



What We Heard
Condominium Act, 2015
Regulations
Engagement

May 2019



Condominium Act, 2015 Draft Regulations Engagement - What We Heard report

Background

Condominium legislation across the country governs most aspects of condominiums. It regulates the creation, the ownership and the governance of condominiums. The current *Condominium Act* has been in force since 1977 and much has changed in terms of how condominiums are developed and governed in the last 40 years.

The *Condominium Act* does not reflect modern day realities of development and governance of condominiums. For this reason, we began a review process back in 2012 to modernize the legislation governing condominiums in Yukon.

The *Condominium Act, 2015* (the “Act”), was passed unanimously by the Yukon Legislature in May 2015, and received assent later that month. It was felt that the new Act would better ensure the efficient development of land and housing in Yukon, while introducing modern consumer protection provisions, as well as modern governance provisions for condominium corporations. Work then began on identifying what would be required to be included in the regulations that accompany and operationalize the Act.

Engagement Process

Purpose – This engagement asked for feedback on Government of Yukon’s proposed approach to drafting regulations under the *Condominium Act, 2015*. While the Act provided the overall framework for development and operation of condominiums in Yukon, the regulations explain how those rules will be carried out. Condominium legislation can be complex, so we wanted to give sufficient detail and information to Yukoners to ensure that they could provide the feedback required to confirm that the regulations would reflect the needs of both developers and consumers.

Process – The *Condominium Act, 2015* was developed with the participation of representatives from First Nation governments, real estate lawyers, surveyors, the business community, condominium owners, the federal Surveyor General’s branch and

the Government of Yukon, through the Land Titles Stakeholder Advisory Committee and the Drafting Advisory Group. Public consultation and active stakeholder engagement made a major contribution to the Act and strengthened its consumer protection components.

This high level of participation has continued with the development of the provisions included in the draft regulations that were released for public consultation. As the development, purchase/sale and management of condominiums is a matter of private law, and not overseen by a specific government branch, it was important to ensure that those most affected by how this legislation works be given an opportunity to comment and provide input into its development.

It was also important to gain feedback due to the fact that almost five years has passed since the Act itself was developed and approved by the Legislative Assembly. This was a good opportunity to ensure that the rules and decisions made back in 2015 were still appropriate.

Now that the engagement on the draft regulations is complete, we will be undertaking further research and analysis on this feedback and how it might impact the draft regulations, and potentially the Act itself. We will be taking both the feedback from the consultation, and our further research, to our Stakeholder Advisory Committee and Drafting Advisory Group for their consideration and review prior to any final decisions being made on changes. Once we have agreed on an approach for moving forward, we can prepare final regulations, propose any necessary Act amendments and undertake the necessary steps to obtain final approvals and bring the new legislation into force.

What We Heard

At the beginning of the consultation in November 2018, we released a set of detailed summary documents that contained proposed provisions to be included in the regulations and sought feedback on these proposals. Based on the feedback that we received during the first few weeks of the engagement period, it was decided that releasing the draft regulations that had been prepared based on those summary documents would be a good way to garner further feedback.

These draft regulations were released in January 2019, and the consultation was extended until March 1, 2019 to allow additional time for Yukoners to review and provide specific feedback on those draft regulations.

We asked Yukoners to review and provide feedback on seven separate regulations including:

- Governance and other General provisions;
- Phased Condominiums;
- Bare Land Condominiums;
- Reserve Fund requirements;
- Converted Building Condominiums;
- Condominiums on Leasehold Land; and
- Mixed Use Condominiums.

Overall, we were very pleased with the level of feedback that we received on both the summary documents and the draft regulations. Despite the complexity of this topic, those who provided feedback and attended the public meetings obviously took significant time to review the engagement documents and provide us with detailed feedback on what they felt worked, and what required further consideration, or amendment. We greatly appreciate this time and feedback. We believe that it will contribute to a better overall legislative framework.

The survey asked Yukoners if they agree with the provisions of each of the draft regulations and then asked for specific comments in each area. Yukoners responded with the following:

- Do you agree with the proposed governance provisions? **Yes – 57.4%, No – 19.8%, Unsure – 22.8%.**
- Do you agree with the proposed reserve fund provisions? **Yes – 54.5%, No – 27.3%, Unsure – 18.2%.**
- Do you agree with the proposed content for the General Condominium regulation? **Yes -58.4%, No – 12.9%, Unsure – 28.7%.**
- Do you agree with the proposed content for the Phased Condominium regulation? **Yes – 63.6%, No – 13.6%, Unsure - 22.7%.**
- Do you agree with the proposed content for the Bare Land Condominium regulation? **Yes- 61.8%, No – 21.1%, Unsure – 17.1%.**

- Do you agree with the proposed content of the Condominium Conversion regulation? **Yes – 66.2%, No – 12.3%, Unsure – 21.5%.**
- Do you agree with the proposed content of the Leasehold Condominium regulation? **Yes – 54.1%, No – 6.6%, Unsure – 39.3%.**
- Do you agree with the proposed content of the Mixed Use Condominium regulation? **Yes – 58.5%, No – 7.7%, Unsure – 33.8%.**

For each section, we then asked for feedback on what changes Yukoners feel are necessary prior bringing the Act and its associated regulations into force. The feedback we received is summarized in the following 'Analysis' section.

Analysis

It was clear during the consultation that many Yukoners feel that there is a need to modernize the legislation governing condominiums. Yukoners want to see legislation that provides clear guidance and accountability to developers, unit owners and condominium corporations on how condominiums should be created and managed. It was also very clear that there is a need to ensure that the legislation does not create barriers to development, or make it more difficult for condominium owners and condominium boards to effectively and efficiently operate their condominium corporation.

Overall, feedback was generally consistent in terms of the areas of concern and can be broken down into two main areas, concerns related to development provisions, and concerns related to governance provisions.

Development Provisions

Much of the feedback that we received with respect to the regulations that would apply to the development of new condominium projects focused on several key areas:

1. Security for Completion

Subsection 60(2) of the Act requires that before an agreement to purchase is entered into, the developer must comply with the regulations respecting the provision of security to ensure that the unit and common property are substantially completed within a reasonable time. We received feedback that this provision, along with the wording of the regulations (s. 8 draft General regulations), would place an unachievable financial burden on developers as it would potentially require them to put into trust all of the funds that would be required to complete the development before construction even. Concerns were expressed that this may ultimately prevent further condominium development in Yukon, especially large developments, as developers would not be able to obtain sufficient financing to set aside the required amount to build the condominium, while at the same time finance the actual construction itself.

2. Developer Reserve Fund Contribution

The Act requires that the developer establish a reserve fund and sets out the amount that the developer must deposit into the reserve fund before the sale of the first unit in the condominium. In the draft regulations, we proposed that the contribution to the reserve fund in the first interim budget should be an amount equal to at least 0.6 per cent of the total asking sale price of all units, calculated as of the day when the first unit is sold.

We received feedback from a number of stakeholders that, while they agreed in principle that the developer should provide the initial funding for the reserve fund, the amounts proposed by the regulations would result in an unrealistically high initial contribution that developers would not be able to achieve and that ultimately, this would significantly impact further condominium development in Yukon.

3. Transition for Pre-existing Condominiums – Substantially Advanced

For condominium developments already underway, it is important that the Act and regulations clearly identify how the new Act applies to their development.

Concerns have been raised both before and throughout our formal engagement period, that there is a lack of clarity on what it means for a condominium development to be “substantially advanced” in order to determine what condominium developments will qualify as pre-existing condominiums under the new Act.

We know that what is required by the legislation to qualify as a pre-existing condominium has implications for development planning, rules around what will need to be provided to the Land Titles office and purchasers, and the ability for developments to obtain financing for their projects. We heard that it is important that we review these transition provisions to make sure these provisions are clear and do not create barriers that would limit existing projects from continuing to completion.

Governance Provisions

The majority of comments and feedback we received during the consultation period were specific to the draft regulations relating to governance of condominium corporations and the establishment and funding of reserve funds.

1. Proxy Voters, Voting Entitlements and Special Resolutions

We heard a great deal about the challenges many existing condominium corporations have with holding general and special meetings and ensuring enough of their unit owners attend, or provide the necessary proxy votes, so that decisions can be made during those meetings.

We heard that there must be sufficient processes in place to ensure that all condominium unit owners are provided an opportunity to participate and vote. This is especially important on matters such as amendments to the declaration and other special resolution issues. We also heard that it was equally important that the regulations around voting take into account the realities and challenges condominium corporations have in obtaining the required voting thresholds.

We heard concerns related to s. 98(4) of the Act that sets out that the maximum proxy votes any one individual can hold is two, unless otherwise provided for in the regulations. Most of those who commented suggested that we remove this limitation as it was too restrictive and would contribute to making it difficult to meet the voting thresholds.

We also received feedback that it was important to ensure that certain classes of individuals (directors, developers, persons who provide management services, etc.) can hold other unit holders' proxies, but that those proxy vote holders should have reasonable limits placed on that voting power.

It was also brought to our attention during the engagement period that the original draft version of s. 11(1) of the General regulation and the summary documents was worded incorrectly. The draft language was interpreted to say that each owner of a residential unit would be able to vote, rather than each unit having one vote. We committed during the engagement to amend that section to ensure that it is clear that each residential unit is entitled to one vote.

2. Reserve Funds and Smaller Condominium Corporations

Requiring that a condominium corporation establish and maintain a reserve fund is a key consumer protection element of the Act and is common practice across the country.

We received a great deal of feedback and requests for clarification around the proposed provisions for reserve funds. We heard from a number of developers, condominium owners and boards that they are very supportive of the requirement for reserve funds and feel that this is a long overdue consumer protection provision.

We also heard concerns about the ability to find someone who meets the requirements to conduct a reserve fund study, as well as concerns about the costs to obtain a reserve fund study, especially for smaller condominium corporations.

During the public meetings we were pleased to have at least two individuals come forward who indicated that they had obtained the necessary certification to conduct reserve fund studies. We expect that the number of individuals who offer this type of service will grow in the coming years and believe that this will present an opportunity to develop an additional service sector profession in Yukon.

One of the most frequent concerns we heard from both the survey and during public meetings was the need for smaller condominium corporations, especially duplex condominiums, to obtain a reserve fund study and maintain a reserve fund. We received feedback from many duplex condominium owners that the application of the Act itself, and more specifically the requirements for reserve funds, was problematic and should be eliminated for duplexes. We heard concerns that the costs to get a reserve fund study done and to establish a fund to cover costs of replacing the common elements for duplex condos, would be cost-prohibitive for these types of condominiums.

During many of the consultation meetings, we were asked by several duplex condominium owners how they might go about dissolving their condominium corporation, as they did not feel that it was appropriate to apply the new Act to duplex condominiums. We were able to explain that while there are provisions in the new Act that would allow for this, this type of dissolution would also require working with the City of Whitehorse in order to ensure that all applicable municipal zoning provisions and bylaws were met. We were very grateful to have the participation of our partners with the City of Whitehorse at several of our public meetings to help explain the role of the City in the overall process and to help speak to some of the concerns of duplex condominium owners.

3. Insurance requirements

We also heard concerns with the insurance provisions as laid out in the draft General regulation. While there was agreement that condominium corporations need to obtain insurance, concerns were raised about the rising cost, and difficulty of obtaining condominium insurance in Yukon.

We heard during the engagement that costs for condominium insurance are rising across the country.

We also heard that, due to some of these challenges and costs, there may be very real logistical and financial challenges for condominium corporations to obtain insurance against loss or damage by risks other than fire. They have indicated that there may be significant barriers to condominium corporations being able to comply with the proposed regulations and have recommended that we reconsider the insurance-related provisions by providing some flexibility.

4. Financial Statements and Oversight

Most of the feedback we heard indicated an understanding of the need for financial oversight and checks and balances when it comes to the finances of a condominium corporation. We heard from a number of individuals and condominium corporations that they have concerns around the proposed regulations governing the need for financials statements and financial oversight in general. This includes concerns about the costs for condominium corporations to meet the requirements set out in the draft regulations. It was felt that some of the proposed rules would be cost prohibitive and overly burdensome for many smaller Yukon condominium corporations.

Specific concerns have been expressed around the requirement for larger condo corporations (75+ units) to have an auditor conduct an annual audit of the corporation's financial statements. Some felt that there needed to be flexibility included in the regulations by changing the audit requirement to once every five years, or by allowing condominium corporations to waive the audit requirement through a vote.

5. Educational Website

Over the course of the engagement period, it became very clear that there is a strong need for a comprehensive website that provides information to condominium owners, boards and developers that explains legislation and policies governing condominiums in Yukon. We are already looking at existing models across the

country to determine the best way to provide this much needed information to those who need it.

6. Coming Into Force

One of the key questions we asked during the engagement was when the new legislation (Act and regulations) should come into force. We want to ensure that the coming into force of the new legislation doesn't impact planning and financing for upcoming condominium projects, or those that are already under development, and provides sufficient time for existing condominium corporations to begin planning for the implantation of the provisions that will apply to them.

Results from both the survey, public meetings and individual meetings were mixed, with a slight majority indicating that winter 2020 would be best if there were to be amendments made to the Act in the fall of 2019. The results of the online survey question indicated that:

- **36.1%** of respondents were in favour of the legislation coming into force in **late fall/early winter (Oct/Nov) 2019**;
- **43.5%** of respondents were in favour of the legislation coming into force in **winter 2020 (Jan/Feb)**;
- **9.3%** of respondents to the survey did not answer this question; and
- **11.1%** of respondents indicated they would prefer a different timeline. Those responses ranged from “immediately,” to “2025,” and “after clarity regarding duplexes is provided”.

Participation

Engagement Methods

In order to obtain feedback from Yukoners, we undertook a number of different methods to engage people. This included the development of an online survey, encouraging feedback through written submissions, holding several public meetings in Whitehorse, and meeting individually with those who expressed an interest.

Participation by the numbers

Over the course of the consultation period there were:

- **Four** public meetings held in Whitehorse during January & February, 2019 with an approximate total of 100 attendees. This included one specific meeting for condominium owners;
- Approximately **108** responses were received from the online survey and an additional **10** written submissions;
- **15** emails and letters were received by the department and the Minister's office containing feedback, questions and requests for clarification on the draft regulations;
- **Seven** individual meetings were held with various stakeholders including condominium owners, developers, and surveyors;
- **75** individuals/condo corporations signed up to receive email updates during the consultation phase and beyond.

Survey results by the numbers:

- **97%** of survey respondents indicated they lived in Whitehorse;
- **80.6%** of respondents were condominium owners;
- **10.2%** indicated that they were members of the real estate bar/Surveyor/Realtor/Engineer or Architect/Member of a Yukon First Nation/Municipal government representative;
- **26.9%**, of respondents (the majority) fell in the 30 – 39 year old age range.

Notification

We used a number of avenues to let people know about this engagement. In the spring/summer of 2018, advertising was placed in local papers and on social media to let Yukoners know about the upcoming consultation and to solicit contact information so that we could establish an email database for communicating updates.

We sent out a news release in late November 2018, with the initial launch of the engagement, and again in January 2019, when the draft regulations were released and the consultation period extended. We also used social media ads on Facebook and Twitter, ran ads in the local newspapers in both English and French, and we ran radio

ads in January and February 2018. We also posted all of the consultation materials on EngageYukon.ca for the entirety of the consultation period.

In addition, letters were mailed to Yukon First Nations, as well as to the Land Titles Office-registered address for all condominium corporations in Yukon advising them of the launch of the engagement. Finally, for those who signed up for the email distribution database, emails were also sent regularly to keep them informed of the launch of the engagement, provide information on how to submit feedback and to send reminders of upcoming public meetings.

It is important to note that we discovered that many Yukon condominium corporations have an incorrect mailing address registered in the Land Titles Office. Many of the letters sent out to the corporations were returned. As such, we also undertook to advise condo owners and condominium corporations of this fact via the email distribution list and during the public meetings.

The Land Titles Office developed a form to allow condominium corporations to easily change their registered address to ensure all communications from the Land Titles Office is received by the condominium corporation board. This form can still be obtained and addresses updated by visiting:

http://www.justice.gov.yk.ca/pdf/Condominium_Act_Change_of_Address_-_V_1.pdf, filling in the form and returning it to the Land Titles office.

What's next?

The department is currently working on analyzing the feedback on the key issues, doing some additional research on those issues, and developing policy options to address the suggestions and concerns that were brought forward.

We will continue to work with our Stakeholder Advisory Committee and Drafting Advisory Group to ensure that any recommendations brought forward, and changes made, reflect the need to provide an adequate balance between allowing for continued condominium development and ensuring appropriate consumer protections are in place.

It is our hope that we will be able to complete this work over the spring and early summer of 2019 so that the revised regulations and any necessary Act amendments are ready for the various review and approval processes in the fall of 2019.

We will also work with our Stakeholder Advisory Committee to recommend an appropriate date for the *Condominium Act, 2015* and the accompanying regulations, to come into force.

We again would like to thank all of those individuals and groups who participated in the latest engagement process and provided us with their valuable feedback.

