

## **CONDOMINIUM FACT SHEET:**

### **Posting and Release of Security – For Condominium Corporations and Unit Owners**

#### **What is the applicable legislation?**

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

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

Both the Act and the Regulations contain all recent amendments and are available on the Queen's Printer website at [www.qp.gov.sk.ca](http://www.qp.gov.sk.ca).

#### **When is a developer required to provide security for residential condominiums?**

A developer must either post security or obtain a waiver from posting security for all condominiums that include residential units. This requirement applies to new developments as well as condominiums created from building conversions.

*Sections 5.2 and 16 of the Act  
Section 17 of the Regulations*

#### **Does the requirement to post security include condominiums that are converted from other types of buildings (also known as condo conversions)?**

Yes. Effective June 16, 2014 developers must post security for residential condominium developments that are converted from already existing building structures. Examples of this include:

- Apartment buildings;
- Buildings used for commercial retail purposes; or
- Warehouse lofts.

*Sections 5.2 and 16 of the Act  
Section 17 of the Regulations*

#### **What is the security meant to protect?**

The security protects completion of the condominium's common property, common facilities and services units promised by the developer. Examples of this may include: landscaping, paving or elevators.

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In addition, where the development is a phased condominium as defined under the Act, the security protects completion of the subsequent phases promised by the developer. This type of development has become less common.

*Sections 5.2 and 16 of the Act*

### **How do I know what the developer promised to complete?**

The money posted only secures completion of elements promised by the developer in the Developer's Declaration – Form J. The Developer is required to register this Declaration in the Land Registry as an interest against each condominium title. The Developer's Declaration is supported by an independent assessment of the value of the work to be done; the assessment must be completed by a professional engineer, architect or appraiser.

Once the Developer's Declaration has been registered, it may only be discharged once the security has been released by the Ministry of Justice.

You may get a copy of the Developer's Declaration by searching your condominium title in the Land Registry at [www.isc.ca](http://www.isc.ca). If you need assistance in searching your title to get a copy of the Declaration you may contact ISC's Customer Support Team toll free at 1-866-275-4721 or [ask@isc.ca](mailto:ask@isc.ca).

*Sections 5.2 and 16 of the Act*

*Sections 22 and 23 of the Regulations*

### **What is the security not meant to protect?**

The security is not like a "hold-back" covering completion of the condominium as a whole. Generally speaking, it does not cover completion of any individually owned condominium units.

The only situation where it will cover completion of individually owned units are for those that are part of a phased development where the developer must include their completion in the Developer's Declaration.

*Sections 5.2 and 16 of the Act*

*Sections 22 and 23 of the Regulations*

### **Does the developer have to comply with building standards?**

Yes. The developer has to comply with the requirements of *The Uniform Building and Accessibility Standards Act*, the regulations and the local building bylaws.

Effective February 25, 2016, a change was made to the Form J – Developer's Declaration to include a paragraph certifying compliance with these building standards. If the developer was required to post security against completion of the common property, this money will not secure

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compliance with building standards unless the non-compliance is directly related to the common property that is itemized on the Form J.

However, the Form J – Developer’s Declaration can be used as evidence by the parties and by the courts where there is a dispute about compliance with building standards.

### *Form J of the Regulations*

#### **Are there any situations where the developer does not have to post security?**

Yes. The developer is not required to post security if:

- The developer has not promised to complete any property or common facilities; or
- The developer has already completed all the common property and common facilities at the time that the Developer’s Declaration is completed.

In these situations, the requirement to post security may be waived.

### *Sections 5.2 and 16 of the Act*

### *Section 17 of the Regulations*

#### **Who makes the decision about the posting and release of security?**

Under the Act, the Minister of Justice and Attorney General is responsible for decisions about the posting and release of security, and also to keep safe the security that has been posted. The Minister has assigned this to the Office of Public Registry Administration at the Ministry of Justice. You may contact the Office of Public Registry Administration at [condos@gov.sk.ca](mailto:condos@gov.sk.ca).

### *Section 22 of the Act*

#### **What if the condominium corporation or condominium unit owner is dissatisfied with the developer’s construction or completion of the condominium?**

In most circumstances the security posted by the developer with the Ministry of Justice will only be available for completion of items set out in the Developer’s Declaration – Form J.

If unit owners are dissatisfied with the developer’s completion of other elements of the condominium, they may be able to take other courses of action. There may be contractual rights available under the agreement entered into with the developer. In addition, some developers participate in a voluntary program offering coverage for new homes, called the Saskatchewan New Home Warranty Program. Information on the program can be found at [www.nhwp.org](http://www.nhwp.org).

You should contact your lawyer for information and advice on these alternatives as well as other options that may be available to you.

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### **What is the amount of security required?**

The amount of security that must be posted depends on the value of the outstanding work as certified by the developer in the Developer's Declaration – Form J. Effective June 16, 2014 a new formula was introduced setting the amount of security required to be posted. The amount of the security increases with the value of the work outstanding:

- If the cost of completing the outstanding work is less than \$500,000, the amount of security is equal to that cost;
- If the cost of completing the outstanding work is equal to or greater than \$500,000 but less than \$2,500,000, the amount of security required is \$500,000; and
- If the cost of completing the outstanding work is \$2,500,000 or greater, the amount of security is 20% of that cost.

It is important to note that a different formula applied to condominiums that were titled prior to June 16, 2014. Under the prior formula, the maximum amount required to be posted was \$200,000.

### *Section 17 of the Regulations*

### **What happens if a developer believes it may not be able to complete the work promised in the developer declaration? What alternatives exist?**

The Act and Regulations provides three alternatives for this situation:

1. Amendment of the Developer's Declaration. The declaration may be amended to remove items if the developer obtains approval from:
  - the corporation in the form of a special resolution (2/3 majority approval); and
  - the approval of the Minister through the Office of Public Registry Administration.In this situation, the developer should first reach agreement with the corporation and submit this along with their request to the Office of Public Registry Administration. If approval to amend the declaration is obtained, then the interest registered against all condominium titles must be amended by the developer in the Land Registry.
2. Proceed directly requesting release of the security. The security will be released if:
  - the majority of the units have been sold, the condominium board elected, and the developer enters into an agreement with the condominium based on a unanimous resolution of owners; and
  - the agreement and the unanimous resolution under seal of the condominium corporation are provided to the Minister.

In this situation, the developer should first reach the agreement with the condominium corporation and provide it together with the unanimous resolution of the condominium corporation to the Office of Public Registry Administration.

3. Obtain a court order directing release of the security. The developer may make an application requesting that the court direct that the security be released.

*Section 18 of the Act*

*Section 18 of the Regulations*

**When may the security be released?**

It is possible for the security to be released in two stages by the Office of Public Registry Administration on behalf of the Minister:

- ***On more than 50% completion of the items listed in the Developer's Declaration – Form J***, the developer may request a 50% reduction of the security posted. The request must include a Certificate of Completion – (50% Reduction) – Form I. This Certificate is an independent assessment from a professional engineer, architect or appraiser certifying the level of completion of the work promised in the Developer's Declaration. Not all developers request a release of 50% of security; many wait and request release once all the promised improvements have been completed.
- ***Once all of the work set out in the Developer's Declaration – Form J has been completed***, the developer may request the release of security at any time. The request for the release of the security must include a Certificate of Completion – Form M. The Certificate of Completion is an independent assessment by a professional engineer, architect or appraiser certifying that the work promised in the Developer's Declaration – Form J has been completed.

*Sections 18 and 19 of the Regulations*

**Will the condominium corporation be notified if the developer has requested release of the security, either in full or in part?**

Yes, notice is sent to the condominium corporation at the address for service as shown in the Corporate Registry.

If the developer has turned responsibility for the condominium corporation over to the owners and a board of directors for the condominium corporation has been elected, it is important for the corporation to ensure that the address for service is up to date at the Corporate Registry at [Information Services Corporation \(ISC\)](#). You may contact the ISC Customer Support Team toll free at 306-787-2962 or by email at [corporateregistry@isc.ca](mailto:corporateregistry@isc.ca) if you need to clarify or update your address for service.

*Section 18 of the Regulations*

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### **What is in the notice sent to the condominium corporation advising of the developer's request for full release of security?**

The notice from the Office of Public Registry Administration at the Ministry of Justice advises that:

- The Developer has made the request for release of security by submitting a Certificate of Completion – Form M from an independent engineer, architect or appraiser;
- The request has been accepted as of a specific date set out in the letter;
- The condominium corporation has 30 days from that date to raise any objections that it may have to the release of the security; and
- If no objections are made by the condominium corporation within those 30 days, the security will be released.

#### *Section 18 of the Regulations*

### **If the 30 days has elapsed and there is no objection from the condominium corporation what happens next?**

If the 30 days has elapsed, and there are no objections, the Office of Public Registry Administration may release the security. At that time the Office of Public Registry Administration will:

- Send notice to the condominium corporation advising that the security has been released;
- Send notice to the developer (or its agent) advising that the security has been released together with the endorsed Form M indicating approval of the release of the security; and
- Return the original security (whether bond or letter of credit) to the issuing institution, advising of the release.

Following release of the security, the developer should submit its application to the Land Registry to discharge the interest based on the Developer's Declaration – Form J. The endorsed Form M must be included in the packet.

#### *Section 18 of the Regulations*

### **What can a condominium corporation do if it objects to the release of the security?**

If a condominium corporation receives a notice advising that a request for release of security has been made and it objects to the release of the security it must raise its objections within the time frame set out in the notice. You can do so by contacting the Office of Public Registry Administration at [condos@gov.sk.ca](mailto:condos@gov.sk.ca). You may wish to consult a lawyer to get legal advice on your rights and remedies available to you.

#### *Section 20 of the Regulations*

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### **If the condominium corporation objects to the release of the security what happens next?**

If a condominium corporation or its lawyer raises an objection to the release of security by advising the Office of Public Registry Administration at [condos@gov.sk.ca](mailto:condos@gov.sk.ca), the Office will review the objection and compare it against promised items contained in the Developer's Declaration – Form J. If there are questions about the objection, the Office may contact the condominium corporation and ask for further information.

The Office will advise the developer of an objection that has been raised, and recommend that the developer and condominium corporation negotiate a solution to the concerns. If a solution cannot be negotiated, either party may apply to the courts for an order providing direction as to whether the security (in part or in full) should be released to the developer or be paid to the condominium corporation. In this situation, you may want to consult a lawyer to give you advice or act on your behalf.

#### *Section 20 of the Regulations*

### **What are the situations where the security will not be returned to the developer, and if it is not returned to the developer, who will the money be paid to?**

There are circumstances where the security (or a portion of the security) may not be returned to the developer. It may not be returned where:

- The developer was building a phased condominium under the Act with the completion of subsequent phase individual units (as set out in the Developer's Declaration – Form J) and the subsequent phases were not completed within the time allowed under subsection 17(2) of the Act;
- The court directs that the money not be returned to the developer, and the time for an order from the judgment of the court has expired; or
- The developer has committed an act of bankruptcy.

In these situations, the Office of Public Registry Administration may pay the money protected by the security to:

- The local registrar of the court in trust for any parties who have or will have a judgment from the court directing payment of money to them;
- Parties such as a trustee, receiver or liquidator legally entitled to act on behalf of the developer; or
- Anyone that the Minister of Justice and Attorney General considers entitled to the money for a claim against the related to the condominium development.

#### *Section 20 of the Regulations*

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