



## Current Articles 2002 - December

### Condos & the New Condominium Act

The new Condominium Act for Ontario has been in effect for a little over one year. It brings some significant changes and definitions that can affect the placing of insurance for both a Condominium Corporation or an individual Condominium owner. Condominium Corporations registered prior to the new Act will be phased into the provisions of the Act.

It is important to watch the definitions carefully. The term "freehold" as used in the Condominium Act, has a different meaning to that which the insurance industry and the real estate market implies.

The Act denotes two types of Condominium Corporations; a Freehold Condominium Corporation and a Leasehold Condominium Corporation. A "Freehold" is a condominium where all elements and common interest are held by "fee simple" (outright ownership) by the unit owners. A Leasehold Condominium is where all elements and common interests are subject to a "leasehold" interest by the unit owners. The condo could be located on leased land.

There are four types of Freehold Condo Corporations: First is a Common Elements Corporation which is where the common elements are shared but there are no units. A unit owner may have fee simple ownership to his unit and a shared interest in common elements such as a golf course, community centre, roads and services, etc. The second is a Phased Condo Corporation where the common elements and units are developed in phases which later may require two or more phases to merge into 1 Condo Corporation. This would apply to large multi unit developments being built in phases. The third is a Vacant Land Condominium Corporation where vacant land is owned but there are no common elements or units. The fourth type is the Standard Condominium Corporation which is what we have been familiar with and where the owner has title to a "unit" and has an interest in the common elements. It is important when placing the coverage that you identify from the bylaws which type of Condominium is applicable.

Understanding the difference in the term "Freehold" when referring to the Act or insurance is important. When you see a developer advertising to sell "Freehold Townhouses", a purchaser "buys" a unit, usually townhouse or row type structures. The unit owner must insure the building. Such a "freehold" may still have a Condo Corporation to manage the common elements ( and place insurance for the common elements, if any) He may pay monthly maintenance fees for lawn care, snow removal, maintenance of common elements, etc., but the entire building is the unit owners responsibility to insure. Such a freehold owner must buy a Homeowner's policy. There is no requirement for Contingent Building coverage as the unit owner's building section will apply. However as their may be common elements that he shares in, the Homeowners policy should have a Homeowner's Loss Assessment Endorsement added. And not all insurers have this form available!

One of many other items to note is that the new Act permits the Condominium Corporation to charge to the unit owner's a "reasonable deductible" incurred by the Corporation. For a

Corporation that has had several claims, there may be a \$5,000 or \$10,000 deductible. Many Condominium Unit Owner's policies will NOT apply to an assessment to a unit owner for a Corporation deductible or may be subject to a very low limit. Identify your markets and how they approach the deductible issue.

For a more serious study of the Condominium Act, may I recommend the "bible for condos"? A book, written by Audrey Loeb, LL.M., titled "The Condominium Act - A User's Manual, and available through Canada Law Books is invaluable.

Have a Merry Christmas and a Happy New Year,

**James E. Bonnay,**  
C.I.P., C.C.I.B.  
Insurance Consultant

Phone 905-333-1727  
Fax 905-333-0683  
E-mail - [jamesbonnay@cogeco.ca](mailto:jamesbonnay@cogeco.ca)