

GARDINER MILLER ARNOLD LLP
BARRISTERS & SOLICITORS

J. ROBERT GARDINER
390 BAY STREET, SUITE 1202, TORONTO, ON M5H 2Y2
PHONE (416) 363-2614 ext. 226 FAX (416) 363-8451
e-mail: bob.gardiner@gmalaw.ca www.gmalaw.ca

Re: GMA'S COMPREHENSIVE GENERAL BY-LAW

Benefits of Comprehensive General By-law

Our new Comprehensive General By-law contains approximately 200 improvements compared to a condominium's old General By-law No. 1. GMA's Comprehensive General By-law has been very favourably received by boards of directors, unit owners and property managers at over 100 condominium corporations. GMA's Comprehensive General By-law follows all relevant criteria set out in the *Condominium Act, 1998* (the "Act"), eliminates misleading criteria contained in old by-laws and contains numerous practical enhancements which particularly assist boards of directors and property managers to more easily govern the corporation, while eliminating redundant paperwork and affording new protections. The directors, owners and managers should all have an accurate comprehensive set of by-law guidelines which clarify many issues and can preclude disputes.

BENEFITS

GMA's Comprehensive General By-law contains the following types of enhancements:

Table of Contents – A detailed Table of Contents facilitates rapid navigation to items of interest.

Usual General By-law Provisions - All of the provisions normally found in a condominium's typical By-law No. 1 are updated to comply with the provisions set out in the new Act. Such usual provisions include: Definitions, Seal, Year End, Records, Duties of the Corporation, Powers of the Corporation, Giving Notice, Issues Affecting Directors, Board Meetings, Indemnification, Officers, Meetings of Owners, Assessment and Collection of Common Expenses, Liability for Costs, Banking and Execution of Instruments, among other typical General By-law No. 1 provisions.

Amendments - Our Comprehensive General By-law will adopt any beneficial provisions contained in your existing by-laws, unless they are already contained in our Comprehensive General By-law.

Eliminate Redundant By-laws – Old general by-laws, amendments, expired management agreements and other redundant by-laws will be eliminated. Reciprocal Agreement by-laws and certain other specified by-laws will be continued as is, unless you instruct us to adopt them in the Comprehensive General By-law.

Customized Provisions - Any customized provisions drafted by you will be reviewed and incorporated.

Records Access – Our provisions address records access and exclusions, copying, retention and confidentiality, together with a Record Acknowledgment form.

Owners' Meetings - Many enhancements pertain to annual meetings, requisition meetings, notice criteria, appointment by the board of a chair other than the President (when appropriate) and the chair's right to make final decisions. Various proxy requirements can minimize abuses.

Rules of Order – A set of condo-appropriate Rules of Order should be adopted by by-law and it is also useful to have a one-page set of Rules of Conduct to govern owners' behaviour at a meeting. Moreover, we provide an Owners' Code of Ethics to discourage owners from believing unsubstantiated misleading statements, participating in political dirty tricks or blindly signing proxies.

Directors' Qualifications – Improved directors' qualifications provisions exclude criminals and non-bondable persons, property managers, staff or more than one resident per unit. We suggest that two-thirds of directors be resident owners, but various optional versions of that qualification can be adopted. Provisions allow for non-qualification of an existing director and rights of removal in carefully restricted circumstances.

Directors' Code of Ethics – This Code goes a long way to educate directors as to their mission, duties and criteria to avoid poor governance, inappropriate conduct at directors' meetings, dirty political tricks and defamation, amongst many other criteria. Owners can ask directors seeking election whether the candidate will comply with the Directors' Code of Ethics.

Election of Directors – Enhanced provisions establish procedures to elect owner occupied directors and standard directors and prevent common mistakes pertaining to candidate notices and proxy requirements.

Directors' Criteria – Modernized provisions deal with a director's standard of care, duty of honesty and good faith and conflict of interest disclosure.

Indemnification - Old standard indemnity provisions protecting directors and officers should be revised in many corporations since they are often worded more broadly than the restricted wording required to comply with s. 39 of the Act. The indemnification provision should cover appointed volunteer committee members.

Assessments – The Corporation can object to realty tax assessments on behalf of owners on a condo-wide basis, potentially resulting in substantial tax reductions on an inexpensive basis, subject to safeguards.

Insurance Deductible - The circumstances whereby an owner becomes responsible to pay the greater of the insurance deductible amount or the cost of damage are extended beyond the unit in various ways so as to protect all other owners not responsible for causing damage.

Recreational Facilities Access – Access to the recreational facilities is restricted for use by only residents of units complying with rules. Trespass on the common elements by loiterers and trespassers breaching a rule are prohibited, even where a unit owner or resident has become a temporary trespasser.

Occupancy Standards - Occupancy standards prohibit more than two persons per designated sleeping area from occupying a residential unit. A formula calculates the additional common expenses levied against an owner whose unit contains excess residents.

Prohibited Commercial Uses - Uses of residential units for commercial, hotel, boarding house or other purposes are prohibited (but an ancillary home-office avoiding nuisances is permitted).

Partitions, Flooring and Alterations – Provisions address installation criteria for partitions, hardwood flooring and sound insulation. Section 98 criteria applicable to additions, alterations or improvements to the common elements by owners requires either a Multi-Use or a Single Purpose Owner's Alteration Agreement registered on title at the owner's expense.

Safety Devices – Governance, safety compliance, liability problems and maintenance obligations pertaining to maintenance of fan coil units, window latches, smoke detectors, carbon monoxide detectors and other designated "safety devices" can be resolved. The board has discretion to fund installation and repair of various types of "safety devices" designated by the board as lienable common expenses, so as to simplify and resolve condo-wide safety programs which can be performed by the Corporation better than owners, where preferred.

Duties and Powers – Various additional duties and powers of the corporation can be specified and can be designated as common expenses.

Mediation and Arbitration - Procedures streamline mediation/arbitration of disagreements. Now that the Court of Appeal has restricted the s. 134 court Application procedure, all corporations should have a pre-established set of mediation/arbitration provisions to resolve compliance and enforcement of declaration, by-law and rule requirements on a cost-effective basis.

Borrowing - The corporation is empowered to borrow significant funds listed in the current year's budget for proper purposes, without having to obtain unit owners' further consent.

Insurance Trust Agreement – The board will be empowered to terminate an existing expensive Insurance Trust Agreement, but is required to enter into an Insurance Trust Agreement only in an event of damage whereby proceeds in excess of 15% of the replacement costs of the insured property become payable by the insurer, as required by the Act.

Easements – Inherent easement powers are granted to permit the board's discretion to enter into telecommunications access and bulk service agreements, installation of service utilities and ancillary servicing equipment, to comply with s. 21 of the Act, as an approved common expense.

Leases and Licences – Leases negotiated by the board pertaining to superintendent suites, guest suites, laundry facilities, party room rentals, parking areas and lockers are automatically approved by by-law according to provisions and rents determined at the board's discretion, in order to comply with s. 21 of the Act.

EXCLUSIONS

The Comprehensive General By-law will not include the following:

Standard Unit By-law - Every existing corporation should now enact a Standard Unit By-law which defines Standard Improvements contained within one class (or sometimes more) of Standard Unit. Existing corporations are obligated to repair after damage declarants' pre-registration improvements (such as drywall, internal doors, plumbing and electrical fixtures, etc.) contained within units (s. 89), but the corporation is not allowed to insure such improvements unless the corporation has designated them as Standard Improvements in a Standard Unit By-law (s. 99). The corporation must have a Standard Unit By-law in order to make sure insurance proceeds will cover major and extended perils causing damage to Standard Improvements, because otherwise the corporation will have to self-fund the cost of fulfilling its duty to repair pre-registration improvements after damage. Moreover, a high percentage of owners typically fail to insure pre-registration improvements and a corporation can obtain such insurance for such pre-registration Improvements as Standard Improvements in a Standard Unit By-law at a hugely reduced rate. Ask for our Standard Unit By-law information letter for further explanation.

Reciprocal Agreement - Any existing Reciprocal Agreement/Shared Facilities Agreement/Easement and Cost Sharing Agreement by-law will remain unaltered, in full force and effect.

Insurance Trust Agreement – If you wish, any existing Insurance Trust Agreement can remain unaltered and in full force and effect, or you can adopt the insurance trust provisions contained in our Comprehensive General By-law.

Other By-laws – Normally, we will terminate and replace most of your existing by-laws. Any other specific by-laws not encompassed by the Comprehensive General By-law will remain unaltered, in full force and effect, unless you instruct us to repeal or revise them.

Directors' Remuneration - A provision to fix the remuneration of directors is generally an unpopular concept. Therefore, we will not include such a provision - unless you give us specific instructions to do so.

Non-Budgeted Borrowings - In the event the Corporation wishes to borrow money for expenditures which are not listed in the current year's budget, s. 56 (1) and (3) of the Act require a specific by-law to be passed in each such case.

Easement, Leases and Licences – Our Easement/Lease/Licence provisions address the common scenarios where a s. 21 by-law is required to approve them; let us know if other special circumstances deserve an Easement/Lease/Licence by-law provision.

Quorum Higher Than 25% - The quorum is set at 25% of all units, but upon your instructions, it can be increased to 33 1/3% of all units, if deemed appropriate.

Declaration Amendments – Certain topics referred to in s. 7 of the Act can only be contained within a declaration. The declaration will remain the same, but can be amended if particular declaration provisions are troublesome, in which case, ask for our Declaration Amendment Package information letter.

Rules - Certain criteria applicable to the safety, security and welfare of the units, common elements and owners referred to in s. 58 of the Act can only be contained in a rule. The existing Rules will remain the same, but upon request, we can usually suggest a number of improved and modernized Rules to establish a proper governance system with respect to a broad range of issues. Upon request, we will be pleased to provide a separate information letter pertaining to our Comprehensive Rules (High Rise, Townhouse, Recreational Facilities or Shared Facilities).

OTHER BY-LAW CONSIDERATIONS

Out of Date/Missing Provisions

By-law No. 1 of most corporations and other by-laws contain provisions which by now are long out of date, or inconsistent with the superseding requirements of the existing *Condominium Act*. Moreover, many beneficial provisions are typically missing from existing by-laws. Some corporations may wish to reduce superfluous paperwork circulated to purchasers with the status certificate, by terminating old redundant by-laws.

Amended vs. New By-law

Some corporations may consider customizing detailed revisions in a new amending by-law which refers back to specific paragraphs in existing by-laws. This approach, however, is both time-consuming and cumbersome, resulting in a patchwork of complicated provisions. We recommend that condominiums enact one new replacement by-law. Our new Comprehensive General By-law includes standard terminology to cover most of the provisions that would be contained in the by-laws of a typical townhouse or high rise condominium (as the case may be), together with numerous practical improvements, as well as features made available by the new Act.

Drafting Care

The new Act contains many new provisions and glitches in the statutory drafting. We have drafted the Comprehensive General By-law form to the best of our ability, since it is not easy to rectify a by-law once it has been passed and registered on title. On the other hand, it must be recognized that the new Act contains some unpredictable aspects which will only be resolved as judges and the condominium community develop practical experience with applicable situations, subject to revisions as may be imposed by case law as it develops.

A Starting Point

Any new form of by-law should be considered only as a starting position for each corporation. It is a mistake to slavishly follow a standardized precedent, since particular circumstances may call for appropriate revisions. You should compare your Corporation's existing by-laws to the new Comprehensive General By-law to make sure that any favourable special provisions set out in your existing by-laws can be customized to fit the new Comprehensive General By-law, which should also be amended to specifically suit any other circumstances of the Corporation of which you make us aware. Of course, as a general precedent, the Comprehensive General By-law may contain some provisions your Corporation may prefer to eliminate - but at least our condominium clients have the opportunity to consider a wide range of additional new by-law powers and notify us of any provisions contained in our Comprehensive General By-law which should be deleted or revised for your condominium. We are relying upon you to eliminate or revise wording which is not appropriate in your Corporation's circumstances.

Fees for Comprehensive General By-law

We will provide the Comprehensive General By-law package of all required documents for a fee of \$2,500, plus disbursements (approximately \$60 and GST). That will include our time for initial drafting, a subsearch of title to determine which by-laws are currently registered and a review with you of existing by-laws to determine which should be repealed or incorporated into the Comprehensive General By-law and which should remain. Once you have completed and returned to us the enclosed form of written Instructions, we will forward our form of Comprehensive General By-law, together with a form entitled **Procedures – General By-law** which sets out the steps we will each take and the timing to complete our respective inputs. Upon request, will be pleased to attend a meeting with your by-laws committee (including the property manager) at our usual hourly rates. Once we receive your revisions, we will re-draft the Comprehensive General By-law accordingly, finalize the form of by-law and forward it to you, provided that any processing or drafting time spent in excess of three hours to insert customized special provisions which require additional drafting time on our part, or to deviate from the Processing Procedures or to attend additional meetings will be charged at our standard hourly rate. We will forward a form of Resolution for the board of directors to pass the by-law, a one-page memo to Owners explaining the new Comprehensive General By-law and a set of By-law Enactment Procedures, as well as the finalized form of the By-law. You will organize the meeting of owners in the normal course, including the Notice and Agenda (which must contain a reference to enactment of the Comprehensive General By-law). You will forward the Comprehensive General By-law to each of the unit owners, together with the owners' meeting package. We will forward a precedent form of Proxy which you can adapt to suit your election circumstances. If you wish us to attend or chair a meeting of owners to sell them on the benefits of the Comprehensive General By-law, lead them through a discussion about it and deal with any questions or amendments that may arise, we will charge an additional fee at our standard hourly rate.

Adjourned Meeting for By-law Enactment

If there is less than a substantial majority of owners in attendance at an owners' meeting for the purpose of deciding of whether or not to enact a proposed By-law, the owners can be asked to pass a detailed Motion to Adjourn Meeting Re: By-law Vote, in order to adjourn only the portion of the owners' initial meeting pertaining to the By-law to be dealt with at an adjourned meeting to be held within 120 days. That allows the Corporation to provide a chance for absent owners to vote by proxy in favour of or opposed to such a by-law at an adjourned meeting where only the Chair, Registrar and Scrutineers need be in attendance. Normally, a high percentage of owners absent from the original meeting will regard the proposed by-law favourably and will complete the proxy form accordingly. We will provide a copy of the Motion to Adjourn Meeting once the board is ready to forward the finalized by-laws in the Notice of Meeting to Owners, so that the Chair of the meeting can have it on hand in case it is necessary to invoke it. We have arranged for many by-laws which otherwise would have failed due to low attendance at an owners' meeting to in fact be enacted at the adjourned table-top meeting on that basis. If in fact it is necessary to pass the Motion to Adjourn Meeting, we will then forward our Manager's Instructions Letter, together with a package of Adjournment Procedures, notices, letters, Agenda, Proxy and Ballot which will enable the Manager to send out the appropriate notices and to arrange for the Adjourned Meeting to be properly conducted (fee \$275 plus GST).

Registration on Title

Our account to provide the legal-sized registration forms for the Comprehensive General By-law, Certificate and Document General in quadruplicate, obtain three signed and dated copies of those three documents under seal, attend upon registering them and provide a registration report will be an additional set amount of \$345.00, which includes charges for legal fees, disbursements (approximately \$100) and GST.

Timing

We are receiving a large volume of requests to finalize our Comprehensive General By-law and the Standard Unit By-law. We are prioritizing requests on a first-come, first-served basis in order to give equal preferential treatment to our clients. Once we receive written instructions to proceed, you should expect to receive our basic form of Comprehensive General By-law promptly thereafter. Plan on four weeks turnaround time for GMA to finalize any revisions made by the board (so that we can fit this project into our other workload priorities). Boards should expect an overall processing time of approximately three - five months before the board will be in a position to approve the finalized version. It is preferable to provide your instructions to GMA six months before your next AGM. The Comprehensive General By-law should be ready for circulation to owners attached to an agenda for a meeting of owners to vote to approve the by-law, with or without amendments, and the by-law will become effective once it has obtained approval by the owners of a majority of units and the by-law has been registered on title.

Copyright

You will appreciate that in view of the fact these documents have taken a substantial amount of time and effort to create, GMA retains its copyrights and other rights with respect to those documents. Upon payment of GMA's fee by each participating condominium corporation or unit owner, it or him/her is thereby licensed to use those documents only for its/his/her own purposes. Directors, managers and owners should refrain from misappropriating those documents for use by any other condominium corporation without GMA's prior written consent.

Other Issues

A wide range of sophisticated and challenging issues confront directors, managers and condominium lawyers. GMA provides a wide range of condominium legal services, including legal opinions, litigation, mediation, arbitration, corporate governance and preparation of a range of condominium agreements, by-laws, rules and other legal services. GMA is committed to solving your condominium legal problems in a practical and cost-effective manner to a high quality standard.

GMA Condo Documents Upgrade Packages

If you are interested, please ask for GMA's complementary introductory letter explaining any particular topic of interest referred to on GMA's Condo Documents Upgrade Packages list attached to this letter.

Instructions to GMA

Once you have reviewed GMA's complimentary introductory letter pertaining to any of GMA's Condo Documents Upgrade Packages, if your board wishes to instruct GMA to undertake the project referred to in this letter or any of the topics listed on GMA's Condo Documents Upgrade Packages list, you may instruct us to proceed with the chosen project(s) by filling out and returning to GMA our enclosed Condominium Project Instructions.

Conclusion

Please do not hesitate to call if we can be of assistance to you or if you wish to discuss any aspect in greater detail.

Yours truly

GARDINER MILLER ARNOLD LLP

Per: J. Robert Gardiner

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Encl. Instructions
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