

Updating condominium bylaws

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

Changing bylaws so they do not conflict with the new legislation

Normally, corporations must pass a special resolution to amend their bylaws. However, there is a special exemption for changing current corporation bylaws so they do not conflict with the updated condominium legislation, effective January 1, 2020.

Section 34.1 of the amended *Condominium Property Act* (the Act) provides a one-year “window,” starting January 1, 2020, for corporations to amend their bylaws by ordinary resolution if their bylaws conflict with the Act or the regulations.

An ordinary resolution requires support from a majority of owners or mortgagees who are present at a properly convened meeting, or represented at the meeting by proxy. An owner or mortgagee, or their proxy, is not eligible to vote if any contribution payable for the unit, or any other obligation owing to the corporation in relation to the owner's unit or the common property, is in arrears for more than 30 days prior to the day the vote is taken.

An ordinary resolution may also be passed if the resolution is signed by a majority of all the persons who would be entitled to vote at a meeting, and who represent more than 50% of the corporation's unit factors.

Special resolutions require the approval of 75% of the owners who represent at least 75% of the unit factors. Corporations may pass a special resolution at a general meeting or may use a written vote.

An ordinary resolution can only be used to amend bylaws that conflict with the Act and regulations. Any other bylaw amendments or the addition of new bylaws will require a special resolution, as normal.

This opportunity to amend bylaws that conflict with the legislation by ordinary resolution will last for one year after the amended governance legislation comes into force, until December 31, 2020.

Carrying out an ordinary resolution

Votes may be cast in person or by proxy at an annual general meeting or a meeting called for the purposes of voting on the amendments, or the vote may take place using a written resolution.

Boards may wish to consult with a legal advisor to ensure that amendments are worded accurately and voting procedures are conducted appropriately.

Beyond the one-year timeframe

If a particular section or clause conflicts with the Act or regulations, that section or clause becomes void when the updated legislation comes into force January 1, 2020. However, the remainder of the bylaws would still remain in effect. Owners, tenants and board members would need to examine the relevant sections of the Act or regulations, and



should seek legal advice, to determine the requirements for a particular situation.

The corporation will still be able to amend their bylaws after the one-year “window” closes, but after December 31, 2020 all amendments will require a special resolution.

If a corporation is using default bylaws

When the amended Act and regulations come into force on January 1, 2020, the default bylaws set out in the amended regulations will apply to all condominium corporations that do not have their own bylaws registered with Land Titles and have been using either the Appendix 1 Bylaws or the Appendix 2 Bylaws.

Corporations using default bylaws may decide to develop updated bylaws that suit the needs of their corporation through a special resolution, and may want to seek legal advice on how to draft their bylaws.

The default bylaws in the Condominium Property Regulation only apply to condominium corporations that do not have their own bylaws registered with Land Titles. If a corporation has registered its own bylaws, the default bylaws would not apply, even in those areas where the corporation’s bylaws are silent.

If a corporation using the default bylaws would prefer to adopt bylaws that meet its own particular needs, it can pass a special resolution to adopt its own bylaws. The bylaws in the most recently amended Regulation replace the previous default bylaws in Appendices 1 and 2 of the Act in their entirety.

To determine whether a corporation has registered its bylaws, search the Land Titles website at: <https://alta.registries.gov.ab.ca/spinii/logon.aspx>

If a corporation’s bylaws are silent on matters in legislation

There is no timeline specified for adding or amending bylaws to address matters where there is

no conflict with the amended Act or regulations. Corporations should examine the updated legislation for sections where the updated legislation might mention corporation’s bylaws, such as insurance requirements, to determine if their existing bylaws address that topic.

Sections of the amended legislation that require corporations to have complementary bylaws, such as those addressing sanctions for bylaw violations, will be unavailable to corporations unless they have bylaws enabling the use of these sections.

Addressing changes in other legislation

Ordinary resolutions to amend the bylaws would only apply to those parts of a corporation’s bylaws that do not conform to the *Condominium Property Act* and regulations. Amendments of any bylaws that are not in conflict with provincial condominium legislation, or bylaws that would be new to the corporation, would require a special resolution.

As the *Condominium Property Act* does not address issues such as cannabis use or age restrictions, which are addressed in other legislation, changes to address these subjects would require a special resolution.