

# Understanding the Protecting Condominium Owners Act

## LMR's Mitchell Leitman reveals potential pitfalls

Legislation currently winding its way through Queen's Park will, if passed, introduce new rules and amend existing ones affecting condo owners, developers and managers alike.

The Protecting Condominium Owners Act is, as the name suggests, primarily a matter of consumer protection. Mitchell Leitman, a real estate lawyer with Low Murchison Radnoff, has a unique point of view: he sits on the executive of a section of the Ontario Bar Association invited by the province to offer input as the act was developed.

Leitman says that, while it is a positive for consumers, condo builders and managers need to be aware of some potentially problematic features of the act.

### More obligations

"Because it's consumer protection legislation, it exposes potential pitfalls for industries serving condo buyers, developers and managers. A condo developer should know, for instance, that there are going to be more onerous obligations in terms of their liability for accurate budgeting when they're selling," he explains.

"That's scary for a developer. It means if the project's financial circumstances change because of the cost of doing business, or something else out of your control entirely, it reopens every deal and what you thought was pre-sold at 60 per cent becomes 30 per cent or 40 per cent."

Buyers currently have a 10-day cooling off period within which to walk away from a purchase, Leitman adds. That clock can also be reset with any material changes to the condo proposal. The act will expand upon this, including a more specific definition of 'material change' than exists now, Leitman says, potentially putting a developer at something of a disadvantage.

"They're making it quite clear that an increase of more than 10 per cent in the amount of common expense contribution that the purchaser is going to have to pay will constitute a material change. A buyer



**Mitchell Leitman, Real Estate Lawyer, Low Murchison Radnoff**

could walk away a year and a half, or more, after the purchase agreement was first signed. That's scary for a developer. It means if the project's financial circumstances change because of the cost of doing business, or something else out of your control entirely, it reopens every deal and what you thought was pre-sold at 60 per cent becomes 30 per cent or 40 per cent. Those are serious ramifications."

### Licensing regime

The act creates new legislation relating to the regulation and licensing of condo managers. This, Leitman points out, is likely to be a positive for condo corporations.

"I've experienced it myself acting for condo managers and condominiums who had to deal with managers who were less professional because there's been no regulation. It's been a wild west. [Under the act], you're going to have a roster

of licensed managers who have passed vetting and taken courses. They'll be regulated just as lawyers are regulated by law societies."

The act also impacts condo directors by introducing mandatory training and criminal record checks that would reveal any relevant history.

### Better protection

"Sometimes you have turnover of management or board members so there may not be an institutional memory. If someone's been an owner in a condo for 15 years, something that happened 10 years ago might not be known. This will give protection to the condo corporation vis a vis the property manager. It also gives protection to unit owners vis a vis the directors. That's a really nice piece of consumer protection."

Overall, Leitman says the act offers greater clarity which in turn allows him to offer better and more accurate advice.

"When I act as a lawyer for developers, I like certainty. Having that makes it easier to advise a client. My client may not like it because vagueness gives them more latitude, but as an advisor it makes my job easier. I can say, 'No, you can't do this.' We often work in grey areas in law. The proof will be in the pudding. We'll have to see, after a few years, how the act unfolds."

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