

Legislative Changes

I. LEGISLATIVE HIGHLIGHTS - S. 22 OF THE CONDOMINIUM ACT

1. Access granted by a Condominium Corporation need only be ratified by 51 per cent of the owners (an ordinary by-law) rather than two-thirds of the owners (a special by-law) as required in the existing legislation. However, if a carrier or service provider requires an access agreement as a precondition to rewiring a building, or upgrade its facilities you only need board approval and not approval of 51% of the owners.

2. Developers have secured legislative approval to declare that certain areas in highrise buildings consisting of roof tops, risers, conduits and utility closets to be units (communication control units, hereinafter referred to as the "CCU"). The developer can retain control of the CCU and thereby control entry into the building by service providers and carriers.

3. If the only practical place for a condominium to install its own distribution system (MATV) is in the CCU or if the third service provider has insisted by contract on having access to the CCU, the condominium and the service provider are deemed to have a non-exclusive easement over the CCU. Moreover, if there is no space in the CCU for a new system (eg. the conduit is small and is filled with an existing wire) the condominium can demand on 30 days notice to have access to the CCU and the owner of the CCU must take all reasonable steps to make room for the new system. I do not think this deemed easement gives the condominium the right to demand access on the rooftop from the owner of the CCU for service providers and carriers not providing service directly to the residents of the condominium.

4. A bulk television service building can be converted into a resident pay building even if the condominium charter documents require the condominium to buy bulk television services.

5. As noted above, service providers and carriers can enter into access agreements with the board of the condominium to do network upgrades without having to obtain approval of 51 per cent of the owners.

6. Leases for cell sites, head ends and hub sites (ie: facilities not directly serving the building) can be negotiated with the condominium without obtaining approval of 51 per cent of the owners (subject to CCU impediments described above).

7. If the board does enter into an agreement with the service provider or carrier for:

(a) a conversion from bulk to tenant resident pay;

(b) a network upgrade; or

(c) a cell site, hub, head end or other carrier lease or license, notice must be given to the owners who have 30 days to call a meeting and by vote of 51 per cent, the owners may cancel the agreement.

8. Exclusive access agreements in the form of easements automatically become non-exclusive after 10 years and the service provider's or carrier's rights under the access agreement continue on a non-exclusive basis until terminated.

9. Perpetual access agreements entered into by developers, even if non-exclusive, can be cancelled after 10 years by the vote of 51 per cent of the unit owners.

10. Unless otherwise agreed, if an access agreement is terminated, the service provider or carrier must remove its distribution facilities within 150 days from the date it receives notice of termination or it is deemed to have abandoned it.

11. Perpetual access agreements will not be cancelled, if they are non-exclusive, if physical provision was made for an alternate supplier to install its own system and such agreements were negotiated with a board controlled by the unit owners and not the developer.

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