

Emergency use of reserve funds

This publication is intended to provide general information only and is not a substitute for legal advice

Introduction

Responding to disasters and emergencies may challenge the capacity for some condominium corporations to comply with the *Condominium Property Act* and its regulations.

When a natural disaster occurs, or a public health emergency is declared, the incomes of condominium unit owners may be negatively affected, particularly if people have been evacuated from their community, or they are required to quarantine. During these times, condominium corporations may need greater financial flexibility to operate and ensure the safety and security of residents while taking care of the property.

The Condominium Property Regulation allows condominium corporations, in certain emergency situations, to access reserve funds to cover operating fund shortfalls resulting from declared states of emergencies such as a public health emergency, wildfire, or overland flooding.

Requirements

Condominium corporations need to be cautious if they choose to access their reserve funds for emergency use. This can only be done in specific situations and the legislation includes important requirements that must be followed.

An elected condominium board may transfer funds from its reserve fund to its operating fund in the instance of a government-declared emergency under the *Emergencies Act*, the *Emergency*

Management Act, or the *Public Health Act*. The transfer of funds must be related to a shortfall in income (contributions) as a result of the emergency. Funds cannot be transferred to cover a shortfall due to an increase in expenses or poor budgeting.

Condominium reserve funds can only be used for emergency operational funding as long as the following criteria are met:

- A state of emergency or public health emergency has been declared by the federal, provincial, or municipal government and is still ongoing.
- The amount drawn from the reserve fund does not exceed the contribution shortfall, the deficit in operating expenses, or a limit set in the bylaws (whichever is less).
- The board provides:
 - a preliminary notice of its intent to use reserve funds in this manner to owners;
 - a date on which it will make its decision;
 - information about alternatives; and
 - a proposed revised reserve fund plan that includes how much will be used and how it will be repaid.
- After the preliminary notice is provided to owners, a board resolution with 75 per cent in favour of the revised reserve fund plan must be passed, which is then shared with owners.
- **Monies must be repaid within two years.**

A transfer from the reserve fund to pay for operational expenses can occur only during the time the state of emergency is in effect.

Example: A public health emergency due to the pandemic COVID-19 was declared March 17, 2020 under Alberta's *Public Health Act*. The Order in Council declaring the state of public health emergency was in effect for 90 days and expired June 15, 2020. When the public health emergency order was terminated, condominium corporations were no longer able to transfer reserve funds to the operating account to cover revenue shortfalls from unpaid contributions.

Notice to owners

When a board wishes to transfer from the reserve fund in order to pay operating expenses, it must serve a notice on all owners stating its intention to do so. This notice must also include a description of any alternative budgeting measures that were considered by the board, as well as its reasons for not adopting alternate measures. In addition, the notice must include the date on which the board intends to make its decision, as well as a proposed revision to the board's last approved reserve fund plan, which is based on the reserve fund study; this document is sometimes referred to as an annual report.

The dollar amount that is permitted to be transferred from the reserve fund can be equal to the lesser of the difference between the decreased contributions and revenue expected, the specific shortfall in revenue to expenses, or any limit that has been set out in the bylaws. A corporation is also allowed to pass a bylaw to prohibit such transfers from the reserve fund if they wish to do so.



Revising the reserve fund plan

Corporations will not be required to complete an entirely new reserve fund study. The revision to the board's plan must identify the exact amount of funds intended to be transferred, and also a repayment plan that outlines a strategy to return all funds taken out within two years from the end of the declared emergency.

The board must then pass a resolution with a 75 per cent majority of directors authorizing this transfer of funds, and approving the revision to the reserve fund plan. The board must then notify the owners of the resolution if it was approved, and provide to them the updated reserve fund plan.

For more information about reserve fund plans, see the fact sheet "Reserve fund study providers, plans and reports" available at <https://open.alberta.ca/publications/reserve-fund-study-providers-plans-and-reports>

Other information

Methods used by condominium corporations to determine the amounts of their condominium contributions (either monthly condominium fees or special levies) are not regulated by the government. If an owner is unable to pay their contributions, or if a board is concerned owners may not be able to pay, corporations have options under the legislation to adjust.

For example, condominium corporations may want to revise their budgets or reserve fund plans in order to reduce expenses or defer contributions to the reserve fund. They can also borrow money.

There is no legal requirement for condominium corporations to pursue owners by placing caveats on their unit for unpaid contributions. While the government cannot direct that contributions are to be deferred, a condominium corporation may still choose to do so.