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## Reserve studies are due Tuesday

### Report must plan for future repairs

*If deadline missed, board risks liability* Tuesday, May 4, is an important deadline for every Ontario condominium building that has been registered for more than three years.

It's the final deadline for completion of a reserve fund study, which details the estimated common element expenditures in each building for the next 30 years and sets up a plan to fund those costs.

Under the Condominium Act 1998, every condo corporation that was in existence prior to May 4, 2001, is required to complete a reserve fund study by May 4, 2004.

The study analyzes every part of the common elements of the building and predicts when repair or replacement will be required over the next 30 years. It also proposes how the costs will be funded.

Typically, a reserve fund study will look at things like roof repair or replacement, parking garage restoration, window and balcony replacement programs, exterior maintenance and interior decorating programs.

As an example, an older condominium may have to come up with \$2 million or \$3 million in 12 years to repair anticipated salt damage to the underground parking garage. It should put a plan in place now to raise the money over time so that the full cost will not come as a shock in 2016.

Ron Danks is a condominium lawyer with Simpson Wigle LLP in Hamilton and national president of the Canadian Condominium Institute. In the latest issue of the Golden Horseshoe chapter's Condo News, Danks writes that there are two methods of properly funding the catch-up necessary for a reserve fund.

The traditional method is to direct part of each month's common elements fee to the reserve fund. If that doesn't produce enough rainy-day cash, a special assessment can require each owner to contribute an extra amount for a set period of time.

The second method is to obtain a loan from outside sources, such as banks or private lenders. This is an increasingly popular method of fundraising, particularly when there is an urgent need for immediate repairs.

In the hypothetical case of a 150-unit building requiring \$1.5 million for a garage restoration, each unit owner would have to come up with \$10,000 immediately.

If the money is borrowed at, say, 8 per cent interest, monthly payments of \$125 could be spread out over 10 or more years.

In this way, an owner who sells his or her unit within that period would pass the ongoing payments to the new owners.

After the board receives its reserve fund study, it has 120 days to develop a contribution plan. The board is then required to send each owner a Form 15 notice containing a summary of the study and the proposed plan to raise the required money.

Under the act, corporations have a period of 10 years from the date of the first study to achieve an adequate level of money in the reserve fund.

Although there are no condo police to enforce compliance with the act, Danks says condo boards that have not completed a reserve fund study by Tuesday's deadline may have their directors' and officers' liability coverage terminated by their insurance carrier. They are in breach of the act and are exposed to liability from several sources.

According to Danks, the condominium and its directors could be sued by unit owners who want to sell but cannot because potential purchasers are concerned by the lack of a reserve fund study.

In another scenario, a purchaser might buy a unit after May 4 in a condominium that does not have a reserve fund study and later find out there is a need for a special assessment. This buyer might be able to claim damages against the board for failing to comply with the act.

Danks says boards that have not completed the study should contact their insurance broker and lawyer for direction on how to minimize liability.

One final reminder: Reserve fund studies must be updated every three years, so the next deadline is May 4, 2007. For condominiums registered within the last three years, the deadline is one year from the date of registration. Mark your calendars.