

# **ENFORCEMENT REMEDIES**

## **Provincial Offences under the *Condominium Act, 1998***

**S**ection 137<sup>1</sup> will subject those who *knowingly contravene*<sup>2</sup> certain sections of the *Condominium Act* to an offence under the *Provincial Offences Act* and if convicted, to a fine and/or a compliance order. The purpose of the *Provincial Offences Act* is to replace the summary conviction procedure for the prosecution of provincial offences with a procedure that reflects the distinction between provincial and criminal offences.<sup>3</sup> The *Provincial Offences Act* encompasses approximately 120 different provincial Acts with the most common violations falling under the *Highway Traffic Act*, the *Liquor Licence Act* and the *Compulsory Auto Insurance Act*.<sup>4</sup> The main difference between a provincial offence and a criminal offence is the procedure that is involved in prosecuting the offences. As well, the most serious penalties, such as long jail terms, are only applied to criminal offences.<sup>5</sup>

### **OFFENCES UNDER THE CONDOMINIUM ACT**

The following are categories of provincial offences under the *Condominium Act*:

- I. Failure of the declarant board of directors to hold the Turnover Meeting and to turn over certain documents to the condominium.**
- II. Failure of the condominium to keep adequate records.**
- III. Failure to hold trust monies in accordance with the *Condominium Act*.**
- IV. Failure of the declarant to provide disclosure statements and accurate information.**
- V. Failure to permit a political candidate to enter the condominium.**

#### **I. Failure of the Board of Directors of the Declarant:**

- 1. To call and hold the Turn Over Meeting when the declarant ceases to be the registered owner of a majority of the units (subsections 43(1), (3)).
- 2. To turn over certain documents to the new board of directors of the condominium at the Turn Over Meeting or at the specified times after the Turn Over Meeting (for the list of documents see subsections 43 (4)(5)(7) and subsections 152 (1)(2) for phased condominiums).

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<sup>1</sup> All references to sections are to the *Condominium Act of Ontario, 1998*.

<sup>2</sup> Any director, officer or *any* corporation that *knowingly* causes, authorises, permits, participates in or **acquiesces** in the commission of an offence (subsection 137(2)).

<sup>3</sup> *Provincial Offences Act*, R.S.O. ch. P.33 s. 2 (1).

<sup>4</sup> [www.region.waterloo.on.ca](http://www.region.waterloo.on.ca)

<sup>5</sup> [www.gclawyers.com/criminal.htm](http://www.gclawyers.com/criminal.htm)

***II. Failure of the condominium to keep adequate records (subsection 55(1)):***

1. The financial records of the condominium.<sup>6</sup>
2. The minute book containing the minutes of owners' meetings and the minutes of board meetings.
3. A copy of the declaration, by-laws and rules.
4. All lists, items, records and other documents mentioned in subsections 43 (4) and (5) (the Turn Over documents).
5. The report described in subsection 44 (8) from the person who conducts a performance audit.
6. The record of owners and mortgagees and their addresses of service (subsection 47 (2)) and the record of notices of unit leases (subsection 83 (3)).
7. A record of all reserve fund studies and all plans to increase the reserve fund (subsection 94 (8)).
8. A copy of all agreements entered into by or on behalf of the condominium.
9. The report that the condominium receives from an inspector appointed by the court regarding the activities the inspector is to perform (subsection 130 (5)).
10. All other records that may be prescribed or specified in the by-laws of the condominium. For example, section 15 of O. Reg. 48/01 states that the condominium must keep copies of the status certificates that it has issued under section 76 within the previous ten years.

***III. Failure to hold Trust Monies in accordance with the Condominium Act***

1. The failure of the declarant to transfer all monies including interest to a trustee or its solicitor (as specified in the regulations) that relate to an agreement of purchase and sale, a reservation agreement or paid on account of the sale of a proposed unit (section 81).
2. The failure of any person who receives money on behalf of or for the benefit of the condominium, including money received from owners for common fees or the reserve fund, to hold the money and any interest earned thereon in trust for the performance by the condominium of its duties and obligations (subsection 115(1)).
3. The failure of the condominium to establish general and reserve accounts in the name of the condominium and to keep those accounts with an authorized bank, trust company, credit union or Province of Ontario Savings Office in Ontario (subsections 115(2), (3)).
4. The failure of a person who receives money on behalf of or for the benefit of the corporation to pay this money together with interest and other proceeds earned from investing it into a general account if the money was not received from owners for the reserve fund and into a reserve fund account if the money

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<sup>6</sup> The condominium's financial records must be retained for at least six years from the end of the last fiscal period to which they relate.

was received from owners for the reserve fund account [*subject to the approved investments, see subsections 115 (6) (7)*] (subsection 115(4)).

5. The failure of a person who receives money under subsection 115 (1) to keep records relating to its receipt and disposition and to make those records available for examination by the condominium, an owner or a mortgagee at reasonable times on reasonable notice (subsection 115 (9)).

**IV. Failure of the declarant to provide disclosure statements and accurate information**

1. The failure to deliver current disclosure statements to purchasers of standard condominiums (subsection 72 (1)), common elements condominiums (section 143), phased condominiums (subsections 147 (1)(3)), vacant land condominiums (subsection 161 (2)) and leasehold condominiums (section 169).
2. Where material statement or material information is required to be provided by the declarant and the declarant omits this material statement or material information and/or the declarant makes a material statement or provides material information that is false, deceptive or misleading (subsection 133(1)).

**V. Failure to permit a political candidate to enter the condominium**

The refusal by the condominium or its agents to allow political candidates or their authorized representatives to enter the condominium for the purpose of canvassing or distributing election material (section 118).

**PENALTIES**

The fine if convicted of an offence is a maximum of \$100,000.00 for a corporation and \$25,000.00 for an individual. A court of competent jurisdiction hearing the proceeding may make an order requiring the person who is convicted of the offence to comply with the provisions of the *Condominium Act* (subsections 137 (1)(4)).

**LIMITATION PERIOD**

There is a two-year limitation period from the date on which the facts that gave rise to an offence are discovered within which an offence proceeding can be commenced (subsection 137(3)).

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