

Dispute Resolution

What is the applicable legislation?

The current Act is [The Condominium Property Act, 1993](#).

The current Regulations are [The Condominium Property Regulations, 2001](#).

Both Acts and Regulations contain all recent amendments and are available on the Publications Saskatchewan website at <https://publications.saskatchewan.ca/#/freelaw>.

What methods are available to a condominium corporation or owner to resolve a dispute?

The following are methods that may be available to a condominium corporation or owner to resolve a dispute:

- Discussion;
- Negotiation;
- Mediation;
- Arbitration;
- An application in Small Claims Court; and
- An application in the Court of King's Bench.

As you escalate through the methods of dispute resolution, generally, the costs increase. It is always in your best interest to start with the lower cost conflict resolution options, such as having a discussion about the concerns.

The Office of Residential Tenancies is also available for rental disputes.

COURT REMEDIES

Can a condominium corporation fine a unit owner or tenant when a bylaw or rule is broken?

No. Neither the board nor the condominium corporation has direct authority to impose fines to enforce the bylaws. If the corporation wishes to levy a fine, it must make an application to Small Claims Court to recover from the owner, tenant or other person any of the following:

- a penalty of not more than \$500 with respect to the contravention of the bylaws;
- compensation for any damage to the common property, common facilities or services units resulting from the contravention of the bylaw up to the deductible limit of the insurance policy obtained by the corporation; and
- any actual costs incurred by the corporation to enforce the bylaw against the defendant.

An application to Small Claims Court cannot be made unless a corporation has a bylaw that authorizes it to commence an action and that sets a fine. It is also relevant to note that all claims are subject to the

limits in [The Small Claims Act, 2016](#). More information about Small Claims Court can be found at www.sasklawcourts.ca.

Section 99 of the Act

What if a corporation or the board is not fulfilling its duties?

One or more tenants, owners, mortgagees, or other interested parties can apply to the Court of King's Bench for an order directing a condominium corporation or its board to fulfill its duties. The duties include, but are not limited to, enforcing the bylaws and keeping the common property in good condition.

On an application to the court, the judge can make any order considered appropriate including an order:

- prohibiting conduct;
- directing the corporation or board to fulfil its duty; and
- requiring the payment of compensation.

More information about the Court of King's Bench can be found at www.sasklawcourts.ca

Section 99.1 of the Act

What can I do if the board refuses to provide financial information to me as an owner?

You can apply to the Court of King's Bench for an order directing the board to fulfill its duties including making available for inspection to an owner the financial books of account.

Section 99.1 of the Act

What can I do if the corporation or another owner's conduct is unfair to me?

You can apply to the Court of King's Bench for:

- an order prohibiting the conduct alleged in the allegation; and
- for an order requiring the payment of compensation.

A judge can determine if the conduct of an owner, a tenant, a corporation, a developer or a mortgagee of a unit is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant. These are referred to as oppression remedies.

Section 99.2 of the Act

What conduct is oppressive?

The Act does not have a list of specific conduct that could be oppression. It is for the Court of King's Bench to determine, on an application, if the conduct is oppressive or unfairly prejudicial to the

applicant or unfairly disregards the interest of the applicant.

Section 99.2 of the Act

Who can apply to the Court of King's Bench for an oppression remedy?

The following can apply to the Court of King's Bench for an order prohibiting the conduct alleged in the allegation or for an order requiring the payment of compensation:

- an owner;
- a condominium corporation;
- a developer;
- a tenant;
- a mortgagee of a unit; or
- other interested parties.

Section 99.2 of the Act

Can a corporation or an owner make a claim against a developer?

A corporation, an owner or a mortgagee may bring an action or proceeding against the developer in a court for the recovery of damages with respect to the claim for:

- any misrepresentation by or on behalf of the developer in a declaration or in the information provided to a purchaser; and
- failure to reasonably pursue remedies under warranties in existence with respect to construction of common property, common facilities and services units.

In addition, there may be an ability to pursue other legal remedies against the developer including remedies based on any contracts that you signed with a developer. You should seek legal advice on the remedies available to you.

Section 24 of the Act

At what other times would it be appropriate to make an application to the Court?

The following are other times when a party with an interest in the condominium might consider making an application to the Court of King's Bench. When:

- objecting to a proposed amendment to the condominium plan (*Section 14 of the Act*);
- a developer wants to amend a developer's declaration or extend the time for obtaining the issuance of titles pursuant to a replacement plan (*Section 20 of the Act*);
- a public guardian and trustee or some other fit and proper person is to be appointed for the purpose of exercising any of the voting rights (*Section 43 of the Act*);
- an owner wishes to object to a sector bylaw (*Section 47.1 of the Act*);
- a member of the board failed to disclose an interest in a contract and an owner or corporation wants the court to set it aside (*Section 50 of the Act*);
- terminating the condominium status of a building or land (*Section 84 of the Act*);

- directing the disposition of the assets of the corporation upon a termination (*Section 86 of the Act*);
- winding up the affairs of the corporation upon a termination (*Section 90 of the Act*);
- pursuing a scheme of settlement when a building, a fixture on land or landscaping is damaged but the condominium status is not terminated (*Section 102 of the Act*);
- releasing security (*Section 18 of the Regulations*);
- realizing on security (*Section 20 of the Regulations*);
- objecting to a scheme of apportionment (*Sections 48 and 49 of the Regulations*);
- objecting to an opting out of an audited financial statement (*Section 53.2 of the Regulations*); and
- appointing an administrator for the corporation (*Section 101 of the Act*).

OTHER REMEDIES

Other than court, what other options are available to a condominium owner or the corporation to resolve a dispute?

Nothing restricts other remedies available to a person for the failure of another to perform a duty imposed by the Act. Other available remedies include discussion, negotiation, arbitration and mediation.

Section 99.3 of the Act

What is negotiation?

Negotiation is a process whereby parties in dispute have a formal discussion in an effort to reach a compromise or agreement.

What is arbitration?

Arbitration is a process whereby parties in dispute in any matter relating to the condominium agree in writing to refer their disagreement to a mutually acceptable, knowledgeable, independent third party - an arbitrator - agreeing in advance to be bound by the arbitrator's decision. *The Arbitration Act, 1992* applies to condominium arbitrations.

Section 100 of the Act

Who can take the path of arbitration?

Any owner, a combination of owners, or the corporation can opt to resolve a dispute through an agreement to arbitrate.

Section 100 of the Act

Who pays the costs of the arbitration?

The costs of the arbitration shall be shared equally between the parties. An interest may be

registered against the title to a unit for the amount of the owner's share of costs that is unpaid.

Subsection 100(4) of the Act

What is mediation?

Parties in dispute choose a mediator - an impartial person - who helps them reach their mutually-acceptable settlement.

Who pays the costs of mediation?

The costs of the mediation are the responsibility of the parties.

APPOINTING AN ADMINISTRATOR

When can an administrator be appointed?

A corporation or any person having an interest in a unit may apply to the Court of King's Bench for the appointment of an administrator.

Subsection 101(1) of the Act

When can the court appoint an administrator?

The Court of King's Bench can, at its discretion, appoint an administrator for a fixed or indefinite period on any terms and conditions as to remuneration or otherwise that it considers appropriate.

Subsection 101(2) of the Act

Who pays for an administrator?

The remuneration and expenses of an administrator appointed by an order of the Court of King's Bench may be paid out from the common expense fund of the corporation.

Subsection 101(3) of the Act

What does an administrator appointed by the Court do?

An administrator appointed by an order of the Court of King's Bench has the power and duties of the corporation or any of those powers that the Court orders. While those powers are vested to the administrator, the board and corporation cannot exercise those powers or perform those duties. However, an administrator can delegate any of the powers vested in the administrator by the Court.

Subsections 101(4) & 101(5) of the Act

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How is an administrator removed?

On the application of the administrator, the corporation, or a person having an interest in a unit, the court can remove or replace the administrator.

Subsection 101(6) of the Act

Who pays the costs of going to court?

The costs of going to court are the responsibility of the parties.

Can someone in government assist me if I have a condominium dispute?

No. A lawyer employed by the government may be able to offer general information that may assist you in addressing your concern, but is unable to provide you with specific legal advice and therefore cannot assist you in determining what action you should take to resolve a dispute under the Act or Regulations, nor can they assist you with a contract dispute when purchasing a condominium. If you are unable to resolve your concerns on your own, it is recommended that you seek legal counsel.

OFFENCES**Can a condominium corporation be guilty of an offence?**

Yes. A corporation that contravenes one or more of the following is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000:

- failing to perform the duties of the board pursuant to subsection 39(2) of the Act including maintaining appropriate financial records;
- failing to hold an annual meeting pursuant to section 40 of the Act;
- failing to hold the reserve fund in trust pursuant to clause 61(2)(b) of the Act;
- failing to file a notice of termination of condominium status pursuant to subsection 87(1) of the Act; and
- any duty to a local authority imposed on a corporation.

When a corporation has committed an offence, every officer or member of the board who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party of the offence and is liable on summary conviction to a fine of not more than \$500.

No prosecution for a contravention can be commenced more than two years from the date on which the offence is alleged to have been committed.

Subsections 111(1) and (3) and section 111.1 of the Act

Can a developer be guilty of an offence?

Yes. A developer that contravenes one or more of the following is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000:

- failure to turn documents over to a corporation pursuant to section 12 of the Act;
- failure to turn documents over to a purchaser pursuant to subsection 26(1) of the Act;
- failure to return to a purchaser all of the moneys paid with respect to a purchase of a unit within 10 days after receiving written notice of a rescission pursuant to subsection 26(4) of the Act; and
- failure to complete the requirements of a purchase agreement pursuant to section 28 of the Act.

No prosecution for a contravention can be commenced more than two years from the date on which the offence is alleged to have been committed.

Subsection 111(2) and section 111.1 of the Act

Can another person be guilty of an offence?

Yes. Every person who fails to comply with any duty imposed by any provision of the Act is guilty of an offence and is liable on summary conviction to a fine of not more than \$500.

No prosecution for a contravention can be commenced more than two years from the date on which the offence is alleged to have been committed.

Subsection 111(4) and section 111 of the Act

When does a prosecution of an offence under the Act occur?

A prosecution under the Act is a remedy of last resort. This means that it happens only in extreme and rare circumstances and only if there is no other reasonable alternative available.

A request to prosecute is made by the Office of Public Registry Administration condos@gov.sk.ca to Public Prosecutions. Public Prosecutions has the final decision on whether to proceed and makes that decision by considering their prosecution policy for provincial statutory offences. Some things that are considered by both offices when making a decision to prosecute are:

- whether there are more efficient means of ensuring compliance;
- whether there have been a significant number of violations;
- whether there is a need to deter such activity;
- whether there is an impact on issues of public importance; and
- the standard of evidence available.

SPECIFIC DISPUTES

There is a loud and difficult resident across the hall from me. What can I do about this situation?

You can report the matter to condominium board as the condominium board is responsible for the enforcement of bylaws and the control, management and administration of the units, common property and common facilities. If the board fails to resolve the situation, you can explore negotiation, arbitration, mediation or court solutions.

Can a corporation collect a tenant's rent to satisfy the unpaid fees of the owner of the unit?

Yes. If the owner's condominium fees are in arrears respecting a residential unit that is occupied by a tenant or when the corporation has obtained a judgment requiring the owner to pay an amount to the corporation and the owner has not paid that amount, the corporation may:

- by written notice to the tenant and the owner, require the tenant to pay the rent directly to the corporation in an amount not exceeding the rent; and
- apply the amount collected to the unpaid fees until the arrears are satisfied.

However, the corporation must have a bylaw to allow for such payments from tenants.

Sections 81 and 82 of the Act

ASSISTANCE

Who may be able to offer me assistance with my dispute?

Some places to seek assistance from are:

- Small Claims Court: www.sasklawcourts.ca;
- Court of King's Bench: www.sasklawcourts.ca;
- Hire a lawyer;
- Hire a mediator or alternate dispute practitioner:
 - ADR Institute of Saskatchewan;
 - Conflict Resolution Saskatchewan; and
 - Dispute Resolution Office, Ministry of Justice; and
 - Collaborative Lawyers of Saskatchewan;
- Office of Residential Tenancies for rental disputes;
- Canadian Condominium Institute North Saskatchewan Chapter: (306) 370-6224 or email at northsaskatchewan@cci.ca; and
- Canadian Condominium Institute South Saskatchewan Chapter: Email: cci-ssk@cci.ca
Website: cci-southsaskatchewan.ca/

DISCLAIMER NOTICE: The employees of the Office of Public Registry Administration (OPRA) are lawyers acting for government. OPRA is prohibited from giving legal advice to the public. This means that OPRA cannot provide you with explanations, opinions or recommendations about your legal rights or solutions to your problem.

OPRA offers self-help information, including Fact Sheets, to the public to promote general understanding of the law on commonly encountered issues. Although OPRA takes reasonable effort to ensure that the information provided is up-to-date, OPRA cannot guarantee that the information provided is complete and current. The law can change rapidly. It is also subject to varying interpretations by different courts, lawyers, government and administrative bodies.

OPRA is not your lawyer. Information provided by OPRA is not legal advice. This information is not a substitute for the advice of your lawyer. If your specific question or problem is too complex to be addressed by the information provided or if you otherwise need legal advice, you should consult legal counsel.

Office of Public Registry Administration

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