration of the declaration and description and that is determined in accordance with the regulations.</u>
	No equivalent	(1.1)	<u>Reserve fund contributions</u> <u>If the budget statement described in subsection 72 (6) does not comply with clause 72 (6) (e), the declarant shall pay to the corporation the amount required for compliance with that clause, as determined in accordance with the regulations.</u>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
(2)	<p>Common expenses</p> <p>The declarant shall pay to the corporation the amount by which the total actual amount of common expenses incurred for the period covered by the budget statement, except for those attributable to the termination of an agreement under section 111 or 112, exceeds the total budgeted amount.</p>	(2)	<p>Common expenses</p> <p>The declarant shall pay to the corporation the amount by which the total actual amount of common expenses incurred for <u>the one-year period mentioned in clause (1) (b)</u>, except for <u>the following</u>, exceeds the total budgeted amount <u>for that period</u>:</p> <ol style="list-style-type: none"> 1. <u>The expenses attributable to the termination of an agreement under section 111 or 112.</u> 2. <u>The amount, or any part of it, that the declarant is required to pay under subsection (1.1).</u> 3. <u>Any other prescribed amount.</u>
(3)	<p>Revenue</p> <p>The declarant shall pay to the corporation the amount by which the total actual amount of fees, charges, rents and other revenue paid or to be paid to the corporation, during the period covered by the budget statement, for the use of any part of the common elements or assets or of any other facilities related to the property, is less than the total budgeted amount.</p>	(3)	<p>Revenue</p> <p>The declarant shall pay to the corporation the amount by which the total actual amount of fees, charges, rents and other revenue paid or to be paid to the corporation, during the <u>one-year period mentioned in clause (1) (b)</u>, for the use of any part of the common elements or assets or of any other facilities related to the property, is less than the total budgeted amount <u>for that period</u>.</p>
(4)	<p>Set-off</p> <p>If the total actual amount of revenue described in subsection (3) exceeds the total budgeted amount, the declarant may deduct the excess from any amount payable under subsection (2).</p>	(4)	<p>Set-off</p> <p>If the total actual amount of revenue described in subsection (3) exceeds the total budgeted amount, the declarant may deduct the excess from any amount payable under subsection <u>(1.1) or (2)</u>.</p>
(5)	<p>Notice of payment</p> <p>After receiving the audited financial statements for the period covered by the budget statement, the board shall compare the actual amount of common expenses and revenue described in subsections (2) and (3) for the period covered by the budget statement with the budgeted amounts and shall, within 30 days of receiving the audited financial statements, give written notice to the declarant of the amount that the declarant is required to pay to the corporation under this section.</p>	(5)	<p>Notice of payment</p> <p>After receiving the audited financial statements for <u>the corporation's first fiscal year, the board shall,</u></p> <ol style="list-style-type: none"> (a) <u>if it has not already done so, determine the amount, if any, that the declarant is required to pay to the corporation under subsection (1.1);</u> (b) compare the actual amount of common expenses and revenue described in subsections (2) and (3) for the <u>one-year period mentioned in clause (1) (b)</u> with the budgeted amounts <u>for that period</u>; and (c) within <u>90</u> days of receiving the audited financial statements, give written notice to the declarant of the amount that the declarant is required to pay to the corporation under this section.
(6)	<p>Time for payment</p> <p>Within 30 days of receiving the notice, the declarant shall pay the corporation the amount that it is required to pay under this section.</p>	(6)	<p>Time for payment</p> <p>Within 30 days of receiving the notice, the declarant shall pay the corporation the amount that it is required to pay under this section.</p>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
<p>76. (1) Status certificate</p> <p>The corporation shall give to each person who so requests a status certificate with respect to a unit in the corporation, in the prescribed form, that specifies the date on which it was made and that contains,</p> <ul style="list-style-type: none"> (a) a statement of the common expenses for the unit and the default, if any, in payment of the common expenses; (b) a statement of the increase, if any, in the common expenses for the unit that the board has declared since the date of the budget of the corporation for the current fiscal year and the reason for the increase; (c) a statement of the assessments, if any, that the board has levied against the unit since the date of the budget of the corporation for the current fiscal year to increase the contribution to the reserve fund and the reason for the assessments; (d) a statement of the address for service of the corporation; (e) a statement of the names and address for service of the directors and officers of the corporation; (f) a copy of the current declaration, by-laws and rules; (g) a copy of all applications made under section 109 to amend the declaration for which the court has not made an order; (h) a statement of all outstanding judgments against the corporation and the status of all legal actions to which the corporation is a party; (i) a copy of the budget of the corporation for the current fiscal year, the last annual audited financial statements and the auditor's report on the statements; (j) a list of all current agreements mentioned in section 111, 112 or 113 and all current agreements between the corporation and another corporation or between the corporation and the owner of the unit; <p style="text-align: right;"><i>Cont'd</i></p>		<p>76. (1) Status certificate</p> <p>The corporation shall give to each person who so requests a status certificate with respect to a unit in the corporation, in the prescribed form, that specifies the date on which it was made and that contains,</p> <ul style="list-style-type: none"> (a) a statement of the common expenses for the unit and the default, if any, in payment of the common expenses; (b) a statement of the increase, if any, in the common expenses for the unit that the board has declared since the date of the budget of the corporation for the current fiscal year and the reason for the increase; (c) a statement of the assessments, if any, that the board has levied against the unit since the date of the budget of the corporation for the current fiscal year to increase the contribution to the reserve fund and the reason for the assessments; (d) a statement of the address for service of the corporation; (e) a statement of the names and address for service of the directors and officers of the corporation; (f) a copy of the current declaration, by-laws and rules; (g) a copy of all applications made under section 109 to amend the declaration for which the court has not made an order; (h) a statement of all outstanding judgments against the corporation and the status of all legal actions to which the corporation is a party; <u>(h.1) the financial implications, as may be prescribed, of the judgments and legal actions mentioned in clause (h);</u> (i) a copy of the budget of the corporation for the current fiscal year <u>all amendments, if any, to that budget</u>, the last annual audited financial statements and the auditor's report on the statements; (j) a list of all current agreements mentioned in section <u>21.1</u>, 111, 112 or 113 and all current agreements between the corporation and another corporation or between the corporation and the owner of the unit; <p style="text-align: right;"><i>Cont'd</i></p>	

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	<p>(k) a statement that the person requesting the status certificate has the rights described in subsections (7) and (8) with respect to the agreements mentioned in clause (j);</p> <p>(l) a statement whether the parties have complied with all current agreements mentioned in clause 98 (1) (b) with respect to the unit;</p> <p>(m) a statement with respect to,</p> <p style="padding-left: 20px;">(i) the most recent reserve fund study and updates to it,</p> <p style="padding-left: 20px;">(ii) the amount in the reserve fund no earlier than at the end of a month within 90 days of the date of the status certificate, and</p> <p style="padding-left: 20px;">(iii) current plans, if any, to increase the reserve fund under subsection 94 (8);</p> <p>(n) a statement of those additions, alterations or improvements to the common elements, those changes in the assets of the corporation and those changes in a service of the corporation that are substantial and that the board has proposed but has not implemented, together with a statement of the purpose of them;</p> <p>(o) a statement of the number of units for which the corporation has received notice under section 83 that the unit was leased during the fiscal year preceding the date of the status certificate;</p> <p>(p) a certificate or memorandum of insurance for each of the current insurance policies;</p> <p>(q) a statement of the amounts, if any, that this Act requires be added to the common expenses payable for the unit;</p> <p>(r) a statement whether the Superior Court of Justice has made an order appointing an inspector under section 130 or an administrator under section 131;</p> <p>(s) all other material that the regulations made under this Act require.</p>		<p>(k) a statement that the person requesting the status certificate has the rights described in subsections (7) and (8) with respect to the agreements mentioned in clause (j);</p> <p>(l) a statement whether the parties have complied with all current agreements mentioned in clause 98 (1) (b) with respect to the unit;</p> <p>(m) a statement with respect to,</p> <p style="padding-left: 20px;">(i) the most recent reserve fund study and updates to it,</p> <p style="padding-left: 20px;">(ii) the amount in the reserve fund no earlier than at the end of a month within 90 days of the date of the status certificate, and</p> <p style="padding-left: 20px;">(iii) current plans, if any, to increase the reserve fund under subsection 94 (8);</p> <p>(n) a statement of those <u>modifications, within the meaning of subsection 97 (2)</u>, that are substantial <u>within the meaning of subsection 97 (9)</u> and that the board has proposed but has not implemented, together with a statement of the purpose of them;</p> <p>(o) a statement of the number of units for which the corporation has received notice under section 83 that the unit was leased during the fiscal year preceding the date of the status certificate;</p> <p>(p) a certificate or memorandum of insurance for each of the current insurance policies;</p> <p>(q) a statement of the amounts, if any, that this Act requires be added to the <u>contribution to the</u> common expenses payable for the unit;</p> <p>(r) a statement whether the Superior Court of Justice has made an order appointing an inspector under section 130 or an administrator under section 131;</p> <p>(s) all other material that the regulations made under this Act require.</p>
(2)	<p>Fee for certificate</p> <p>The corporation may charge the prescribed fee for providing the status certificate.</p>	(2)	<p>Fee for certificate</p> <p>The corporation may charge the prescribed fee for providing the status certificate.</p>
(3)	<p>Time for giving certificate</p> <p>The corporation shall give the status certificate within 10 days after receiving a request for it and payment of the fee charged by the corporation for it.</p>	(3)	<p>Time for giving certificate</p> <p>The corporation shall give the status certificate within 10 days after receiving a request for it and payment of the fee charged by the corporation for it.</p>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
(4)	Omission of information If a status certificate that a corporation has given under subsection (1) omits material information that it is required to contain, it shall be deemed to include a statement that there is no such information.	(4)	Omission of information If a status certificate that a corporation has given under subsection (1) omits material information that it is required to contain, it shall be deemed to include a statement that there is no such information.
(5)	Default in giving certificate A corporation that does not give a status certificate within the required time shall be deemed to have given a certificate on the day immediately after the required time has expired stating that, <ul style="list-style-type: none"> (a) there has been no default in the payment of common expenses for the unit; (b) the board has not declared any increase in the common expenses for the unit since the date of the budget of the corporation for the current fiscal year; and (c) the board has not levied any assessments against the unit since the date of the budget of the corporation for the current fiscal year to increase the contribution to the reserve fund. 	(5)	Default in giving certificate A corporation that does not give a status certificate within the required time shall be deemed to have given a certificate on the day immediately after the required time has expired stating that, <ul style="list-style-type: none"> (a) there has been no default in the payment of common expenses for the unit; (b) the board has not declared any increase in the common expenses for the unit since the date of the budget of the corporation for the current fiscal year; and (c) the board has not levied any assessments against the unit since the date of the budget of the corporation for the current fiscal year to increase the contribution to the reserve fund.
(6)	Effect of certificate The status certificate binds the corporation, as of the date it is given or deemed to have been given, with respect to the information that it contains or is deemed to contain, as against a purchaser or mortgagee of a unit who relies on the certificate.	(6)	Effect of certificate The status certificate binds the corporation, as of the date it is given or deemed to have been given, with respect to the information that it contains or is deemed to contain, as against a purchaser or mortgagee of a unit who relies on the certificate.
(7)	Examination of agreements Upon receiving a written request and reasonable notice, the corporation shall permit a person who has requested a status certificate and paid the fee charged by the corporation for the certificate, or an agent of the person duly authorized in writing, to examine the agreements mentioned in clause (1) (k) at a reasonable time and at a reasonable location.	(7)	Examination of agreements Upon receiving a written request and reasonable notice, the corporation shall permit a person who has requested a status certificate and paid the fee charged by the corporation for the certificate, or an agent of the person duly authorized in writing, to examine the agreements mentioned in clause (1) (k) at a reasonable time and at a reasonable location.
(8)	Copies of agreements The corporation shall, within a reasonable time, provide copies of the agreements to a person examining them, if the person so requests and pays a reasonable fee to compensate the corporation or the labour and copying charges.	(8)	Copies of agreements The corporation shall, within a reasonable time, provide copies of the agreements to a person examining them, if the person so requests and pays a reasonable fee to compensate the corporation or the labour and copying charges.

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
77.	Information on corporation On the request of any person, the corporation shall, without fee, provide the names and address for service of the directors and officers of the corporation, the person responsible for the management of the property of the corporation and the person to whom the corporation has delegated the responsibility for providing status certificates.	77.	Information on corporation On the request of any person, the corporation shall, without fee, provide the names and address for service of the directors and officers of the corporation, the person responsible for the management of the <u>property</u> and the person to whom the corporation has delegated the responsibility for providing status certificates.
SALE OF UNITS			
78. (1)	Implied covenants Every agreement of purchase and sale of a proposed unit entered into by a declarant before the registration of the declaration and description that creates the unit shall be deemed to contain the following covenants by the declarant: <ol style="list-style-type: none"> 1. if the proposed unit is for residential purposes, a covenant to take all reasonable steps to sell the other residential units included in the property without delay, except for the units that the declarant intends to lease. 2. A covenant to take all reasonable steps to deliver to the purchaser without delay a deed to the unit that is in registerable form. 3. A covenant to hold in trust for the corporation to the money, if any, that the declarant collects from the purchaser on behalf of the corporation. 	78. (1)	Implied covenants Every agreement of purchase and sale of a <u>unit or</u> proposed unit entered into by a declarant <u>or a person acting on behalf of or for the benefit of the declarant</u> shall be deemed to contain the following covenants by the declarant, <u>which shall apply despite anything in the declaration, a by-law, an agreement or an instrument:</u> <ol style="list-style-type: none"> 1. if the <u>unit or</u> proposed unit is for residential purposes, a covenant to take all reasonable steps to sell the other residential units included in the property without delay, except for the units that the declarant intends to lease. 2. A covenant to take all reasonable steps to deliver to the purchaser without delay a deed to the unit that is in registerable form. 3. A covenant to hold in trust for the corporation to the money, if any, that the declarant collects from the purchaser on behalf of the corporation.
	No equivalent	(1.1)	<u>No acquisition of property, etc.</u> <u>Every agreement of purchase and sale of a unit or a proposed unit entered into by a declarant or a person acting on behalf of or for the benefit of the declarant shall be deemed to contain the following covenants, which, subject to the regulations, shall apply despite anything in the declaration, a by-law, an agreement or an instrument:</u> <ol style="list-style-type: none"> 1. <u>The purchaser under the agreement of purchase and sale shall not acquire an interest or right in property described in subsection (1.2) if the property is intended for or is for the collective use or enjoyment of the owners in the corporation of which the unit or proposed unit forms part.</u>
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<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	No equivalent		<p>2. <u>The declarant shall not charge and the purchaser under the agreement of purchase and sale shall not pay any amount that is or is intended to be a projected or actual contribution to the reserve fund of the corporation, unless otherwise permitted under this Act.</u></p> <p>3. <u>Subject to subsection 23 (6), the purchaser under the agreement of purchase and sale shall not directly or indirectly indemnify, reimburse, or otherwise compensate the declarant or a declarant affiliate for any remedies exercised by or on behalf of a corporation against the declarant or declarant affiliate.</u></p>
	No equivalent	(1.2)	Same <u>The property mentioned in paragraph 1 of subsection (1.1) is any real or personal property, other than real or personal property owned by the corporation, as may be prescribed, or the common elements.</u>
	No equivalent	(1.3)	Other agreement <u>Subject to the regulations, a provision of an agreement to which a purchaser is a party is void if it contravenes the covenant described in subsection (1.1).</u>
(2)	No merger of covenants The covenants shall be deemed not to merge by operation of law on delivery to the purchaser of a deed that is in registerable form.	(2)	No merger of covenants The covenants <u>described in subsection (1) or (1.1)</u> shall be deemed not to merge by operation of law on delivery to the purchaser of a deed that is in registerable form.
(3)	Compliance order If the declarant breaches a covenant described in subsection (1), the purchaser under the agreement of purchase and sale may make an application for an order under section 134 and an order may be made under that section.	(3)	Compliance order If the declarant breaches a covenant described in subsection (1) <u>or (1.1)</u> , the purchaser under the agreement of purchase and sale may make an application for an order under section 134 and an order may be made under that section.
79.	(1) Duty to register declaration and description A declarant who has entered into an agreement of purchase and sale of a proposed unit shall take all reasonable steps to complete the buildings required by the agreement subject to all prescribed requirements and to register, without delay, a declaration and description in respect of the property in which the proposed unit will be included.	79.	(1) Duty to register declaration and description <u>If a declarant or a person acting on behalf of or for the benefit of the declarant</u> has entered into an agreement of purchase and sale of a proposed unit, <u>the declarant</u> shall take all reasonable steps to complete the buildings required by the agreement subject to all prescribed requirements and to register, without delay, a declaration and description in respect of the property in which the proposed unit will be included.

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
(2)	No right to terminate Despite any provision to the contrary in the agreement of purchase and sale, the declarant is not entitled to terminate an agreement of purchase and sale of a proposed unit by reason only 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.	(2)	No right to terminate Despite any provision to the contrary in the agreement of purchase and sale, the declarant <u>or a person acting on behalf of or for the benefit of the declarant</u> is not entitled to terminate an agreement of purchase and sale of a proposed unit by reason only 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)	Application to court Despite subsection (2), if a declaration and description have not been registered, the declarant may, upon 15 days written notice to the purchasers of all proposed units in the property affected by the declaration and description, make an application to the Superior Court of Justice for an order terminating the agreements of purchase and sale of the purchasers.	(3)	Application to court Despite subsection (2), if a declaration and description have not been registered, the declarant may, upon 15 days written notice to the purchasers of all proposed units in the property affected by the declaration and description, make an application to the Superior Court of Justice for an order terminating the agreements of purchase and sale of the purchasers.
(4)	Subsequent registration The court may, in the order, provide that a declaration and description shall not be registered in respect of the property in which the proposed units will be included during a period specified in the order.	(4)	Subsequent registration The court may, in the order, provide that a declaration and description shall not be registered in respect of the property in which the proposed units will be included during a period specified in the order.
(5)	Considerations On an application for an order, the court shall consider whether, (a) the declarant has taken all reasonable steps to register a declaration and description; (b) a declaration and description can 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 declarant.	(5)	Considerations On an application for an order, the court shall consider whether, (a) the declarant has taken all reasonable steps to register a declaration and description; (b) a declaration and description can 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 declarant.
(6)	Registration of order The order is ineffective until a certified copy of it is registered.	(6)	Registration of order The order is ineffective until a certified copy of it is registered.
80.		80.	
(1)	Interim occupancy An agreement of purchase and sale may permit or require interim occupancy of a proposed unit.	(1)	Interim occupancy An agreement of purchase and sale may permit or require interim occupancy of a proposed unit.
(2)	Definition In this section, “interim occupancy” means the occupancy of a proposed unit before the purchaser receives a deed to the unit that is in registerable form.	(2)	Definition In this section, “interim occupancy” means the occupancy of a proposed unit before the purchaser receives a deed to the unit that is in registerable form.

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
(3)	<p>Right to pay in full</p> <p>Despite any provision to the contrary in the agreement of purchase and sale, before the expiry of the time period mentioned in subsection 73 (2) for rescinding the agreement, a purchaser may elect to pay in full, on assuming interim occupancy of the proposed unit, the balance of the purchase price remaining after deducting the amounts paid under the agreement before assuming interim occupancy.</p>	(3)	<p>Right to pay in full</p> <p>Despite any provision to the contrary in the agreement of purchase and sale, before the expiry of the time period mentioned in subsection 73 (2) for rescinding the agreement, a purchaser may elect to pay in full, on assuming interim occupancy of the proposed unit, the balance of the purchase price remaining after deducting the amounts paid under the agreement before assuming interim occupancy.</p>
(4)	<p>Occupancy fee</p> <p>If the purchaser assumes interim occupancy of a proposed unit or is required to do so under the agreement of purchase and sale, the declarant may charge the purchaser a monthly occupancy fee which shall not be greater than the total of the following amounts:</p> <ol style="list-style-type: none"> 1. Where applicable, interest calculated on a monthly basis on the unpaid balance of the purchase price at the prescribed rate. 2. An amount reasonably estimated on a monthly basis for municipal taxes attributable to the unit. 3. The projected monthly common expense contribution for the unit. 	(4)	<p>Occupancy fee</p> <p>If the purchaser assumes interim occupancy of a proposed unit or is required to do so under the agreement of purchase and sale, the declarant may charge the purchaser a monthly occupancy fee which shall not be greater than the total of the following amounts:</p> <ol style="list-style-type: none"> 1. Where applicable, interest calculated on a monthly basis on the unpaid balance of the purchase price at the prescribed rate. 2. An amount reasonably estimated on a monthly basis for municipal taxes attributable to the unit. 3. The projected monthly common expense contribution for the unit <u>subject to the regulations.</u>
(5)	<p>Reserve fund contribution</p> <p>If the declarant charges the purchaser a monthly occupancy fee for interim occupancy of a proposed unit for residential purposes for longer than six months and the monthly occupancy fee includes a projected contribution to the reserve fund of the corporation, then, with respect to the occupancy fee for each month after the sixth month, the declarant shall hold in trust and remit to the corporation upon registering the declaration and description the portion of the monthly occupancy fee that represents the projected contribution to the reserve fund.</p>	(5)	<p>Reserve fund contribution</p> <p>If the declarant charges the purchaser a monthly occupancy fee for interim occupancy of a proposed unit <u>of a prescribed class</u> for longer than six months <u>or such other period that is prescribed</u> <u>and if</u> the monthly occupancy fee includes a projected contribution to the reserve fund of the corporation, then, with respect to the occupancy fee for each month after the sixth month or such other period that is prescribed, the declarant shall hold in trust and remit to the corporation upon registering the declaration and description the portion of the monthly occupancy fee that represents the projected contribution to the reserve fund <u>in accordance with the regulations, if any.</u></p>
(6)	<p>Rights and duties of declarant</p> <p>If a purchaser assumes interim occupancy of a proposed unit, the declarant,</p> <ol style="list-style-type: none"> (a) shall provide those services that the corporation will have a duty to provide to owners after the registration of the declaration and description that creates the unit; <p style="text-align: right;"><i>Cont'd</i></p>	(6)	<p>Rights and duties of declarant</p> <p>If a purchaser assumes interim occupancy of a proposed unit, the declarant,</p> <ol style="list-style-type: none"> (a) shall provide those services that the corporation will have a duty to provide to owners after the registration of the declaration and description that creates the unit; <p style="text-align: right;"><i>Cont'd</i></p>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	<p>(b) shall repair and maintain the proposed property and the proposed unit in the same manner as the corporation will have a duty to repair after damage and maintain after the registration of the declaration and description that creates the unit;</p> <p>(c) has the same right of entry that the corporation will have after the registration of the declaration and description that creates the unit;</p> <p>(d) may withhold consent to an assignment of the right to occupy the proposed unit;</p> <p>(e) may charge a reasonable fee for consenting to an assignment of the right to occupy the proposed unit; and</p> <p>(f) shall, within 30 days of the registration of the declaration and description that creates the unit, notify the purchaser in writing of the date and instrument numbers of the registration, unless within that time the purchaser receives a deed to the unit that is in registerable form.</p>		<p>(b) shall repair and maintain the proposed property and the proposed unit in the same manner as the corporation will have a duty to repair and maintain after the registration of the declaration and description that creates the unit;</p> <p>(c) has the same right of entry that the corporation will have after the registration of the declaration and description that creates the unit;</p> <p>(d) may withhold consent to an assignment of the right to occupy the proposed unit;</p> <p>(e) may charge a reasonable fee for consenting to an assignment of the right to occupy the proposed unit; and</p> <p>(f) shall, within 30 days of the registration of the declaration and description that creates the unit, notify the purchaser in writing of the date and instrument numbers of the registration, unless within that time the purchaser receives a deed to the unit that is in registerable form.</p>
(7)	<p>Application of Residential Tenancies Act, 2006</p> <p>The rights and duties described in subsection (6) apply despite any provision to the contrary in the <i>Residential Tenancies Act, 2006</i>.</p>	(7)	<p>Application of Residential Tenancies Act, 2006</p> <p>The rights and duties described in subsection (6) apply despite any provision to the contrary in the <i>Residential Tenancies Act, 2006</i>.</p>
(8)	<p>Refund of municipal taxes</p> <p>The declarant shall, on delivering to the purchaser a deed that is in registerable form or as soon as is practicable after delivery, refund to the purchaser the portion of the monthly occupancy fee that the purchaser has paid on account of municipal taxes attributable to the proposed unit in excess of the amount actually assessed against the unit.</p>	(8)	<p>Refund of municipal taxes</p> <p>The declarant shall, on delivering to the purchaser a deed that is in registerable form or as soon as is reasonably possible after delivery, refund to the purchaser the portion of the monthly occupancy fee that the purchaser has paid on account of municipal taxes attributable to the proposed unit in excess of the amount actually assessed against the unit.</p>
(9)	<p>Municipal taxes payable</p> <p>If the portion of the monthly occupancy fee that the purchaser has paid on account of municipal taxes attributable to the proposed unit is insufficient to pay the amount actually assessed against the unit, the declarant may require the purchaser to pay the difference between the two amounts.</p>	(9)	<p>Municipal taxes payable</p> <p>If the portion of the monthly occupancy fee that the purchaser has paid on account of municipal taxes attributable to the proposed unit is insufficient to pay the amount actually assessed against the unit, the declarant may require the purchaser to pay the difference between the two amounts.</p>
(10)	<p>Non-application</p> <p>Sections 149, 150, 151, 165, 166 and 167 and Part VII of the <i>Residential Tenancies Act, 2006</i> do not apply to interim occupancy and monthly occupancy fees charged under this section.</p>	(10)	<p>Non-application</p> <p>Sections 149, 150, 151, 165, 166 and 167 and Part VII of the <i>Residential Tenancies Act, 2006</i> do not apply to interim occupancy and monthly occupancy fees charged under this section.</p>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
<p>81. (1) Money held in trust</p> <p>A declarant shall ensure that a trustee of a prescribed class or the declarant's solicitor receives and holds in trust all money, together with interest earned on it as soon as a person makes a payment,</p> <ul style="list-style-type: none"> (a) with respect to reserving a right to enter into an agreement of purchase and sale for the purchase of a proposed unit; (b) on account of an agreement of purchase and sale of a proposed unit; or (c) on account of a sale of a proposed unit. 	<p>81. (1) Money held in trust</p> <p>A declarant shall ensure that a trustee of a prescribed class or the declarant's solicitor receives and holds in trust all money, together with interest earned on it as soon as a person makes a payment,</p> <ul style="list-style-type: none"> (a) with respect to reserving a right to enter into an agreement of purchase and sale for the purchase of a proposed unit; (b) on account of an agreement of purchase and sale of a proposed unit; or (c) on account of a sale of a proposed unit. 		
<p>(2) Exception</p> <p>Subsection (1) does not apply to money received,</p> <ul style="list-style-type: none"> (a) on account of the purchase of personal property included in the proposed unit that is not to be permanently affixed to the land; or (b) as an occupancy fee under subsection 80(4). 	<p>(2) Exception</p> <p>Subsection (1) does not apply to money received,</p> <ul style="list-style-type: none"> (a) on account of the purchase of personal property included in the proposed unit that is not to be permanently affixed to the land; or (b) as an occupancy fee under subsection 80(4). 		
<p>(3) Reservation money</p> <p>If a person has paid money to reserve a right to enter into an agreement of purchase and sale for the purchase of a proposed unit and subsequently enters into such an agreement with the declarant, the declarant shall, on entering into the agreement, credit the money received to the purchase price under the agreement, despite any provision of the agreement.</p>	<p>(3) Reservation money</p> <p>If a person has paid money to reserve a right to enter into an agreement of purchase and sale for the purchase of a proposed unit and subsequently enters into such an agreement with the declarant <u>or a person acting on behalf of or for the benefit of the declarant, the declarant shall, in accordance with the regulations and within the prescribed period of time</u> on entering into the agreement, credit the money received to the purchase price under the agreement, despite any provision of the agreement.</p>		
<p>(4) Trustee</p> <p>Upon receiving money that is required to be held in trust under subsection (1), a trustee of a prescribed class shall hold the money in trust in a separate account in Ontario designated as a trust account at a bank listed in Schedule I or II to the <i>Bank Act</i> (Canada), a trust corporation, a loan corporation or a credit union.</p>	<p>(4) Trustee</p> <p>Upon receiving money that is required to be held in trust under subsection (1), a trustee of a prescribed class shall hold the money in trust in a separate account in Ontario designated as a trust account at,</p> <ul style="list-style-type: none"> (a) <u>a bank within the meaning of section 2 of the Bank Act (Canada);</u> (b) <u>a corporation registered under the Loan and Trust Corporations Act; or</u> (c) <u>a credit union within the meaning of the Credit Unions and Caisses Populaires Act, 1994.</u> 		

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
(5)	Defendant's solicitor Upon receiving money that is required to be held in trust under subsection (1), the declarant's solicitor shall hold the money in trust in a trust account in Ontario.	(5)	Defendant's solicitor Upon receiving money that is required to be held in trust under subsection (1), the declarant's solicitor shall hold the money in trust in a trust account in Ontario.
(6)	Evidence of compliance Within 10 days of the payment of the money under subsection (1), the declarant shall provide to the person who paid the money written evidence, in the form prescribed by the Minister, of compliance with subsection (1) and one of subsections (4) and (5).	(6)	Evidence of compliance Within 10 days of the payment of the money under subsection (1), the declarant shall provide to the person who paid the money written evidence, in the form prescribed by the Minister, of compliance with subsection (1) and one of subsections (4) and (5).
(7)	Duration of trust Despite the registration of a declaration and description, the person who holds money in trust under subsection (1) shall hold it in trust until, <ul style="list-style-type: none"> (a) the person holding the money in trust disposes of it to the person entitled to it, where the disposal is done in accordance with this Act and an agreement that the person who paid the money has entered into with respect to the proposed unit; or (b) the declarant ensures that security of a prescribed class is provided for the money, except if the money has been received under clause (1) (a) and has not been credited to the purchase price under the agreement. 	(7)	Duration of trust Despite the registration of a declaration and description, the person who holds money in trust under subsection (1) shall hold it in trust until, <ul style="list-style-type: none"> (a) the person holding the money in trust disposes of it to the person entitled to it, where the disposal is done in accordance with this Act and an agreement that the person who paid the money has entered into with respect to the proposed unit; or (b) the declarant ensures that security of a prescribed class is provided for the money, except if the money has been received under clause (1) (a) and has not been credited to the purchase price under the agreement.
82.		82.	
(1)	Interest The declarant shall pay interest at the prescribed rate to the purchaser on all money that a person pays on account of the purchase price of a proposed unit or that the declarant credits to the purchase price of a proposed unit.	(1)	Interest The declarant shall pay interest at the prescribed rate to the purchaser on all money that a person pays on account of the purchase price of a proposed unit or that the declarant <u>or a person acting on behalf of or for the benefit of the declarant</u> credits to the purchase price of a proposed unit.
(2)	Money released from trust The interest is payable on the money even if, under clause 81 (7) (b), the declarant provides security of a prescribed class for the money.	(2)	Money released from trust The interest is payable on the money even if, under clause 81 (7) (b), the declarant provides security of a prescribed class for the money.
(3)	Calculation The interest shall be calculated from the day the person pays the money received until the day the proposed unit is available for possession or occupancy in accordance with the purchaser's agreement of purchase and sale with the declarant.	(3)	Calculation The interest shall be calculated from the day the person pays the money received until the day the proposed unit is available for possession or occupancy in accordance with the purchaser's agreement of purchase and sale with the declarant <u>or a person acting on behalf of or for the benefit of the declarant.</u>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	No equivalent provision		<p>(b) <u>at least 80 per cent of those persons who, at the date of the vote, have registered claims against the property that were created after the registration of the declaration and description that made this Act applicable to the units being sold, consent in writing to the sale; and</u></p> <p>(c) <u>all other conditions, if any, that are prescribed have been satisfied.</u></p>
	No equivalent provision	(2)	<p><u>Conveyance</u></p> <p><u>When a sale takes place, the board shall deliver to the purchaser the following documents signed by the authorized officers of the corporation: a deed and a certificate in the form prescribed by the Minister,</u></p> <p>(a) <u>stating that the persons who, under subsection (1), are required to vote in favour of the sale or consent in writing to the sale have done so; and</u></p> <p>(b) <u>containing all other statements and material, if any, that are prescribed.</u></p>
	No equivalent provision	(3)	<p><u>Subject to subsection (4), the owners at the time of the registration of the deed, as determined by the regulations, shall share the net proceeds of the sale in the same proportions as their common interests, subject to the conditions, if any, that are prescribed.</u></p>
	No equivalent provision	(4)	<p><u>Same</u></p> <p><u>The portion of the net proceeds of the sale that is attributable to a portion of the common elements that is for the use of the owners of certain designated units, where the owners are those at the time of the registration of the deed, as determined by the regulations, and not all the owners at that time, shall be divided among the owners of the designated units in the proportions in which their interests are affected, subject to the conditions, if any, that are prescribed.</u></p>
	No equivalent provision	82.2 (1)	<p><u>Right of dissenters</u></p> <p><u>A corporation that has made a sale under section 82.1 and every owner in the corporation shall be deemed to have made an agreement in accordance with the prescribed requirements, if any, that an owner who has dissented on the vote authorizing the sale may, within 30 days of the vote, submit to mediation a dispute over the fair market value of the units that have been sold, determined as of the time of the sale.</u></p>

<i>Condominium Act, 1998</i>		Bill 106, <i>Protecting Condominium Owners Act, 2015</i>	
	No equivalent provision	(2)	<u>Application of s. 132</u> <u>If an owner submits a dispute to mediation in accordance with the agreement mentioned in subsection (1), section 132 applies to the dispute with necessary modifications as if it were a disagreement under that section.</u>
	No equivalent provision	(3)	<u>Notice</u> <u>An owner who submits a dispute to mediation in accordance with the agreement mentioned in subsection (1) shall give the corporation notice of intention in accordance with the prescribed requirements, if any, within 10 days after the vote authorizing the sale.</u>
	No equivalent provision	(4)	<u>Entitlement to amount</u> <u>An owner who serves a notice of intention in accordance with subsection (3) is entitled to receive from the net proceeds of the sale the amount the owner would have received if the sale price had been the fair market value as determined by the arbitration.</u>
	No equivalent provision	(5)	<u>Deficiency</u> <u>The corporation shall pay to each of the owners who served a notice of intention in accordance with subsection (3), the deficiency in the amount to which the owner is entitled if the net proceeds of the sale are inadequate to pay the amount, subject to the conditions, if any, that are prescribed.</u>
	No equivalent provision	(6)	<u>Liability</u> <u>The owners, other than those who dissented on the vote authorizing the sale, are liable for the amount of the deficiency payments determined by the proportions of their common interests.</u>
	No equivalent provision	(7)	<u>Common expenses of other owners</u> <u>The corporation shall add the amount of the liability of each of the owners who voted in favour of the sale to the contribution to the common expenses payable for the unit of that owner.</u>
LEASE OF UNITS			
83.	(1) Notification by owner The owner of a unit who leases the unit or renews a lease of the unit shall, within 30 days of entering into the lease or the renewal, as the case may be, <i>Cont'd</i>	83.	(1) Notification by owner The owner of a unit who leases the unit or renews a lease of the unit shall, within <u>10</u> days of entering into the lease or the renewal, as the case may be, <i>Cont'd</i>

<i>Condominium Act, 1998</i>		<i>Bill 106, Protecting Condominium Owners Act, 2015</i>	
	<ul style="list-style-type: none"> (a) notify the corporation that the unit is leased, (b) provide the corporation with the lessee's name, the owner's address and a copy of the lease or renewal or a summary of it in the form prescribed by the Minister; and (c) provide the lessee with a copy of the declaration, by-laws and rules of the corporation. 		<ul style="list-style-type: none"> (a) notify the corporation that the unit is leased, (b) provide the corporation with the lessee's name, the owner's address and a copy of the lease or renewal or a summary of it in the form prescribed by the Minister; and (c) provide the lessee with a copy of the declaration, by-laws and rules of the corporation.
(2)	<p>Termination of lease</p> <p>If a lease of a unit is terminated and not renewed, the owner of the unit shall notify the corporation in writing.</p>	(2)	<p>Termination of lease</p> <p>If a lease of a unit is terminated and not renewed, the owner of the unit shall notify the corporation in writing <u>within 10 days of the termination.</u></p>
(3)	<p>Record of notice</p> <p>A corporation shall maintain a record of the notices that it receives under this section.</p>	(3)	<p>Record of notice</p> <p>A corporation shall maintain a record of the notices that it receives under this section.</p>