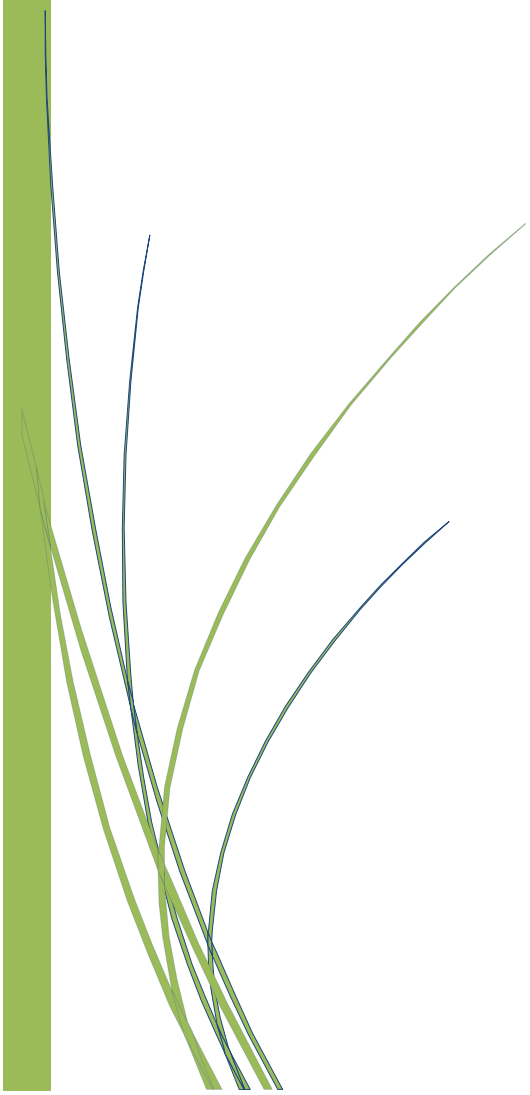
2026

Course 3

A Study Guide for Ontario Real Estate



Shiva Bakshi

WWW.SHIVAREALESTATECOACH.COM

Dear Student,

Thank you for your continued commitment.

Course 3 is one of the most detailed courses in the licensing journey.

Condominiums, leases, and new-home transactions can feel like an entirely new language – and in many ways, they are.

My goal with these notes is to make that language intuitive: to show you how all the pieces fit together so you can *see* the transaction from every angle.

You'll notice these notes emphasize clarity, structure, and examples – because that's what helps the information stick.

Remember, the exam doesn't test how much you can memorize; it tests how clearly you can *think* through a situation.

You can explore more free tools and exam prep resources at **www.shivarealestatecoach.com**.

Thank you for trusting me to guide you through this stage. Keep going – you're closer than you think.

With gratitude,
Shiva Bakshi

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Module 1

1.1 Introductions to Residential Condominiums

- A condominium corporation is a legal entity that represents the collective interests of its property owners.
- These buildings consist of 'units' and 'common elements. Condominium corporations in Ontario are governed under the Condominium Act, which regulates the creation, governance, and bylaws of the condominiums.

Types of Condominium corporations

Freehold – **standard** → This is the most common type of residential condominium corporation. Unit owners have exclusive ownership of their unit and common interest (as tenants-in common) in the common elements.

- These two interests cannot be separated.
- They include mid-rise, high-rise, or row townhouses.
- All unit owners share the maintenance costs of the common elements.
- This cost is according to their proportionate share based on square footage of the unit.

Freehold – **common element** → contains no units but has common elements such as roads or a community centre.

- Owners own their house and the land it sits on and share in the ownership and expenses of common elements.
- Each owner must own a freehold parcel of land within the same Land Registry Office where the condominium is registered.
- Each owner has ownership of their house and the land, and they share the ownership and maintenance of common elements. A golf course, a ski hill resort, community centre, or roads are some examples. The registration shows that each owner owns a parcel of land, the building on it, and partial ownership of common elements.
- Since the property of an owner is permanently 'tied' to common elements, such common elements are called "Parcel of Tied Land (POTL). This means that the property cannot be sold separately from its interest in common elements.

Freehold – **vacant land** → A builder can register the corporation before the condo units are constructed or sold

- It provides for development and sale of units (land) without the necessity of immediately completing any structures.
- The developer can build the structures and infrastructure, facilities, and services prior to registration or provide a bond to guarantee subsequent constructions.

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- Once all buildings, structures, facilities and services are completed and approved the developer's security is released
- The buyers of vacant land can build their homes later and their share in corporation is based on the sale of land.
- Title is transferred to buyers with the commitment that homes and other structures will build at a later time. The declaration contains restrictions concerning future construction such as building size, design, standards and the approx. completion date.
- Owners interest based on size

Freehold – **phased** → It operates as a freehold corporation in which the builder/developer may add or create additional successive units/common elements in phases.

- In a large-scale development project, this provides cost savings and there is no need for separate board of directors.
- Gives builders flexibility in the development process.
- They can add successive units and common elements under a single corporation by amending the original registration. This avoids the need to create new condo corporation for each new phase or two have a board of directions in a large- scale development
- Cost savings for developer who is able to coordinate purchase of services (such as utilities) and supplies to max efficiency

Leasehold → All units and common elements are situated on leased land for which the lease term is from 40 to 99 years.

- A portion of the common expenses (maintenance fee) is paid to the landowner as rent.
- Since the corporation does not have to purchase land, this type of condominium offers reduced prices, especially for low-income buyers and retired persons.
- Developer can only 'sell' the right to lease the land
- Benefits of freehold ownership (the ability to sell transfer and mortgage) without having to invest funds in owning land

Condominium Structure

- Most are divided into units and common elements
- Unit is the private living space to which the owner holds sole title.
- Elevators, hallways and gardens are examples of common elements , costs of maintenance and repairs shared with owners

Condominium Act

- All condominium corporations in Ontario are subject to the *Condominium Act* Which regulates creation, governance and bylaws of condo in ON.

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- The Protecting Condominiums Act amended the Condominium Act and the Ontario New Home Warranties Plan Act.
- It establishes two delegated authorities, the Condominium Authority of Ontario (CAO) and the Condominium Management Regulatory Authority of Ontario (CMRAO).
- A condominium corporation is a legal entity that represents the collective interests of property owners
- These buildings consists of 'units' and "common elements. Condominium corporations in Ontario are governed

Registering a Condominium Corporation

- Legally created when the declarant (usually builder) files a declaration and description at the *Land Registry Office*
- *Declaration*: The Declarant is usually a builder or developer, which includes details about proportionate share of each unit in Common Elements and the share of Common Expenses. It also includes information about common elements which are for exclusive use of unit owners.
- *Description:* This document provides the Diagrammatic Presentation of the property. It includes series of architectural plans and surveys describing the property and structures of the condominium corporation. Unit boundaries, shape, dimensions and location of each unit is given in this document.

Condominium Governance: Condominiums are governed by a board of directors, which has the authority to make and enforce bylaws and rules and that it complies with the *Condominium Act*

- It is similar to a fourth level of government, where members elect the board of directors who are given the authority to create and enforce bylaws and rules to ensure compliance with the corporation
- Bylaws are about operational matters of the corporation whereas rules are about safety and security if the unit owners and the condominium property.

Shared-Facility Agreements: These are used in mixed use buildings in urban areas where the residential units are located above retail or commercial units.

- These agreements are not mandatory under the Condominium Act, but the buyers and their salespersons must be careful if such an agreement exists.
- The residential unit owners do not pay a proportionate share of maintenance costs, but it may be higher than a standard condominium.

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Condominium Structural Styles

Apartments style condominiums: High-rise apartment buildings have 5or more storeys with elevators where as low- rise buildings have up to 4 storeys.

Townhouses: A complex of several houses, which are either attached or built very close to each other. Each unit is a sperate condominium unit

Detached Houses: A freestanding house which is not attached to any other house.

Semi-Detached Houses: One house is attached by a common party wall to the next house. Row Townhouses: Three or more houses attached side by side by a party wall.

Rowhouse Condominium : complex of three or more houses joined side by side in which each house is a separate condo unit

Duplexes and Triplexes: It is a single building, which is divided into two or three dwelling units, each has its own separate entrance and is treated as a condominium unit.

Distinction between units and common elements

- Unit is private living space to which the owner holds sole title. Walls, land structures and fixtures
- Common elements → elevators hallways main lobbies, gardens pools etc.

Parking & Storage

- typically, not shared , but details are in the corporation's declaration
- Developer and corporation typically have the right to re-assign spots which may mean that a promised parking spot turns out to be in an inconvenient location
- Typically, one of four types
    1. Freehold
        a. Parking: unit owner owns the parking space, as part of unit description or with separate title
        b. If it is separately titled, it can usually be sold to another owner in the complex at fair market value
        c. Storage: the owner owns the storage locker
    2. Leasehold
        a. Parking: condo corporation holds ownership of the parking and leases them to unit owners
        b. Storage: corporation retains ownership and leases to unit owners
        c. Exclusive use common element
        d. Parking and storage: condo corporation owns the parking or storage spaces. It gives unit owners the right to use specific spaces as described in the declaration
        e. Allocated or assigned

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f. Parking and storage: Condo corporation owns the parking or storage spaces and assigns them to unit owners on a discretionary basis

Units and Common Elements

- Unit: A Unit is the space defined by boundaries within a condominium building. The unit owner has exclusive ownership of the unit and is has proportionate ownership of the Common Elements as Tenant-in-Common.
- Common Elements: All property within the condominium corporation except units is considered Common Elements.
- Exclusive Use Common Elements: In some condominiums, the unit owners may have the right to exclusively use a part of the common elements as per the Declaration.
- The cost of maintenance of such common elements is the responsibility of the unit owner. Some examples are shared fences, patios, balconies, etc.

1.2 Condominium Lifestyles and Niche Market Living Appeal in Condominiums

Condominium Lifestyle

Specific Lifestyles:

- Several newer condominiums are customized for needs of specific lifestyle groups. These include bungalows and two story freehold townhouses for adults or seniors, high-rise developments for millennials, etc.
- Freedom from Maintenance: Condominiums provide maintenance-free living as compared to home owners because common elements are maintained by the corporation.
- Security: Enhanced security features in the building appealing to buyers who are concerned about personal safety. These include security cameras, entrance gates and security system, monitoring alarms, key fob entry system, front desk security person, etc.
- Amenities: Buyers find a condominium attractive if there are many amenities and they are included in common expenses, or they can be used at reasonable fees.

Corporation and Unit Insurance: Difference between condominium corporation insurance versus owner's insurance

- Condominium unit insurance is typically less expensive than other houses due to lesser risk for the insurer.
- The condominium corporations usually have a master insurance policy, which is paid for by unit owners as part of maintenance fee, but the buyers cannot assume this coverage.

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- Any changes or damage to unit must be covered by unit owner's own personal insurance policy.
- Owners require separate coverage for theft and liability and for special assessments or lawsuits that the corporations master insurance policy or reserves fail to cover
- Advised for storage lockers and parking spaces, if they are owned separately form the corporation

Obligations and Limitations

Condominium Fees: Under the Condominium Act, the maintenance fees are mandatory and non-negotiable. This is true even if the owner

- Has waived or abandoned the right to use the common elements
- Is making a claim against the corporation
- Is restricted from using the common elements by the declaration. Bylaws or rules

If a unit owner defaults in payment of common expenses, a lien can be registered against the unit and the unit owner may lose voting rights

- The corporation may have the right to sell the unit to recover unpaid common expenses.
- Can seek compensation for the unpaid fees plus interest, legal costs, and expenses incurred to collected unpaid

Personal Liability for unit owners : Unit owners are personally liable for the debts of the condominium corporation.

- If there is any deficiency in the Reserve Fund, there may be a special assessment, and the cost of ownership for the unit owners are increased.
- Buyers should be encouraged to have their lawyer review the reserve fund status before making a firm offer.

Disagreements with the Management: The unit owners may not agree other unit owners, the management, or the board of directors.

- This may create disharmonious situations, especially when the board makes certain changes without input from unit owners.
- These changes may increase the operating budget or may necessitate a special assessment.

Impact of Rules and Bylaws: Rules and bylaws may affect the use and enjoyment of the property by unit owners.

- Owners must be notified of the proposed changes and the date that the change is proposed to become effective
- Notice must also indicate that 15% of the owners can request a meeting within 40 days after receipt of the notice to vote on the proposed change

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- Meeting held → vote on proposed change
- Change will only become valid if the majority of owners at the meeting vote in favor of it , if no meeting is requisitioned within that period, the rules automatically become effective
- They may prevent the unit owner from short-term rentals, prohibit pets, etc.

Making Changes: Unit owners cannot make changes to their units or to exclusive use common elements. Any changes to balconies, plumbing, or parking spots (except cosmetic changes) needs approval of the board.

- Unit owners may have to sign an agreement to obtain insurance if there is any damage.
- This agreement is registered on title and is a part of Status Certificate. Insurance coverage ensures that no unit owner becomes liable for the acts of other unit owner

Condominium Niche Market

- Niche markets for condominiums are defined by buyers or by type of properties. They provide potential buyers an opportunity to invest in housing.
- *Geography:* The condominium lifestyle of a specific location is a deciding factor for buying a condo, which may be in urban core, on the beach, or near a ski hill.
- *Demographics:* Developers can design the amenities in a condominium to attract first- time buyers, singles, young professionals, retirees, or a combination of these groups.
- *Style:* The style or structure of the building such as high-rise apartments or townhouses provides specific benefits to buyers.

1.3 Condominium Legal Framework and Governance the Condominium Act

The Condominium Act governs the creation and governance of condominiums in Ontario. It defines the roles and responsibilities of the board of directors, the number of directors, their election process, and qualification criteria.

Condominium Act

- Condo corp is Created in law when both the declaration and the description are registered by the declarant (builder) who holds the freehold or leasehold in the land on which the development is built
- Declarant invokes the *Condominium Act* through the registration process
- Act defines governance structure of condo corporations
- Outlines the duties of the board of directors who are responsible for managing the affairs of the corporation
- Details number of board members, how they are elected, qualified and disqualified from board services
- Stipulates that the corporation has a duty to effect unit owner compliance under the condominium Act

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Disclosure Statement (New Condominium Purchases)

- When a buyer purchases a new condominium unit from a developer, the **Condominium Act, 1998** requires the buyer to receive a **Disclosure Statement**. Any **deposit** paid by the buyer must be held in a **trust account** by the developer or the developer's lawyer.
- Salespersons must ensure that buyers are aware of these statutory rights and protections.

Key Provisions

- Trigger for Disclosure:
    - Once the buyer signs the Agreement of Purchase and Sale (APS), the developer must provide a current Disclosure Statement to the buyer.
- Contents of the Disclosure Statement: The package must include essential details about the condominium project, such as:
    - A summary of the proposed Declaration and By-laws
    - Budget statement showing estimated common expenses
    - Description of units and common elements
    - Details of management contracts and amenities
    - The developer's anticipated completion or occupancy date
- 10-Day Cooling-Off Period: Buyers have the right to cancel the APS within 10 calendar days of the later of:
    1. The date they receive the Disclosure Statement, or
    2. The date they sign the APS
        - If cancelled, the buyer's deposit must be refunded in full, without penalty.

Material Changes:

- If a material change occurs after the Disclosure Statement is issued — such as an increase in maintenance fees, change to common elements, or elimination of an amenity — the buyer may rescind the APS within 10 days of receiving written notice of that change.

Developer's Right to Terminate: A developer cannot unilaterally terminate an accepted APS. Termination is only permitted with buyer's written consent or through a court order.

Deposit Protection:

- All deposits are held in trust by the developer's lawyer or a designated trustee.
- Deposits are protected under the Condominium Act and Tarion Warranty Program (currently up to $20,000 for most projects).
- These safeguards protect buyers in case of project cancellation or builder insolvency.
- Salesperson Responsibility under TRESA:
- Salespersons must ensure buyers understand:
- Their right to receive the Disclosure Statement.

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- Their right to a 10-day cooling-off period and refund.
- That deposits must be held in trust and protected by law.

Condominium Authority of Ontario(CAO): The CAO is an independent administrative authority that maintains a register of condominium corporations in Ontario.

- Focus on consumer protection and supporting healthy condominium communities across Ontario
- Independent and self-funded administrative authority with the goal to improve services and resources for owners, residents and directors
- It provides information to public and unit owners, mandatory training for condominium directors, and online dispute resolution service through Condominium Authority Tribunal.

Condominium Authority Tribunal: This tribunal helps resolve disputes by case management, mediation, and adjudication.

- The nature of disputes may include enforcement of declarations, bylaws, rules, procurement procedures, access to records, procedures for requesting meetings, etc.
- The tribunal's decisions are enforceable as court orders.

Impact of the Condominium Act on Ownership

Right of Entry: states that, with reasonable notice, a person authorized by the corporation may enter a unit or the exclusive use of elements at any reasonable time to perform duties or exercise the powers of the corporation. No notice is required in emergency situations.

Loss of Owner's right to vote: A unit owner loses the right to vote if their common expenses are in arrears for 30 days or more.

Changes Made by Owner: Owners can make changes to exclusive use common elements only after approval from board. They must also sign an agreement with board to obtain liability insurance.

Lien on Unit: If a unit owner fails to pay common expenses, a lien can be registered against the unit

Meetings: The Act includes guidance on meetings of owners, special meetings, and annual general meetings. Act gives owners who hold at least 15% of the units the right to call a meeting at any time.

Owners Contribution: The Act defines unit owner's obligation to pay their proportionate share of common expenses as given in the Declaration. These are payable even if a unit owner elects not to use any common elements.

Bylaws and Rules: The board can make amend, or repeal bylaws that govern the corporation.

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Condominium Board of Directors

- Within 10 days of the condominium being registered, the declarant (builder) is required to appoint a board of directors.
- The first board, consists of at least 3 people, must call a meeting by the later of the 30th day after the day by which the declarant has transferred 20 percent of the units in the corporation or the 90th day after the declarant transfers the first unit in the corporation
- At this meeting, the owners may elect two directors to the board who hold office in addition to those appointed by the declarant

Declarants Obligations at Turn Over Meeting

- Goal of the meeting is to transfer control of the condominium corporation from the declarant (builder) to the owners. It must be called no more than 21 days following the time when the declarant ceases to be registered owner of the majority units
- Declarant is responsible for providing several items to the board
  1. Delivery of corporate documents
     a. Seal of corporation and the minute book which includes the registered declaration and the minutes
  2. Delivery of related documents
     a. Management contracts, deeds, leases, licenses and easements, copies of all insurance policies, insurance trust agreements, memoranda, and related items
     b. Also included are bills of sale or transfers for items that are assets of the corporation, but not part of the property and records concerning owners, mortgages and leasing of units
  3. Documents to be delivered within 30 days → architectural plans, electrical/mechanical
  4. service plans, documents related to Ontario New Home Warranty, financial records, reserve fund, disclosure statement, etc.
  5. Documents to be delivered within 60 days
     a. Audited financial statements as of the last day of the month in which the turnover meeting is held

Board of directors

- The first board with minimum 3 members must be appointed by the Declarant, who stay as directors until the Turn Over Meeting.
- Unit owners may elect 2 more directors in this meeting. Directors are appointed for a maximum term of 3 year. Director must be at least 18 years of age, mentally competent, not be a bankrupt, and there must not be a lien on their unit.
- This meeting is called within 30 days of transfer of 20% units, or within 90days of transfer of first unit, whichever is later.

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- To remove a director, the majority of all owners must vote in favor of dismissal + the owners may elect a person qualified by a member of the board to serve the remaining time in the term
- Directors are not liable if they are in breach of a duty occurs as a result of their relying in good faith on reports of experts such as accountants, engineers, or lawyers.
- May be reimbursed for legal fees and other costs if they have acted honestly

Roles and responsibilities of the board of Directors

- Arrange and attend regular meetings.
- Creating, amending, and enforcing rules and bylaws.
- Maintenance of property (common elements)
- Tracking financial performance of the corporation.
- Regular communication with unit owners regarding finances.
- Make required personal disclosures about any legal proceedings, which disqualifies them.

Condominium Authority of Ontario Director Training Program

- The Condominium Authority of Ontario (CAO) requires that condominium directors must take online training within 6 months of appointment.
- This free training is also available for unit owners, residents, and managers.
- The training covers topics related to finance, corporate processes, repair, and maintenance, etc.
- Available to owners, residents' managers and broader condo community

Establishing Condominium Bylaws

Condominium Bylaws

- Condominium bylaws are made for internal operations and governance of the condominium corporation.
- election process of directors, assessment and collection of common expenses, maintenance of common elements and units, and process to approve and amend new or existing bylaws.
- Bylaws are made, amended and repealed by the board of directors and unit owners must approve it by a majority vote. Of owners a copy of bylaws is registered in the Land Registry Office.
- Valid until replaced

Condominium Rules

- The board of directors makes, amends, and enforces the condominium rules and regulations.
- They are made for the purpose of safety, security, and welfare of the owners and corporation property and assets. Rules typically relate to use and enjoyment of common elements and may include pet prohibitions, parking rules, noise, number of occupants in a unit, modifications to unit, etc.

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- Rules are effective only after unit owners approve them by majority vote, which may be held within 30 days of requisition.
- Rules are not effective until the day after the 30th day, but the management can pick a date that is more than 30 days later

Condominium Management Regulatory Authority of Ontario (CMRAO)

The Condominium Management Services Act requires compulsory licensing system for condominium managers.

- Its purpose is to build trust in management services and protect the interests of condominium communities.
- Managers and management providers must be trained, educated, and follow a code of ethics.
- Only licensed managers should respond to questions related to fees, reserve funds, or planned projects.
- Management service providers must hold fidelity insurance (to protect clients from losses) as well as errors and omissions insurance.
- It imposes fines or imprisonment for mangers and management firms convicted on violating provisions
- Regulations establish
    - Compulsory licensing system for managers and management providers
    - Training and education requirements for managers
    - Code of ethics for managers and management provides Public Registry
- The Condominium Management Authority of Ontario maintains a Public Registry of licensed management service providers.
- Searchable by name or license number, provides information prescribed in the Condominium Act and submitted by condominium corporations to the Condominium authority of Ontario through the filings of returns and notices of change
- Licenses are required to keep their info accurate and current

Insurance for Management Company

- CMRAO Also governs the insurance that management providers must hold including types of insurance and minimum amounts for which they must be insured under

Types of Management Licenses

General License (Individuals): Individuals who have provided management service for 2 years out of previous 5 years.

- To renew this license, the individual must pass the required courses.
- Provide condo management services without any supervisory requirements

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- Can act as a principal condominium manager for licensed condominium management provider company
- Must hold either a limited license or a transitional license before they can apply for a general license
- Cannot be employed by more than one licensed condo management provider unless license has obtained consent

Transition General License(Individuals): Individuals who have provided services for more than 2 years out of 5 years (2, 20 hours or more) but have not completed the required courses for General License. The license is valid for a period of 3 years.

- Can provide condominium management services without supervisory requirements under legislation
- They can act as principal condominium manager for a licensed condo
- Cannot be employed by more than one licensed condominium management provider unless the licensee has obtained the consent , in the form or manner approved by the registrar

Limited License (Individuals): Those individuals who have provided services for less than 2 years under the supervision of a General License Holder.

- Entry level license
- Do not require condo management work
- They cannot independently provide management services.

They cannot sign or terminate contracts and cannot make expenditure over $500.

Condominium Management Provider License (Companies): These management companies may be sole proprietorships, partnerships, or corporations

- Any business that provides condo management services to condo corporations is required to hold a condo management provider license
- Must designate a principal condo manager that holds a general license or transitional license
- Must maintain insurance coverage
- Fidelity insurance, including against losses that a client of the provider suffers and that arise from dishonesty of a condo managers that the provider employs or of other employees

Roles and Responsibilities of Condominium Manager

- Collecting common expense fees - preparing status certificates
- Keeping records - issuing meeting notices
- Responding to owners - organizing board meetings and overseeing
- Ensuring maintenance and repair administration of all owner's meetings
- Hiring and monitoring service companies - monitoring corporations' insurance
- Preparing draft annual budgets and overseeing the reserve fund - preparing financial reports
- Emergency management plan, advising the board of directors

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Obligations of Condominium Managers

- *Working for multiple firms:* A licensed manager cannot be employed by more than one management company unless they have obtained consent from all condominiums.
    - A General or Transitional General license holder can work for a maximum of 3 condominium corporations.
- *Certificate of license :* Licensed managers must carry their Certificate of License and produce it for inspection.
- *Ontario Based* All condominium management companies must be based and have service address in Ontario.
- *Service contracts:* with condominium corporations must be in writing.
- *Records transfer, retention and storage:* Upon termination, all records related to condominium must be transferred to client. Records related licenses, exams, employment, etc. must be retained for minimum 6 years. Copies of records related to client's contracts must be retained for minimum 6 years.
- *Client Records* Licensees must inform the registrar of Condominium Management Authority of Ontario within 5 days if any of their profile information changes.

Condominium Information Certificates

These certificates are sent by condominium corporation to unit owners to inform them about the corporation and ongoing information throughout the year

3 times of information certificates

1. Periodic Information Certificate: Sent 2 times a year and includes information on board, finances, legal issues, reserve fund, legal proceedings and other matters
2. Information Certificate Updates: Sent to owners within 30 days of key changes before the next Periodic Information Certificate. Such as changes in directors or officers of the corporation
3. New owner information Certificates Sent to new owners within 30 days after they provide their information to the corporation.
    a. Covers the most recent periodic information certificates and subsequent info certificate updates

Record Keeping Requirements

- Condominium authority tribunal has exclusive jurisdiction to resolve most disputes about record retention and access
- Identifies two types of records, core and non-core, that a condo must retained. Act also establishes
    - Time frame for retention
    - Processes to request records

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- Cost to obtain or view them
- Timeframe for the board of directors to respond
- Requirements for how and where records must be maintained
- Minimum retention periods

1.4 Legislations for New Condominiums

The Planning Act - Application and Approval

- Applications for new condominiums are approved by local municipalities under the Planning Act.
- It is a two-stage process that begins with submission of a Draft Plan, which may take extended time periods for approval, minor changes, or conditional approval. Plans must be consistent with the local Official Plan, the Zoning bylaws, the Building Code Act, and the Tarion Warranty Corporation.
- The Official Plan is implemented through zoning bylaws which identify the basic standards such as lot site and coverage, building height, parking, and setback requirements, etc. (bylaws)
- The construction work cannot start until a building permit is issued after the project is found to be in compliance with appropriate planning, zoning, and other municipal regulations.
- If the project does not meet the requirements, the developer can make an appeal to the Committee of Adjustment for grant of a Minor Variance.
- After all requirements are met, the developer can start construction and buyers can start taking possession, starting with those units which are declared fit for occupancy. (usually the lower levels)

<u>Condominium Registration</u>

- Marks the point where the corporation is legally created – buyer can become the owner and in doing so, takes new responsibilities
- Upon registration of a condominium corporation with Declaration and Description,

<u>Condominium Corporation Founding Documents:</u>

<u>Declaration</u>

- Becomes a legal entity when the declarant (builder) registers the declaration and description at the Land Registry Office
- Referred to as the constitution of the condo
- The declaration presents the details of the new corporation's ownership and governance
- Declaration establishes the legal structure of the corporation
- Required information includes
  - Statement that the *Condominium Act* Governs

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- Consent of all registered mortgagees
- Proportionate share of common elements assigned to each unit
- Proportionate contribution of unit owners to common expenses
- Common elements for designated units if applicable
- Corporation address for service
- Any conditions required by approving authority

Description

It is the diagrammatic representation of the property, which includes the surveys, architectural drawings, and structural plans with appropriate certificates.

- Plans are accompanied by certificates confirming compliance and accuracy. The description usually includes
    - Plan of survey depicting legal boundaries
    - Architectural plans and certificate of architect
    - Unit boundaries shape, dimension and location
    - Definitions of common elements and exclusive use common elements
    - Proportion each unit pays in condo fees
    - Structural plans, certificate of engineer, Ontario land Surveyor certificate
    - All interest pertaining to the land that is included in the property
- Plan of survey showing property boundaries, Unit boundaries, dimensions, and location, Identification of common elements and proportionate share,

Automatic Formation of condominium Corporation

- When the Declaration and Description are filed, a condominium corporation is automatically formed but without share capital.
- Corporation in which members are unit owners
- Purchase of a unit in a condominium does not provide limited liability as the unit owners become personally liable for the debts of the corporation.
- Corporation does not provide limited liability so the unit owners are personally liable for all the debts and obligations of the corporation

Condominium Corporations Index

- Mandates the creation and maintenance of the condominium corporations index
- The unit owners are names as members and the corporation is assigned a Condominium Corporations Index:
- All Land Registrars in Ontario are required by the Condominium Act to create and maintain an online searchable index of condominium corporations.
- This registry displays information on each registered project including their name, registration date, name of Declarant, municipal address, number of units, board of directors, etc.
- Buyers who want to rent their unit: Some buyers purchase condominium units only to rent it.

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- When the owner rents their condominium units, they become a landlord and enter a landlord-tenant relationship regulated by the *residential tenancies Act*
- Can rent prior to registration or after when they take title
- During occupancy period they cannot be evicted by the owner because the unit is subsequently registered
- Act specifies that the registration is not grounds to serve notice of termination to a tenant under RTA'owner who enters into or renews a lease on their unit must notify the corporation within 10 days
- Name address and copy of lease agreement

Warranty Requirements for New Condominiums

- The Ontario New Home Warranties Plan Act specifies warranty coverage for units and common elements.
- The warranty protects the buyers for buyers' deposits, delays in completion, unauthorized substitutions, defects in work and material, major structural defects, and common elements.
- Condominium unit is considered a home, including the common elements of the corporation
- Begins on date of possession of a condo unit and remains in effect until the end of the warranty period
- Common elements: Warranty
    - Less amount of $50,000 times the number of units or $2.5 million
    - No warranty coverage for common elements that are part of a common elements or vacant land condo Conversations: Warranty
- When older buildings are converted into condominiums, the original parts of the building are not covered under the 1-year warranty as they are made with older materials and techniques.
- The 2 -year warranty starts after the first year and then these elements are covered under the two-year warranty for water penetration and defects in electrical, plumbing, and heating systems.
- 7 warranty for major structural defects is applicable to all conversion projects.

Deposit Protection and Delayed Closing Compensation

- A buyer purchasing a pre-construction condominium is required to place a deposit with the builder to hold the specific unit until it is ready to be occupied.
- Under the *Condominium Act,* all deposits paid on the pre-construction properties must be kept in trust by the builder's lawyer or another trustee
- In the event the builder does not complete the sale, pre construction buyers are protected against the loss of their deposit to a max of $20,000 per unit
- New condo builders must provide a warranty to buyers at the time the purchase agreement is signed against delays in occupancy

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    - Provision ensures a unit will be ready for the occupancy date agreed on by both the builder and buyer
- Builders are required to provide specific occupancy date and to state whether it is tentative or firm
    - *Tentative* – estimated date a unit is expected to be ready for occupancy
    - *Firm* – specified date a unit will be ready for occupancy and with which the builder is confident
        - If not ready , builder is required to compensate.
        - Builder must provide a date on which the purchasers termination period begins
        - 30 days written notice, if occupancy has not occurred, a buyer can apply for delayed occupancy
            - Warded for daily living expenses including food and accommodation
            - Max $7,500
    - *Outside* – latest date a builder expects to be able to provide a buyer with occupancy to the unit
        - if buyer has not been given occupancy , buyer can elect to terminate the transaction and all monies paid by the buyer are returned with interest, and entitled to delayed occupancy compensation
        - builder may extend occupancy date multiple times without paying compensation, however you must be given 90 days.

1.5 Pre-Construction and New Condominiums Documents to New Condominium Buyer

Key documentation – New Condo Buyer

Disclosure Statement

- drafted by the builder, lists the rules and financial status of the condominium
- includes information on financial aspects and rules of the corporation
- also informs the buyers about amenities, declaration, bylaws, rules, and a budget for the first year after corporation registration.

Cooling off Period

- Buyers have the right to cancel their agreement with the builder within 10 days of receiving the signed copy of the agreement or the disclosure statement, whichever is later.
- Buyers can also terminate the agreement within 10 days if there is any significant ('material') change in the information of the disclosure statement.
    - Anything significant enough to have caused a reasonable purchase to not enter into or to cancel an agreement
- In any of above cases, the builder must provide full refund of the deposit.

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- Only applies to new condominium units, not resale
- Provide written notice of the cancellation to the declarant (or lawyer)

Agreement of Purchase and Sale

- Known as the builder's agreement
- Must be in writing
  - Builders usually have their own agreement of purchase and sale, which must be in writing and must be provided to buyers immediately upon signing.
  - The agreement includes information on parking, storage, common expenses, deposit, occupancy fees, warranties, etc.
  - Salespersons should recommend their clients that they should have their lawyer review the builder's agreement and seek expert advice.
  - Normally legally building from the moment they are signed, buyers who purchase a pre-construction condo from the builder have the cooling off period to consider

Pre-construction Plans and Actual Construction:

- Buyers usually cannot view the unit before signing the agreement as only builder's plans and renderings are available.
- Some serious issues include more than one building on the site blocking the view, change in floor plans, etc. Buyers may feel disappointed when the occupancy date is close, especially when they have already sold their existing property.
- Etc. changes in building amenities or building layout. View blockage, delays etc. Unanticipated noise

Deficiencies in Common Elements:

- Certain common elements such as gym, pool, hot tub, etc. may not be complete and unavailable when the buyer takes possession.

- Buyers should be advised that the Tarion warranty can take care of such issues.
  - Owner has specified time to make repairs
  - If builder does not repair or resolve all warranted items during the initial builder repair period the corporation can request conciliation inspection by Tarion to determine whether the items are warranted
- Not part of the pre-delivery inspections so new owners may be surprised to learn of the deficiencies

Interim Occupancy:

- Some buyers may take interim occupancy, which is the time they get possession and the actual registration date of the condominium when they actually become owners. Until that time, they pay estimated municipal taxes, occupancy fees and interest on unpaid balance, a projected common expense.
- Before the corporation is registered

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- Payments are similar to paying rent – they do not go toward retiring a mortgage
- Buyers taking interim occupancy may have to live while the construction is still on and the common elements, for which they are paying, are not available yet.
- Balance of the purchase price and any adjustments must be paid to the builder before a buyer takes ownership of the unit
- At that point the mortgage is registered against the unit, the builder receives compensation, and a buyer begins making mortgage payments
- Possession marks the start of the Tarion-sponsored warranty coverage

Phased or delayed construction Deadlines

- Financial institutions will not provide a mortgage on an unregistered condominium
    - Only when the builders registers or transfers title
- May cause higher mortgage rates with the delay (make purchase more expensive than originally thought)
- Phased condo
    - Developed in stages
    - Builder can sell and build the first phase and reserve the right to build further phases at a later time
    - Provides flexibility for builders

Assignment

- Occurs when the original buyer, the assignor, sells their contract or APS for a unit to a new buyer, the assignee
- Ownership of the unit cannot pass to a buyer until the condo is registered and the title is transferred
    - Delays can impact both the assignor and assignee
- Should check over the A of P and S to confirm assignments are allowed

Risks in Assignment

- The buyer taking over the contract (assignor) may not qualify for mortgage or may not be eligible for HST rebate.
    - HST is included in the pre-construction condo purchase price
- In case the assignor is unable to close the transaction, the assignor may be subject to loss of deposit or penalties by the builder.

Taxation Implications

- Salespersons must inform the buyers about taxation issue involving new condominium units such as applicable Land Transfer Tax, HST, Capital Gains Tax, etc. (municipal land transfer tax in TORONTO)
- CRA may consider the assignment as investment if the unit is sold on profit before closing date.

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Salesperson's Role: preparing assignment agreements, which are complex legal documents

- They should have adequate knowledge of the risks and how to handle them diligently.
- Permission to assign, assignment fees, closing fees, and other costs must be reviewed with a lawyer.
- The Assignor as well as the assignee must be aware of all the extra costs involved in the assignment process.
- A clause should be inserted in the assignment agreement to ensure that the assignee and the assignee's lawyer will communicate with the builder for final closing matters.

Assignment Agreement Form

- Total assignment purchase price
- Deposit paid by assignee
- Original purchase price
- Deposit paid by assignor (builders agreement Schedule C deposits paid by assignor)
- Payments
    - Assignee pays assignor – deposits paid by assignor plus assignment agreement fee/profit
    - Assignment payment for assignment agreement – separate from deposits paid by assignor to builder
- Balance of Payment
    - Deposits by the assignor minus the deposit paid for the assignment agreement

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Module 2

2.1 Considerations When Selling a Condominium

Maintenance Fees

- Fee is proportionate to the amount of their ownership in the corporation as outlined in the declaration.

Insurance: Condominiums have two coverages

(i) property insurance for damage to units (other than caused by the unit owners),
(ii) liability insurance for lawsuits against the corporation

Equipment: for purchase and repair of lawnmowers, gardening equipment, snowblowers, etc.

Maintenance: Painting of hallways and lobby, maintenance of pool, cleaning supplies, lawns and gardening, elevator, cleaning supplies, HVAC system, etc.

Reserve Funds (future reserves) (held in trust account) for major repairs and replacement of common elements: roof, elevator, windows, underground parking, lighting, and heating systems.

Security: Security guards, parking enforcement, inspections and patrol, access control equipment, fire and life safety equipment, etc.

Personnel: To pay for the salaries of superintendent, administrator, manager, security guard, contractors, service workers, and other employees.

Management: The cost of property management, administration, collections, financial bookkeeping, enforcement of bylaws/rules, organizing meetings, etc.

Calculations of Maintenance Fees

- Defined in schedule D of the corporation's declaration
- based on proportionate share of the unit in the condominium building and can include the cost of parking and storage lockers.

Calculations for maintenance fee

Annual Budget X Percentage of Unit Title ÷ 12 = Maintenance Fee

Cost per Square Foot

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Maintenance fee ÷ Square Footage = cost per square foot

Example: A condominium corporation has set the annual budget for $5,463,000. A unit owner shares 0.072% share of the condominium.

5,463,000 x 0.0 72% ÷ 12 = $442.50

Example #2: annual budget is $2,500,000 maintenance fee for the unit is based on square footage of an individual condominium unit as percentage of total square footage for all units. A buyer purchases a condo unit that is 0.2795% of the total area of all units. The monthly maintenance fee for this buyer is calculated as follows:

$2,500,000 x 0.002795 = $6987.50 annually or 582.29 monthly

Comparing Amenities and Maintenance Fees

- provide accurate information to buyers about amenities and maintenance fees of a condominium since these are considered material facts.
- Amenities in a condominium affect the monthly maintenance fees and if two or more condominiums have agreement to share common facilities, the cost to unit owners is reduced.
- When there are several buildings in a complex, they may not have the same maintenance fees as the corporations for each building may be different.
- Salespersons should include a condition in the agreement so that the buyers may verify the amount of current maintenance fee and compare amenities verses fees in different similar condominiums.

Condition of Common Elements

- The condition of common elements should be checked to determine how well or poorly the property is managed.
- If the maintenance condition is poor, the annual budgeting may have problems, which may force the use of money from the Reserve Fund.
- Interior items include poorly maintained hallways, missing lighting, elevators, security systems, stairs, lockers, fire safety, parking, pool, etc.
- Exterior items include exterior walls, balcony and railings, landscaping, garbage and recycling, lighting, parking areas, etc.
- General maintenance costs + general repairs
- Not enough money in the reserve fund – special assessment
- If repairs are needed, condo owners must determine if they have been budgeted for or if they have to be added

Alterations to the Unit and Common Elements

Fall into two broad categories

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1. Alterations Inside Unit: Permission may be required from the corporation and the repair /renovation (hardwood floors, kitchen, washroom, etc.) may cause noise and/or damage to other units.
2. Alterations to the Exclusive Use Common Elements: Changes to exclusive use common elements cannot be done without permission from the board/management.

Agreement between the corporation and unit owner that is registered on a title can include an addition, alteration or improvement to better or enhance the value of the property

This agreement remains on title and sells the unit

Issues Related to alterations of Common Elements: Appropriate approvals may not have been obtained for changes/additions to balconies, privacy fences, decking, or flooring and may pose problems at the time of closing.

Tenant-to-Owner Occupancy Rates

- # of tenant occupied units compared to the number of owner-occupied units is key consideration for a condo buyer
- Salespersons must check the ratio of tenants vs. owners in the condominium as tenants do not have the same obligations of cleanliness, maintenance, repairs, etc. as owners.
- A high ratio of tenants vs. owners is likely to have negative impact on condition of the unit and the building.
- This may put burden on the corporation's budget and impact the overall financial condition of the corporation.
- A condominium with 25% or higher tenant-to-owner ratio should be treated as caution for the buyers as the value of the unit would be reduced.

Reserve Fund

- As per the Condominium Act, the Reserve Fund is required for major repairs and replacement of common elements and corporation assets such as roof, building exteriors, electrical, plumbing, elevators, HVAC system, recreational and parking facilities, etc.
- Contributions to the Reserve Fund come from monthly maintenance fees paid by the unit owners and these funds must be held in a trust account.
- All condo Corporations in Ontario are required to have a reserve fund
- Funds allocated in the developers first year budget and set aside as soon as the condominium corporation is registered

Reserve Fund Study: Every condominium corporation, irrespective of its number of units, is required to conduct a Reserve Fund Study **every 3 years.**

- Newly registered corporations must conduct this study within first year after registration.
- The study is done by specialized engineers or appraisers to make projections of future requirements for major
- repairs and replacement of common elements.
- No affiliation with the board or with the corporation

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- Projections of the amount of money needed for future repairs and replacements of major items

Consequences of Reserve fund inadequacy

- Implement a special assessment to meet necessary expenses
- Unit owners are required to contribute a specific sum in addition to normal monthly common expenses
- If any owner chooses not to pay the Special Assessment, the corporation can register a lien against the unit within 90 days.
- Could result in a huge increase

Third Party Review

- Status certificate is a document providing key info about condo unit as at the date that the certificate is issued
- Does not include full reserve fund study , but notice of future founding of the reserve fund
- should be reviewed by buyer's lawyer before the agreement becomes legally binding.

Status Certificate

- Info for the resale buyer and crucial to the resale condo
- Status Certificate is a statutory form that includes information about the subject unit, number of owned and leased units, the condominium management, board of directors, financial health, Reserve Fund, current legal proceedings, etc.
    - Disclosure of any legal actions taken against the condo corporation
- Typical attachments include the fiscal year's budget, the most recent audited financial statements, auditor's report, Declaration, current bylaws, rules/regulations, management agreements, current insurance policies, etc.
    - Maintenance fees for specific unit
    - Copy of current declaration, bylaws and rules
    - Listing of various current agreements
    - Certificate or memorandum of current insurance policies
- Salespersons should include the Status Certificate conditional clause in the agreement, which provides sufficient time to the buyer to obtain the documents and get lawyer's opinion.
- Required to give to each party who requests it
    - Within 10 calendar days
    - Must pay a fee no more than $100
- Can be delivered via
    - Condo management provider website
    - Directly from management
    - From the on-site management office at the building
- Must include current declaration, bylaws and rules that the condo owners and occupiers follow

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Timelines for Status Certificate:

- upon request, the condominium corporation or the management must provide the Status Certificate to a buyer or the seller with 10 calendar days, at a maximum cost of $100.
- *Certificate Not Provided:* If the corporation does not provide the certificate within this time, it is deemed to have provided and stated that –
    - No default has occurred in payment of common expenses,
    - Common expenses for the unit have not increased since the date of budget, and
    - No special levies have been assessed against the subject unit since the date of budget.

Agreement for Condominium Resale (OREA Form 101)

- Resale condominium transactions
- What is included with the property, confirm info related to parking, lockers and condo fee and what it includes
    - parking, lockers, maintenance fee, special assessments, responsibilities, restrictions within the declaration bylaws, rules, etc.
    - Before drafting the offer, salespersons should insect the unit and common elements, and make enquiries from the listing salesperson, management, or the board of directors.

Condo Resale versus Residential resale

Property

- Type of unit: apartment, suit or unit, location, legal name of condominium corporation
- Condo plan number, unit number , floor number and building number
- Parking space and locker number and their level Common Expenses
- The current monthly maintenance fee and what is included is inserted here.

Parking and lockers

- The amount of monthly fee is inserted here when parking and/or lockers are assigned and not included in the unit ownership.

Status Certificate and Management: This section provides information on current status of the condominium corporation and provides a warranty to the buyer that there are no special assessments or legal actions.

Meetings: Warranty by the seller that no special meeting has been called for termination, changes, or alterations.

Approval: Informs the buyer if the agreement requires approval of the corporation or its board of directors.

Common clauses

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- satisfactory review of status certificate and all related condo documents, satisfaction property inspection, satisfactory financing, satisfactory insurance edibility of the property

Mortgage Financing

Mortgage financing for a condominium unit is impacted by inadequate Reserve Fund, special assessments, tenant-to- owner ratio, and GDS ratio of the buyer.

Special Assessments: Special assessments or levies on the unit may increase buyer's liability.

Tenant-to-Owner Ratio: Lenders prefer owner occupied properties and a high ratio of tenants in the condominium building may make it difficult for the buyer to obtain financing.

Gross Debt Service (GDS) Ratio: The GDS Ratio for a condominium includes 50% of annual maintenance fee. G D S Ratio = (Annual PI + Taxes + 50% Condo Fee) ÷ Annual Gross Income

Example: A buyer has annual gross income of $68,000 and is planning to buy a 3-bedroom condominium unit for $285,000. The buyer will be making 30% down payment for the purchase and arranging a mortgage loan for the balance. Currently, mortgage is available at an interest rate of 4.25% per annum, amortized over a period of 25 years. The monthly payment factor for this mortgage is 4.3 6602 per thousand dollars of the loan. If the monthly maintenance fee for the unit is $550, annual property tax is $3,800, what is buyer's GDS ratio?

Amount of Mortgage Loan = 285,000 x 70% = $199,500

Monthly Mortgage Payment = 199,500 x 4.3 6602 ÷ 1,000 = $877.12 Annual Mortgage Payment = 877.12 x 12 = $10,525.44

Annual Property Tax = $3,800

Maintenance Fee (50% of Annual) = 550 x 12 ÷ 2 = $3,300

GDS Ratio = (10,525.44 + 3,800 + 3,300) ÷ 68,000 x 100 = 25. 2%

2.2 Inspecting the Unit and Common Elements

Conducting the Inspections

Getting Access: For conducting inspections, the salesperson may obtain permission from the management to gain access to common elements of the building and facilities, which may otherwise be locked or have restricted access.

Internal and External Environment: During a scheduled walk-through, questions may be asked about accessible spaces, their size, unit and its ID number, lighting, evidence of water leaks (if any), mould, clear access to parking and lockers, etc.

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Interiors of the Complex: Cleanliness, lighting and repair condition of lobby and corridors, functioning of elevators, security systems, stairwells, and their handrails, working of recreational facilities, safety and accessibility, fire safety systems, and general deterioration.

Exteriors of the Complex: Questions may be asked from property management regarding maintenance, garbage, recycling, snow removal in winters, lawn mowing in summers, deferred maintenance (if any), general condition of exterior walls or sidewalks, drains and catch basins, age of the building, lighting on pathways and parking lot, garage doors and their security.

Changes in the Neighbourhood: Condominium's value is impacted by new or planned development in the neighbourhood, closeness to railways or other sources of noise,

vacant land for commercial development, transit facilities in the area, etc.

Changes to Units: Any changes to units may require written approvals from the management/board and the unit may look different than other similar unit.

- Some examples of changes to common elements include decks in townhouses, addition of storm door, covering the balcony with tiles, installing a jacuzzi on the rear deck, installing a satellite dish, etc. Salespersons should use due diligence regarding any changes to the standard unit, obtain documentation from the seller, and make appropriate disclosures in the listing.
- In the absence of these disclosures, the buyer may face upfront costs of removing the seller's changes to bring back the unit in original condition.

Documenting disclosures made by the seller

- Any improvements or renovations the seller has made and whether the required approvals were obtained
- If alterations to the unit were not approved, the new owner may have to revert the unit back and absorb the costs with damage that may occurred

Calculating the Area of Unit

- Interior measurements of the unit are more important than exterior in a condominium unit.
- Typical high-rise measurement criteria for actual usable floor space
    - Vertical (walls): Inner-most unfinished surface of the exterior wall or shared wall
    - Upper boundary: lowest unfinished surface of the (ceiling) upper slab
    - Lower boundary: highest unfinished surface of the (floor) lower slab
    - Windows/doors: inner unfinished surface of window frames and exterior doors
    - Excluded areas: Unfinished inner surface of any excluded walls or columns within the unit

Unit Square Footage Versus Total Living Area

- The actual 'square footage' of the unit may be different from the 'total living area', which may include exclusive use common elements.
- Total square footage = measurement inside the unit

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- Any other area is a common element which is not to be included in the total square footage
- There are common elements that are used only by the owner of the unit and are exclusive use common elements
    - Balconies, decks parking spaces and lockers
- May not be included on unit listing depending on rules and regulations
    - Can obtain from any original layout plans or documents available from the well or from a web-based centralized property information source
    - These measurements may be verified from the layout plans and only actual square footage should be quoted in the listing (and not the total living area).

Listing a Condominium for Sale Gathering Information for Listing

- Salespersons should obtain information on maintenance fees, use restrictions, repairs and upgrades by the unit owner, and parking and lockers in order to provide a complete picture of costs to prospective buyers.
- Condominium corporation, rather than the declarant, often modifies the rules because the process of changing the declaration is more difficult.
- Examples of Use Restrictions:
    - Only white draperies on exterior windows. No placement of temporary structures. -No artificial vegetation, sculptures, birdbaths, or fountains.
    - No floor mats outside the unit due to trip hazard. No outside storage of garbage bins or trash bins
    - No alterations to the unit, common elements, or exclusive use common without written consent of the corporation.
    - No exterior paints, no awnings, or canopies in a townhouse.
    - No signs permitted on the property.
    - No pets on the property or limits on number of pets.
    - Parking restricted to private vehicles only (no commercial vehicles).
    - No smoking or vaping anywhere in the common areas.

Key information to Gather about the Condominium Corporation

- The name of the management provider, Condition of the common elements, Monthly maintenance fees and what is included, whether parking/lockers are assigned or owned, Number of units in the building, Number of rented units, and Whether short- term rentals are permitted or not.
- Money held in reserve funds
- Amenities or facilities available
- Number of units the building, view, and floor number
- Whether there are shared facilities

Conditions that Impact Value

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- Development of a new high-rise condominium building may block the view of the subject unit or building.
- Inadequate Reserve Fund may increase the cost of ownership for the buyer due to Special Assessments.
- Deteriorating condition, outdated systems, or deferred maintenance of common elements may require significant renovations.
- Alterations made to units or exclusive use common elements without written approval may prove expensive to the buyer as the buyer may have to restore the original condition.
- Lack or unavailability of parking space or storage lockers, or lack of visitor parking.
- Lack of vehicle charging stations in the building, especially if the buyer owns an electric vehicle.

Factors that Affect Value Situations That Need an Appraiser

- In addition to the condition of the subject unit and common elements, condominium appraisals consider the competency of the corporation, its directors, and the Reserve Fund.
- Mortgage financing, major renovations, etc. may call for professional appraisal of the condominium.
- However, salespersons may use a CMA report to establish a reasonable listing price.
- Salespersons may refer their buyer to 2 or 3 reputed appraisers and be present when the appraiser is at the property.

Factors That Affect Value

External Environment: New developments in the area, proximity to sources of pollution and/or noise, transit projects, and road upgrades near the building.

Management: Quality and effectiveness of the management must be assessed, especially when it is by an external licensed management company.

- Poor management results in negative impact on value. Physical inspection of the complex, review of minutes of meetings, financial statements, and talking to owners are some of the methods.

Maintenance Fees: If the building has high maintenance fees as compared to similar buildings in the area, it will have a negative impact on value and vice-versa.

- It is important to know the amenities in the building, the amount of maintenance fee, and what is included.

Special Assessments: Special assessments that increase the monthly fees for a unit owner have negative impact on value.

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- Factors that may call for special assessment include poor handling of finances, deferred maintenance, emergency structural, electrical, or mechanical repairs, or a municipal bylaw that requires major expenses from the Reserve Fund.
- Some buyers may put off buying a unit in building or may demand heavy discounts from the seller.

Additional Information: Can be obtained from the management, board of directors, condominium declaration. Other sources of information include the Reserve Fund Study, audited financial statements, annual general meetings (AGM),

Status Certificate, Condominium Authority of Ontario (CAO), Municipal Property Assessment Corporation (MPAC), and GeoWarehouse®.

Comparative and Competitive Pricing

Comparative Market Analysis (CMA)

- The general format of a CMA is based on the Direct Comparison Approach of appraisal, which provides an attractive listing price for the seller.
- CMA helps the salesperson and the seller assess how the unit compares with similar units that are on sale, sold, expired, or removed from the market.
- Listing price, not market value, is being determined based on
    - Unique considerations when conducting a CMA for a condo using the direct comparison
    - Information and documentation that can impact value
    - Where and who to access necessary data and documentation for a comparative market analysis

Preparing Supporting Information Sellers should be informed about

- Comparables including their square footage, maintenance fees, amenities, parking/lockers, level of maintenance, etc.
- Major market trends in the immediate neighborhood and community.
- Historical information on past trends involving sold properties and their sale to listing price ratio.
- Evaluation of strengths and/or weaknesses of the seller's unit verses the comparables.

Overpricing: Sellers should be cautioned not to overprice their unit because –

- Motivated buyers and/or their salespersons may not be attracted,
- The unit may remain on the market for a long time, the unit may appear in wrong price category, and the unit may just become a 'comparison property'.

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Salesperson's Obligations Due Diligence

Parking and Storage Lockers: The information on parking spots and their location is considered material facts and must be verified.

Special Assessments: Information on any current or pending decisions to implement Special Assessments must be obtained and verified as this is a material fact and must be disclosed to potential buyers.

- If the seller has decided not to pay maintenance fee or Special Assessment, the corporation has the right to register a lien against the unit within 90days.

Third-Party Professionals obtaining legal advice, getting mortgage financing, appraisals, or insurance, the seller should be referred to third-party professionals in the respective field.

Newer and New Condominiums: the impact of a delay in obtaining a property assessment and municipal tax bill

- If the seller's condominium is relatively new or the seller has 'interim occupancy' of the unit, the municipality may not have done the tax assessment yet.
- During this period, the unit owners pay an estimated property tax and this information must be disclosed to potential buyers.
  - Required until the building is registered

Disclosure Requirements

- TRESA Code of Ethics requires that salespersons to disclose material facts (known or ought to be known) related to the condominium to potential buyers.
- Latent defects, which are not readily visible upon reasonable inspection such as hidden flaws, weaknesses, or imperfections must be identified and disclosed to buyers.
- Salespersons can ask a number of relevant questions to the seller to know if there are any latent defects in the unit.
- Failure to disclose all material facts may result in fines and/or legal actions against the seller, the salesperson, and the brokerage.

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Module 3 - Condominium Agreement Of Purchase And Sale

3.1 Agreement for a New Condominium New and Pre-Construction Condominiums

Builders Agreements

- There is no standard agreement form for new and pre- construction projects as different builders may have their own different agreements.
- Prepared by the builder's lawyer to serve the builders best interest Salesperson Obligations
- Salespersons must be aware that new condominium buyers have a 10-day 'cooling off period' to cancel the agreement with a builder.
- This time period starts after signing the agreement with the builder, or receiving the disclosure statement, whichever is later.
- This lengthy agreement containing the terms of sale is prepared by builder's lawyer, and buyers should be advised to have it reviewed by their own lawyer before signing.
- Buyers have the option to amend, delete, or add clauses, especially those related to assignment, altering deposit schedule, adding financing condition, lawyer's approval, or any changes to builder's floor plans.

Builder's Disclosure Statement,

- Under the Condominium Act, the builder must provide a disclosure statement to every buyer of a new or pre- construction condominium.
- If there are any significant changes ('material changes') to the statement, a revised statement must be provided to the buyer, which gives them another 10-days cooling-off period to cancel the agreement.
- Certain changes, such as less than 10% increase in common expenses, need not be disclosed again by the builder
- May receive a refund of deposit plus interest Declaration
- Contains information required by the *Condominium Act*
    - Street & mailing address
    - Boundaries of each unit
    - Amount each unit will pay for common expenses
    - Type of condominium: Freehold (standard, common elements, vacant land etc.)
    - Parts of the building that are exclusive use common elements (balconies)
    - Repair and maintenance obligations
    - Insurance requirements

Description:

- A visual description of the property including plans and surveys

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    - Survey indicating property boundaries
  - Description of elements and assets included in the property
  - Diagrams showing the shape and dimensions of each unit
  - Description of what is included as part of each unit

Bylaws and Rules:

- Bylaws are related to internal operations of the condominium
  - election of directors
  - assessing and collection of common expenses
  - when and how the condo borrows money borrowing money, maintenance, etc.
  - how common elements and units are maintained
- Rules are related to safety, security, and welfare.
  - Visitor uses of common elements
  - Rental of units as short-term accommodations
  - Number and size of pets allowed

Budget:

- Projected budget for the first year
- monthly common expenses
- contribution to Reserve Fund
- circumstances under which common expenses may increase after the first year.

Features:

- Description of flooring, bathroom fixtures, finishes
- construction schedule of amenities, conditions on use, and amenities that will be available during the interim occupancy.

Occupancy Dates: A list of 'firms', 'delayed', and 'outside firm' dates of occupancy.

Management & Contracts:

- type of condo management self-managed or by an outside contracted management company)
- any committed contracts entered by the builder on behalf of the corporation, including service contracts.

Occupancy Fees: Fees paid during the interim occupancy before the transfer of title to the buyer.

- Monthly occupancy fee cannot exceed the total of the following amounts
  - Interest calculated on a monthly basis on the unpaid balance of the purchase price at the prescribed rate
  - An amount reasonably estimated on a monthly basis for municipal taxes attributable to the unit

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- The projected monthly common expenses

Cancelled or Delayed Occupancy

- Builders may delay the projects or even cancel them if they are not able to pre-sell certain percentage of units (60% to 70%), their failure to get financing, or if there building plans are not approved.
- Buyers may refer to the Ontario Builder Directory on Tarion website and should review the agreement terms to fully understand the delay or cancellation options.
- The occupancy date may be extended multiple times by a builder and this may create problems for the buyers who need to sell their existing home to move into a new condominium.
- As discussed in Module 2, Tarion requires builders to attach a delayed occupancy date schedule with the agreement which specifies the Occupancy Date, Firm Occupancy Date, and the Outside Occupancy Date.

Buyers Options if Construction is Delayed

- If there are delays such as beyond the Firm Occupancy Date, the buyers have the right to be compensated $150 per day, up to a maximum of $7,500.
- Beyond the Outside Occupancy Date, the buyers have the right to terminate the agreement within 30 days and get full refund of the deposit.

Occupancy Date → anticipated date a buyer will be able to move in to a unit. Builder can set one or more dates

Firm Occupancy Date → If the occupancy date cannot be met, a builder (with 90 days' notice) can extend the occupancy date up to 120 days by setting a firm occupancy date

Outside Occupancy Date → latest date a builder agrees to provide occupancy, if completion of the unit is delayed beyond this date , a buyer has a right to terminate the purchase agreement

Additional Information in a builder's agreement

- Likely will include an acknowledgement of adjacent property clause advising the buyers that future development may occur on lands adjacent to the proposed condominium development
- Land "may be subject to redevelopment in the future"
- Might also include an access to development site clause limiting a buyer's access to the condominium development site (safety reasons)

Deposits

- Pre-construction condominium deposits are usually larger than resale condominiums.
- The builder may ask for additional funds for buyer's selected upgrades and these funds are not treated as deposits.

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- The deposit paid by buyers is protected and must be placed in a trust account
- Ontario New Home Warranties Plan - Tarion warranty protects buyer's deposit up to a maximum of $20,000 in case the project is never completed due to builder's bankruptcy or inability to return the deposit.
    - Begins before the buyer moves in
    - Deposits exceeding that are protected under the *condominium Act*
- In addition, compensation of up to $7,500 for a delay in closing if proper notice is not given may be entitled
- All monies received must be made payable to the escrow agent (usually the builder's lawyer) in trust and must be set out in the agreement of purchase and sale
- Must receive all deposits within 15 days
- A deposit trust agreement (DTA) between the builder, the escrow agent, and Tarion sets out how buyers deposits will be held in trust
- Must be in place before the taking of deposits and or signing of APS

HST Rebate:

- If the unit is to be used as a principal residence, the buyers may get up to $30,000 rebate on Harmonized Sales Tax (HST) on a pre-construction condo
- In order to claim it, buyer must sign a statement under oath stating that they or a family member will be occupying the property
- Based on fair market value of the property at completion (not occupancy) when ownership is transferred from the builder to the new owner
- Result usually smaller rebate for investment property
- Must be leased for a min of one year from the occupancy date, and if the property is sold before that date, the owner must refund the HST rebate in full
- Builders agreement should be specific about the terms of the HST rebate
- most build it into their sales prices, as a result a buyer would not be eligible for the rebate

Additional Clauses in a Builder's Agreement

Warranty Program

- builder's agreement usually includes a statement indicating warranty
- Tarion – one year, two year and seven-year warranties Cooling off Period
- Buyer can cancel a new condo purchased directly from builder for any reason within 10 days of signing the builder's agreement or receiving a disclosure statement, whichever comes later

Interim Occupancy

- This clause specifies the amounts for intertest on unpaid purchase price, estimated maintenance fees, and estimated municipal taxes during the interim occupancy.

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- These fees are payable even if the buyer has taken interim occupancy but not moved into the unit.

Prohibition of Assignment: Some builders may include this clause to prohibit sale of a pre-construction unit without builder's consent (known as assignment of the agreement).

- The buyer's salesperson may amend this clause to request an 'assignment privilege' from the builder.

Additional Clauses

Term Clause: This clause in the builder's agreement relates to terms of the agreement such as Interim Occupancy Date. Finishes and Features Clause: This clause is related to finishes such as flooring, countertops, ceiling height, appliances, etc.

Interim Occupancy: This clause provides details of occupancy to the buyer even before the completion of common elements.

Builder's Right of Entry: The builder retains the right to enter the unit during interim occupancy for the purpose of completing the construction work.

Salesperson's Obligations

- Builders' agreements are typically written to protect the builder.
- Their on-site salespersons may not even be registrants and not subject to TRESA Code of Ethics.
- Builders' agreements may contain conditions of different types such as Condition Precedent, Condition Subsequent, and True Condition Precedent

Condition Precedent

- If a condition is not fulfilled, waived or deleted no binding contract has been formed
- Delivery of notice of fulfillment or waiver
- True condition precedent
    - Means that a condition must be fulfilled as written and cannot be waived

Condition Subsequent

- Assumes there is a binding contract, unless a specific event occurs

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3.2 Agreement for a Resale Condominium

Overview: what is unique in the Standard Condo Agreement of Purchase and Sale

Property Description:

- Name of the condominium property
- Legal name of the condominium corporation
- Unit number and level number, building number, parking and locker levels

Parking and Lockers: added expense for parking or lockers, it is noted

- If the parking or lockers are owned, a there is a separate title/deed for each, and they can be sold separately.
- Exclusive Use Common Elements cannot be sold separately from the unit.
- If assigned, or differ from those indicated earlier, the location and additional costs if any are indicated
    - Assigned parking spaces may not be owned by the unit owner

Common Expenses: The current monthly maintenance fee, which the salesperson must verify from the Status Certificate.

- The clause identifies what is included in the common expenses, such as heat, electricity, hot water, air conditioning, insurance, etc. for common elements.

Agreement confirms

- No assessments anticipated by the condo corporation
- No egal actions pending by or against the condo corporation
- Seller gives consent to buyer to obtain a status certificate from the condominium corporation
- Buyer acknowledges the condo corporation may have entered into management

Meetings: Warranty by the seller that no special meeting has been called concerning

- termination of the condominium,
- substantial changes to condominium common elements,
- substantial changes to corporation's assets and liabilities.
- The seller must provide a notice to the buyer if any such meeting is called before closing date, in which case the buyer has the right to terminate the agreement.

Approval: Informs the buyer if the agreement requires approval of the corporation or its board of directors.

- In case the seller is unable to obtain consent for the sale, the agreement of purchase and sale becomes null and void and the deposit is returned to the buyer in full.

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- Difference between the sale of a standard condominium and a freehold property, where there is no third-party consent required

Title Search: The buyer's lawyer conducts the title search before the Requisition Date to identify any liens, work orders, or deficiency notices that may affect the transaction.

- Salespersons must ensure that an appropriate date is selected, and the Present Use is inserted correctly.
- In case the buyer's lawyer finds out that the present use cannot be legally continued, or the building cannot be insured against risk of fire, the buyer has the option to terminate the agreement.

Title: The buyer agrees to accept the title with limitations such as registered easements and minor easements for utilities (telephone, water, sewers, electricity, gas, cable, etc.).

- Registered restrictions, conditions, or covenants that run with land and complied with by the owner are also accepted by the buyer.
- The buyer accepts the Condominium Act and regulations, condominium declaration, bylaws, rules, and other terms of contracts with utility and service companies.
- All municipal agreements, zoning bylaws
- Utilities and service contracts agreed to by the Condominium board

Status Certificate and Management

- Contains details regarding the resale condo unit and the condo corporation in which it is located
- Corporations declaration, rules, and regulations are part of the status certificate
- Buyers lawyer must review Status certificate

Documents and Discharge: The seller agrees to provide condominium documents to the buyer and provides directions to their lawyer to discharge the mortgage from the funds received from the buyer.

- Private mortgages must be discharged on or before closing. For institutional mortgages, the seller's lawyer can provide an undertaking to discharge after closing.
- If mortgage is held by an institution incorporated under *trust and loan companies Act* and discharge is not available on closing, the lawyer can undertake to have it discharged after closing

Insurance: The seller is responsible to insure the unit until the date of closing.

- If there is any significant damage before closing, the buyer may either terminate the agreement or take proceeds from seller's insurance to pay for repair costs.

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Adjustments: The seller and the buyer agree that the purchase price is adjusted to pay for pre-paid and unpaid items such as property taxes, condominium fees, and utilities.

- The Statement of Adjustments provided by lawyers provides the details of these adjustments.
- Prepared by the seller's lawyer
- No adjustments for the seller's share of any assets of the condominium corporation

Acknowledgement

- Sign and acknowledge the receipt of their copies on the signature page
- If property is not self-managed, the contact details for the property manager are provided in the lower part of this section

Schedules

- Detail the conditions to the offer, how the buyer to pay the balance due at completion, and any other terms
- Includes the detailed specifications of the unit being purchased and confirmation of membership to Tarion warranty
- Normally includes condo rules as adopted by the corporation

Additional Clauses in the Schedule

Warranty on Renovations or Alterations: Confirmation from the seller that any renovations or alterations in the subject unit were done after required written approval from the condominium board.

Receipt of Documents: The buyer may be required to acknowledge receipt of condominium documents such as the Status Certificate.

Condominium Rules: Certain clauses are added to ensure that the buyer, buyer's family, guests, or tenants will abide by the condominium declaration, bylaws, rules, and regulations.

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3.3 Preparing the Offer for Resale Condominium the Offer Plan

Complete an Agreement of Purchase and Sale

Completing an Offer Plan

The offer plan for a condominium resale includes the legal names of the sellers and the buyers, property address, property description, and other information.

1. Summarize the offer mathematics
2. Identify the required dates
3. List the required information to be included on a schedule
4. Identify any additional information required for the offer

- The information obtained from the listing service for the offer plan must be verified by salespersons to avoid errors. Offer mathematics, required dates, and clauses in the schedule are identified.
- Chattels included and fixtures excluded should be identified along with required dates such as the requisition Date and the completion date.
- GeoWarehouse® and the local municipal property records may be used to confirm seller's legal names, legal description of the property, and amount of property tax. Legal name of the condominium corporation, condominium plan number, unit, level, and building number, amount of common expenses and what services are included, locations and legal identities of owned and exclusive use parking/lockers, etc. must be included in the offer.

Pre-printed Clauses

Most pre-printed clauses in the Agreement of Purchase and Sale for a Freehold Condominium Resale (OREA Form 101) are similar to those in Agreement of Purchase and Sale for Freehold Resale (OREA Form 100).

- Title: buyer is entitled to a title without liens or encumbrances other than stated in the agreement, the seller will provide the buyer with details of any mortgages that will need to be discharged upon clothing
- Inspection: the buyer acknowledges the opportunity to view the property and has declined to have a professional home inspection
- Insurance the seller must maintain the property and fire insurance on the unit until completion
- Document Preparation: the seller is responsible at their own expense for transferring the deed and arranging for any discharge of mortgages required
- Residency this clause addresses the tax implications if the seller is a non-resident of Canada
- Adjustments certain charges, such as taxes or utilities will be adjusted as of the completion date, and from the completion date forward, the buyer will assume responsibility for taxes and utilities

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- Property assessment: the property may be re assessed on an annual basis by the province, and the salesperson or brokerages will not be held responsible
- Time limits: any changes to time in the agreement of purchase and sale by the buyer, the seller or their respective lawyers, must be agreed to in writing by both parties
- Tender: On the day of completion the buyer will deliver to the seller any monies owed and the seller will provide any outstanding documents to the buyer
- Family law act declares no spousal consent is required
- Urea Formaldehyde Foam insulation the seller warrants that the seller and the past owners have not installed urea formaldehyde foam insulation in the unit, and are not aware of its use in other parts of the building
- Legal accounting and environmental advice : any information provided by the brokerage is not expert advice in tax, legal or accounting issues
- Consumer Reports a personal or credit check may be performed on the buyer
- Agreement in writing if there is any discrepancy between the pre-written portion of the agreement of purchase and sale and any added conditions, the added conditions will replace the pre-written portions

Time and Date: any time and date stated on this agreement of purchase and sale are based on time where the property is located Successors and Assigns the sellers and buyers with a witness sign and confirm that, in the event one parties dies, their heirs or executors will be bound by the agreement

- Status certificate and management of condo clause → the seller assures the buyer that there are no assessments anticipated by the condominium corporation, and no legal actions pending or against he corporation
- The seller must give consent to the buyer to obtain a status certificate from the condo corporation

Offer Conditions

- Who is to do it
- Who is to pay for it
- What is to be done
- Within what time limit
- What happens if the conditions are not fulfilled
- Can the conditions be waived?

Counter offer

- Must initial all changes they make to the offer, and add initials at bottom of every page of agreement of purchase and sale
- Status Certificate Condition: This condition is written in the Condition Precedent format and allows the buyers to fulfill or waive the condition.
- The clause wording is as follows:

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This offer is conditional upon the Buyer and Buyer's lawyer reviewing the Status Certificate and Attachments satisfactory in the Buyer's and Buyer's Lawyer's sole and absolute discretion. The Seller/Buyer agrees to request, at Seller's/Buyer's own expense, the Status Certificate and attachments within days after acceptance of this offer. Unless the Buyer gives notice in writing, delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in the Agreement of Purchase and Sale or any Schedule thereto not later than_____p.m.. on the day (excluding Saturdays, Sundays, and Statutory Holidays) following receipt by the Buyer of the Status Certificate and Attachments, that this condition is fulfilled, this offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

3.4 Types of Condominium POTL and Common Elements

Most pre-printed information and clauses are similar to those in the Agreement of Purchase and Sale for freehold resale condominium, except for a few unique clauses.

Description: Separate descriptions are given for the real property (Parcel of Tied Land) and the common elements.

- The description of the freehold property (POTL) includes information such as the fronting on road and approximate frontage and depth. Unlike a standard condominium, the property tax bills and other utility bills for the freehold portion of the property are separate.
- The legal name of the corporation and plan number are inserted the description for common elements with the wording" shall be deemed to include a common interest in:" and then lists the corporations legal name and plan number

Difference Between POTL (Parcel of Tied Land) Across Condominium Types

POTL (Parcel of Tied Land) refers to a freehold parcel of land that is legally tied to an interest in a condominium corporation.

The owner of the POTL cannot sell or transfer the freehold parcel without also transferring the associated condominium unit or common interest - they are inseparable by law.

1. Standard Common Element Condominium

- The most common use of a POTL.
- Owners have:

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- Exclusive ownership of their condo unit (structure or dwelling) and shared ownership of the common elements
- The POTL portion is legally tied to the condo unit (both are transferred together under one title
- Each owner holds freehold title to their lot or unit (e.g., townhouse or detached home) plus a shared ownership interest in common elements (roads, driveways, parkettes, etc.) through the condominium corporation.
- The individual lot is the Parcel of Tied Land, legally tied to the common elements condominium.
- Example: A townhouse owner owns the home and lot (freehold) but pays common expenses for shared snow removal and road maintenance.

2. Common Elements Condominium Corporation (CEC)
   - No traditional condominium units – only common elements
   - Each owner owns a freehold property (the POTL) outside the condo plan, and this parcel is tied to a share of ownership in the common elements.
   - Each unit is part of the condominium itself - ownership includes the unit and a proportionate share of common elements (e.g., hallways, elevators).
   - There is no separate freehold parcel; title and common interest are part of the same condominium plan.

3. Vacant Land Condominium Corporation
   - The POTL concept is similar but structured differently.
   - Owners purchase vacant land units (not yet built structures) - the building they construct becomes part of their unit.
   - The condominium corporation still manages common elements (private roads, amenities).
   - Each lot is effectively a unit, not a POTL, since the ownership is within the condominium structure itself.
4. Leasehold Condominium Corporation
   - POTL does not apply because ownership is lease based, not freehold.
   - The land is leased from a landowner (e.g., government or institution) for a fixed term (often 40–99 years).
   - Owners hold leasehold interests in the units rather than owning land that could be tied to a POTL.

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5. Adjustments

    - Same as single family home
    - Condo fees for the common elements portion are adjusted on completion

6. Common elements Details

    - Records condo name, number, and location similarly as standard condominium
    - Exceptions are
        - No record of the parking and lock spaces, which are no applicable to a common element property
        - And the condo fees apply only to the common elements portion
    - The significant differences in the two types of agreements of purchase and sale are the wording for the shared elements
    - Rather than owning a share of the common elements portion of a standard condo the agreement of purchase and sale reads
        - "the property shall be deemed to include a common interest in the condo corporation
        - The parcel of tied land and the common elements are inseparable

Additional Clauses

- Inspection can be conducted on the parcel of tied land or real property portion
    - buyer may arrange for the inspection of the common elements portion, but the cost is likely prohibitive
- Condominium documents declaration, description, rules and regulations pertain only to the common elements option of the corporation
- Status certificate copy of the status certificate may be requested for review, but it only applies to the common elements, not the parcel of tied land portion
- Title search should be done for both the parcel of tied land and common elements portion

Salesperson for buyer, you complete the offer by adding information specific to the common elements portion of the property in the section referring to the common element's condo of the agreement

3.5 Complete an Agreement of Purchase and Sale Common Elements Condominium

Completing an offer plan for Common Elements Condominium

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3.6 Complete Additional Sale -related Documents for a Condominium Amendment to Agreement of Purchase and Sale

- This form is used to make changes to an accepted Agreement of Purchase and Sale (legally binding contract).
- The form must be signed by all parties to the original agreement to indicate that the changes are mutually acceptable.
- When one of the parties (e.g. the buyers) initiates the amendment, the other party is not obliged to accept the changes, and in this case, the terms of original agreement remains enforceable.
- Changes are inserted or deleted in this form, it contains sections such as an irrevocable date and time, signatures of parties, confirmation of acceptance, and acknowledgement.

Notice of Fulfillment of Conditions

- This form is typically used by the buyer to notify the seller that conditions in the agreement such as mortgage financing, property inspection, etc. have been fulfilled.
- The notice must be sent to the seller before the time period stated in the condition
- The seller or seller's brokerage may acknowledge receipt of this form, which makes the agreement a legally binding contract.

Waiver

- when one party meets a condition, they issue a notice of fulfillment to advise the other party
- waiver is an intentional relinquishment of some right or interest
- used when a decision can be made by the buyer themselves
    - ex condition on financing on terms and conditions satisfactory to the buyer in their sole and absolute discretion, and if the buyer is satisfied the buyer can wave the condition
    - The condition, which is being waived must have a waiver provision, and as such, this form can be used only to waive a Condition Precedent.
    - This form cannot be used for a True Condition Precedent or for a Condition Subsequent.
    - The waiver must be sent to the seller before the time period stated in the condition.
    - The buyer must be advised about the risks of waiving a condition and should obtain independent legal advice.
    - The seller or seller's brokerage may acknowledge receipt of the waiver, which makes the agreement a legally binding contract.

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3.7 Understanding the Agreements Legally Binding Contract

Title Search Clause

- Usually performed by the buyer's lawyer
- Ensure there are no encumbrances on the property and confirm the property's use is in compliance with the *planning Act*
- For example
    - If the buyer plans to rely on continuing to rent a basement apartment after taking possession, it must be confirmed as legal use
- *Non-title searches* refer to locating any work orders or deficiency notices filed against the property by the municipality
    - Should be settled in negotiation with the seller, to ensure the buyer receives a property that is safe and free of encumbrances
- Provides requisition date (deadline by which the buyers lawyer must submit a list of items to be corrected by the seller's lawyer prior to closing)
    - Should be at least two weeks prior to closing

Title Clause

- Buyer has right to clear and marketable title, but they must also accept any existing easements on property
- Seller has obligation to inform the buyer of all major easements that affect property
- Minor easements are covered in the title clause, but major easements are not, as must be separately acknowledge by the buyer
- Buyer must also accept any restrictive covenants placed on title
    - Restricts property owner on what they can do on their property
        - Ex no clothesline in a subdivision

Documents and Discharge Clause

- Sellers obligation to provide any documents related to the property, such as surveys or deeds which are in the seller's possession
- Seller not obligated to provide documents not in their possession unless specifically included in clause asking for them
- Discharge portion of the clause assures the buyer that any mortgage on title that is not being assumed by them will be discharged on or before closing

Challenging Clauses in a resale or common elements condominium agreement

Common Elements Clause: The buyer must understand that they are buying a common interest in common elements, and they are obliged to pay their common expenses.

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- In a common element condominium, the buyer is buying the property, a parcel of tied land, and shared interest in common elements.

Legal Description: In a condominium, the buyer buys the unit and shared interest in common elements.

- In a common element condominium, the real property is a parcel of tied land (POTL) and shared interest in common elements.
- Must be able to explain the description terms specific to a common element's property such as "front on the", side of or "having frontage of… by depth of"

Status Certificate and Management of condominium clause

- Salespersons may not have access to the Status Certificate yet, but they can explain the clients what the clause means for their client in terms of financial health of the condominium or the use restrictions.

Additional Content: Clauses related to Balance Due on Closing and inserted conditions should be explained to the clients. Challenging Clauses in Condominium Resale

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Module 4 - New Construction

4.1 Buying a Property and Hiring a Builder

Vacant Lot in Urban Area

- Vacant urban lot is located within an area of the municipality where full municipal services are available
- When development occurs in a build-up neighborhood, referred to as infill development

Zoning: Salespersons must confirm that the current zoning permits development of the site for buyer's intended purpose.

- Zoning is site-specific and addresses maximum lot coverage, setbacks, and minimum/maximum area (square footage) of the house.

Additional Restrictions: Developer's deed restrictions as well as requirement of design conformity with surrounding properties may impact new construction.

Restrictive Covenants: Buyers must conduct a title search to ensure suitability of the property for their intended use.

- Restrictive covenants 'run with land', meaning that they are transferred to subsequent owners and can affect marketability and value of a property.
- Examples
  - Use of any building as a single-family home
  - Not permitting trading or business activity
  - Not permitted property to be lease

Easement: An easement on the subject property may impact the location and site of the building.

- No development can impede the easement area, especially if it is for municipal services.

Survey: An up-to-date survey should be checked to verify property boundaries, any easements, and setback compliance with zoning.

Infill Redevelopment

- Infill properties usually have larger lots, located on serviced lands, and can be redeveloped to increase housing
- Infill is also known as 'urban intensification', which is intended to provide additional housing stock on serviced land rather than using vacant land.

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Zoning: The property zoning must permit increase in number of dwelling units, otherwise the buyer will have to apply for rezoning.

Severance: If the property has large frontage, the zoning may allow for consent to sever it into two lots.

Impact on Neighbourhood: Redevelopment in an area impacts existing properties due to intensification, increase in traffic, and higher demand of municipal services and healthcare facilities.

Site Plan Control Agreement: This agreement with municipality may be required at the time of building permit application if the property falls within a Site Plan Control Area.

- Additional inspections related to grading, sodding, and landscaping may be required.

Third-Party Professionals: The services of an architect, surveyor, land development lawyer, planner, environmental, or heritage consultant may be required.

Urban Lot with Structure

- A buyer may want to purchase an older residential property, demolish it, and build a new home.

Permits: In addition to the building permit, a demolition permit is required to ensure proper disposal of waste material and there are additional inspections by the Ministry of Environment, Conservation and Parks.

Design: In order to maintain visual aesthetics of the surrounding properties, the new structure must be designed to conform to standards in the area.

- Depending on the municipal bylaws that restrict or prohibit cutting of tress which could add costs

Zoning: The new development must conform to existing zoning bylaws, especially in terms of setbacks and maximum house size.

Recycling and Reusing: Materials from the older building may be recycled and reused for environmental concerns and financial aspects of the project.

Vacant Rural Lot

Lots outside municipal urban areas may not have services available and the buyer must use due diligence.

Services Available: Property owners usually have to install their own private water wells and septic systems.

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- The buyer must investigate availability of services such as hydro, telephone, garbage collection, fire protection, school buses, and natural gas for heating.

Surrounding Areas: There may be minimum separation requirement between agricultural use and residential use as farming operations may produce dust, noise, odour, flies, and disturbance from farm machinery.

Access: The access to the subject lot may be by a gravel road instead of a paved road and it may/may not be serviced year-around.

Other Regulations: The Ministry of Environment, Conservation and Parks as well as Ministry of Natural Resources and Forestry may impact building a house in rural areas.

- The buyer may have to obtain a permit from the local Conservation Authority for building a structure on environmentally protected land.

Rural Lot with Structure

- A buyer may select a rural property with an older house, demolish it, and build a new home.

Services Available: The property may already have services such as water well and septic tank, but their age and condition must be investigated.

- Hydro and telephone services may be available on the property but may need upgrading for the new structure.

Property Boundaries: Although a survey is best evidence of property boundaries, it is easier to visually identify boundaries of a built-up lot as compared to a vacant lot.

Building Permit Process

- Salespersons should have a general understanding of the building permit process as the buyers may ask for guidance. In case the buyer is a contractor, the buyer would apply for the permit.
- if the buyer has hired a builder, the builder would usually make the application.
- In some cases, applicable permits may be required from other agencies such as the Conservation Authority and the Ministry of Transportation.

1. Application Form :
    a. should not be altered
    b. ensure compliance with Ontario Building Code
    c. ensure zoning
    d. ensure other site control provisions
2. Building Plans

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   a. Architectural drawings, floor plan out and foundation and basement layout Elevations or views of the front, sides and rear
   b. Detailed cross section
   c. Site plan showing location of the structure, setbacks etc.
   d. Heating, ventilation and air drawings
3. Application Fee
4. Inspections
   a. Building has to commence within a specified time following building permit issuance
   b. Inspections are expected at certain points + randomly
   c. Occupancy permit is issued when inspections are done

Steps for a building Permit

1. Application
2. **Review**: The application is reviewed by the municipality within certain timeframe, which is usually 10 days for a residential structure.
3. **Approval and Issue of Permit:** upon approval, a building permit is issued, and the construction work can begin.
   a. If a minor variance or rezoning is required, permit is not issued until that is approved.
4. **Inspections:** Construction must start within the time specified in the permit and the permit must be posted on the site.
   a. Copies of the plan must be kept on the site and if there are any changes to the approved plan, it must be reviewed and approved again.
   b. Any deficiencies found during inspections must be remedied otherwise a 'stop work' order may be issued.

Occupancy Permit: Once the building passes all inspections including the final, the municipality issues an occupancy permit. There may be additional inspections such as site plan control, grading, electrical, and gas installations.

Hiring a Builder

Key considerations	Explanation
Explain the provincial warranty program and the protection it provides to owners of new hoes to ensure the buyer is aware of their rights working with a builder	Under *protection for owners and purchaser of new homes act* warranty program exists that applies to most new homes being built. The warranty covers not just the construction of the home but also condo common elements, substitutions of materials without permission, deposit protection and more
Confirm builder is registered with provincial warranty provider	Builder must be registered

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	New home is considered on not previously occupied Check builder directory
Explain the requirement for home meeting the criteria under the warranty program, to be enrolled prior to construction beginning	Qualified homes must be enrolled before constructions begins, which requires a fee to be paid Fees are usually a cost to the buyer and are based on the final price of the home, including upgrades
Detail the conditions or items excluded from warranty program	Some conditions or items fall outside of warranty coverage (some include alterations, deletions, additions, normal wear and tear, and normal shrinkage of materials)
Identify the exclusions to the warranty program for certain property types	Certain properties are excluded from the warranty program such as previously occupied home, a home built by the owner for their own use, and a seasonal home

Key Considerations: Salesperson should have an understanding of legal obligations of registered builders.

Builder Evaluation: Conducting research before hiring a builder may protect the buyer against delayed occupancy and cost overruns due to misunderstandings.

- The buyer may visit model homes of various builders to check the quality of workmanship and materials.
- The builders may be asked for references so that the buyer can talk to them to gauge their satisfaction.
- Online reviews of some local builders may be checked. The website of the warranty program provider may be checked to obtain more information.

4.2 Transactions Involving New Construction

Representation agreement with a builder

Details needed

Listing Price

- No misrepresentation of what the builder is offering
- Builders will typically price a property based on the basic package, negotiating additional upgrades with the builder would be completed at the time of an offer from a buyer

Schedules Attached to a Representation Agreement

- When home is not completed at the time of offering the property for sale, alternative methods will be used to capture the details of the finished product
- Used to provide a detailed description of home being offered for sale
- Include sketches, drawings, floor plans and artist renderings

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A salesperson or brokerage may be representing a builder in selling one or more newly built properties.

Purchasing a spec home

-A speculative home ('Spec Home') is that which the builder has started building without any particular buyer in mind and which has wide appeal in terms of price and features.\

Home purchased form plans

- Builder could offer a few floor plans that would be suitable, but buyer is purchased based on the plan chosen
- Customization may be possible
- *Advantage* buyer may be able to make changes to the floor plan and select some finishing's
- *Disadvantages* as construction has not yet begun, delays could occur and an extended item period before possession could be obtained

A partially constructed home

- Foundation, framing roof and windows may have begun but no finishing's have been completed
- *Advantages* the buyer has a better understanding of the floor plan, as framing is in place and could select finishes or features, both to the interior and exterior
- *Disadvantage* the buyer could not change the positioning of the home on the lot, modify any structural components or select windows or roof shingles of their choosing

Mostly constructed home

- Advanced where the interior and exterior finishes have been completed but not all the construction has been completed, such as cabinets etc.
- *Advantages* the buyer has fuller understanding what they are purchasing while still being able to select a few final finishes
- *Disadvantages* buyer has limited options to change anything completed or request upgrades

Fully constructed home

- All finishes and features
- *Advantages* buyer can see exactly what they are purchasing and possession date can be negotiated
- *Disadvantage* buyer may be paying for features not needed and potentially be required to monitor any seasonal items not completed

Transactions considerations

- Negotiating any changes to the plans or upgrades so the final selling price reflects these
- Attaching plans and specifications sheets to the offer to ensure the buyer knows what the final product will be

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- Ensuring the buyer is aware of any additional work or costs not being completed by the builder
- Ensuring the buyer understands how delays due to weather impacts possession date
- Identifying any items to be completed prior to closing or work that is seasonal in nature (concrete driveway, sod)
- Understanding the types of clauses or conditions to be included in an offer and the time period required to complete due diligence in obtaining financing

Financing Considerations

- Approval for mortgage requires an appraisal typically
- If home is still under construction, the appraiser may use the plans to provide an estimate of value "as if complete"
- Terms within the mortgage commitment may not be honored if the closing date is extended.
- Sufficient funds available to pay for items being completed by the buyer and not the part of the purchase form the builder
- Usually builders need only an initial deposit and balance upon possession, but some builders may require several deposits on a Spec Home, depending on the stage of construction.
- commitment may expire due to changes in interest rates.
- Certain improvements by buyer such as deck or fence may not qualify for the mortgage and the buyer may need sufficient surplus funds after possession.

Negotiating the transaction

Assist a buyer in negotiating an offer with a builder

- Upgrades
- Changes to the floor plan and additional cost
- Additional items or features to be included by the builder that were not identified in the plans (deck)
- Reduction in the offer price if the buyer will be completing parts of the home rather than the builder (installing floors)
- Ability to revise the closing date on behalf of the buyer if their current property needs to be sold and the buyer's closing date on this sale does not align with the new purchase
- Deposit is typically held by the builder.
- Number of site visits

Representation Agreement with Builder

- The builder is like a seller, and the representation agreement must have minimum content such as the date of commencement, date of expiry, commission details, and the services being provided.

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- Details of the listing price may be complex depending on the stage of construction and home is not yet available for viewing.
- Salespersons must ensure that there is no misrepresentation of the prices, builder's offerings of standard home, and/or upgrades.
- Schedules should be used to describe the home being offered with detailed description of sketches, drawings, floor plans, and artist renderings.

Services Provided to the Builder

- Salespersons should confirm that the builder is registered under the warranty program and has obtained warranty enrolment number for the property being offered for sale.
- Services could vary depending on the stage of construction and typically include –

Assisting the builder in paint colours, flooring, cabinets, lighting, etc. based on market trends.

- Advertising the property using 'For Sale' signs, local listing service, websites, social media, etc.
- Staging, videography, conducting open houses, and showing to prospective buyers.
- Explaining list price with upgrade options and costs of selecting finishes and upgrades.
- Explaining warranty coverage for the new home.

Key Components of a Builder's Agreement of Purchase and Sale

- Legal description (lot number and municipal address)
- The model name or model number chose of the home constructed
- Rights of way or easements registered on the property (fire hydrant or electrical box on the lot, or storm and sanitary sewers)
- Subdivision requirements, such as colour of paint used on exterior doors, the number of kinds of trees planted etc.)
- Copy of site or street plan and lot
- Schedule or any requirements related to providing deposit monies to the builder, and any penalties
- Standard features and finishes included in package
- The budget set aside for certain items
- Confirmation of rental items
- Builders obligation to maintain insurance
- Confirmation the builder and the home are enrolled under the provincial warranty program
- Assignment of the HST rebate to the builder
- Acknowledgement by the buyer for retroactive tax payments upon municipal property assessment cooperation re assessment of the property once construction is completed
- Closing date
- Requirements when visiting the property during construction etc.

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4.3 Transactions involving new construction

Full-Time Salaried Employee: An unregistered full-time salaried employee of the builder can sell only new homes built by that builder.

Hiring a Brokerage: An exclusive representation agreement with a brokerage ensures that salespersons who introduce buyers to the builder are paid commission.

- These salespersons are regulated under TRESA Code of Ethics.
- In large developments, builders hire brokerages who specialize in new home sales.
- Builders may also co-operate with other brokerages when they register their buyers, leading to a sale.

Components of a Representation Agreement

Primary contents of a representation agreement

- Different when marketing a new development site rather than a single property
- Is used to sell all the lots in the development
- New home site containing 160 units would not require 160 agreements, but rather one that covers all units

Other components of the agreement

- Length of the contract
- Extent of the involvement with assisting the buyer in making all the decisions regarding, finishing features, flooring choices and upgrades
- Staffing and marketing requirements
- The hours of sales office operation
- Any regular sales meetings with the builder
- reports as required.

Commission Agreements : The commission structure may be negotiated, and it can be different than in case of sale of a single resale home.

Marketing and Role of Salesperson

- Salespersons will need to work with builder's onsite staff as well as visitors.
- Salespersons must have knowledge of builder's Agreement of Purchase and Sale, schedules, and other standard documentation related to floor plans, features, site plans, warranty program, and other legal terms of the agreement. Salespersons need to have good knowledge of different types of homes, builder's package, standard features, optional upgrades, financial arrangements, features and amenities in the subdivision, premium lots, etc.

Standard Finishes and Features Sheet: This provides an overview of construction materials, kitchen cabinets, plumbing, and electrical system.

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- Builders use this sheet as part of the promotional and marketing material.
- Does not include property price
- Limited to the standards provided by the builder

4.4 Representing a Buyer for New Home Role of a Salesperson

The role of a salesperson when representing a buyer purchasing a property in a new development

Buyer Registration: Builders typically pay commission to registered salespersons when they register a buyer on builder's site office, and this leads to a sale.

- Not all builders offer such a commission and salespersons must enquire from the site office if this facility exists.
- Important to introduce and register the buyer prior to or when they first visit (if there is a commission)
- Working with Builder's Employees: Buyer's salesperson may have to deal with unregistered sales staff at builder's site office.
- They must ensure that the buyer client's best interests are protected when selecting a new home and when negotiating price, features, and upgrades.

Reviewing Marketing Materials: The salesperson must review the promotional material carefully and help the buyer decide if the home and features meet their needs.

Obtaining Product Information: Salespersons should help their buyer client in reviewing different model homes, identify differences, check layouts, and design features.

- They should determine if new innovations, energy efficient systems, and other high-tech features are part of the builder's package.
- Help the buyer understand the closing procedure and circumstances that may delay the closing date.
- Develop a keen eye for quality construction and finishes
- Discover what brand name and products are provided

Knowledge of the Community: Salespersons should enquire if there are any other development plans in near future.

- These may include new school, shopping plaza, child care facilities, places of worship, and public transportation.

Contracts and Financial Obligations: Salespersons should ensure that the buyer client understands their contract obligations, financial requirements, pricing options, and deposits required for the purchase

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4.5 Financing Options for New Homes

Progress Draw Mortgage

- Short term, higher-interest loan that is used to cover the cost of construction
- Lender draws as various phases of construction are completed
- Number of draws can range from 3-5 and negotiated between the builder, the buyer and lender
- Each time draw is requested , completed construction work is inspected by the lenders appraiser to confirm
- Many various , ex in a five-stage schedule money may be dispersed as follows
  - 1st draw (15%) is released upon primary excavation, lot grading, and construction of foundation
  - 2nd draw (20%) is released when the foundation is completed, trusses are placed and the roof is sheathed
  - **3rd** draw (20%) is usually released when rough plumbing, electrical and mechanical and installation of windows and doors complete
  - **4th draw** released when drywall, trim and painting complete
  - **5th draw** released when installation of all equipment , final mechanical and utility connections are completed and the occupancy permit is issued
- The contract between the builder and the buyer will identify when the draws are required
- Positive progress report to the lender = funds released
- Interest normally only charged on the amount draw, not full amount approved
- Buyers need to have some additional funds available for several reasons such as
- The lender will only lend up to a max determined by their lending policies so the buyer will need to provide the balance
- Money is held back for a certain period to cover any potential liens so if there is a shortfall for any reasons the buyer must be able to cover the difference

Take-out Mortgage

- Once completed and verified by the appraiser, a take-out mortgage is organized by the lender, this is when all acquisition and construction costs are rolled into a final mortgage
- Usually this take out mortgage becomes the first mortgage that is for a longer term than initial construction loan
- This mortgage is also typically at a much more favorable interest rate, as there is less risk for the lender now that there is a finished product

Addition funds, documents and appraisals

Additional funds used for deposits

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- When a buyer purchases a home from plans, the financing is different that when hiring a builder to construct a home
- Builder is ultimately financing the construction
- Deposits for home purchased from plans are typically higher (20% as opposed to 5%)
- Buyer is required to make a deposit at the time of submitting an offer to purchase the house, but often not the full amount
- Made to builder in instalments

Documents required by a lender

- When buyer a house from plans
- Mortgage application, credit check, proof of income, proof of down payment
- Copy of the builders final and signed agreement of purchase and sale including all schedules, waivers and amendments
- Lenders appraisal
    - Copy of the firm agreement of purchase and sale for the buyer's current home
    - Documents required when hiring a builder
    - Mortgage application, credit check, proof of income
- Construction contract including itemized budget and construction schedule
- Construction or drawings for the home
- Site preparations, including municipal services for the lot
- If the land has been already acquired a copy of the deed, or a copy of the agreement of purchase and sale
- Appraisal as a completion Appraisal Process
    - Based on the completed value of the home
    - Lender will have an appraiser look at the plans of proposed homes as well as the value of land and estimate the value of home

Holdbacks and Liens

- Construction Liens: The Construction Act permits anyone involved in improvements on the property to register a lien in the Registry Office for the value of materials and services provided.
- Wage earners, workers, material contractors and subtrades involved in such work have lien rights
- Only lien for value of services and or materials supplied
- The lien the contractors, is registered within 60 days of specific events, and the owner must be notified.
- The lien Prevents transfer of ownership from the seller to the buyer without the payment of the lien amount
- Two types
    - Individual Lien applies to single property involving a single contract.
    - General Lien applies to a several properties involving a single contract and associated subcontracts

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Holdbacks: The Construction Act permits a 'payer' (owner, contractor, or subcontractor) to hold 10% of the contracted amount of services or materials until the period where lien can be registered has expired, or the lien has been discharged.

- Create a fund where lien claimants can look if they are unable to get payment from the person
- *Basic Holdback*: The owner can hold back 10% of the price of services and materials up to the time of substantial completion of work.
- Substantial completion is defined as the point where the improvement being made pursuant to a contract, or a substantial portion, is ready for use or is being used for the purposes for which it is intended
- Ex. Buyer is having a new home built $240,000 and the buyer has agreed to pay the contractor with three equal payments less the basic holdback of 10%
- *Finishing Holdback*: This holdback of additional 10% applies when the contract is substantially complete but certain services or materials are still required to complete.
    - in advancing funds under a construction mortgage, the mortgagee will typically withhold 10% of amounts advanced to ensure that all contractors and suppliers have bene paid and the time limit for liens has expired

Removing Construction Lien from Title: Once 60 days have passed, if there is no lien registered on title on the 61st day, the remainder 10% price is paid to the contractor.

- If a lien is discovered, the 10% amount is paid to the contractor to remove the lien.
- If a lien is registered on title, the 10% holdback would be used to pay the construction lien and it would be removed from title

4.6 New Homes Warranty Coverage Warranty Basics

Provincial Warranty Coverage

- Warranty for new homes and condominiums is provided by Tarion Warranty Corporation under the New Home Construction Licensing Act and the Protection for Owners and Purchasers of New Homes Act.
- The warranty provider ensures that any builder who constructs new homes, and any vendor (seller) who sells new homes must be registered with Tarion.
- The Act requires that every builder and vendor provide warranty that the home is Constructed in a competent manner, free from defects in materials, fit for habitation, Built according to Ontario Building Code standards, and free from major structural defects.
- The warranty also provides protection to buyers for deposits, delayed closings, and substitution of finishes by the builders.
- The Act ensures that builders meet minimum service standards for repairs and resolving issues that are under warranty coverage.
- The warranty for a home or a condominium unit starts from the date of possession, but for common elements, it starts from the date of registration of condominium.

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- Ask builder for registration number and home's enrolment number
- New home warranty is regulated by
    - New home construction licensing Act → not for profit corporation as the regulatory authority of new home builders and vendors
    - Protection for Owners of New homes Act → not for profit corporation as the warranty authority
- Certificate of Completion and Possession (CCP): The Act requires that every new home builder provides this certificate to the buyers, which marks the official date when the warranty coverage starts.
- Transfer of Warranty: The new home warranty stays with the property until the end of seven-year period and is transferred to subsequent buyers.

Warranty Coverage

- Begins date of possession
- Must use applicable forms
- Forms include
- a 30-day form (used during the first 30 days of possession)
- a year end from relating to outstanding warranty items in the two-year warranty period
- major structural defect form during the 3rd year + no later than the 7th year of possession
- builders will pass on to the buyer any warranties given by manufacturers, suppliers, and subcontractors that extend beyond the first year

1. Year Warranty:
    - The structure meets Ontario Building Code standards and is fit to live in (habitable).
    - The structure is free from defects in workmanship and materials.
    - There are no major structural defects.
    - Defective in repair, stability , freedom from damp, natural lighting, ventilation, water supply, drainage and sanitary conveniences and disposal of waste water
2. Year Warranty:
    - Major structural defects such as failure of load bearing parts, Water leakage, seepage, or penetration. Windows and doors, electrical, plumbing and heating systems. Detachment, displacement, or deterioration of exterior cladding.
    - Violations of Ontario Building Code related to health and safety provisions.
3. 7 Year Warranty:
    - Known as Major Structural Defects (MDS) warranty, it covers structural defects that render the property dangerous to live in.
    - Any defect in materials or work that results in failure of load bearing parts of the home.

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- Any defect due to which the buyer cannot use the building as a home.
- When an ownership changes, warranty stays with the home
- New buyers should contact provincial warranty authorities
- Must provide documentation to prove ownership of the home

4.7 Warranty – Additional Coverage and Exclusions Coverage for Condominiums

Warranty Coverage for Residential Condominiums

Coverage for common elements

- The warranty starts from the date of registration of the condominium
- Responsibility for making a warranty claim for common elements lies with the condominium corporation
- Unit owners are encouraged to report potential defects to the property manager or board of directors
- maximum coverage is $50,000 times the number of units, up to a maximum of $2.5 million.
- Condominium buyer deposits are protected up to a maximum of $20,000.

Converted Condominiums: As of January 1, 2018, buildings that were previously used for non-residential purposes are covered except the first one-year warranty for workmanship on pre-existing materials.

Additional Coverage

Additional Provincial Warranty Coverage

Deposit Protection:

- Protects deposits up to certain limits in the event builder goes bankrupt, builder fundamentally breaches the purchase agreement, or a buyer exercises their statutory right to treat the purchase agreement as terminated
- If the agreement is signed before January 1, 2018, the buyers are up to a maximum of$40,000.
- After January 1, 2018, the buyer's deposit is protected up to a maximum of $60,000 for a property priced less than $600,000.
- In case the property is over $600,000, the deposit is protected up to 10% of the purchase price, to a maximum of $100,000.

Unauthorized Substitutions: If the buyer has not selected any items, the builder can substitute them with items of equal of higher quality.

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- APS may also give the buyer the right to make selections of certain features, such as style and colour
- Examples include: Interior and exterior paint colors, design and colour of cabinets , colour and type of kitchen, floor finishes, style of interior trim
- However, builders cannot substitute any selected item without the consent of the buyer.
- If the builder cannot supply the buyer's choice of colours, finishes, or other selected items, the buyer must be notified to make new selections within 7 days of notice.
- If the buyer does not respond, the builder can proceed with items of equal or higher quality.
- If no notice is provided and builder replaces buyer's selections, the buyer can force the builder to change to their selections or may get a cash settlement.
- Provincial warranty coverage applies if the builder uses lower quality item than the agreed upon or if the builder replaces the item that was specifically selected and included in the APS without giving the buyer 7 days to make a new selection

Radon and Septic System: The coverage for environmentally harmful substances, such as excessive Radon, is $15,000 and the coverage amount for septic systems is $25,000.

Delayed Closings: The Act requires the builders to attach a schedule to the agreement giving a specific closing date (firm or tentative) and clauses related to delayed closings.

Exclusions to Provincial warranty Coverage

Excluded properties

- *Temporary or seasonal homes* and cottages that are not suitable for year-around occupancy.
- Homes built on *existing footings or* foundations when the pre-exiting portion of the foundation exceeds 40% of the entire foundation.
- *Homes built by owners* themselves even if the owner hires subcontractors, traders, or suppliers.
- Homes which have been occupied/rented by builder or anyone before sale, as these homes become resale homes.
- *Renovated homes are* not covered even if the renovation work is significant.
- *Model homes* of the builder may be covered under the warranty.
- Residential partnership properties held for investment purposes are not covered as they are not considered 'homes' for warranty purposes
- Investors purchase interest or units
- Homes in which the contractor completes the exterior shell and the interior finishing work is completed by owner himself.

Custom Homes: Covered if the owner hires a single contractor for all work from start to finish. Not covered if the owner hires multiple contractors as the owner is not considered a registered builder.

Excluded Items (From provincial warranty)

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- Even when the new home is covered under the provincial warranty, certain items may still not be covered.

- Normal wear and tear such as shrinkage of materials, settling of soil, and any damage done by the homeowner
- Improper maintenance such as dampness or condensation caused by owner's failure to maintain ventilation.
- Damage caused by alterations or additions done by homeowners during the warranty period - Damage caused by third parties such as municipal services or utilities.
- Damage caused by Acts of God (flooding/lightening), war, riots, or vandalism.
- Insects or rodents unless it is caused by builder's failure to meet building code standards.

Secondary Damage: Damage to personal property (such as furnishings, furniture, etc.), loss of income, personal injury, is not covered even when it is caused by something that is covered under the warranty.

- The primary damage is covered by the provincial warranty and the home owner may make a claim from their insurance company for the secondary damage.
- Example

- Supplementary warranties are warranties or agreements provided by the builder over and above statutory warranties (between the builder and homeowner)
- Deficiencies caused by homeowners' action
- Defects in material, design or work installed by homeowner
- Elevators and HVAC appliances
- Specific defects accepted in writing – ascertained defects in work or material accepted inwriting
- Defects Accepted by Homeowner: If the buyer has specifically accepted any defect at the time of pre- delivery inspection, it would not be covered under the warranty.
    - However, if the buyer is unable to detect a defect at the time of pre-delivery inspection, they do not lose warranty.

4.8 The Completion and Possession of a Home

Entitlements of New Home

Home owner Information Package: This provides information on warranty coverage to buyers and must be provided before the Pre-Delivery inspection (PDI).

- Given from builder to homeowner
- Provision must be included in every purchase agreement that this package is available and will be delivered to the buyer on or before date of inspections
- As a salesperson ensure this packaged is delivery

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Pre-Delivery Inspection (PDI): builder or representatives, must conduct a pre-delivery inspection of the home with the buyer

- Complete a certificate of completion and possession/warranty certificate and complete a PDI form
- Outlines any deficiencies at the time of possession
- One of the first opportunities for homeowners to see completed home
- Builder will Guide the buyer through comprehensive inspection and demonstrate on how to operate the homes system
- The buyers also get an opportunity to identify any defective, missing, or incomplete items and should be noted on PDI form
- Items that are overlooked or missed during the PDI are still covered under provincial warranty
- Buyer has the responsibility of filing claim to the provincial warranty authorities
- Condominium unit homebuyers complete a PDI at the interim occupancy in the same way as other new homebuyers

Warranty Service Rules: This section in the package details warranty regulations and how the buyers may request service, time frames for the builder to respond, and Tarion's involvement.

- Be provided by the builder directly to the buyer

Warranty Review: This section provides information on dispute resolution process between the buyers and the builders. Certificate of Completion and Possession (CCP)/Warranty Certificate: This form is completed at the time of PDI and is provided to the buyers.

- This certificate marks the official date when the warranty starts.

Certificate of Completion and Possession (CCP/Warranty Certificate)

- After pre -delivery inspection a buyer will receive a certificate of completion which is completed at the same time as the PDI

Purpose

- Marks official date of possession and establishes when the provincial warranty coverage starts Completion of CCP
- Must be completed before possession
- Builder submits the form to the provincial warranty authorities within 15 days of possession
- Completed coincident with the PDI form

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- Provides the buyer with an opportunity to describe incomplete, damaged missing or no-operational items
- Buyer must be thorough and precise when completing the inspection
- During walk through the builder may remove the warranty sticker from the CCP form and place it on the electrical panel

- Ticker contains registration info and enrolment numbers CCP requirements for condominium
  - At interim occupancy
  - Once the condo corporation nis registered, the builder and corporation sign a CCP Warranty Certificate for common elements

4.9 Salespersons Obligations

Working for the Builder Obligations of Salesperson working with a builder (seller)

- The builders may be either clients of the brokerage and are owed regulatory obligations under TRESA.
- In a client relationship, salespersons must work diligently to promote and protect builder's best interests.
- Best efforts should be used to ensure that all documents, including marketing materials, must be prepared correctly. Salespersons have a duty to account for and safeguard all trade related documentation.
- Potential buyers, visitors, and other registrants must be dealt with honestly, fairness, and with integrity.

Working for the Buyer

- New home buyers should be advised to obtain independent legal advice as the agreements and other documents contain complex clauses related to closings, delays, substitutions, HST rebates, assignments, etc.
- Buyer clients must not be discouraged from seeking expert advice from third-party professionals such as lawyers, accountants, mortgage brokers, etc.
- *Verification of Builder Registration* Builder's registration status with warranty provider should be verified to protect the buyer client's best interests.
- *Confirmation of Commissions Obligations* Any commission arrangement with the builder must be clearly disclosed to the buyer client in writing.
- *Confirmation of Enrolment* Ensure that the buyer client receives the PDI/CCP and other warranty information before possession.
- *Discussion of Warranty Coverage* Salespersons should discuss the warranty provisions and what is covered or excluded items.

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Module 5 - Rural Properties

5.1 Types of Rural Properties Characteristics of Rural Properties

- Rural areas offer lower cost of living due to low property taxes, but it is often offset by fewer municipal services such as lack of water supply, sewage, natural gas, etc.
- A variety of economic activities such as agriculture, forestry, mining, logging, and manufacturing occur in rural areas.
- A buyer looking to purchase a rural property would typically focus on the specific type of property such as hobby farm, seasonal cottage, or a year-round rural home.

Types of Rural Properties

Year-Round Rural Residential

- These properties appeal to buyers who want larger lots (0.5 acre to several acres), privacy, and more distance from neighbours.
- The location may be outside a town, having paved roads, or a remote location accessible by gravel roads.
- The cost of services and utilities depends on specific location.
- Key Considerations: If there is private water and waste water system, maintenance is required.
  - If the home is not fully insulated, renovations may be required.
  - If a centralized heating system is not installed, the upgrades would be expensive.
  - If natural gas is not available, propane, oil or electrical heating is required.
  - Is hydro capable of providing enough electricity to service the needs, if not upgrades made need to be completed
  - If the nearby properties are farmlands, this may impact buyer's enjoyment
  - Other considerations include location of nearest fire station, snow plowing, internet service, maintenance of gravel road, garbage pick-up, school bus route, fire station, etc.

Seasonal Cottages

- Seasonal cottages are not fully insulated for year-round living and may not have year-round access due to terrains, water access only, lack of road maintenance during winter, and snow and ice conditions.
- Typically, these properties have private water wells, septic systems
  - Some instances very rustic with limitations to water usage or a holding tank rather than septic
  - River water supplies
- wood stoves or space heaters for heating.
- If a buyer wants to convert a seasonal cottage into a year- round house, the cost of renovations or upgrades will need to be considered carefully.

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- Winterization for Year-Round Living:
    - Varying amounts of insulation throughout house
    - **Windows** sliders offer limited insulation value and are prone to leakage
    - **Unheated Areas/Cold Areas** floors above certain unhated areas, such as crawl space, may not be insulated
        - corrective action will require adequate space for installation, improve ventilation and installation of heating ducts
    - **Water/Septic Systems** The water and wastewater systems will need upgrades as existing pipes may not be winterized.

Year-Round or Seasonal Waterfront

- Properties on the borders of lakes or rivers are usually built for year-round living and are expensive due to features such as docks and boathouses.
- Any improvements, or alterations to exiting improvements require permit from the local municipality and the Ministry of Natural Resources and Forestry.
- The land between the property and lake/river needs investigation as it may be a 'shore road allowance' owned by the Crown.
- Soil erosion and flooding are major concerns due to changing water levels and a retaining wall may be required.

Hobby Farms

- These properties were mainly used for raising animals or growing limited crops, fruits, or vegetables but may simply be a country home in disguise.
    - Originally could have been purchased with the intent of enterprise in mind, many become a second home away from urban congestion
- The term 'hobby' is not a municipal zoning for land use but is used in real estate trading to describe such properties. Different municipalities have different bylaws and restrictions regarding minimum size of land for raising animals such as horses or cows.

Rural Residential Vacant Lots

- Larger site of lots and features such as wooded areas, stream, etc. in rural areas attract buyers who want to build their custom homes that offer increased privacy.
- *Considerations:* Property boundaries are not always visible, and a new survey would be required.
    - **Dimensions of the lot**: If severance from an existing lot is required, it may take a long time for severance approval.

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- **Severance of the lot** if the property must be severed prior to being sold, the time period required to receive approval and confirmation that the severance is approved
- **Availability of services** such as water, sewers, natural gas, etc. needs thorough investigation.
- **Extending Services to home** the cost of hydro and telephone lines is usually borne by the customer if the service lines are at a distance.
- **Obtaining a building permit** may be a complex issue and should be checked in advance.
- **Position of home on the lot** Soil conditions and the location of water well and septic systems may have restrictions and/or limitations.
- The local Conservation Authority may impose serious restrictions on setbacks, building envelope, and the size of home.
- In certain regulated areas, such as wetlands or environmentally protected zones, a building permit may not be available at all.

- *Special Considerations:* A buyer may buy a lot for building a custom home or simply buy the land and hold it as investment.
    - The location of land is important, especially if it is purchased as investment for future development.
    - Size of the land and its natural features such as forests, hills, streams are some of the factors that need investigation.
    - The buyer should insist on a current and up to date survey to determine boundary lines.
    - Access to the land and any easements or restrictions on uses by municipalities or regulatory authorities will impact the value of vacant land.
    - If land is purchased for holding, there may be ongoing costs of financing, taxes, liability insurance, and maintenance.
    - Timing of purchase and holding are important factors and the zoning for permitted use

5.2 Special Considerations the Planning Act

Impact of the *Planning Act* on Rural Property Development

- Section 21 of the Planning Act states that no one can transfer a part of land or lease it for a period of more than 21 years unless the owner has received appropriate permission.
- This does not apply if the owner has obtained Consent to Sever or the land is within a registered subdivision.
- Subdividing land is done in one of two ways
    - i) land severance (consent)
    - ii) subdivision plans

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Land Severance: When the owner wants to divide one parcel of land into 2 or 3 parts, the severance must be approved by the Committee of Adjustment (local municipality) or the Land Division Committee (regional).

- The owner may enter into a conditional agreement with the buyer, but the severance must be approved before closing.
- Although the *Planning Act* sets out provisions, the actual process of approving any requests is done by municipal organizations
- Part of process is the requirement to provide notification to landowners within a certain distance
    - They are invited to comment on proposed changes, so initial discussions with neighbouring property owners should be held to determine any concerns

Subdivision: When the owner wants to divide one large parcel of land into several parts, usually more than 3 parts, the owner must get a Plan of Subdivision approved and registered.

The Road Access Act

- Relevant to rural properties
- In place to prevent arbitrary closing of a private road by a landowner when doing so would results in one or more parcels of land being landlocked
- This Private road is known as an access road
    - private road (not a dedicated or accepted municipal road) that leads to one or more rural properties and is considered a thoroughfare.
- Accessing a property by a motor vehicle using the Access Road is not a legal right-of-way but is also not considered a trespass.
- The Access Road can only be closed by a court order or for maintenance once a year for 24 hours with proper notice to affected property owners.
    - Owner can charge the users a fee that is based on the actual cost of maintaining and repairing the road
- It may not be used for other reasons such as walking, or driving a snow mobile
- In some cases, a judge may order closure of an Access Road if an alternate road is available, which must not be abandoned, unmaintained, unopened road allowance, or covered by brush.
    - unopened road allowance → strip of land that is owned by the municipality or the Crown for the purpose of constructing a road at a future point

Impact of Zoning Bylaws on Rural Property Development

- Most rural properties are located in the vicinity of natural resources such as forests, rivers/lakes, and environmentally sensitive areas and are subject to close scrutiny by authorities.
- There may be restrictions on land use and property development and a buyer must use due diligence by investigating the impact of zoning and other regulations.

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Building Location: Restrictions may apply to building location, its setbacks from wells, and total coverage.

- Additionally, soil conditions, rock formations, and topography may limit the location.

Total Coverage: There may be municipal limitations on total coverage for any waterfront structures such as docks and boathouses.

Non-Conforming Use: Some older waterfront improvements may have become non-conforming due to recent changes in zoning bylaws that are more restrictive.

High Watermark: The setbacks for placement of any structures near water bodies are determined from the high watermark. Municipalities typically establish a specific benchmark of bodies of water within their jurisdiction and notify property owners

Boat houses, Ports ,and Docks: Construction, demolition, or renovation of any waterfront improvements are impacted by zoning by laws and the high watermark.

Waterfront Decks: The extent of waterfront decks connected to docks, boathouses, and boat ports is controlled by local municipalities.

Conservation Authorities

- conserve, restore, manage, and protect water, land, and natural habitat.
- If a buyer wants a development in a regulated area (e.g. a flood prone area), appropriate approval and permit from the local Conservation Authority is required.
- Before granting an approval, the Conservation Authority confirms that there is no effect on flood control, soil erosion, dynamic beaches, pollution, or the conservation of land.
- Most common types of regulation under conservation Authority
    - Building a new home or replacing one, constructing an addition, installing an in-ground or above ground swimming pool, landscaping which includes filling, re-grading and adding hardscape
    - Constructing a break wall, shore wall, and retaining walls
    - Constructing repairing or removing gabions or groynes
    - Installing geothermal heating
- Permit will require various documents and reports
    - site plan or drawings that show dimensions , proposed works, roads, existing structures, setbacks site grades and drainage features
- once permit is issue work must be completed prior to the expiry date of the permit (24 months)

Endangered Species Act

This Act is administered by the Ministry of Natural Resources and Forestry to protect and recover plants, animals, and their habitat which are at the risk of disappearing from Ontario.

- When a species is endangered or threatened their habitat is automatically protected

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    - Den, nest, place of refuge, cave, or any residence
    - Can be found in trees, creeks, cliffs and beaches
- The Act impacts construction activities on sites where these species are found by requiring owners and developers to obtain specific permits and approvals.
- *Ministry of Natural Resources and Forestry* can grant different types of permits or authorization that contain conditions aimed at protecting and recovering species at risk
- Permit is not required if there will not be any adverse effect on a species and the work is done when the animals are not present or by reducing the size of the project.
    - Locating the activity to a different area of the property or reducing the size of project
    - Completing work when birds are migrating
- Salesperson can recommend
    - Avoid work that can affect species during reproduction
    - Prevent a species from entering the area
    - Give the species time to leave the area before starting work
    - Protect plants or move them
    - Get advice.

Classifications: Plant and animal species are classified as –

- Extirpated: They existed sometime in the wild but are extinct now.
- Endangered (Protected) - They exist in the wild but face possible extinction.
- Threatened (Protected) - Not endangered but need to be protected.
- Special Concern (Not Protected) - Not endangered or threatened but may become so.

Protection for Farmers against Nuisance Complaints

- Often conflict with city people moving to urban areas and not understanding the lifestyle
    - Noise, odour, flies, light smoke, vibration, and dust
- The Farming and Food Production Protection Act protects farmers from nuisance complains and subsequent lawsuits or injunctions.
- The Act ensures that the farming and food production industry is protected from municipal restrictive bylaws that constrain normal farm practices
- Salespersons must make their buyers aware that the property they are buying is close to farming area and farmers are protected if they are carrying on normal farm practice.
    - Provide information about the rights of a farmer under the legislation, investigate the present and potential uses of nearby property, include an acknowledgement in any offer that the buyer understands these nature of the rural properties

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Regulations Impacting Hobby Farms

- Different municipalities have different bylaws and regulations related to hobby farms.
- For growing vegetables and/or fruits, there may be restrictions on use of pesticides and nutrients, and requirements related to water quality, drainage, and sewage.
- Hobby farms involved in raising livestock are governed by several animal and health legislations as they can pass diseases to humans and pets.
- Some considerations include feeding and watering systems, manure management, land area used for livestock, maximum number of animals, their shelters, and adequate fencing for their protection.

Forest Conservation

- Forest conservation bylaws ensure that rural property owners help in improving natural environment, health, and quality of forests and timber lots.
- Falls to the upper tier Municipality
- Wooded lots provide several benefits to the owner for recreational activities as well as use of wood for fuel, maple syrup, etc.
- Property owners should continue to practice sustainable forest management practices with the help of professional advice.

Cutting Trees: Municipalities may require landowners to obtain a permit to cut a tree if it is over 12 inches thick.

- No permit is required if a tree is dead, terminally diseased, or is hazardous.
- Trimming of tree branches and limbs past the property lines also does not require a permit.

Managed Forest Tax Incentive: Owners of woodlots that are minimum 4 hectares (10 acres) may qualify for provincial Managed Forest Tax Incentive Program (to reduce property taxes).

- These owners must sign a 10-year agreement with the Ministry of Natural Resources and Forestry.
- The owners may contact a Managed Forest Plan Approver who will confirm that the property meets the qualification criteria.
- When a Managed Forest property is sold, the buyer must sign a new agreement in order to continue getting tax incentives.

Additional Rights of Rural Property Owners

Certain rights associated with rural properties are not automatically granted to the owner as they are reserved by the Crown or may have been sold to another individual.

Timber Rights: Refers to trees on the property

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- If the owner does not have timer rights, then the tress are reserved for the Crown or have been sold to another individual
- If another individual owns the timer rights, the property owner's ability to harvest the trees will be restricted

Mining Rights: The rights related to minerals below the surface such as precious metals, ore, sand, and gravel may have been granted to another party under the Mining Act.

- Holder of these rights does not need to obtain permission from the property owner to go on the property
- However, *the ministry of Energy, Northern Development and mines* encourages prospectors to avoid entering private property unannounced
- To perform ground exploration work, written notice must be provided a day before entering onto the land
    - Compensation for this work can usually be negotiated between parties, especially if damage occurs as a result
- If a property is located in an area where mining activity could occur, confirming whether any mining claims have been staked on the property should be done by lawyer

Air Rights: Refer to the space above the land, including controlling or occupying that space.

- which rarely impacts rural property owners.
- Dependant on where you live how much air rights there is

Location of Farmland

Climate dictates what crops can be grown, wind can destroy crops as well as reduce the moisture in soil resulting in soil erosion

- Growing season also influences the type of crop as some crops require 90 days to mature while others may have two or 3 crops per year
- Growing season shorter the further north it goes

Topography

- Lowlands, such as floodplains, are good for crops.
- Gently sloping lands are less prone to soil erosions, while steep slopes have thinner soils and hinder the use of machinery required to harvest the crops
- Hills, the temperature decreases as you go higher, and south facing slopes will receive more sunlight

Soil type

- Fertility of the soil is important for growing crops as it requires lesser fertilizers.

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- Flood plains provide excellent soil and good drainage reduces the danger of flooding crops

Chemicals: Traditional farming methods use pesticides to protect plants from diseases and to kill weed and bugs.

- Organic farming heavily restricts use of chemical pesticides fertilizers, antibiotics and other substances
    - Use crop rotation and cover crops, with the organic residues and nutrients recycled back into soil
- Coper crops and composted manure are used to maintain soil organic matter and fertility

Proximity to Wind Farms, Solar Panels, and Other Environmental Projects

- Hydro one replacing all wood poles with 65-79 food poles

Renewable Energy Projects: These projects include windfarms ,solar panel farms, and other environmental projects.

- A renewable project may be considered a material fact by a buyer as the location of the project may affect the value of the subject property, it enjoyability, and usability.
- Considerations include noise and odours that can negatively impact properties

Future Development: If a new development is planned nearby or if the municipality is increasing its boundaries, the buyer may lose the attraction of a rural lifestyle.

- Buyers should be fully informed about any such future developments as a planned development may change zoning and/or result in increased property taxes.
- When the *Ministry of Environment, Conservations and Parks,* receives an application a notice on the Environmental Registry is posted
- Allows members to submit comments
- Website is also provided where you can search for a notice on the Environment Registry and see a list of current renewable energy projects

5.4 Services, Utilities, Access, and Waterfront Properties

Availability of Services:

Heating Fuel Natural gas may not be available, and the furnace would need propane or oil for which an on-site storage tank is required.

- Some properties may have electric furnace or wood burning stoves.

Hydro Services: Hydro One installs primary lines along dedicated roads for properties up to a pre-determined distance

- Secondary lines on customer's property are installed free for the first 30 metres from the last pole location and the remaining cost is borne by the customer.
- Costs may be reduced if electrical and telephone services are installed at the same time

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- Some customers may own the hydro poles and lines if they service only one property.
- These owners are responsible for the cost of maintenance.
- In case hydro poles cross more than one property,
- Hydro One takes easement to access the hydro poles and takes ownership of the pole
- Request an unregistered easement search (as some lines before 1999 were not registered)

Telephone: Service may not be available because it is not economically feasible, and the customer may be responsible for costs beyond a certain distance.

- Telephone service is provided only if the hydro service is already available.
- However, existence of hydro service is not a guarantee that telephone service would be provided.

Municipal water service Rural properties may be getting water from a private water well or a lake.

Municipal Sewage: If municipal sewage is not available, some on-site septic system is installed.

- The location, size, and functionality of sewage system depends on the soil conditions, setback requirements, and proximity to nearby water sources.

Internet: There are very few providers of internet service and high-speed internet may not be available.

Cell Phone: Coverage may not be 100% due to unavailability of nearby towers. Cell phone boosters can be installed

Access to municipal Services

Mail Delivery: In some rural areas, postal outlets are available in retail stores and mail delivery is sometimes available to individual mailboxes

- Community mailboxes may be setup at convenient locations where customers can pick up their mail.

School Bus: School bus routes are limited to main public roads and students may have to wait for the bus several kilometres away from their home.

- Buyers should be aware that school bus service may not be available to areas which are primarily used seasonally.
- Contact the applicable *Board of Education* to determine availability of school buses
    - Provide legal description, municipal address and current owners name

Fire: Communities within reasonable distance to larger communities or urban areas are serviced by fire station but smaller communities may have to depend on volunteers.

- The distance to nearest fire station impacts the cost of property insurance.

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Garbage and Recycling Pickup: Municipalities typically provide this service on public roads, but distant locations may have limited services.

- Where service is not available
    - 1. the owners may take their garbage/recycling to nearby landfill site
    - 2. pay someone to pick up their garbage, o
    - 3. hire a private service to collect their garbage.

Well and Septic Systems

- The capacity and efficiency of the water and septic system needs investigation by third-party professionals to ensure that the systems meet the household needs of the buyer.
- In some cases, the water system may need winterization as the cottage was built for seasonal use only.
- All septic systems should have been built according to the Ontario Building Code specifications, whether they are used seasonally or year-round.
- The listing salesperson should advise sellers that the condition of an older system, which needs upgrading, must be disclosed to the buyers.
- The buyer's salesperson should make their offers conditional upon inspection of water well and septic systems by third-party professionals.

Unincorporated Townships

- Unincorporated townships are those areas in the province which do not have local municipal government and most matters are regulated under the Ministry of Municipal Affairs and Housing.
- A local service board or advisory board, which consists of volunteers, oversees certain services such as waste disposal, local roads, and volunteer fire services.
- Annual fees are paid to oversee these services and can range from a few hundred dollars to a few thousand

Building Permit: Generally, it is not required but all construction work, including on-site sewage systems, must adhere to the Ontario Building Code standards.

- *Ministry of Natural resources and Forestry* may. Need to be consulted with respect to some permits
- *Ministry of Transportation* would be consulted for developments near a highway

Zoning: Some unincorporated townships are regulated under Minister's zoning, which requires a letter of conformity prior to any development work.

- Townships not subject to these provisions are not regulated and do not require any compliance letters or permits On-site Sewage systems

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- Regulated under the provisions of the *Ontario building Code* and approvals would be obtained from local health unit or conservation authority

Emergency Services 911 may not be available unless these have been established by the local service board

Property Taxes: Taxes are based on Provincial Land Tax, Board of Education Tax, Local Service Board Tax, and Local Roads Board Tax.

Factors Impacting Obtaining Insurance

- Insurance companies look at the risk factors when providing coverage to rural properties.
- Higher risk increases premiums for the owner.
- These factors include access during winter, year-round or seasonal occupancy, proximity to fire station or fire hydrant, use of wood-burning stove, fuel source and on-site storage tank, and condition of the electrical and plumbing systems. Additional endorsements or coverage may be required for flood damage, sewer backup, windstorms, outbuildings, and livestock (if any).
- Concerned buyers should make their offer conditional upon availability and cost of insurance.

Access to Rural Properties

- Both public and private roads can be sued by the general public
- Access to a rural property could include both public and private roads

Year round or Seasonal Access for Public Roads

- Should ensure the municipality maintains the road in the winter months
- Some rural properties are zoned seasonal meaning that the municipality does not maintain the roadway and may not provide emergency services in winter
- Where a road is not maintained the municipality may place a sign "no winter maintenance"

Private Road Ownership: If the property is accessible by a private road, which is not dedicated, accepted, and maintained by the municipality, the buyer should check who owns the road and what would be the cost.

- anyone who owns a road could potentially be held liable for accidents caused by the condition of the road
- There may be restrictions on use of private road and legal liability issues if there is an accident.

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- Appropriate inspections of the roads condition and proper liability insurance should be held by the owner
- Salesperson should ask who owns road? How and who maintains it? Cost? Rules of road use?
- Private roads have deeded rights of way, or there could be no formal agreement in place, which means use of the road is granted under the *Road Access Act*, which grants a deeded and unobstructed access to private property owners.
    - Descriptions, maintenance agreement details, specific rights and obligations should be accurately documented to ensure a buyer is fully informed of the impact of a private road

Accessing a Property from a Provincial Highway

- If the rural property is accessible by a provincial highway, an Entrance Permit from the Ministry of Transportation is required to construct a driveway directly from the highway.
- Permit is also required for installation of a gate, construction of a private road, drilling a well, installing a swimming pool, and installing an underground storage tank.
- Salespersons should include a due diligence clause in their buyer client's offer to investigate these matters.
- When property is sold that has an existing access to a provincial highway, a new permit must be obtained as an entrance permit is not transferrable to the new owner
- Fee is charged for the original entrance permit however not fee when change in ownership

County Road: If the property is fronting on a county or regional road, there may be regulations with respect to private roads, entrances, gates, or other structures.

Access Over Crown Land:

- Crown land owned by provincial government
- The private property owner will need an easement from the *Ministry of Natural Resources and Forestry* in the form of a right-of-way that allows access.

Access by Water Only: Cottages that are located on an island are less expensive but are accessible by waterways only.

- The buyer should investigate matters such as proximity to shore where amenities or marinas are located, and the distance required to travel by boat.
- Issues such as where to park a vehicle and where to dock a boat should be checked in advance.
- Check ability to access the cottage by snowmobile in winter
    - Check fluctuating water levels, additional vehicle licensing, boat launching and storage facilities

Shore Road Allowances: when crown land was originally surveyed, a strip of land was set aside along the banks of some lakes and rivers for road allowances

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- Some instances, the road was never constructed, however the road allowance was set aside
- Usually owned by the municipality or the crown
- Ensure you check ownership of this land as it impacts owners' rights
- The allowance is 66 feet wide measured from the high watermark of a river or a lake.

Open Shore Road Allowance: When assumed and maintained by the Crown or municipality and is a public road.

- Not assumed may have a road that was created by someone other than the crown or the municipality and maintenance of the road can vary
- Sign on this road would indicate " Road unassumed, use at own risk"

Unopened Shore Road Allowance: Owned by the Crown or municipality but has never been opened or used by public.

Closed Shore Road Allowance: identified as not necessary anymore and closed.

- Such land can be sold to private property owners by passing a bylaw and then it becomes private property. This process is complex and may take up to one year to complete.

Open and unopened road

- means that the crown or the municipality owns to the water's edge
- Any property abutting an open or unopened shore road allowance may appear to extend to the waterfront, but the land is not privately owned
    - Owned by the local municipality
- Unopened may not be visible
- Without permission from the adjoining landowner, such as an easement or right of way access, the public does not have the right to access the water by crossing their land

Considerations for Shore Road Allowance: When the shore road allowance is not owned, it can have significant impact on buyer's decision.

Confirming Ownership

- Surveyors Real Property Report → completed by Ontario Land Surveyor and shows location of the property boundaries, structures and other improvements on the property
- Reference Plan → property boundaries and easements
- Deed/Transfer → document would provide the legal description of the property which would indicate if the ownership includes the shore road allowance

Impact if not owned

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- Improvements along the water's edge may be on land not owned (boathouse, docs lifts)
- Property owner could be required to purchase the land or pay an annual rental when a structure or an improvement is located on lands not owned
- Shore road allowance can be used by the public which could result from others using the beach or snowmobile in winter

Restrictions to Building

- May require building permits for the constructions of many improvements and structures
- Confirmation ownership will be needed for repairs or renovations

Riparian Rights

- Owners whose land is adjacent to water, such as a river or a lake, have Riparian Rights associated with water
- However, these rights are not available to owners whose properties about an opened or unopened road allowance
- These rights include the right to access water, increase or decrease in land area depending on change in water level, fishing, swimming, boating, use of water for irrigation, and rights to install a dock.
- Property that does not extend to the water's edge, restricts the owner from constructing any improvements along the shoreline
- Property that includes the shore road allowance would mean that shore road is closed
- An open road allowance would not be included in the property – it would about the property

5.5 Gathering Information Sewage Systems

Difference Between Private and Municipal Systems

Private Sewage System vary depending on lot size and soil conditions

- Most common is where discharge from kitchen, bathrooms and laundry flow into a tank where the solids are separated form liquids
- Then flow into a leaching bed
- Solids remain in tank which is emptied periodically (3-5 years)
- Known as a conventional septic system

Municipal Sewage System: The waste flows by gravity into sewer pipes, which carries it to a treatment facility for cleaning before being released.

- Rural properties in close proximity to a community may have municipal services that include both water and sewers

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- Many times, these services are extended after properties were already serviced with private systems

Onsite Sewage System Considerations

- Soil and site conditions will determine the type of septic system that can be used for a property
- Can include waterless composting toilets, privy vaults and holding tanks, where the sewage is retained and then collected and disposed of, leaching pits for non-human waste water or the most common type of system which includes a tank and leaching bed

Type classified by the Ministry of Environment, Conservation and parks

- Type 4 is most common
    - i) tank
    - ii) leaching bed
        - series of pipes that extend from the tank and release water back into the ground
- soil conditions will impact the size of the leaching bed, as permeable soil conditions can have smaller drain fields
- percolation test is done to determine the absorption rate of the soil
- water table is high → drain field may require additional fil brought onto the lop, so septic field is raised
- septic strictly regulated on cottage properties because of proximity to natural watercourse

Size: Two factors determine the size of septic system - the type of soil, and the number of kitchen and bathroom fixtures.

- If the buyer wants to make additions after purchase, the size of the sewage system should be investigated.
- Max use is based on the potential number of people who could be living in the home, for every bedroom (assumption is 2 people) and either total living space or total fixture count

Location: Ontario Building Code specifies the minimum distance of leaching beds from nearby dwellings, wells, lot lines, and trees on the property.

- Located in areas not prone to flooding or excessive water ponding
- The typical distance of the septic system from the house is 1.5 metres (or 5 feet).
- When listing a property, the owner should be asked to provide a sketch or other information that shows location.

Using and Maintaining a Septic System

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- Items that should never be put into a septic system
    - Gasoline, pesticides, fats, oils, grease, varnishes, plastic, food, kitchen waste
- To assist in maintaining system, phosphate-based cleaning supplies should be avoided as they can impact water

Requirements for New Septic Tank Installations

- Installers of sewage systems are required to be licensed
- Installation permit is issued by local municipality and the construction is done according to the Ontario Building Code specifications.
- Based on potential maximum use to take into consideration
- Local municipality build department examines plans, issues permits and carries out inspections of onsite sewage systems
- Building permit is required for a septic system for
    - Installing a new system
    - Replacing part or all of the system

Common Sewage/Septic Issues on a Rural Property

- Accumulation of solid material, which needs to be pumped
    - If allowed to accumulate, sludge can reach leaching bed
- Some build for some homes were not enlarged as additions were made which could inevitably Lead to strains on it and malfunction
- Older systems also used clay pipes for leaching bed → degrade and collapse resulting in the need for costly replacement
- What happens when it malfunctions
    - Clogs can be hazardous and expensive (degrade water supplies reduce property value)
    - Required repairs can be messy
- Symptoms of ailing system
    - Slow draining of sinks, tubs, showers + toilets
    - Odour in the house or drinking water
    - Thick or green grass in the leaching bed area
    - Excessive water on the ground in septic tank or leaching bed area

Water Sources

River or lake source water

- Supplied to property using a jet pump system through either an above or below ground pipe
- Can be drained in the fall or heated in winter (if not drained they can freeze)
- Water purification equipment is typically installed

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- Some systems do not address the risk of potential chemical contamination, only address potential bacterial contamination
- Chemical contamination is higher with lake/river draw water

Well water

- Poorly constructed or maintained well can result in bacteria or other contamination of the well water, groundwater or soil
- Part of maintaining well is prevent surface water or foreign materials from entering the well
- Well abandoned → plugged and sealed.

Types of Wells:

- Dug and bored wells are shallow water systems with depth ranging from 50 feet to 100 feet. The risk of contamination due to ground water is high.
  - Large diameter of above ground casing
  - Must be capped with a safe cover to prevent contamination
  - Low water levels during the dry summer months → water brought in

Drilled wells have small diameter pipes (10-20cm), depth of about 200 feet, and provide safer drinking water.

- Most new wells constructed are drilled
- Connect to deep water supplies

Sandpoint wells (well points or drive point wells) are roughly 25 feet deep and are found where the water table is high.

- Good for sandy or loose soil
- No deeper than 25 feet where water levels are high

A shared well is located on one property but is shared by several property owners according to a written agreement.

- Once water reaches each property, owners are responsible for their own individual water treatment and pressure systems
- Make sure written agreement is registered on title
- Will require easements be registered on the properties serviced by the water system for the construction and. Maintenance of the well and all equipment
- Registered well agreement should include
  - Location of the well and the equipment
  - Terms relating to the maintenance of the well
  - Description of how the costs will be shared, including when and how payments are made

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- Obligation of each party to maintain and replace water pipes or mains servicing their respective properties
- Specification of who can decide when maintenance and repair may be necessary and how the costs of the maintenance and repairs will be shared
- Procedure for terminating the agreement

Well Record: The construction company provides the owner a Well Record after installation, which shows the installation date, the construction method, test results after installation, and other technical details + sketch

- This record is also available from the Ministry of Environment, Conservation, and Parks.
- Well is constructed a well tag is affixed to the well, which contains a unique identifier that corresponds to the well record
    - Allow buyer to obtain info on it
- Could have more than one record (well record when constructed + abandoned)

Factors leading to Water Contamination

- Water should be tested for potability (bacteriological contamination) by the local public health department (free) Sediments Silt → soft materials that are usually from an organic source sand → ground down stone making it inorganic in nature

Living Organisms → bacteria, viruses, and other organisms are common in many rural water sources

- Living organisms are most serious form of rural water contamination
- Treatment
    - Chlorine , physical straining, ultraviolet (UV) systems Hardness and Iron
- Too high they can destroy fixtures and make even new cottage look old
- Hard water can impede the efficiency of water treatment equipment
- Water softener removes hardness and iron

Preventive Measures: Contamination of water typically occurs due to poor construction (lack of depth, inadequate sealing materials) and surface water arising from drainage problems.

- Water contamination can be prevented by sealing all openings to the well, making the well seal and well cap water tight, and screening of vent pipes.
- Well casing should be visible at least 40 cm above ground to ensure access for repairs. - Disinfection can be done using chlorine, which is used with wells, cisterns, springs, pumps, and pipes.
- If a bacteriological test indicates contamination, bleach (chlorine) may be poured into water well as a temporary remedy.
- Another option is to boil water used form the source

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- Chlorine can temporarily remove bacteria but there may be an underlying problem

Well Water Testing:

- The bacteriological testing of well identifies Coliform and Fecal Coliform, the presence of which indicates existence of pollution and harmful bacteria.
    - Fecal = immediately renders the water unsafe
- *Ministry of Environment, Conservation and Parks* and public health authority provide a variety of info on well testing, procedures etc.
    - *3* separate samples are collected for testing
    - Should be collected one to 3 weeks apart
- In case there are other contaminants such as heavy metals, the tests are done by the Ministry or private laboratory.
- Bacteriological results provided do not imply anything about the chemical quality of water supply
- Salespersons should be careful to avoid giving any representations about the water well or water quality. They should insert appropriate conditions for the buyer to ensure that the well provides sufficient water, there is no evidence of contamination, and working of pump and related equipment.

Equipment used to Assist in Water Quality

Chlorination Injector Unit

- Primarily in recreational property that feeds a weak solution of chlorine into the water distribution system immediately after it comes into the wall
- Water must then be pumped into a pressure or storage tank that is large enough to ensure that the water will be stored for specified period to effectively destroy any bacteria

Reverse Osmosis

- Removal of dissolved solids and minerals
- Forcing water through a semi permeable membrane, the membrane passes fresh water, leaving behind minerals

Sources of Heat

- In rural areas, heating is primarily accomplished using electricity, propane and oil furnaces, solar power, and wood burning stoves.
    - Oil: cost of fuel can vary, not as clean as other heat sources
    - Propane: typically, available even in remote areas, cleaner source of heat
    - Electricity: many uses baseboard heating, which is clean but expensive

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- Solar power: panels can be placed on the roof or mounted (south facing best at 45 angle)
- Wood: typically, secondary source
- Pellet stove: similar to wood stove but requires electricity to operate and burn pellets

WETT Inspection: If a property has wood burning appliance such as furnace, stove, or fireplace, it must be inspected by a licensed inspector from Wood Energy Technology Transfer (WETT) Inc.

Heating Costs: Efficiency of the heating system, prices of heating fuel, and overall design and architecture of the home affects heating costs.

Oil tank All oil storage tanks must be registered with the Technical Standards and Safety Authority (TSSA), otherwise fuel is not delivered.

- Anyone working on installation, repairs, or maintenance of oil tanks or appliances must also be certified by TSSA
- Prone TSSA inspections are valid for 10 years
- Valve and fuel lines must be protected from physical damaged caused by objects such as ice and snow
- Shouldn't be installed under deck or stairs Leakage
- If any oil tank leaks, the owner is required to contact TSSA for cleanup and removal of contamination. Presence of an underground oil tank must be disclosed to potential buyers, otherwise the sellers may face legal action after closing.
- Call spills Action Centre of Ministry of Environment, Conservation and Parks
    - Causes are internal corrosion
    - Improper installation
    - Improper refueling
    - Breaks in fuel lines
- Concealing fuel may lead to legal action and reparation

Crown Land and Shore Land

- Regulated under Public Lands Acts

Requirements for Work Permits

- Managed by ministry of Natural Resources and Forestry (MNRF)
- Any development work on properties located on Crown lands and shore lands need appropriate work permit from the Ministry of Natural Resources and Forestry.
- Permit required for private land when the work could potentially affect any Crown land and shore lands

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- Permit is required for activities such as placing fill for creating a beach, dredging to create a boat slip, construction of a dock or boathouse, and where the covered area of water body exceeds 15 metres.
    - Construct a building on public land
    - Construct a road, trial or water crossing on public land except where constructed under authority of the

Crown Forest Sustainability Act

- No work permit required
    - docks with off-shore footings, floating docks and boathouses, removal of old docks or boathouses, placing a registered ice fishing hut, installation of water line, service cable or heat loop for private use, and where covered area of water body is less
    - minor road maintenance on public land
    - cantilever docks
    - erosion control, relocate rocks on shore lands, removal of invasive and native aquatic plants
    - Permit is also not required for dredging if it was previously done, maintenance or repairs of structures for erosion control, and removal of invasive aquatic plants.
- Docks and Boathouses
    - Installation of docks and boathouses require permits from *the Ministry of Natural Resources and Forestry* as it impacts shoreline waters and fish habitat.
    - If property fronts on the federal lands and bodies of water (Rideau canal, Trent seven waterway) must be approved by federal authorities such as parks Canada
    - All docks and boathouses must be directly located in front of owner's property and appropriate notices must be provided to at least two adjacent property owners.
        - Also need proof of ownership, sketches, drawings , survey of the property
    - Site inspection may be required for application approval
        - Work permit can be approved with or without conditions
    - Once a work permit is received work can begin
    - Must be located directly in front of the applicant's property and must not interfere with a neighbour use of the property
    - May require other approvals → Ontario building code, conservation authority, hydro gas lines not impacted Fisheries and Oceans
    - If on crown land they may require permit
    - For real estate purposes, docks and boathouses are neither considered chattels nor fixtures, and salespersons should conduct due diligence when listing or selling waterfront properties.

- Dredging Permits, Concerns and Impact on Shoreline

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- Broadly described as any activity that involves the removal or displacement of material from a stream bed
- Most are legally public land and fall under *public Lands Act*
- No person shall, without a permit, dredge or cause dredge any shore lands and fill
- Dredging permit required
    - Beach channels or swimming areas. Installation of a cable , water line, or heat loop
    - Removal of rocks, boulders from shore lands or bottom of lakes/streams
- Dredging permit not required
    - Installation of a cable, water line, or heat loop for private use
    - Submarine cables where laid on a lake or river bottom
- *Ministry of Natural Resources and Forestry (MNRF)* may need to visit the site and adequate time be allowed for application process
- Federal *Fisheries Act* Provides the protection of fish habitat
- quantity of material to be removed, the maintenance of bankside and shoreline vegetation

- Aquatic Plant Control and Concerns Regarding Herbicides

    - various control methods over the years for aquatic plants
    - raking, mechanical harvesting, removal by hand, barriers, cutter bar device , chemical use
    - *Ministry of Environment, Conservation and Parks* oversees the control of underwater plant growth using chemicals (herbicides) pursuant to the *Pesticides Act* and permit must be obtained
    - Removal of aquatic plants is seasonally restricted owing to fish spawning periods and exact time frames will be set out in permit

<u>Rural Chattels and Fixtures</u>

- Year-round properties may have garden equipment, water treatment systems, and submerged septic pumps.
- Seasonal cottages may have boats and motors, patio furniture, watercrafts such as canoes and kayaks, swimming rafts, docks, and water treatment systems.
- Hobby farms may have hay mowers, pitchforks, old tractors, lawn care equipment, chicken coops, etc.
- A rural residential vacant lot may have an outside traveling trailer.
- Best to discuss all in schedule B
- Unacceptable → "contents as viewed"

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5.6 Selling and Leasing Rural Properties Salesperson's Obligations

Salespersons involved in selling/leasing rural properties must determine and disclose facts that are unique due to location of the property, use of surrounding land, municipal services, shorelines, and rights-of-way.

Latent Defects: Defects that are not readily observable during reasonable inspection but can affect the value of the property and change a buyer's or seller's decision.

- Some examples include a well that quickly becomes dry, flooding in the spring resulting in damage, or a buried fuel tank that is no longer in use.

Disclosures

- Improvements, Permits, and Inspections: Previous improvements on the property and/or any current permits along with any inspection reports need to be investigated and disclosed to potential buyers.
  - Home inspection is important part of identifying any potential problems and this is even more important when a building permit was not obtained
- Disclosure of Easements: Salespersons must thoroughly investigate and disclose any easements since they are considered material facts which affect the value of the property. An up to date current survey of the property can be referred for information on easements registered on the title.
- Material Facts Specific to Rural Properties: Types of trees on the property, well and septic systems, heating source, land use restrictions, water table, etc. are some examples of material facts that should be investigated and disclosed to clients.

Verifying Unique Factors

Shore Road Allowance: Existence of a shore road allowance and whether the property extends up to water should be verified.

- Salespersons can verify the details from a current survey or from the title/deed of the property, which shows the legal description.

Riparian Rights: These are the rights associated with shoreline properties with respect to access and use of water. These rights come with a host of regulations and limitations that must be verified.

- Some areas will not allow a motorized vehicle to operate on a lake or waterway
- Right to protect the shore if it does not interfere with the rights of adjacent riparian owners

Waterfront Improvements: It is important to verify that a building permit was obtained for any improvements on the waterfront such as a dock or a boathouse.

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- The seller may be asked to provide documentation related to work permits and/or current survey that show the waterfront improvements.
- If built without permit might need to be removed

Road Access: The buyer's salesperson should ensure that the subject rural property is accessible throughout the year.

- For a private road, the cost of maintenance should be verified.
- For a public road, year-round access should be verified. The information is generally available from the local municipality, especially when the area is zoned as seasonal residential.
- If property is on island, you will have to determine where a car can be parked , boat docked etc.

Sewage and Septic Systems: under the Ontario Building Code, sewage and septic system must be inspected every five years.

- A building inspector from the local municipality conducts this inspection and the salesperson should encourage their seller client to get a pre-listing inspection.
- Building inspector will
  - Carry out sewage system maintenance inspections
  - Sign inspection reports
  - Issue orders
  - Enter a property to conduct an inspection

Well Water: Testing for private water wells are done by collecting three separate samples, one to three weeks apart and sent to the local public health offices, which provide free of cost tests for presence of Coliform and E. Coli in water.

- Sellers can get their well water tested before listing the property.
- The buyer may insert a condition in the agreement regarding the condition and potability of water. Mortgage lenders typically require a report on potability of well water for approval of loan.
- *Ontario ministry of Health and Long-term care* is responsible for the testing of private well systems
- Coliform and e coli tests are free

Alternative Energy Contracts: The provincial Micro FIT program encourages and promotes use of renewable energy sources and salespersons should verify is the seller is participating in the program.

- New applications for the Micro FIT program were discontinued in 2017, but the existing projects have a positive impact on the value of the property.
- If the subject property has any Micro FIT project such as solar panels, the details of lease and/or maintenance contracts should be verified and disclosed to buyers.

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Tax Considerations for Cottages

- Rural properties that are primarily used as secondary residence or that include personal items such as a boat, may be subject to taxes upon sale and this should be investigated.
- Many sellers are non-residents who use rural properties and cottages as secondary homes, which are subject to Capital Gains Tax when they are sold.
- If the property being sold is not a principal residence or is owned as investment property, the seller must pay Capital Gains Tax on profit realized from sale.

Capital gains tax

- Property sold not the seller's principal residence, tax is payable on any capital gain
    - Difference between the amount the property sells for, less any expenses incurred (legal fees and estate commissions), less any capital improvements made (new furnace installed) and the adjusted cost (ACB)
    - Adjusted cost Base
        - Amount paid when purchased less any expenses incurred when purchased, such as legal fees and commissions

Exemption for Principal Residence: A property designated and used as a principal residence is exempted from Capital Gains Tax upon sale, subject to certain qualifications.

- Capital gains tax was implemented in 1972 as a result, properties purchased after that date that are not a principal residence are subject to capital gains
    - Only one property can be designated at the time of filing tax return as a principal residence.
    - The taxpayer must own the property either solely or jointly.
    - The property must have been occupied (ordinarily inhabited) during the taxation year.
    - The land on which the property is situated must be less than 1.24 acres (0.5 hectares).
- Cannot designate a seasonal cottage as a principal residence

Recommending Updates to Enhance sale or lease of rural property: Salesperson Duty

Access → grade and remove potholes

Service to property → ask seller for documentation relating to the well and septic system so this is readily available for buyer

- Water system → obtain at least one recent water tests and have the well inspected
- Septic system → consider pumping the septic tank and having the system inspected

Mechanical components

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- Heating system → ensure heating system has been maintained and provide any information on previous sources of heat so a buyer is not concerned about a buried oil tank
- Wood burning → provide info on inspections such as obtaining a WETT inspection on a wood stove

Exterior improvements

- Inspected for condition and interior cleaned Landscaping
- Clean up the yard, trim bushes and trees for better view, placing a house number sign, name sign at entrance , place a bench or chair in front of pond

Picture its year round

Key Considerations when Leasing

Distance → further away the owner lives, more expensive it will be to manage and remedy any issues that arise with the property

- Harder to find trades and lack of absentee landlords can result in
    - Lack of maintenance to the property by the tenant
    - Delay in the reporting go necessary repairs
    - Improper use of the property by the tenant including use of chemicals or other unsafe products, illegal activity, additional occupants, pets etc.

Private well and septic system

- Most rural properties are not on municipal services
- Well water should be tested when the tenant moves in as well as regular intervals

Ability to attract a tenant

- Amenities, cell phone coverage, nature of surrounding properties can vary, heating systems can be more expensive etc.

Year round versus seasonal occupancy

- If tenancy is for travelling or vacationing public, the tenancy is exempt from *residential tenancies act*
- Providing any travel services beyond short-term accommodations rentals requires registration with travel industry council of Ontario

5.7 Valuation of Rural Properties Salesperson's Obligations

Factors that might affecting Value

- Location, property access, year-round or seasonal use, easements , registered restrictions

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- Property size, conditions of the structures, available services, type of heating , property ventures
- Location: A rural property is assessed based on proximity to services, uses of surrounding land, traffic volume, and ease of access.
- For a water front property, additional factors include the type of waterfront, exposure, views, and privacy.
- Access: Easy access to the property helps mitigate risks for fire and insurance concerns. -For example, a property with road access is worth much more than a similar property that has water only access.
- Year-Round or Seasonal: If the property is seasonal only, it may have been constructed differently, and may be less desirable than a similar year-round property.
    - Seasonal properties remain vacant during winter time and may be subject to criminal activities such as theft or vandalism.
- Easements: Easements are commonly found on rural properties and they have an impact on value.
    - The impact on value depends on type, location, and size of easement, which is usually shown on the survey or other documentation.
- Registered Restrictions: Also known as Restrictive Covenants, could impact the value of a rural property as they impose certain restrictions on use of the property over and above the municipal/ zoning restrictions.
    - If the property is registered under the Land Titles Act, restrictions expire by default in 40 years.

<u>Constructions Considerations</u>

- Structural movement
    - Gaps between walls and floor or ceiling, slanted floors, cracks in the foundation wall, cracks in following mortar lines , difficulty opening or closing windows, gaps in window or door frames
    - Caused by → inadequate foots, deterioration, homes built on perimeter walls
- Roof construction/pitch
    - Sagging, poor construction, low pitch in high areas of snow, ice damming
- Decks/porches May have been built on inadequate footings without considering expanded area and additional load.
- Drainage Cottages built on low lands, where water table is high, may have moisture problems.
    - The leaching bed may have poor absorption causing sewage problems. Drain water may be contaminating water from wells.
- Retaining walls
- Do it yourself work

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Financing

Lending Criteria → generally must be residential rather than farming operation

- Lending rules for rural properties can include
    - Home must be satisfactory and mortgage doesn't extend past the "remaining economic life" (number of years the home would still be usable should no additional renovations or improvements be completed)
- Based on lending value
    - Determined by lender based on home acreage and outbuildings
        - Outbuildings may have no value

Second or seasonal home → lenders may require a larger down payment if the property is a secondary home Potable water → investigate the condition of the well to ensure it produces potable water

- Inspect condition of well
- Properties not serviced by a municipal water system could require the following documentation
    - Water potability certificate
    - Septic certificate
    - Well drillers certificate (new wells0 Insurance Requirement
- Fire insurance on major structures when placing financing on property
- Rural properties pose additional challenges for obtaining insurance
    - Location (more remote the higher insurance)
    - Fire and police proximity
    - Age of structure (older increases risk of claim)
    - Type of heating (oil heating can increase cost of insurance)
    - Wood stove (WETT inspection might be required) Use of private lenders
- Some may specialize in rural financing
- When property is second home Canada Mortgage and House corporation (CMHC) will not provide mortgage insurance on the loan

5.8 Agreement of Purchase and Sale Clauses Unique for Rural Properties Clauses Unique to Rural Properties

- Salespersons are expected to have a general understanding of different clauses that may need to be inserted in the Agreement of Purchase and Sale for rural properties.
- The conditional clauses are typically written in Condition Precedent format, which includes the waiver provision.
- The seller agrees to provide access to the property for the purpose of any inspection or collection of soil and/or water samples.

Well Warranty Clause: The conditional clause for well water consists of three parts.

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- flow rate (quantity of water) indicating that there is adequate supply of water for buyer's household needs,
- Satisfactory working condition of the pump and related equipment, and
- Potability → Evidence of no contamination (quality of water) and that buyer may obtain bacteriological analysis of water.
- NOTE: if the seller does not know the current status of the well, the seller should be advised to verify through professional well inspection as the currently water supply can vary from original record
- Salesperson include clause ensuring that there is enough well water, that it is safe to drink and that the pump and all related equipment are in working order upon completion

Sewage & Septic Clause: will make the offer conditional upon the buyer ensuring that the sewage system meets all requirements and the septic bed is in good working order

- All sewage systems serving the property are located wholly within the setback requirements and has received Certificates of Installation and Approval under the Environmental Protection Act,
- All sewage systems have been constructed in accordance with the Certificates of Installation and Approval, and
- All sewage systems have received required use permits and the septic bed is in good working order.

Dock/Boathouse: This conditional clause allows the buyer to verify that docks and/or boathouses were constructed after obtaining necessary approvals and permits

Agricultural Activities Acknowledgement clause: This acknowledgement clause makes the buyer aware that agricultural activities near the property may cause disturbance due to dust, noise, flies, light, odour, smoke, traffic, vibration, operating of farm machinery, and spraying of chemical fertilizers, soil amendments, herbicides, and pesticides.

- All these normal farm practices have protection under the Farming and Food Production Protection Act.

Road Access Clause: This conditional clause deals with verification that the access road is a public road maintained throughout the year by the municipality (publics expense)

- Some other access clauses deal with private roads and seasonal roads and address maintenance issues.

Alternative Clause concerned about road access, the seller agrees to include a represents and warrants clause regarding the condition of the road

Ex. The seller represents and warrants that the proposed fronts

- Road which is maintained on a year-round basis at public expense or

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- Road which is maintained on a seasonal basis at public expense or
- Road which is not maintained at public expense

Privately maintained road clause

Avoid confusion clause in the offer acknowledging that road is privately maintained and also confirming the current annual cost

Ex. The buyer acknowledges that the private road accessing the said property is maintained by […] at an annual cost of…

Obtaining Right of Way Clause

- In cases with no direct access to water but are looking for access from adjacent property that is on waterfront
- Ex this offer is condition upon the buyer obtaining an agreement to create an easement etc. etc.

Road Access by Open Public Road Clause

Sometimes a buyer is purchasing a rural property and may not be sure the adjacent roadway is public due to its condition. This is important to verify because a landowner is responsible for maintaining a private roadway/laneway, which could result in owning the property more expensive

Ex. Buyer wants to submit an offer on a cottage, but is concerned that the access road is in fact public road and maintained through the year

This offer is conditional on the buyer determining at the buyers own expense that access by automobile to the property is maintained at public expense throughout the year

Unregistered Easement (Trespass Access Clause)

- No registered-on title
- Only come across it when selling remote rural property's
- You have to put in the offer that the easement will transfer to the new owner upon closing
- For ex. A buyer submits an offer involving a remote property that has an unregistered easement . He is familiar with the general area and is aware that several properties gain access by this same easement.
- Buyer acknowledges that the road to said property may be an unregistered easement

Road Access to Public Highways Clause

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- Rural vacant lot to build a home, buyer needs to verify that they will be able to have driveway access from the highway
- This offer is conditional upon the buyer determining at their own expense that all vehicular entrances to and exists from public highways have been approved etc.

Shore Road Allowance Clauses

- Often you will sell a rural property where you cannot identify , via visual inspection, the property boundaries especially with regards to shore allowance
- Clarifying these boundaries and shore allowances are a critical piece of an agreement of purchase and sale for a rural property

Water frontage – shore road allowance – unregistered Easement Clause

- Unsure of exact shoreline frontage, whether a road allowance exists that interferes with access to the frontage and any other unregistered rights or easements that exist
- The offer is conditional upon the buyer determining at their own expense that…

Shore Road allowance – Acknowledgement Clause

- In cases when it has been verified that a shore road allowance is located on the property, a clause should be included in the offer for the buyer to acknowledge this fact
- The buyer acknowledges that the original shore road allowance is not closed and consequently is not part of the property being sold etc.

Shore Road Allowance – with encroachments clause

- You will need to ensure visible encroachments that currently exist on the property are acknowledge by the buyer
- Buyer is aware of the shore road allowance and acknowledges this fact when submitting an offer. Furthermore, some structure is encroaching on the unowned shore road allowance

Water Access Clause

- When cottage is only accessible by water, have to ensure a buyer is clear that they are purchasing a property that cannot be accessed by land
- Ex. Buyer summits an offer on a remote property that is only accessible by water
    - The buyer acknowledges that this property is only accessible by water

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Construction Permits

- Include condition regarding construction permits
- Include assurance that al permits were issued and that all work orders were done to code
- Gives the buyer time to check proper authorities to ensure the work was done sufficiently

Inspection condition

- Ensure that there are no deficiencies on the property that could be an expense to the purchase after closing

Insurance Condition

- Conditional upon obtaining insurance
- Short time frame should be included

WETT Inspection Condition

- Conditional upon a WETT inspection and it be satisfactory to the buyer

Representation and Warranties

- Warrant that equipment like heating etc. are in proper working order
- The seller warrants that all mechanical , electrical etc.… are in working order on completion and that this warranty shall survive and not merge on completion of the transaction

Access for Necessary Inspections

- Salesperson needs to ensure there are conditions in an offer stating that the necessary inspections are done when the rural property is accessible
- Well inspections, septic system inspections, home inspections

Local 3rd Party Professionals

- Have to enlist third party professionals located in the area
- Recommend this requirement as a condition in the offer

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Module 6 - Multi-Unit Residential Properties

6.1 Multi-Unit Residential Properties Multi-Residential Dwelling

- Multi-residential dwellings have more than 1 but less than 4 'self-contained' residential units.
- A 'Self-Contained Residential Unit' has a separate kitchen, bathroom, sleeping areas, and exit from the building.
- A multi-family or multi-unit building has two or more self- contained units and are known as duplex (2 units), triplex (3 units), and fourplex (4 units).
- The term multi-residential does not refer to a single-family residential property.
- Secondary or accessory dwelling units → self-contained structures that have been added for one purpose such as a single-family dwelling.
    - Additional structure may be part of the original structure or part of the property (e.g. above a laneway garage)
    - Also known as granny suites

Classification: A 'Residential Dwelling Unit' must have

1. Consist of a self-contained set of roos in a building or structure
2. Be used or intended for use as a residential premise and contain separate sleeping areas, kitchen, bathroom,
3. Have a separate exit and entrance to the outside of the building
    - A single-family detached dwelling may be described as a building comprised of one dwelling unit, while multi- unit dwellings are comprised of more than one dwelling unit

Types of Properties Considered as Multi-Unit Dwellings

Detached/semi-detached/row house

Structure built for one purpose as a one dwelling unit on a single lot that has been subdivided with a secondary or accessory dwelling on the property such as a basement apartment

Duplex → Building that is divided horizontally or vertically in two attached dwelling units from single lot, which has a private entrance accessible directly from common vestibule

Triplex → building that is divided either horizontally and or vertically into three separate dwelling units on a single lot, each having a separate entrance or accessible through a common vestibule

Fourplex → building that is divided either horizontally and or vertically into four separate dwelling units on a single lot

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Zoning for Multi-Unit Dwellings:

- Specific to each municipality and set out permitted land uses, building structures etc.
- Residential, commercial, agricultural, industrial, institutional and open space
- Multi-unit residential properties must be built on land specially classified and zoned for such properties.

Requirements for Multi-Unit Dwellings

- Each unit must have fire separation walls and be installed with operating smoke alarms, carbon monoxide detectors, and fire extinguisher.
- There must be a dedicated means of ingress (entrance) and egress (exit) to each unit.
- Basement must have windows of minimum size, which allow for light and can be used for emergency exit.
- If the unit is an accessory apartment, it must be registered with the local municipality.
- All structures must meet the requirements under the Ontario Building Code, the Ontario Fire Code, and Electric Safety Code.

6.2 Special Considerations Zoning Requirements

- Municipalities may have more restrictions in areas zoned for multi-unit residential buildings.

Affordable Housing through the development of Accessory Dwelling Units

- Planning act provides statutory framework for land development
- Introduction of *Strong Communities through Affordable Housing Act (Bill 140)* facilitated a change to allow for an accessory or secondary dwelling unit on one property where it might have otherwise been prohibited
    - Still must meet Ontario building code and fire code requirements

Municipal Zoning Bylaws

- Bill 140 is an example of government legislation that facilitated changes to municipal zoning
- These restrictions include minimum lot size (frontage, depth, and area) and density provisions for a given area.

More units in a specific area means more density and different municipalities may have different density allocations.

Bill 140 allowed accessory dwelling units that may not have been permitted under traditional zoning

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Zoning Provisions

- Accessory dwelling units in detached, semi-detached or row of houses if an ancillary building or structure does not contain accessory unit
- Accessory dwelling units in a building or structure ancillary to these housing types provided the primary dwelling does not contain an accessory dwelling unit
- All zoning requirements must be met, and apply regardless of who is occupying property
- If any unit is found to be non-compliant, the municipality has the authority to have it removed, resulting in loss of income for the owner.

Introduction to Key Building Code Requirements

- Ontario building code sets out min standards for building design and requirements for safety
- Regulation under *Building Code Act*
- Structural strength and integrity of the building is safe and the building complies with fire resistance standards, has acoustic separation, has adequate means of ingress and egress and adequate sanitary conditions and uses appropriate construction materials
- Applies to new buildings, alterations, additions, changes in use
- Reviewed and amended every 5 years

Building Code requirements for Multi-Unit Dwellings

Independent entrance/exit

- Min requirements for the location and dimension for exit doors for a unit to be permitted. Doors must be large enough and positioned to provide a barrier free and safe entrance and exit
- If units have a common exit , they must have a fire separation with min fire resistance time of 30 min to permit egress

Fire Separation between units + around common areas

- Fire resistant materials with specified fire resistance rating must be used in the walls and floors between units to provide fire separation

Smoke Alarms

- Smoke alarms are contained within each unit, on every storey, in any hallway serving bedrooms and, in every bedroom,
- Must have visual component (flashing strobe) for hearing impaired
- Carbon monoxide detectors are also mandatory in any residential unit with a fuel burning appliance or storage garage

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Natural light

- Min requirements for the location and dimensions of windows to provide natural light and an emergency exit
- Window well at this egress point must also be a min size and situated within three feet of grade to allow room

Unit size and Heating systems

- Standard min requirements for unit dimensions, includes all spaces within the unit, such as bedrooms, living and dining areas, kitchen and bathrooms
- Blueprints indicate whether there is sufficient space to add an additional dwelling unit
- Homes less than 5 years old, separate heating systems are required.

Electrical safety

- Permit and work notification to begin the work and once completed must be inspected by Electrical safety authority + certificate of inspection

Building Permits

- No one is allowed to construct or demolish a building without obtaining a building permit from the local municipality.
- Building permit is generally required for finishing previously unfinished areas (attics and basements) and construction of accessory buildings in excess of specified square footage.
- A building inspector is authorized to enter a property under construction at any reasonable time without warrant to ensure that the development work is being done according to the building permit and all requirements are met.
- The owner may be required to correct any deficiencies found during the inspection, failing which a work stoppage order may be issued.
- When the project passes all inspections, an occupancy permit is issued by the municipality.

Building Inspector

- Permitted to enter onto lands subject to a building permit at any reasonable time to inspect the building
- If violation is found, they can make a corrective action, or make a stop work order
- Once all requirements are met, occupancy permit is issued by the municipality

Fire Code Requirements

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- For all new construction work, the Ontario Fire Code is applicable as a subset of the Ontario Building Code.
- Ontario fire code provides the safety of occupants in multi-unit dwellings through
    - Elimination or control of fire hazards in and around buildings
    - Maintenance of life safety systems in building
    - Establishment of a fire safety plan in those buildings where necessary
    - Multi-unit dwellings need a certificate of compliances from the fire department Requirements for two-unit residential dwellings

There must be fire separations between units and corridors, which act as a barrier to prevent spread of fire.

- Detached house, semidetached house, or row house containing two existing dwelling units, where the building is 3 storeys or less, the building area does not exceed 600 m square and one dwelling unit is situated above another or side by side
- 1 continuous separation with a 30 min fire resistance rating is required between units
    - Membrane of lath and plaster or gypsum
- Rated doors installed in hollow metal or solid wood frames and equipped with self-closing devices

Requirements for Multiple Residential Units to 6 stories

- More than two dwelling units
- Fire separations between dwelling units and corridors
- Two means of egress (exit) are required for each dwelling unit.
- Hard-wired smoke detectors and integrated sprinkler and fire alarm systems.
- Fire extinguishers and separation between the room for fuel-fired appliances and rest of the building.
- Stairway exits and exit signs, along with emergency lighting.
- Separate storage rooms inside the dwelling

Life and Fire Safety Systems

- Smoke alarms contained within each unit, on every story, in any hallway serving bedrooms and, in every bedroom, not within a dwelling unit
- As of 2015 must have visual component
- After April 6, 1998, these alarms are required to be hardwired, interconnected, and having a strobe light.
- Fire Extinguishers and Sprinklers: All portable fire extinguishers should be tested on monthly basis. Sprinklers are mandatory in multi-unit residential buildings, which are more than 3 stories high.

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Carbon Monoxide Detectors: These are mandatory and be installed adjacent to the service room in all buildings where fuel-burning appliances are used.

- They must also be installed outside all sleeping areas as per manufacturer's instructions.
- After 2001, must be mechanically fastened, must be hardwired, must be interconnected in the suite

Fire Code Inspections: Accessory dwelling units must be inspected by the municipal fire Inspector

- The Fire Marshal and Fire Inspectors are authorized to enter and inspect a premise without any warrant.
- They check clear paths of egress, fire extinguishers, emergency exit lights, fire alarm panels, fire suppression sprinklers, maximum occupancy limits, overloading of sockets and uses of extension cords, electrical panels

Electrical Safety Compliance

All electrical installation, repair, and replacement work should be done in compliance with the Electrical Safety Code by technicians licensed by the Electrical Safety Authority (ESA).

- After the work is complete, an inspection is done, and an Electrical Safety Certificate is provided to the owners.

Municipalities require this certificate when an accessory building is registered.

Accessory Dwellings

Sellers and buyer need to be aware of insurance, financing, and tax considerations when reviewing properties with accessory dwelling units.

Insurance: Insurers may ask a number of questions to ascertain the condition of the property and ageing structural components may impact the premiums.

- Must provide full disclosure relating to occupancy or it may void insurance policy
- Additionally, the insurance for main home does not cover tenant's contents or tenant's personal liability.
- This means that if there is an event such as fire, which damages tenant's property, the owner may be held liable.

Insurance for Multi-Unit Properties: Landlords must be aware that the basic insurance covers damage to the property.

- Basic policy covers walls, flooring, fixtures, landlords' appliances, heating, cooling and some may include
    - Furniture, replacement of lost rental income, defence costs in the event of a lawsuit should tenants or their guests suffer injury or damages

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Income for Financing: Lenders typically consider 50% of rental income after confirming that the rental units conform to legislative requirements.

- A written lease or tax return is treated as an evidence of rental income, including expenses for maintenance.
- Each mortgage lender will specify their precise requirements but most include
  - Evidence of the rent derived from renting a unit
  - Expenses made for upkeep or to improve the unit
  - Any vacancies
  - Any additional income that may be attributed to the rented dwelling (parking, laundry)
- Documentation of annual expenses for maintaining the dwelling unit, as well as any additional income accruing from it , will be factored
- Tax returns or other proof of incomes helps the lender

Tax Obligations

Taxation Issues: Buyers should be aware that rental income is subject to Income Tax after deducting the expenses for maintenance and capital expenses

- When the rental property is sold, the profits may be subject to Capital Gains tax.

6.3 Due Diligence and Disclosures Due Diligence

Document Physical Condition of All Units: A walk-through of the entire property should be done to ascertain the physical condition of the property.

- Salespersons should confirm that the seller provides warranty about life safety systems, current fire inspection, and other aspects of property maintenance.

Tenant's Possession of the Unit: Salespersons should gather information and document whether the tenant has a fixed- term lease or a month-to-month tenancy. How long have they been there and whether or not you can ascertain future tenant need?

Tenant Information That Impacts Marketing and Sale: Information about tenants, without intruding their privacy, may be collected and shared with the buyer because it is important for decision making.

- Any information related to rent paid, rent in arrears, smoking by tenants, or pets, etc. may have an impact on salability of the property.
- Salespersons must be very careful not to ask anything personal related to their marital status, children, or employment.

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Collecting True and Accurate Financial Information: The seller must be advised that any financial information, which is disclosed to a co- operating brokerage or a potential buyer, must be true, accurate and verifiable.

- Financial statements from the seller, which show revenue and expenses, should be obtained for at least previous 3 years.
- Copies of deed, leases, rent rolls, cost of utilities, tax bills as well as expenses such as lawn maintenance and snow removal
- Good rule of thumb is to retain 3 years of information for any investment property you are listing

Disclosing a Seller's Financial Information

Seller's Financial Information: Prospective buyers usually ask for seller's financial information with details of income and expenses for the rented property.

- Since this information is private and confidential, salespersons may include a non-confidentiality clause in the agreement to protect the seller.
- This clause ensures that the buyer will hold this information in strict confidence and will not disclose it to anyone except for obtaining financing and/or legal advice.

Tenant Information: Only those documents that have been signed and acknowledged by the tenants can be disclosed to a potential buyer.

- These include copies of leases, which provide information on rent, lease term, deposits, post- dated cheques for rent payment, locks, sublets and/or assignment, renewals and termination, rent increases, compensation for repairs/damage, notices, pet provisions, etc.
- If the buyer or buyer's third-party professional wants to take any pictures of the tenanted property, tenant's written consent should be obtained.

Disclosures of Latent Defects: These are structural defects or deficiencies which are not visible to an untrained eye during reasonable inspection.

- Environmental concerns such as asbestos in insulation, underground fuel tank, etc. are considered latent defects.
- Patent defects, which are apparent and readily visible/observable, need not be disclosed.

6.4 Developing Relationships with Tenants Dealing with Tenants

- In addition to their relationship with sellers and buyers, salespersons should be able to develop healthy working relationships with tenants as part of their trading activities.

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- Apart from TRESA Code of Ethics, working knowledge of the Residential Tenancies Act and the Ontario Human Rights Code helps registrants communicate well and understand various considerations.
- *Residential Tenancies Act* addresses the rights and responsibilities of residential landlords and tenants
- According to the act a 24-hour written notice must be given to enter a unit to show it to a prospective buyer
    - must include reason for entry, the date, and time which must be between 8 am and 8pm
    - The only exception is when the tenant allows entry to the unit without an advance written notice.

Providing Proper Notice for a Tenant to Vacate

- May be done in one of two ways
    - Through an agreement between the tenant and landlord. The tenant may voluntarily agree to vacate the premises before the end of the lease
    - If the buyer or immediate family member requires the unit for their own use
        - Must occupy the unit for a min of 12 months
        - Appropriate form for the notice must be used and the prescribed time limits for delivery of the notice must be followed
        - 60 days' notice

Positive Working Relationship with Tenants

- The seller should be advised to request the tenants that during showings and open houses
- They remove their personal or expensive items during showing to protect their privacy, and
- They keep their unit neat and clean (not mandatory)
- They do not have to vacate during showrings

6.5 Estimating Value

Key Factors When Estimating Value

- Some buyers look for extra income from multi-unit residential properties by living in one unit and renting the other unit while others are investors and base their decisions on the return on investment.
- Salespersons may be asked to assist their clients in estimating value, but they should be careful not to provide expert opinions on value or offer professional appraisal services.
- Most estimates of value require a full picture of the property and it is based on units of comparison such as value per square foot/metre or value per unit (suite).

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- Confirm information is accurate, and cross reference it (income from it)

Documentation for Income: The documents provide accurate and verifiable information on income and expenses of the subject property.

- Collect the following
  - *Rent Roll*, which is an official register, provides information about tenants and the amount of rent they pay. Confirmation of who is renting which units
  - *Income and Expense* Statements provide summary of revenue, expenses, and profits and losses for a particular period of time.
  - *Leases* signed with tenants confirm the type of lease, the lease term, and the start and end dates.
- When not available confirm the lease agreements if they didn't sign a new lease and were yearly, then they are then a month to month tenant

Operating Expenses and Supporting Documentation

- Operating expenses are critical to estimating value and appropriate documents confirm the type and amount of expenses.
- These include property taxes, insurance, repairs and maintenance, wages for janitor, property manager, cost of utilities, garbage collection, and other miscellaneous expenses. Advertising etc.

Methods of Valuation

1. Direct comparison approach, unit mix or room mix
2. Income approach
3. Income multiplier approach

Direct Comparison Approach: Unit Mix

This approach compares the subject property with sale of similar properties using two methods – Unit Mix (value per unit) and Room Mix (value per room).

Unit Mix Method: The per unit value of recently sold comparable properties is calculated and this value is used to estimate the value of the subject property.

Example: If the value derived from comparable is $250,000 per unit and the subject property has 4 units, the estimate of value would be 250,000 X 4 = $1,000,000.

Room Mix Method: The per room value of recently sold comparable properties is calculated and this value is used to estimate the value of the subject property.

Only bedrooms, kitchen, dining, living, and family rooms are considered 'rooms' for this method. Bathrooms and storage spaces are excluded.

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Example: If the value derived from comparables is $65,000 per room and the subject property has 15 rooms, the estimate of value would be 65,000 x 15 = $ 975,000.

Income Approach

This approach utilises the net operating income capitalized to get an estimate of value. of the property, which is Traditional is revenue less expenses which would create a Net Operating Income

Step 1: The capitalization rate is estimated from sale Cap Rate = Net Operating Income ÷ Sale Price X 100 of comparable properties.

Step2: This capitalization rate is used to estimate the value of subject property. Estimate of Value = Net Operating Income ÷ Capitalization Rate.

Procedure:

Estimate Annual Gross Potential Income Less Vacancy and Bad Debt Loss Effective Gross Income = Potential Income – Vacancy Loss%

Less Annual Operating Expenses

Net Operating Income = Effective Gross Income – Operating Expenses Estimate of Value = Net Operating Income ÷ Capitalization Rate.

Example: The annual Effective Gross Income of a multi-unit residential property is $550,000 and the annual operating expenses are $326,500. What would be the estimated value of this property based on a Capitalization Rate of 11.5%?

Net Operating Income = 550,000 — 326,500 = $223,500 Value = 223,500 ÷ 11.5% = $1,943,478.26

Valued Rounded to Nearest $100 = $1,943,500

Income Multiplier Approach

This method provides a rough estimate of value because it does not consider complexities of income and expenses but only utilizes the sale price and effective gross income.

Step 1: The Gross Income Multiplier (GIM) is estimated from the comparable sales. Gross Income Multiplier = Sale Price ÷ Effective Gross Income

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Step 2: This GIM is used to estimate the value of the subject property. Estimate of Value = Effective Gross Income of Subject X GIM

Example: You are trying to estimate the value of a commercial property using the Gross Income Multiplier (GIM) method. The Effective Gross Income (EGI) of the subject property is $83,200. A comparable property was sold last week for $520,000. Its annual Effective Gross Income is $88,400. From the Comparable Sale– GIM=520,000÷88,400=5.88 Apply this GIM to the Subject – Value of the Subject Property = 83,200 x 5.88 = $489,216, rounded to $489,000.

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6.6 Showing Tenanted Multi-Residential Properties

Multi -Unit Properties

- Buyers of multi-unit residential properties are mainly looking to invest in residential housing market.
- Salespersons must conduct due diligence when selecting of properties of interest and showing them to the buyers.
- The impact of Residential Tenancies Act should be discussed with the buyers and they should be asked to get expert legal advice from their lawyer regarding rights and responsibilities of landlords and tenants.
- What can they afford, their tolerance for dealing with tenants, their knowledge of the *Residential Tenancies Act?*

Intended Use of Property: The buyer may continue to rent the multi-unit property or may want vacant possession for themselves, a family member, or a caregiver.

- Vacant possession may also be required in case the buyer wants to do extensive renovations or repairs. Buyers must be made aware that 60 days' notice is required to end any month-to-month tenancy but the tenants on a fixed-term lease have the right to remain until the expiry of their lease term.
- Under certain circumstances, a buyer may include a clause requiring vacant possession. Valued reasons
    - Themselves, immediate family member , a caregiver

Buyer's Expectations when selecting an investment property:

- Include factors such as tenure of the tenants, property location, vacancy rates, general maintenance, financing, and types of units in the building.

Due Diligence Legal and Financial Considerations:

- The buyers must verify the legal status and financial position of the property from review of due diligence documentation.
- These documents may include operating statements for at least previous 3 years, capital improvements, details of rent deposits, copies of insurance policies, and service contracts.
-

Interactions with Tenants When Showing

- Salespersons must make reasonable efforts to protect the best interests of their buyer clients.

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- They should be extra careful when dealing with tenants during showing as TRESA Code of Ethics requires that registrants must treat everyone fairly, honestly, and with integrity.
- If tenants are willing to talk, the conversation should be restricted to property related questions and personal questions should be avoided.

Termination Notice to Tenants

- Any notice to terminate the lease must be according to the provisions of the Residential Tenancies Act.
- It is illegal for any buyer to falsely indicate that they want vacant possession for personal use but instead, their intention is to rent the units to other tenants at higher rent.
- If this happens, the former tenant may file a complaint with the Landlord and Tenant Board or may file a lawsuit against both the buyer and the salesperson.
- Once notice has been provided, the tenant may end the tenancy on an earlier date by giving at least 10 days written notice, keep copy of this
- To terminate tenancy immediately, the landlord to the buyer can make an application to the landlord tenant board (LTB) after giving appropriate notice to the tenant, by providing Form L2 and a copy of notice to end tenancy form (N12) that was given to the tenant and a Certificate of Service to tell the LTB when and how notice was given to the tenant.
- Application must be no later than 30 days after termination date noted on the Form N12

6.7 Drafting an Offer for Tenanted Property Clauses That Need Special Consideration

- there may be pre-printed clauses that have specific considerations applicable to multi-unit properties Completion Date: The date and vacant possession should be discussed with buyers due to tenants in the property. Chattels: Certain appliances may be owned by tenants.

Fixtures: Tenants may have installed certain fixtures which will be removed upon completion.

Documents and Discharge: Additional documents, such as leases and tenancy agreements would be required. Inspections: Inspections related to life safety systems are required in addition to regular property inspection. Adjustments: Calculations will include rents and rent deposits.

Additional Clauses: Clauses may be required for permission to enter for showings, provision of financial documents, vacant possession, tenant leases, rents, rent deposits, rent increases, and zoning compliance.

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Due Diligence Documents: The buyer may need documents such as copies of leases, rent roll, confirmation of deposits in trust, and income statements for the past 3 years.

Clauses for Schedule A of a Purchase and Sale Agreement

- could include : permission to enter and showing times, providing financial info, representation and warranties, vacant possession clauses
- tenant leases and rents (including deposits) zoning , rent increases and collection

Clauses to include with an offer for a Residential Multi-Unit Property Inspection Clauses

Inspection by Third-Party: This general- purpose conditional clause may be amended to allow a third-party professional to inspect electrical and mechanical systems, structure, and roof in multiple units in the building

- does not specify what type of report you will obtain so you can bring in the 3rd parties necessary to inspect
- both for single and multi-family

Retrofit - Fire Code Inspection: This conditional clause allows the buyer to get the property inspection for compliance with retrofit provisions under the Ontario Fire Code regulations.

- Bring existing buildings up to a reasonable level of life safety
- Responsibility of owner of the property to comply with the legislation
- APS should be conditional on the buyer obtaining an inspection report of the property

Retrofit – Electrical Inspection: This conditional clause allows the buyer to get the property inspected for retrofit provisions by Electrical Safety Authority (ESA).

- One of the 5 requirements in the retrofit legislation
- Ensures wiring is safe
- APS should be conditional on getting an inspection

Inspection of Systems: This general-purpose clause is inserted to get seller's consent for entering the unit for inspection of electrical systems, heating systems, maintenance, and other utility services.

- May include other components of a building i.e. roof or structural

Consent for Photos (sellers) : This clause gets necessary consent from the seller and the tenants for taking pictures of the interiors of the property, which may be required for home inspection, appraisal, etc.

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- Not allowed to take pictures of property while occupied by tenant unless you have express consent

Right of Re-inspection: This clause is to obtain seller's and tenant's consent to re-inspect the property to ensure that the systems inspected earlier are in working order and fixtures have not been removed.

- Prior to completion
- If the inspection are required to assist in fulfilling conditions, the clause should state that the inspections will take place prior to expiry of conditions

Environmental Clauses

- Help determine whether environmental laws and regulations have been complied with such as
  - No hazardous conditions or substances exist on the land
  - No limitations or restrictions affecting the continued use of the property exist
  - No pending litigation respecting environmental matters exists
  - No outstanding Ministry of Environment orders, investigation changes or prosecutions respecting environmental matters exist
- These clauses should seek co-operation of the seller for environmental site assessment

Compliance with Environmental Laws: This conditional clause allows the buyer to make sure that the multi-unit residential property is in compliance with all applicable environmental laws and there are no hazardous conditions or substances on the property. (oil tanks)

- Additionally, this clause ensures that currently no environmental orders, charges, investigations, or environmental matters are existing.

Environmental–Lawyer's Approval: This conditional clause permits the buyer to have their lawyer review and approve the agreement because the property is located in an environmentally protected area.

Protected Zone, Flood Plain, or Hazard Land: The buyer wants to make sure that no portion of the property has been designated as hazard land, flood plain, or environmentally protected zone.

- In a multi-unit property this may prohibit expansion to make another unit

Due Diligence Clauses

- Universal to single family and multi-unit residential dwellings
- In case of multi-unit dwellings, you will want to include both the seller and the buyer clauses to ensure
  - Parties carry out the appropriate level of due diligence
  - Seller provides the appropriate due diligence documents

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Lawyers Approval - Buyer

- Allows the buyer to speak with a lawyer. Used to provide insight in regards to an item or concern the buyer may have about the clauses that have been inserted

Lawyers Approval – Seller

- Allows the seller to speak with a lawyer to provide inside in regards to concern the seller may have

Finance and Insurance Clauses

- Can be more complicated for a multi-unit property this allows the buyer flexibility

Arranging new mortgage satisfactory to the buyer

- Broadly used due to the flexibility it allows for multi-unit financing
- Stipulates a time frame in order to negotiate terms, appraisal and other requirements a lender may have
- NOTE: sellers should be aware that this condition does not contain any specific terms of the proposed financing buyers wish to arrange and thus provides buyer with more latitude in declining financing
- Buyers have obligation to make "good faith" effort to arrange the necessary financing and should not use this clause inappropriately

Arranging Insurance

- May have complexities if outdated systems that may need to be upgraded in order to qualify for insurance
- Allows the buyer to nullify the transaction should the property be uninsurable or the cost of the premium be unacceptable to the buyer

Representation and warranty Clauses

- Representation is an assertion of fact
- Warranty is a promise of promise of protection if it is false
- Key to ensure the seller is being truthful Seller Representations General
- Condition of property
- Seller is representing and warranting that on closing, the components listed are in good condition.
- Only applies to the condition of the components on completion
- If damage is discovered on closing, the buyers right to recourse against the seller under the warranty would continue after closing however, if the components developed damage after closing , the warranty would not apply

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Warranties – Survive Completion

- Warranties and representation merge on completion, meaning that they no longer apply which is why this clause could be added to an agreement
- Seller should be cautioned that this clause would make them liable indefinitely
    - Unlikely seller would agree to this
- Amendment
    - In a multi-unit situation , if you can't produce the documentation to confirm a representation in the agreement, you don't want the seller's warranty to apply to the property indefinitely.
    - Add the words "but apply only to the state of the property at completion of this transaction"

Rental Clauses

- Specific to multiunit residential properties they ensure due diligence, confirmation of the info, representations from the seller are true, and confirmation of the revenue and expense estimates

Rent Increase: This clause is required where rents will be increased prior to the closing

- Otherwise rents cannot be changed until the buyer takes possession of the property

Notices to Tenants: The seller agrees to provide appropriate notice to tenants that the property is sold, and rents will be paid to the new owner. And they will be taking over

- NOTE: Lawyers for parties will treat rent deposits and interest thereon as part of the adjustment process

No Warranty re legality of Rents: This clause confirms the unit numbers, current rent that the tenant pays, and when the rent was last increased.

- Important to crosscheck rent rolls to ensure due diligence is done and information is accurate
- NOTE: any additional categories may be used to expand tenancy information → apartment number, tenant name, type of tenancy, expiry date, rent due date, prepaid rent etc.
- NOTE: the actual lease documents should be attached as a schedule to the agreement. If there are too many documents consider making the offer conditional upon inspection of tenancy agreement

Rent–General Warranty: This clause provides a warranty from the seller that they have complied with applicable legislation with respect to rents and rent increases.

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Seller Warranty regarding Disputes: The seller gives a warranty that there are no pending disputes with any tenants regarding rents, repairs, or any other terms of the lease.

Renegotiation of Leases ensures the seller does not renegotiate any tenancy agreement without the buyer's consent or instruction

- Another clause gives the seller the authority to renegotiate a lease on behalf of the new buyer

Other Clauses Applicable to Multi -Unit Dwellings

- Not unique to multi – unit dwellings
- What is unique to these clauses is the amount of detail and process associated with them
- Vacant possession is not as simple as a single-family transaction
- Tenants involved who are owed due process and notice Vacant Possession/notices
- Should a buyer plan to move into a unit, this is a clause that would be needed
- NOTE due to the current state of Landlord and Tenant Law, the seller will not be able to guarantee vacate possession on completion of a tenant refuses to vacate

Chattels – good working order

- Have the seller represent and warrant that all the chattels will be in good repair , fully functional l and without any liens on closing
- Another clause is to have the seller represent and warrant that all the equipment will be in good repair and fully functional
- Amendment → this clause should be amended as required. Delete the equipment that doesn't apply

Chattels – fixtures and rental items this clause is to confirm that the fixtures installed are included with the property Amendments → would amend this if a tenant has installed a fixture and it will not be included in the sale of the property

- This clause identifies any rental items on a property and that they are not included in the purchase price
- NOTE: a variety of items may be rentals (hot water tanks, air conditioner, water softener, furnace and furnace burner) care must be taken to ensure all rentals are documented

Zoning situations where there is an accessory dwelling unit requiring compliance with the building, fire and electrical codes and multi-residential zones such as a duplex, triplex and fourplex

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- As a result of different types of properties, zoning becomes very important because it allows for confirmation and permitted uses that will apply to those property types
- NOTE this clause is often used in conjunction with No warranty re-legality of rents

The Offer Plan

- Outline of key information without all the details
    - Names of buyers and sellers
    - Deposit amount and how it will be paid
    - Key dates
        - Irrevocable period
        - Completion date etc.
    - Clauses
    - Details on chattels, rentals etc.
- Only difference between multi and single-family residential offer would be the length and complexity
    - Number of schedules included in a multi would reflect the info required not just about the seller or property but also about the tenants and their property

Agreement of Purchase and Sale

- Sellers and buyer's info are standard
- **Purchase Price and Deposit** (schedule A would be attached and contain the clauses specific to your transaction)
- Irrevocability and Completion date
    - Clause 2 states that vacant possession shall be given to the buyer unless otherwise provided for in the agreement
    - Appropriate clauses must be added to Schedule A to address this fact
- Clause 3: Notices
    - Standard for both single and multi
- **Clause 4 – 6:** Chattels Fixtures and rental Items
- Clause 7: HST
- **Clause 8** : Title search
    - Important and requires multi-unit considerations
    - Second paragraph is important to insert the correct words to describe its present use of the property
    - It is important to identify what the zoning allows the property to be legally used as
        - This protects the parties in the APS
- **Clauses 9-27** standard legal clauses

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Schedule A

Balance Due the amount due at closing

Representation and Warranty for the good working order of the chattels

Inspection condition to conduct an inspection of the property. The inspection by a third party has general inspection requirements and also to confirm the fire code compliance and the state of the air conditioning

Insurance condition to acquire insurance for multi-units

Mortgage condition to acquire funding at an acceptable

Tenancy Assumption clause to identify the current tenant who will stay and the rental conditions

Vacant Possession Notice Clause to require the seller to notify the tenant who must vacate the unit for the buyer

Signatures and Initials

- Each page is initialled and the document is signed and dated also witness views
- Offer is then sent to listing brokerage

Counter Offer

- Accepting a Counter Offer
  - Initial all changes made by the seller
  - Complete and sign the confirmation of acceptance on the agreement of purchase and sale
  - Complete and sign the acknowledgement portion of the agreement of purchase and sale
- Provide a copy of the accepted offer to each buyer
- Sign the commission trust agreement on the APS and obtain the listing brokerages documents to the listing salesperson
- Provide copies of the accepted offer to the listing salesperson
- Retain a copy of the accepted offer for the brokerage's records

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Module 7 - Residential Leasing

7.1 Fundamentals of Residential Leasing Terminology

Landlord (Lessor): The person or organization that owns and leases land, buildings or individual units to others

Tenant (Lessee): The person or group who pays rent for the right to occupy the property.

Lease hold Interest: The right to possess or use a property for a specific period of time and rent specified in a written lease.

Term, Fixed Term, and Periodic tenancy: Term of tenancy is the period of time a tenant will lease a property Fixed term tenancy → provides the tenant with exclusive possession of a rental unit for a specific term.

Ex. Fixed term could be a year

Periodic Tenancy fixed period (weekly or monthly) and is automatically renewed period until there is a termination Ex. When a fixed term ends, a residential tenancy turns into a periodic (month to month)

Tenancy Agreement: The written, oral, or implied agreement between the landlord and the tenant.

Rental Unit: The living accommodation used or intended for use as a residential premise.

Rent: The amount paid by the tenant to the landlord for the right to occupy the rental unit, facilities, and services.

Lawful Rent: An amount that complies with the provincial Residential Tenancies Act.

Rent Increase Guideline: The maximum percentage, set by the government, by which a landlord is permitted to increase residential rent without approval from the Landlord and Tenant Board.

Rent Deposit: The maximum deposit the landlord can charge as deposit is one month's rent or the rent for a period. It must be applied to the last rental period before termination.

Use Restrictions: A public or private declaration that limits how land, building, or a unit is used.

Lease and Agreement to Lease

- Lease is a contract between landlord (lessor) and tenant (lessee)
- It is for the occupation or use of the landlord's property by the tenant for a specified or unspecified time and specified consideration

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- Under the terms of a lease, the lawful owner of the property (landlord) transfer the rights of use, possession n and enjoyment to another (tenant) for a specified or unspecified time for consideration (rent)
- Can be verbal , written, expressly stated or implied by a person's conduct
- All leases longer than 3 years should be in writing as the document outlines each party's rights and responsibilities

Agreement to Lease

- This an agreement without a settled or finalized form of lease but provides key details of the agreement between the parties.
- This agreement expects that, once accepted, the parties will sign a formal lease.
- Outlines terms, conditions to be considered by both parties
- Best described as a consensus leading to final agreement (the lease) Standard lease Agreement
- Applies to most forms of residential tenancies in Ontario
- Landlords are required to use this form (lease) when entering into a tenancy agreement with a tenant
- Uses easy to understand language to help
    - Landlords and renters understand their respective rights and responsibilities
    - It reduces illegal terms and misunderstandings caused by verbal agreements, and
    - It reduces the need for Landlord and Tenant Board hearings.

7.2 Key Components of Leasing Types of Residential Tenancies

Four types of residential Tenancy

Fixed Term Tenancy: The tenant has exclusive possession of the premises for a specified term as agreed in the written contract (lease)

- In a fixed term lease, both the commencement and expiry dates must be determined before the lease takes event
- The lease must specify the date of commencement and date of expiry before the lease starts.
- If the tenant remains in possession after expiry, the tenancy automatically converts to a month-to-month (periodic) tenancy.

Periodic Tenancy: The period (monthly or weekly) is fixed but the length of the tenancy is not defined.

- This tenancy automatically renews after every period until either the tenant or the landlord gives notice of termination.
- Can be in writing or oral and may simply stay it is month to month

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Tenancy at Will: This occurs when no lease exists (it may have expired) but the tenant stays in the property, with or without rent, with the consent of the landlord.

- Implied Tenancy occurs when the tenant does not pay rent and occupies premises
- Express Tenancy occurs when a transaction does not close on due date, but possession is given in anticipation of future closing.
- The lawyers for the owner of the property and the buyer agree to allow the tenant to take possession of the property if circumstances have delayed the closing of the transaction
- Can complicate matters when the landlord wants to change the terms of the tenancy or create a new tenancy for some reason, as the landlord has less control with the tenant on property
-

Tenancy at Sufferance (Overholding): This occurs when the tenant keeps possession of the property, often without the consent of the landlord.

- Arises when tenancy has been terminated but the tenant does not vacate
- Tenant did not vacate after a proper notice to terminate
- The tenant did not vacate after the fixed term tenancy expired

Standard Form of Lease

- If a tenant signs a lease, the standard Residential Tenancy Agreement (standard form of lease) must be used
- If a lease is signed that is not the standard lease, the tenant can request the landlord to provide it within 21 days
- If the landlord fails to provide the standard lease within 21 days after a tenant has asked, IN WRITING< the tenant may withhold one month's rent
- If the landlord fails to provide the standard lease within 30 days after the tenant has begun withholding rent, the tenant does not have to repay the on months' rent
- The tenant cannot withhold more than one month's rent and must continue paying rent for the term of the lease, if the landlord never provides the standard lease
- If a standard lease is not provided, special Landlord and tenant board rules allow the tenant to end the fixed term lease early

Purpose of Standard Lease

- Easy to understand language and standard clauses to provide the following solutions to common problems
    - Help landlords and renters understand their rights and responsibilities
    - Reduce illegal terms in leases and misunderstandings cause by verbal tenancy agreement
    - Reduce the need for landlord and tenant board hearings to resolve disputes
- Ex. Of disputes
    - Who is paying for items such as furnace filters or light bulbs

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- Importance of standard clauses
    - Complies with The Residential Tenancies Act + The Ontario Human rights code

Landlords Rights

Collected Rent deposits rent deposit cannot be more than one month's rent, or if rent is paid weekly, one weeks rent

- Deposit must be used for the last month or week of tenancy payment
- Cannot be used for any other reason, such as pay for damages
- Landlord must pay interest on the deposit every year
    - Interest is determined by *Residential tenancies Act* on info with the rate provided by Landlord and Tenant Board

Increase in rent special rules limit how often a landlord can increase the rent and by how much

- Can only increase once every 12 months by the guideline set out by Ontario government
    - Changes annually
- Must give tenant 90 days' notice in writing of any rent increase using the proposed form N1
- Exceptions: non-profit and public housing units, residences at schools, colleges and universities etc.

Landlords Responsibilities

- Landlord has some fundamental responsibilities
    - Keep the rental property in a good state of repair, which includes obeying all health, safety and maintenance standards
    - Provide tenant with a copy of the completed standard form of Lease within 21 days after the day it was signed and given to landlord

Prohibited Landlord Actions

Shut off a vital service

- Cannot shut off or deliberately interfere with the supply of a vital service
    - Heat, electricity, fuel, gas, hot or cold water Take the Tenants Personal Property
- Even if they do not pay rent and continue to live in the rental unit

Lock a tenant out of their rental unit

- Cannot lock them out unless
    - Landlord has an eviction order from the landlord and tenant board
    - The sheriff comes to the rental unit to enforce it Insist on rent payment by post-dated cheque or automatic debit

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- Must be decided between tenant and landlord
- Landlord cannot demand payment by a specific method
- Landlord cannot refuse to rent to a person who does not agree to pay in the method the landlord prefers
- Once a payment method has been set you cannot change it unless you both agree

Tenants' Rights

Security of tenancy

- Can continue to live in a rental unit until one of the following applies
  - They give the landlord proper notice that they intent to move out
  - The tenant and landlord agree that the tenant can move out
  - The landlord gives the tenant notice to end a tenancy for a reason allowed by the *residential tenancies act*

Privacy

- Can enter rental unit only for reasons allowed by *Residential tenancies act*
- Landlord must give 24 hour written notice, this noticed is waived in the case of an emergency or a tenant agrees to allow the landlord to enter

Tenant's Responsibilities

Pay rent → pay in full and on time

Keep the rental unit clean → keeping it up to the standard that most people would consider ordinary or normal

- Must also ensure proper use, i.e. Not leaving the windows open when it rains

Repair any damage to the rental property

- Tenants are responsible for repairing any damage done by them or their guests (except normal wear and tear)
- Tenants can apply to the Landlord and Tenant Board when the landlord fails to meet maintenance responsibilities but cannot withhold the rent.
- Wear and tear is the physical deterioration that occurs with normal, reasonable use Meet provisions of the lease

Prohibited Tenant Actions

- Tenants cannot change the locking system without landlord's permission and must provide new keys to the landlord.
- Tenants cannot withhold rent when the landlord fails to properly maintain the building or unit

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Mandatory Fields; written Lease

- Cannot change any standard clauses in any of the sections
- Protects all parties (comply with residential tenancies act & Ontario human rights codes)
    - Legally enforceable
- Terms added must also comply with *RTA*
- Some terms violate the RTA
    - Most terms that forbit animals or require a damage deposit
    - Considered void and not enforceable unless the property already has a no pet rule.
        - Ex. Due to existing tenants' allergies or for the residents in condo corp

Accommodations Exempt from Standard Lease

A Standard lease is not required for tenancies that have special rules or partial exemptions under the TRA

- Rental agreements for care homes and retirement homes are only required to have a written lease, which may be other than the Residential Tenancy Agreement.
- Leases for mobile home parks, land lease communities, travel and vacation resorts, tourist camps, campgrounds, or trailer parks occupied temporarily or seasonally.
- Social and supportive housing are exempt from rent rules under the Residential Tenancies Act.
    - Housing subject to operating agreements under certain programs
    - Housing where the tenant receives publicly funded rent-geared-to-income assistance
    - Co-op member units

Mandatory Terms in Standard Form of Lease

Parties to the Agreement: Names of the landlord and the tenant.

Rental Unit: Identifies the unit number, its address, and if it is a part of condominium.

Contact Information: Mailing address of the landlord and tenant, their email addresses, and phone numbers.

Term of Tenancy: Commencement and expiry dates.

Rent: The amount of rent and inclusions in rent (parking fees, etc.).

- The date, frequency, method of payment, and who it is payable to.
- Pro-rated rent when rent is paid earlier than the date of possession and the term starts in the following month.

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- Ex. If rent is due on the first and the tenant moves in on the 25th the landlord can pro rate rent for those seven days Services and Utilities: List of services and utilities included in rent payment. (guest parking, air conditioning etc.)

Rent Discounts, Deposit, Key Deposit:

- Whether a rent discount applies and if so amount
- Whether a rent deposit applies and if so amount
- Whether a key deposit applies and if so the amount
    - Can ask for a max amount of $200 (amount can't exceed the expected cost of replacement)

Additional Terms in Standard Lease

Smoking: Rules on use of smoking in common areas, which are in addition to provincial laws (specifies neither tobacco nor cannabis; it is therefore reasonable to assume both)

Tenant Insurance: Requirement, if any, and the amount. Tenant insurances covers liability within the premises or unit and their personal possessions

Changes to Unit: That the tenant is and is not permitted, with or without landlord's approval.

Maintenance and Repairs: Expectations from the tenant.

Assignment and Subletting: Must first make a written request for the landlord's approval.

- **Assignment** Means that the tenant moves out of the unit permanently and transfers their tenancy to another .all the terms in the original rental agreement stay the same
- **Subletting** tenant moves out of the unit for a certain period of time but they want to return to it before the end of the tenancy
    - The person who moves in (subtenant) pays the rent to the original tenant who pays the landlord Additional Terms: Whether any additional terms exist that appear as an attachment to the agreement.

Changes to This Agreement: The terms of the agreement cannot be changed unless both parties agree

Single-Family Dwelling Units

- Terms residential dwelling unit, residential unit and dwelling unit are formally defined in zoning bylaws as well as under law. Ex *Residential Tenancies Act* are usually divided into 3 main parts
    1. Dwelling types such as detached, semi-detached or duplex
    2. Multiple dwelling units, such as townhouses or other forms of horizontal multiple housing
    3. High density multiple unit buildings, such as high -rise apartments

- A dwelling unit is a housing unit that has one or more habitable rooms as self-contained living quarters. It is generally the same as a single-family home and would consist of sanitary facilities, accommodations for sleeping, kitchen

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Multiple Family Dwelling Unites

- Low-rise buildings set up as a duplex, triplex, or fourplex
- Apartment buildings containing several dwelling units in a low-rise, mid-rise, or high-rise building

7.3 Considerations for Tenants Primary and Accessory Dwelling Units

Dwelling Unit: A housing unit which has one or more self- contained living areas. Primary Dwelling Unit: The main dwelling of a property.

Accessory Dwelling Unit: A self-contained residential unit with separate entrance, kitchen, bathrooms, and sleeping areas.

- These units may be created in basements or on main floor and are also known as secondary suites, basement apartments, accessory apartments, granny/nanny suites, in-law apartments, etc.
- Occupants have less privacy due to reduced space, shared walls, and increased noise.

Legal Compliance of Accessory Dwelling Units

Accessory apartments must comply with zoning bylaws, building code regulations, and the Ontario Fire Code. Whether an accessory apartment is legal or not may checked by calling the municipality as some municipalities require a permit. (Caution: This may trigger an inspection by the municipality.)

Zoning some municipalities, accessory dwelling units are legal, others you need a permit or may be prohibited

Fire Code for Accessory Units: Requirements for occupant safety in each dwelling unit include

- fire separation and containment provisions
- escape (egress) methods
- fire detection and alarm
- fire suppression, and
- electrical safety.

Compliance with code requires two separate inspections – (i) electrical inspection by Electrical Safety Authority (ESA), and (ii) inspection by local fire department.

- Electrical inspection is in accordance with the *Electrical Safety Code* enacted under the *Power Corporation Act*

Failure to comply with fire and electric safety may result in heavy fines for the owner.

- In case of fire damage to a non-complaint building, the insurance coverage may be void and the owner may face criminal charges due to injury or loss of life.

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Concerns for Tenants

Occupants of Other Units: Salespersons can help their tenant client make an informed decision by providing them information on the unit, which may be owner-occupied or rented.

- In case the client is allergic, pets in the building or smoking by others may not suit the tenant.

Shared Utilities', Amenities and Facilities: The cost of internet, electricity, gas, water, and parking may be shared with the owner or with other tenants.

- Additionally, there may be restrictions on days and timings when facilities such as laundry machines can be used by the tenant.
- Parking for the tenant or visitors may pose problems if the space is limited.

Occupancy Standards in Municipal bylaws

Municipalities have varying bylaws for maximum number of occupants in a unit, number of persons in a room, and minimum room sizes.

- Toronto Example: Bylaw on max number of people
  - Cannot exceed one person for each 9 square meters of habitable room floor area
- Bylaw on min room size
  - For rooms used by only one person, the main floor area is 6 square meters
  - For rooms used by two or more person the main floor area is 4 Sq meters for each person
  - Rooms used for sleeping must have no wall less than two meters in length

Maintenance Standards: Landlords must ensure that their rental property meets health, safety, housing, and maintenance standards.

Municipal bylaws and property standards

These bylaws typically relate to removal of refuse/debris, garbage disposal, outdoor furniture, land drainage, snow, and ice removal.

- In the absence of municipal bylaws, the maintenance standards set out under the Residential Tenancies Act apply.

Residential Rental Housing Licensing

- Certain municipalities in Ontario require rental housing licenses; ensures that tenants have a safe, adequate, and well-maintained accommodation.
- Toronto Example: The Rent Safe TO bylaw enforcement program, which is applicable to buildings with 3 or more storeys and 10 or more rental units, requires landlords to register their buildings for compliance with minimum building maintenance standards. Also ensure building owners comply with building maintenance standards

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Zoning and Rental Units

- Zoning bylaw typically divides the entire municipality into min of 6 zoning classification which are then divided into subclasses or zones

7.4 Legislation Affecting Residential Lease Impact of Legislation

Residential Tenancies Act

- Spans numerous provisions
- Governs residential tenancies in Ontario
- Sets out rights and responsibilities for landlords and tenants

Ontario Human Rights Code: applies to both landlords and tenants under this Code, everyone has the right to equal treatment in housing without discrimination and harassment, and people cannot be refused an apartment, harassed by landlord or other tenants, or treated unfairly.

Pet Provisions

- The tenancy agreement cannot prohibit tenants from keeping pets in the rental unit.
- Landlord can refuse to rent if a person has a pet but cannot evict a tenant if they have brought a pet after leasing, though they agreed not to bring a pet.

Landlords can apply to Landlord and Tenant Board to evict a tenant if –

- The pet makes noise, damages the unit, or causes allergy to anyone,
- The pet breed is dangerous, or
- If the pet is over aggressive, has attacked someone, or is used as a weapon by the tenant.

In condominiums, if the Declaration does not permit pets, they can enforce it against the tenant and/or the landlord. The condominium Declaration takes precedence over the Residential Tenancies Act with respect to pets.

Rent Provisions

Rent: The landlord and tenant can agree on how much rent will be for the rental unit, which services will be included in rent (parking, cable, heat, water etc.)

- Cannot be increased until at least 12 months after the tenant moves in

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Rent Deposit: Landlords are permitted to collect rent deposit, which cannot be more than one month's rent or the rent for one rental period (weekly/biweekly).

- The deposit can only be used as rent for the last rental period (month or week) and must not be used for any other purpose, such as repairs to rental unit.
- When the rent increases, the landlord can demand additional amount for rent deposit. - Landlord is required to pay interest every year on rent deposit.
    - Ex of rent increase on rent deposit. Rent $1000
    - Rent increase guideline 1.8% … rent "top up" $18 ($1,000 x 0.018)
    - Last month's rent interest $18 so rent onward is $1018

Damage Deposit: Landlords cannot collect damage/security deposit and if the tenant has damaged the property they can

- Give the tenant a notice of termination
- Ask them to pay for damage
- Both give notice and request payment

If the tenant does not pay, the landlord may approach the Landlord and Tenant Board.

Post-Dated cheques + Automatic Payments: The tenant may agree to post-dated cheques or automatic debit, but the landlord cannot require the tenant to agree to such methods.

Rent Increase: Rent can only be increased if 12 months have passed since start or tenancy or the last rent increase.

- Landlord must give minimum 90 days' written notice to increase rent on a prescribed form.
- The Rent Increase Guideline is published by August 31st of every year and effective from January 1st of the following year.

Increase Above Guideline: The landlord must get approval from the Landlord and Tenant Board if the rent increase is more than the annual Rent Increase Guideline. (This limit does not apply to rental units occupied after November 5, 2018).

- The landlord's costs for municipal taxes and charges have increased significantly
- The landlord has done major repairs or renovations
- The landlord has operating costs of security services performed by people who are not employees of the landlord

Max rent increase for Capital expenditures or security services

- Cannot be more than 3% above the guideline each year
- If the landlord justifies an increase that is more than 3% above the guideline, the increase can be taken over 3 years , at a rate of up to 3% per year

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Rent Increase due to capital Expenditures

- The Landlord and Tenant Board may require supporting documents to ensure compliance with municipal or safety regulations to approve the rent increase for capital expenses.
- However, if the landlord and the tenant mutually agree in writing, the rent can be increased up to 3% above guideline for major repairs, new equipment, or new services.
- They can also dismiss the landlord application
    - Require the landlord to prove that the problems have been fixed before they charge the approved increase

Rent Increase above guideline with landlord and tenant Agreement

- can agree to rent increase above the guideline if the landlords agrees to any of the following
    - Make major repairs or renovations
    - Buy new equipment for the rental unit
    - Add a new service for the tenant
- Tenant has 5 days after signing the agreement to change their mind and tell their landlord in writing that they no longer agree to the increase

Landlord's Access and Entry Rights

Fundamental right → right to privacy

Landlord Entry Without Notice: Landlord can enter without notice in emergency (fire, flooding, water leakage, etc.), when tenant allows entry, or a care home tenant has permitted landlord to check their condition at regular intervals. A landlord can enter without written notice, between 8am-8pm when

- The rental agreement requires the landlord to clean the unit, unless the agreement allows different hours for cleaning
- The landlord or tenant has given a notice of termination, or they have an agreement to end the tenancy, and the landlord wants to show the unit to a potential new tenant
- NOTE: although notice is not required, the landlord must try to tell the tenant before entering for this reason to foster good relationships

Landlord Entry with 24 Hours written notice

- To make repairs or to do work
- Inspect the unit to determine whether repairs are needed
- Allow potential mortgagee or insurer of the complex to view the unit
- To allow a potential buyer to view the unit (also allows real estate agent or broker in)
- Allow an engineer, architect or other similar professional to inspect

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- For any reasonable purpose allowed

Termination Notices

Landlords have more restrictions on terminating a lease agreement than the tenant as the tenant is required to give only 60 days' notice for a month-to-month lease. Termination notice must be in compliance with the Residential Tenancies Act on a prescribed form.

- However, if the landlord and tenant mutually agree, termination notice is not required.

Termination by Landlord: The landlord must first give the tenant a written notice on prescribed form and give appropriate reason for termination.

- The notice must include the date of termination, the reason/details, and signatures of the landlord.
- If the tenant does not move out, the landlord can approach the Landlord and Tenant Board, which decides the case by adjudication after hearing both parties.

Termination Before the End of Tenancy:

- Identify the rental unit and the date of tenancy
- Set out the reasons and details respecting the termination
- Be signed by the person giving notice or their designated agent

Reasons for Termination	Corresponding Notice
Non-payment or consistently paying late	Notice to end tenancy early for non-payment
Damage to the property	Notice to end tenancy for interfering, damage or overcrowding
Interference with reasonable enjoyment of other tenants	
Too many persons occupying the rental unit	
Misrepresentation of income, especially in subsidized housing	Notice to end tenancy for Illegal Acts or misrepresentation income
Illegal act	
Impairment of the safety of others	Notice to end tenancy for causing serious problems
End of term	Notice to end tenancy at end of term
Landlord, purchaser or family members requires the unit	Notice to end tenancy family member moving in
Demolish, repair or convert use of rental unit	Notice to end tenancy for demolish etc.

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Landlord Termination due to Possession Required

When the landlord, spouse, child, or parents want to occupy the unit, a purchaser or purchaser's family member wants to occupy the unit after end of tenancy.

- the tenant must either be offered another rental unit or given one month rent as compensation by the termination date in the notice

Landlord Termination due to Sale of Property

When the landlord of a complex (maximum 3 units) may give notice if

- the landlord has entered into an agreement of purchase and sale to sell the complex
- any of the following requires possession of the complex or a unit within (purchase, purchase spouse, a child or parent of one of the purchasers or spouses, a person who provides care to any of them)
- In this case, no compensation to the tenant is required. Notice can also be given for reasons such as demolition, extensive renovations/repairs, or conversion of use of the rental unit.

Required Notice Period

Reason for notice	Notice Period
Usual notice period	60 days following notice and is the day the tenancy ends if periodic, or in case of fix, end of term Upon notice, the tenant may terminate earlier than the landlords notice but not earlier than 10 days following notice
Demolition, conversion of use, extensive renovations	120 days
Tenant causes wilful or excessive damage to the unit	10 days
Tenant causes a disturbance in a small rental building where landlord also resides	10 days
Rent increase	90 days

Termination by the Tenant

- Must identify the rental unit,
- State the date of the tenancy termination
- Be signed by the person giving notice or their agent

Term of the tenancy	Number of day's notice required

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Daily or weekly	28 days before the effective date of termination.
Monthly or yearly	60 days before the effective date of termination.
Fixed term	60 days before the expiry date and be effective on the expiry date.

Notice for Safety Concerns: If a tenant has concerns for safety, or safety of their child, they can give 28 days' termination notice (rather than 60 days).

- This applies to monthly, yearly, and fixed-term tenancies.

The tenant must provide the landlord with restraining order, access order or peace bond issued within the last 90 days and a signed statement that their child has experienced domestic of sexual abuse.

Requirement to Provide the New Tenant Brochure

Includes info about rights and responsibilities of landlords and tenants, the role of the landlord and tenant board and how to contact the Landlord and Tenant Board.

- Must be given on or before the day the tenancy begins, even if the tenant does not move in on that date

Assignment Rights and Responsibilities

- Assignment refers to transfer of occupancy rights to another tenant (Assignee) wherein the lease terms apply to the new tenant.
- Application of assignment → apply to all tenancies; do not apply to the superintendent's unit/suite.
- Assignment consent or refusal → The landlord has an option to accept or refuse assignment application or can refuse based on a specific assignee.
- When a landlord refuses assignment or fails to reply → If the landlord refuses to assign or does not respond within 7 days, the tenant has the right to terminate the lease within 30 days of request.
- Transfer of rights and responsibilities → If assigned, both the tenant (assignor) and the new tenant (assignee) remain liable to the landlord - the assignor is liable up to the date of assignment, and assignee is liable after the date of assignment.

Sublet Rights and Responsibilities

- occurs when a tenant moves out of the rental unit with the intention of returning before the tenancy ends and lets another person live there as a tenant during their absence
- It allows a different tenant (subtenant) to occupy the unit during the absence.

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- The tenant remains liable to the landlord and the subtenant remains liable to the tenant.
- Tenants must have landlord's consent for subletting, which the landlord cannot withhold arbitrarily
- can charge out of pocket expenses relating to the consent
- tenant can appeal if landlord unreasonably denies the request

No transfer of rights and responsibilities

- tenant remains entitled to the benefits and liable for breaches under the tenancy agreement during the sub-tenancy period
- subtenant is entitled to benefits and is liable to the tenant for breaches of the sub-tenants' obligations
    - original tenant is responsible should the sub-tenant not comply with the lease provision After End of Sub-tenancy: The subtenant has no rights to occupy the unit when the tenancy ends.
        - If the subtenant does not vacant, the tenant may apply for compensation from the subtenant.
        - If the original tenant has vacated but the subtenant does not vacate, the landlord may negotiate a new lease with the subtenant.
            - The unauthorized occupation by the subtenant is deemed to be an 'assignment with consent'
            - if a new tenancy agreement is not signed within 60 days
            - landlord has not made any application for eviction.

The Landlord and Tenant Board

Two key roles

1. Provide information about the Residential Tenancies Act
2. resolves disputes between residential landlords and tenants.

It acts as a quasi-judicial tribunal and operates somewhat like a court of law.

- Board members are appointed by the provincial government.
- Operates in terms of rules of practice and interpretation guide lands and makes those rules and guidelines

Involved in various activities that include

- Determining matters raised in applications made by parties
- Making findings (capital expenditure is reasonable)
- Making and issuing orders
- Mediating situations between landlords and tenants
- Adjudicating (holding hearings)

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Mediation Versus Adjudication

In case of a dispute, the board requires the landlord and the tenant to follow certain steps to resolve the issue and make an application to the board only when these steps fail.

Mediation: This method is preferred by both landlords and tenants because the disputes are settled by way of agreement or reconciliation.

- The landlord and/or the tenant may be present personally or may be represented by their lawyers, paralegals, or employees.
- If a settlement is reached, then there will be no hearing; written settlement will be drafted for both parties to sign.
- Ex. If dispute relates to late or non-payment, the settlement would include the payment terms and timelines

NOTE: salesperson not involved in the hearing

Adjudication: It is a process of settling disputes by way of hearings and according to the Residential Tenancies Act.

- Both parties present their evidence, hearings are held, and a binding order is used by a board member, which cannot be appealed.

Application and hearing Process of the landlord and Tenant Board

Before filing an application

- Landlord and tenant should talk to each other to try to resolve the problem If that fails, the parties follow the required steps before submitting an application
- Two examples. Before filing
    - Tenant must write the landlord to ask them to fix problem
    - Landlord whose tenant is not paying rent must give the tenant notice to end tenancy

Summary of the application and Hearing Process

1. applicant completes the appropriate notice, depending on the situation and outcome, serves notice to the respondent
2. landlord and tenant board schedules a hearing
3. at the hearing, either adjudication or mediation takes place
4. decision is made and order issued the same day

Scheduling Hearings

- typically schedule for a hearing within 30 business day, but could be longer

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- decisions are issued within 10 days of the end of final hearing
- **Exception:** generally, a hearing is scheduled within 25 business days for

Applications to evict a tenant for non-payment of rent

- Applications to collect rent the tenant owes
- Decisions of these apps. Are usually issued within 4 business days of the end of the final hearing
- *Who can represent a landlord at a hearing* → landlord, employee of the landlord, a paralegal, lawyer

Application notices and forms for use by a landlord or Tenant

Landlord and tenant board websites provides

- All the forms necessary for landlords and tenants
- Information on what form to use and how to complete the appropriate form
- Information on how to file the forms
- The annual rent increase guideline

7.5 Safety and Compliance Landlord's Responsibilities

Unobstructed, Well-lit Surrounding areas

- Landlords are responsible to ensure the rental building is clean, well-maintained, and a safe place for their tenants. Lighting: Proper lighting acts as a deterrent to crime, and therefore, all areas of the building including parking, lockers, and perimeters of the building should be well-lit.
- Also, courts have held employers negligent and liable for injuries sustained due to insufficient lighting Unobstructed areas
- The areas around the building must be clean, roof should be inaccessible, and shrubbery around the building should be kept low.
- Provide an unrestricted view of the entire building perimeter
- Prevent unauthorized persons from using shrubs as hiding places
- Trees trimmed to about 6-7' above ground provide a clear line of sight to prevent hiding

Cameras Video recording devices should be installed and be operational at all times with required video monitoring warnings.

- No dummy cameras as it provides a false sense of security

Physical Security: All doors and windows should be secured by working locks, keys/fobs, or dead bolts to prevent unauthorized access.

- No one else has a key to tenants' home
- Change locks after a prior tenant moves out

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- An electronic buzzer system may be installed so that tenants may open the entry doors for their visitors.

Fire Safety: Landlords are responsible to ensure compliance with the Ontario Fire Code.

- Smoke alarms, carbon monoxide detectors, fire safety doors, and equipment should be regularly tested to ensure that they are in good working order.
- Tenants must be given operation manuals for safety devices but should not be able to disable any of these devices.
- They should not tamper with door closing systems in common areas.

Smoke Alarm landlord is responsible for installing and testing smoke alarms, replacing when necessary

- Landlord must give the tenant of each rental unit a copy of the smoke alarm manufacturers maintenance instructs or approved alternative

Carbon monoxide same with smoke alarms

Electrical System: Electrical supply must be maintained in all habitable areas and maintenance be carried out by licensed technicians and depending on electrical work , inspected by the ESA. (free of conditions)

Hazardous Materials: under the Occupational Health and Safety Act, landlords must ensure that any hazardous material used by the maintenance staff or contractors is properly used, stored, and disposed.

- Act also requires employers to provide appropriate training and safety equipment (such as boots, gloves, goggles and masks)

Monitoring for Illegal Activities: Landlords are responsible for monitoring for any illegal activity taking place within the building or on the property

- Landlords must ensure security of the entire premises, access should be controlled, and systems should be assessed regularly to protect the property from criminal activity.
- Can range from a simple security system to a sophisticated electronic monitory system manned 24 hours a day
- Most important part is control of access, which is necessary to protect tenants and their property from criminal activity

Additional Tenant Obligations

- Number of cities have enacted public ordinances requiring owners and occupiers to remove ice and snow from sidewalks
- Cutting grass is also required

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- Municipality may issue an order and potentially a fine against a property owner if the grass is too long (needs to be outlined in the lease)
- Similarly, garbage removed is required by the municipality
- A clause can be inserted in the agreement that the tenant will perform these functions if they agree to
    - However even when included in lease, functions are considered landlord obligations, and such clauses are not enforceable
- Keeping the rental unit clean and tidy is tenant obligations (no. hoarding etc.)
- Similar approach applies to smoking -whether tobacco or cannabis . If one apartment in a duplex or triplex has a tenant who is highly allergic to smoke, the lease can prohibit smoking as the air is shared within the building and could cause a serious health risk to the allergic tenant
- No one has the right to smoke in the rental unit

7.6 Salesperson's Compliance and Due Diligence Agreements with Landlords and Tenants

TRESA requirements for documenting a relationship with a landlord or tenant

Disclosure of an Interest in a Property

- Made in writing at the earliest practical opportunity and before any offer is made
- If a registrant has direct or indirect interest in a rental property, it must be disclosed in writing at the earliest practical opportunity to landlords and tenants but before an offer is made.
- When a registrant is involved in residential leasing, he/she should have adequate knowledge of the Residential Tenancies Act and the Ontario Human Rights Code.

Requirement to use the most current tenancy agreement

- They should ensure that the most current Standard Form of Lease (Residential Lease Agreement) is used without any changes to the pre-printed clauses.

Offering Opinions When asked for an opinion or advice, registrants must demonstrate reasonable knowledge, skills, judgment, and competence.

Ensure Advertising Complies with All legislation Advertisements for leasing must not include discriminatory language that show preferences of the landlord that violate the Human Rights Code.

- Open discrimination
    - Adult building" or "Not Suitable for children"

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- "must have working income" must provide proof of employment
- "no disability cheques" & "no pets

Confirmation of Permits and Inspections If a landlord has recently constructed or renovated a rental unit, appropriate permit from the municipality should be checked.

Compliance with Material Facts must ensure facts gathered are accurate and complete in accordance with the ethical requirement of competent service. Same when working with landlords and tenants as sellers and buyers

Ensure any documentation complies with all legislative requirements

Rental Documentation: Salespersons must ensure that the documentation used by landlords complies with regulatory requirements.

- Rental Application and the Standard Form of Lease are written to comply with legislative requirements and should be used without any changes.
- Two critical parts of any rental application: consent clause and applicants' representation
  - *Consent* allows salesperson to collect the information for the purposes listed in the clause
  - Applicant representation specifies that all information they have completed is true and correct
  - Applicant should sign and date the representation

Standard form of Lease

- Landlords and tenants should understand the terms of the lease and their obligations before they sign the documents.

Referrals to a Third-Party Professional as a salesperson be careful not to overstep your abilities when providing services to clients and refer when necessary

7.7 Preparing the Lease for Residential Properties

Find Appropriate Rental Units for the Tenants

- Salespersons should understand the needs of tenants and show rental properties that meet tenant's criteria.
- Check to make sure they aren't represented by another salesperson
- Preferred geographical area and tenant's rent affordability should be discussed in advance. -Information about the rental property, neighborhood, job opportunities, crime rates, public transportation, shopping, health facilities, and parks should be provided to the tenant.
- The rental rates in the area should be compared before preparing the lease and the terms of lease should be clearly explained to the tenants before they sign it.

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- Negotiate the Agreement and Explain Residential Tenancy Agreement

Providing Material Information about the Units and Environment

- Location and local amenities make up a large part of a tenant's criteria
- Other material info; public transport, shopping etc. etc. crime rates
- *Features of the property* ensure it meets code, specify how it meets tenants' criteria, identify anything unit that may affect tenant
- Specify any additional responsibilities the tenant would have: mowing the lawn

Advertising Properties or Units for Lease

- When advertising properties for lease, salespersons should provide pricing information on comparable, ensure the advertisement is in compliance with applicable legislation and is not misleading.
- In case certain clauses need to be added to the Standard Form of Lease, such as snow removal or lawn maintenance, these should be carefully drafted.
- Some examples of clauses that are considered void include prohibition of pets, smoking, requirement of additional deposits, and prohibition of guests.
- Prospective tenants should be investigated for creditworthiness and previous references without violating the Ontario Human Rights Code.
- Can advertise on; local listing service, brokerage and salesperson websites, rental websites, social media sites, such as Facebook, online market sites, brochures, distributed in area, local print media

Qualifying Prospective Tenants/Rental Application

- Landlords make final choice when selecting tenants
- Approval of prospective tenants begins with a rental application: Credit worthiness and behavioral patterns are the two most important things to be checked

Tenancy Application: Includes the names of the tenants and their relationship, current address, previous address, bank address (optional), references, and current and previous occupation.

- Application also includes information on emergency contact, vehicle information, list of persons occupying the unit, and permission to conduct credit check.
- Good Applicant = full disclosure

Agreement to Lease: Salespersons should ensure that the terms of lease are clear and fair to both parties and they understand their rights and responsibilities.

- Lists the amenities available, including laundry etc.
- Specifies whether amenities are exclusive or shared and how that's paid

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Protect the Landlords Rights:

Require proof the tenant has met requirements of the lease; prior to taking procession of the offer This may cover such items as utility account transfer, proof of tenant insurance etc.

Lease Commencement if mortgage or other payments are due on the 1st, or early in the month the lease should be structured so that rent is due on the first + pro-rated amounts for earlier occupation

Access to part of the premises some landlords request exclusion to access a part of the premises, such as a storage room, garage shed etc. This allows the landlord to access the premises without notice, as they retain this part of the premises for exclusive use

Safety Responsibilities of the Landlord

Constructing a new building, adding a rental unit to an existing structure or renovation a rental unit

- Compliance with the Ontario building code + Fire Code Smoke Alarms and Carbon monoxide detectors
- Responsible for installing smoke alarms and carbon monoxide detectors in the correct locations + testing them annually
    - After a change in tenancy
    - Following installation of a new battery for battery-operated smoke alarms or following electrical renovations or servicing
- Direct tenants not to interfere with any smoke alarm or carbon monoxide detector
- Can delegate these tasks to property manager Fire Suppression Equipment
- Building code requires fire sprinklers in multi-unit residential buildings or mixed buildings with more than 3 stories
- Apply to new construction, additions to existing buildings, floors of existing buildings that undergo a change in occupancy and floor areas that undergo extensive "gut" renovations
- Does not mandate the retrofit of existing buildings where no construction is proposed

Electrical System

- Must comply with Electrical safety code and inspection by the ESA are carried out when required Ensure Tenants have accessible and adequate means of egress

Leading Practices to Qualify tenants

Complete a credit check Equifax, TransUnion, bank or mortgage company

- Ask the tenant to obtain a credit report
- Landlord to do a report independently on the applicant as long as they have submitted an application form allowing it

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Follow up on References : Verify tenants' info online, employer name and address and other info

Require all tenants to fully complete a rental application

- Previous rental history
- Consent for a credit check
- Landlord, employer and personal references Risks of accepting rent or a rental deposit in instalments
- Always require full payment and typically by certified cheque or bank draft for the first and last month Move often and requires immediate occupancy
- Listen to tenants' reasons for quick move in
- Obtain independent verification of the reasons the tenant provides

Role of Property Manager

- Property managers are responsible to oversee maintenance and repairs as specified in their agreement with the landlord.

- They are the point of contact for tenants for rent collection, providing notices, facilitate move- ins/move-outs, and manage staff and contractors.

7.8 Rent Rolls and Tenant Ledgers Rent Roll

- Provides financial info to rental and property owners
- Document that lists tenants their contracted rents, and other basic details of their income and support valuation for their rental property
- Typically prepared by property manager

Purpose of a rent roll → detail rental income derived from an income producing property for the owner

Information typically included → contact information on tenants in each rental unit, their rents, deposits, and other details which the landlords typically use to estimate rental income.

Importance of updating and maintaining a rent roll → assists sellers and buyers in understanding the stability of the rental property.

Use of rent roll for other purposes, such as estimating value of property

- It helps in estimating the value of the rental property using the income approach or by applying a rent multiplier.

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Tenant Ledgers

- Tenant Ledger is an important document that helps landlords track cash flows and budget for future expenses. This financial document tracks revenue and expenses related to a rental agreement including the rent payment history of the tenant.

Information typically included

- It shows dates and amounts of payments and expenses, amounts due and paid, outstanding amounts, chargebacks for damages, rent increases, etc.

Purpose

- It also provides evidence of consistent late payments or non-payments of rent, which the landlord can use for legitimate eviction proceedings.
    - Whether the tenant has been taken to the Landlord and Tenant Board
    - If the tenant has been charged back for damages or other expenses
    - What rents the tenants is paying for , whether allowable rent increase were applied
- Hels landlords track cash flows and budget for future expenses
- Helps evaluate whether the landlord needs to evict a tenant, the ledger provides trend analyze – a history of missed or late payments and repairs
- If management proceeds with an eviction for legitimate reasons, the ledge will provide evidence of late or non- payment

7.9 Value of Rental Property Supply and Demand Factors

Supply and Demand of Rental Properties

- When rent decreases, the demand for that property will increase, conversely, when the rent rises the demand for that property will decrease
- The conditions of the rental market and vacancy rates in a municipality impact the rental rates.
- Lower vacancy rates mean fewer options for tenants and selective landlords whereas higher vacancy rates provide more options for tenants and fewer choices for the landlords.
- Perspectives of Value
- Valuing a property can be vied from two perspectives: the investor and user
    - Investor wants to obtain predetermined objectives usually involving rate s of return on the investment
    - The use tends to focus on the utility of the proper

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Direct Comparison Approach to Determine market Rent

- Proposition that an informed buyer will pay no more for a property than the cost of acquiring an existing property with the same utility
- Same concept would apply to the amount of rent a tenant would pay
- Popular → widely accepted by courts, understood, proven and time tested Procedure:
  1. Locate and select all available comparable rental listings
     a. Located within the local market, rented at or near the date of appraisal
     b. Appealing to the same tenant
     c. Arm's length transaction where both parties are not under pressure or duress the logical steps include location and selection of comparable rental listings within the local area, which are rented at or near the appraisal date
  2. Collect info on each comparable to make adjustments
  3. Analyze all relevant data (including differences that exist between the comparable and subject)
  4. Compare each property to the subject property and make adjustments
  5. Reconcile the data and arrive at a value

Sources of Data: The data on comparable can be obtained from brokerage files, newspapers, and other legal publications.

The information on vacancy rates and absorption rates may be obtained from local listing service or from Canada Mortgage and Housing Corporation (CMHC).

Factors that Impact Value

- Value of a rental investment property is impacted by location, amenities in the building, and the neighborhood. Proximity to transportation, shopping, entertainment, schools, bars/restaurants, and health facilities also impact value.
- The condition of the property, the layout, and views have direct influence on the rent that the tenants are willing to pay.

Net Operating Income; Landlords

- The Net Operating Income of the rental property is derived from the gross potential income after deducting the bad debt, vacancy rates, operating expenses, and property taxes.
- The Rent Roll of the property can provide vital information to analyze the gross income.
- To confirm net operating income, subtract the operating expenses, vacancy , bad debt and property taxes from gross income

7.10 Special Considerations Landlords Leasing a Furnished Unit

Market Considerations

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- Whether the leased unit is furnished or not, makes little difference in obligations for the landlord.
- The number of tenants seeking furnished units is relatively small.

Typical furnished units

- small apartments, student accommodations, seasonal cottages, etc. or businessmen temporarily working in the jurisdiction

Benefits + Drawbacks

- The landlord may charge higher rent for a furnished unit, but they also incur higher expenses on maintenance.

Insurance

- Higher insurance rates are a concern for landlords as the insurer may require coverage for the building, contents, or belongings of the tenant.
- Change of use of a property can void a landlord's insurance if the insurance carrier is not made unaware of the change

Quality of furnishings

- Landlords may simply provide basic furnishings such as furniture, equipment, and appliances or may offer high-end furnishings for a higher rent.

Funding → landlords should develop a fund to cover periodic replacement of furnishings linens and consumable

Considerations for Tenants when Leasing a Furnished Unit

- Tenants' rights and responsibilities are unchanged whether it is furnished or unfurnished Extent of Furnishings included:
- which may be less or more than what the tenant needs.
- What happens to excess furniture that is not needed. Storage units can be expensive
- A "take it as is , or not at all" approach from the landlord can save costs but deter renters
- Detailed inventory needed at beginning and end Amount of rent
- Furnished apartments are expensive than unfurnished apartments and there may be restrictions on decorations or making changes to the unit.

Lease of moving However, with a furnished unit, the moving may become easy for the tenant as there are fewer bulky items to move.

Reason to rent: Furnished apartments may be appealing to first-time tenants such as students, travelers, and people on temporary employments who have limited budget to buy.

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Considerations when Leasing Short Term Rentals

- Several municipalities and condominium corporations do not allow short-term or ultra-short- term rentals due to requirements for a minimum lease term.
- Landlords may increase the rent without following the rent increase guidelines but the cost for landlords increase significantly due to damage, wear and tear, as well as from sanitary concerns.
- The amenities in short-term rental units may be just basic whereas ultra-short-term rentals offer luxurious amenities and spacious accommodations.

Salespersons Right and Obligations When Facilitating Short Term rentals

Registration requirements

- To facilitate short term accommodations a business must be registered with one of the following

- RECO
- Travel Industry Council of Ontario Comply with TRESA
- Clarity in advertising + disclosure of referral fees

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Module 8

Module 8.1 Leasing Residential Condominium

Leasing a Residential Condominium Appeal for Tenants

Condominiums bought as a rental investment property in urban areas can be new construction ore resale buildings that have been renovated as a result.

- No wear and tear in common areas
- New or replaced heating and colling systems that are more efficient
- Less noise and disruption rom maintenance and repairs
- New appliances + amenities
- The amenities in newer condominiums may offer ensuite laundry, concierge, gate guards, access control systems, security systems, and open concept designs that offer natural light.

Community of Unit Owners

- In a rental apartment building, everyone is a tenant whereas in a condominium there is a mix of owners and tenants.
- Unit owners guide the operations of the building with management support and this helps in maintaining the value of their real estate investment.
- However, a unit owner leasing the unit may have limited control over the decision-making process and operation of the condominium.
- Salespersons can help tenants understand that unit owners collectively have the authority to make bylaws and rules, which are enforced by the management.

Leasing Restrictions

- Condominium landlords are required to comply with all obligations and restrictions on leasing the unit prior to listing it ex
    - Minimum rental term per unit
    - Max number of rentals per unit per year
    - Residential use only
    - Not operating as a boarding house

Pride of Ownership

- Since unit owners participate in operation of the condominium, the quality of amenities, upkeep of common areas, and upgrades to the complex protects the value of their investment.

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- For a landlord, this may result in unpredicted expenses as board meetings can have unit owners vote in favor of
    - expensive upgrades, restrictions on use of amenities by their tenants, and new rules or policies.
    - When changes occur both landlord and tenant have to adapt to the changes
- However, when the landlord to tenant ratio is low (more tenants than landlords),the building may be poorly maintained due to low maintenance fees, it may result in loss of value.

Condominium Declaration, Bylaws and Rules

The declaration, bylaws and rules/regulations affect what landlords and tenants can do or cannot do in the condominium during the lease term.

Use of unit

- Residential → many restrict to residential use (cannot be used as a workspace_
- Live / Work Condominiums → : These condominiums permit the unit to be used for both living and working.
    - However, there may still be restrictions on the type of work and the equipment that can be used as customer access and electrical load becomes a concern.
    - Occupancy Bylaw: Some condominiums restrict the maximum number of persons that can occupy the unit whereas others may not restrict but charge extra fees for additional persons.

Use of Common Elements: The corporations have the right to regulate who can use common elements and the hours of use, which may not be suitable for some tenants.

- Pool hours
- Rental of guest's rooms may require two week's notice
- Parking used to be free then not…(need to adjust)
- Condo corporations have the right to regulate the use of common elements

Health and Safety: Condominiums are required to maintain minimum standards of health, cleanliness, safety, and security in the complex.

- Both landlords and tenants are responsible to follow rules/regulations regarding sanitation, smell, front-door security, fire safety, and prevention of tripping hazards.

Pet Provisions: Although the Residential Tenancies Act prohibits landlords from having 'No Pets' provision in the lease, the condominium declaration takes priority over the Act.

- This means that a condominium can prohibit keeping pets in the building.
- Even if pets are permitted, there may be restrictions on size, type, number of pets, and disposal of pet waste.
- **** if it is for medical reasons the human rights codes must accommodate residents with service animals**

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Maintenance Fees

- Unpredictability of maintenance fees can be an issue for landlords as they would have to bear the cost of unexpected increases, which cannot be passed directly onto tenants (except by increasing rents mandated by the landlord and tenant board)

Considerations for Investor Landlords

Different types of condominiums have different repair and maintenance requirements, and this can impact landlord's time and investment.

- Townhouse condominiums, blended residential and retail condominiums , live/work condominiums created for this purpose or in converted warehouses

Purchase of New Condominium for Leasing

- investors may be purchasing a new condominium unit based on developer's floor plans and start leasing it as early as possible, even during the interim occupancy.

Interim Occupancy Period

- The construction is not completed, and the landlord may need developer's permission to lease out the unit because the deed is not yet registered, and the developer is still the interim owner of the entire complex.
- The developer may enforce rules such as restrictions on leasing, written permission to lease, extra fees, restrictions on advertising, and subletting, etc.
- Developer rules and regulations
    - Even though there is no condominium corporation during the occupancy period, tenants are still obliged to follow the rules and regulations set by the developer in the proposed declaration, bylaws and rules
    - Must comply with these during the occupancy period
- During the occupancy period, a unit owner planning to lease a unit is responsible for
    - Verifying with the developer whether advertising is permitted
    - Ensuring that a tenant is aware of and complies with the developer's rules, expectations and limitations

Rent Calculations: Not all amenities are available in a new complex and the tenants may try to negotiate a lower rent.

- Ensure that the tenant is aware of the lack of amenities
- Structure the lease to ensure the tenant covers utility expenses even though utility providers may not be individually billing occupied units

Occupancy Date: only a consideration for a new unit lease in the following situations

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- Construction of the unit is almost complete
- Occupancy date is close
- Unit owner has permission from the developer to lease the unit
- However, salespersons may advise landlords to wait until occupancy is given and the deed is registered in the landlord's name.

Landlord Participation in Condominium Operations

- If they are unable to attend meetings, they should designate a proxy or hire a property manager to act on their behalf

Impact of Condominium Corporation Decisions

- Can make and implement new rules and regulations at any time as long as there is no owner objection
- As a result, the new rules can impact the leasing agreement a landlord has made with a tenant
- Condominium rule takes presence over the lease

Landlord and Condominium rules and regulations

- Landlords must be familiar with the rules, regulations, and bylaws of the condo corporation
- Landlords must be able to explain them clearly to prospective tenants
- Landlords must take responsibility for tenants who do not comply
- Most provide a copy of the governing documents to their tenants

Condominium Insurance

- The Condominium Act does not specifically require unit owners to cover issues related to unit rentals and salespersons can help landlords understand the importance of insurance when leasing their units.

Tenant Insurance:

- Insurance that covers both liability and contents
- Many condominiums require liability insurance for every resident living in the building both unit owners and tenants (check rules regulations if required)
- Landlords should ensure that a clause is included in the lease so that tenants obtain insurance to covers both liability and contents, even if the condominium bylaws do not require it.
- Tenants should be made aware that they are responsible to pay the insurance deductible in case there is any claim for damage.

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Property Insurance:

- Since the tenant's insurance may not cover the landlord due to cancellation or their refusal to pay deductible, they should get their own property insurance.
- Insurers typically require the landlords to disclose the terms of leasing including copy of lease, proof of tenant's insurance, any changes to tenancy, and short- term rentals (if any).
- Landlords property insurance will cover
    - Any chargeback of corporation's deductible
    - Repairs and renovations
    - Loss of use
    - Property damage
- To be valid, property insurance must include disclosure of the terms of leasing
    - Provide the insurer with a copy of the lease and a copy of the tenant's proof of insurance
    - Inform the insurer of any changes to the tenancy
    - Inform the insurer at the outset if the unit will be used for short term rentals

Short-Term Rentals: If the condominium prohibits short-term rentals and the unit is used for Airbnb, bed-and-breakfast, etc., the validity of landlord's insurance will be affected.

- Insurance policies typically become void if the landlord breaches condominium rules.

Renovations and Liability: Renovations and repairs of the unit for preparing to lease must be done by licensed contractors and appropriate written permission be obtained.

Calculation of Rent

- Since the Residential Tenancies Act imposes regulations for any increase in rent, landlords must be careful to include all fixed and changeable costs when calculating the first rent.

Maintenance Fees: Monthly maintenance fee, like the mortgage payment, should be treated as a variable expense as it may increase during the lease term.

Repair: The costs of repairs maybe an unpredictable expense and the landlords of older condominium buildings should include more costs as compared to newer condominiums.

Special Assessments: Salespersons may help landlords consider the possibility of special assessments in rent calculations.

- Condominium landlords may be advised to discuss the likelihood of any major repairs or renovations with the management before finalizing the rent.
- Remember, you can't increase rent for a special assessment

Service Contracts: If the landlord has included the cost of bulk contracted services (cable, hydro, etc.) in the lease and any of these contracts are cancelled, the terms of the lease must be renegotiated.

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- According to the RTA, the landlord cannot increase the rent to cover unexpected expenses.
- The landlord then must absorb the cost difference and reduce the rent so that the tenant arranges individual service contract.
- If landlords have included services, the tenants have a right to these services

Absentee or Novice Landlords

- Landlords who do not live close or are new investors who do not have experience, may pose challenges for tenants.
- Repairs to the unit may take longer as the landlord does not have enough budget for repairs.
- Landlords may not have experience working with contractors, they may hire sub-standard companies, or the quality of repair work may be poor.

Tenant Use of Amenities

- Some are defined in the lease, some in the rules and policies Lockers and storage
- Tenants may not be able to use the lockers or storage as the landlord may have rented the space to someone else.
- Must be stated in the lease Parking
- Landlord may not include parking space in the lease or may have leased it to someone else in the building.
- A tenant with multiple vehicles may have to lease additional parking spaces at an extra cost from other unit owners.
- In buildings with limited visitor parking spaces, the corporation may require obtaining advance visitor passes and the number of consecutive passes may be limited.

Amenities

- Some condominiums may restrict the use of their amenities such as pool or gym and/or may charge a fee for their use.
- Need to look at policies and schedules that will affect their use

Elevators and Move in

- The tenant's choice of move- in or move-out day may be affected due to availability and advance booking of the elevator. Might also need to pay for a damage deposit for the elevator

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Risk of tenancy Termination

Timing Residential tenancy act permits the landlord to give notice of termination to a tenant if the landlord, in good faith, requires the unit for residential occupation for a period of at least one year for themselves, a specified family member, or a caregiver to someone living in the house

- Termination date in the landlords notice of termination must be at least 60 days after the notice is given and must be the last day of the fixed term residency
- On the sale of a property by the landlord and the buyer requiring vacate possession for their own family on completion date, a 60 day's notice must be provided to the tenant in accordance to the RTA
- Notice in this regard only permissible if the property or building is 3 units or less
- If there is a month to month agreement → notice is 60 days after the notice is given on the last day of the monthly rental period

Legal requirements

- The landlord must use the Landlord and Tenant Board form N12 (Notice to End Your Tenancy Because Landlord, a Purchaser, or a Family Member Retires the Rental Unit).

Compensation

- If a family member is moving in, tenant is entitled to one month's rent as compensation, but no compensation is required if the buyer is taking possession.

Restrictions on Assigning and Subletting

- Condominium corporation cannot restrict a tenant form subletting or assigning a unit to another tenant, as governed in *residential tenancies* Act
- Could have restrictions regarding short term rentals
- They can only intervene when the tenants and or landlords breach rules and regulations of the condo corporation
- During occupancy, the developer may put in place temporary restriction on all forms of leasing (since they are the sole legal owner until construction is complete) they have the right to impose restrictions on leasing

Risk of defaulting landlord

- If landlord fails to pay the fees, the condominium corporation has the right to demand payment from the tenant
- Legal term is attorning the rent
    - Corporations lawyer will advise the tenant of their rights
- If tenant has to pay for the landlords defaulted maintenance fee's then this amount is subtracted from the tenants rent, as a result the cost is passed on to the defaulting landlord and the tenant is compensated

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Changes to the Unit: Certain cosmetic changes (change in paint or carpet) may be permitted but any major changes (structural or electrical/mechanical/plumbing) may need written permission from the corporation.

- The landlord may not sometimes permit the tenant to make a change that is otherwise prohibited under the condominium regulations.
- To prevent such an unintentional approval, some landlords add a clause in the lease to ensure that the landlord first obtains approval from the board before approving tenant's changes.

Decision Making: Tenants must abide by all rules and regulations that are not made by them but by unit owners in the building.

- This may seem unfair to some tenants as they cannot raise any issues that are important for them and have limited or no voice in condominium decision making.

Ensuring compliance when providing Services to a landlord or tenant

- Salespersons search for a suitable condominium for their tenant clients, obtain accurate information and prepare lease agreements based on listing information.

Describe amenities:

- Must provide information about common elements and other amenities for comparable condo units to assist the tenant in selecting which units to see.
- Also describe the amenities and services that are part of the unit (ex storage space, washer/dryer, concierge)
- This show due diligence Describe size and elements
- # of bedrooms and bathrooms, size of living room, dining room kitchen, size of balcony , number of floors, additional rooms, square footage
- Must describe any restrictions on the number of residences per unit

Showing: units selected by the tenants are shown after obtaining access information such as the location of the lockbox, its code, or the key fob.

- Before showing a unit, salespersons should obtain information on additional expenses for parking, lockers, laundry, etc.
- In addition to the unit, the common areas and amenities should also be shown.

Explain rules and regulations

- Explaining Rules and Regulations: first-time tenants may be unaware that condominiums have governing documents such as the declaration, bylaws, and rules.
- Show relevant sections in the governing documents

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Compare rents: If the tenant wants to view and compare different units, the salesperson should provide information on locations, rents, additional fees, and access information for common elements.

- Tenants should be able to identify differences in costs and amenities in different units shown to them.
    - Basic rent 9rental cost per square foot and per bedroom)
    - What's included in the rent
    - What requires additional fees
    - Access to condo amenities
    - Location
- Help identify amenities that could reduce other costs ex. Fitness and swimming pool could reduce cost of gym membership

Compliance Requirements: Salespersons should check with the corporation if it requires tenants to sign a compliance document to confirm that they will abide by the declaration, bylaws, and rules.

Services to Condominium Landlords

When working with a condominium owner who plans to lease their unit, you must draw their attention to the requirements and tasks involved with being a landlord

Determine Rental Rate Salespersons can help the landlord determine a reasonable rental rate for the unit based on current conditions in the rental market and comparison of similar units.

- The rent should include all costs for the landlord, such as the mortgage, insurance, property management, repairs budget, and maintenance fees, etc.
- as long as the unit is vacant at the time of setting the rent, there is no restrictions on the rent that the landlord set

Tenant Obligations and Restrictions: Salespersons should assist the landlord in identifying tenant's obligations and restrictions by contacting the condominium management.

- Some examples include maximum number of persons per unit, no home business, pet restrictions, noise, registration of contact information, sign documents declaring their intention to comply with all the condominium rules and regulations

Confirm Landlord's Obligations: Landlords must inform the condominium corporation about any leased unit within 10 days of signing the lease.

- The information includes intention to lease, name and contact information of the tenant, contact information of the landlord, and prohibitions on short-term rentals.

Offer of Management Services: Some first-time, novice, or absentee landlords may be interested in individual property management services offered by the real estate brokerage.

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- Some real estate brokerages offer property management services
- On behalf of the brokerage , enter into an agreement with the landlord to manage the condominium unit once it has been leased
- Services you can provide
    - Collecting and depositing rent
    - Following up on rent arrears
    - Paying monthly maintenance fees
    - Acting as the main contact person for the tenant
    - Following up on requests for repairs and maintenance
    - Arranging for and attending when a contractor carries out repairs
    - Liaising with the condo manager on matters related to the tenants and unit
- RECO insurance does not cover management services
- If you are providing services outside of your brokerage, you will need to disclosed to RECO

Attend Meetings as Proxy: Salespersons can attend corporation meetings on behalf of the landlord as a proxy so that they are up to date with the corporation affairs.

- The corporation documents must permit the landlord to appoint and register the salesperson as a proxy.

Compliance and Due Diligence

- Errors made by salespersons in providing services or advice may result in legal actions or financial loss to the landlord and/or the tenant client.

Obtain specific information

- Specific About the unit: information about size, rent, amenities, extra charges and fees, and service contracts
- Exclusive versus common definitions of the elements that are exclusive use vs common elements
- Specifics abo
- ut the rules and regulations up to date governing document detailing the rules, regulations and bylaws

Confirm restrictions on leasing

- Before listing or marketing a unit, you must confirm all board obligations and restrictions on leasing of the unit
    - Requirement for board approval to lease
    - Minimum permitted leasing term
    - Maximum number of rentals per year
    - Residential use only restrictions
    - Max number of occupants allowed

Obtain rules and regulations document

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- Obtain and up to date copy of the condominium corporations' rules and regulations document before marketing a unit
- Landlords to provide accurate information on leasing within the timeline Confirm access for viewings
- you are responsible for verifying how to access the following well in advance of showing a tenant
    - building, individual unit, common elements, additional buildings at the condo complex Advise to seek further guidance
- lawyers, property manager , insurance agent, account licensed condo manager
-

8.2 Compliance and Management Requirements Landlord's Roles and Responsibilities

Roles and responsibilities of the Landlord

Ensure approve use of unit Landlords need to ensure that the tenancy is for residential purposes only and in accordance with declaration and bylaws.

- Typically defined as one or two residents per bedroom in the unit
- Ensure tenants do not sublet

Inform the Corporation: Landlords must keep the corporation informed and provide copies of lease agreements including the names of tenants and contact information for both the landlord and the tenants.

- The corporation must be informed about termination of tenancy within 10 days.

Pay monthly Maintenance Fee's Landlords remain liable to pay monthly maintenance fees unless the lease requires tenants to pay. If they fail to pay the tenant might have to pay

Keys, fobs and remotes Landlords must provide all access (keys, fobs, remotes, etc.) material to tenants and should ensure that the tenants are responsible for the cost of lost items.

- Advisable to include a clause in the lease detailing that the tenant will be responsible for all costs related to lost or damaged keys fobs remotes

Keep Tenants Informed: Landlords should provide a copy of declaration, bylaws, and rules to tenants and inform them about any changes/updates.

- Not required by law but they should make every attempt to attend all owner's condo board meetings, either in person or by proxy

Tenant's Compliance with Rules: It is landlord's responsibility to ensure that the tenants comply with condominium rules and appropriate action is taken for any non-compliance issues.

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- Process for a noncompliant is

1. If tenant breach any of the rules, regulations or bylaws, condo corp will contact the tenants directly to inform them of the breach and provide a deadline to rectify the problem
2. Corporation will contact the landlord
3. If the problem cannot be resolved to the satisfaction of the condo board within the given time frame, the landlord will be held responsible for the noncompliance
4. The land lord is responsible for any costs borne by the condo corporation for enforcement actions taken against a tenant who has breached the rules (legal fees, repairs after damage, cleaning costs)

Repairs: It is landlord's responsibility to repair the interiors of leased unit by hiring licensed, insured and approved contractors.

- The RTA requires that landlords must provide 24 hours' notice to tenants to access the unit for inspections and/or repairs.

Role and Responsibilities of the Condominium Corporation

- The condominium corporation is responsible to ensure that the complex offers a safe, healthy, and high-quality living environment.
- They maintain, update and apply rules and regulations that prevent unreasonable interference with eh use and enjoyment of common elements within the condominium complex
- Condo corp is an active party in the lease of any condo unit Inform landlord about noncompliance
- The corporation must inform the landlord in writing if the tenant breaches any rules and provide a deadline for corrective action.
    - Identify the noncompliant tenant
    - Inform the tenant of the noncompliance in writing and provide a reasonable deadline for correcting issue
    - Inform he landlord in writing about non-compliance
- If the tenant has caused any damage, the cost of repairs is typically passed onto the landlord.
- If there is a dispute between the landlord, the tenant, and the corporation, each party may seek legal advice.

Communicate to landlord and tenant: The corporation must maintain communication with both the landlord and the tenant even though the tenant does not have the right to attend corporation meetings or vote.

- Tenant needs up to date and relevant condo rules, regulations and day to day repairs and maintenance
- Landlord is a voting unit owner with an investment in the condo

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- Must send info by mail unless the owner completes electronic form and consents

Record of Leases: The corporation must keep a list of all leased and subleased units and contact information for both the landlords and the tenants.

- Contact info for the tenant and any unit property managers
- Contact information for the landlord
- Copy of the lease or a summary of the lease in an approved format
- Records regarding termination of leases
- Records regarding subleases including contact info for sub-tenants

Communication with Registrants: Although not mandatory under the Condominium Act, the corporation may communicate with brokerages and salespersons as courtesy

Role of Property Managers

Be fully insured

Two types of managements exist

(i) Condominiums may have contracted outside property management services,
(ii) individual unit owners may have hired a property manager for their own unit.

- Keep records of leases on the corporation's behalf
- Implement board decisions made by the board of directors
- Communicate with landlords and tenants of all changes by board of directors
- Inform landlords and tenants of maintenance schedules
    - Provide advance written notice as authorized by board of directors
- Ensure maintenance of common amenities
    - Operational and in good condition
- Collect Maintenance fees
    - Drafting the annual budget for board approval
    - Enforcing collections of unpaid common element fees
    - Preparing the monthly or quarterly financial statements for the boards review

Property Managers for Individual Units

- Be fully insured
- Keep records of individual leases
- Provide monthly or quarterly financial statements
- Collect and deposit rent and related fees
- Ensure maintenance and repairs are completed on time, on budget and properly
- Communicate all relevant information about the lease and tenant to the landlord
- Attend owners' meetings as the landlord's proxy (if authorized)

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- Inform tenants of repairs and maintenance schedules both to common elements and to the unit interior
- Arrange repairs to the unit interior

Withholding Taxes Non-Resident Unit Owners:

- If the landlord is a non-resident
- The property manager is required by the Canada Revenue Agency (CRA) to withhold 25% of rent payments before submitting them to the landlord. This serves as a deposit on income tax earned on the investment property.
- Property manager Acts as an agent for the CRA
- Liable for taxes not paid on investments they are managing
- By submitting the 25% withholding amount to the CRA, property managers protected themselves

Individual Property Manager:

- Must have insurance to act as a property manager, Keep record of individual leases,
- Provide monthly or quarterly financial statements, Ensure maintenance and repairs on time and within budget,
- Attend condominium meetings if authorized as landlord's proxy, and Informs tenants about repairs and maintenance schedules for the unit interiors and common elements.

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Module 9 - Residential Agreement To Lease

Essential Elements of Lease

- A lease is a contract between a landlord and a tenant for a specified period of time (term) and for a specified payment (consideration or rent).
- A lease must have certain essential elements to make it a legally binding and enforceable contract.
- All lease agreements must be in compliance with the Residential Tenancies Act and the Ontario Human Rights Code.

Legal Names: Full legal names of individuals or corporations must be verified from government issued identification documents and must be included in the lease.

- If possible verify that the landlord signing the agreement is, in fact, the owner of the building (geowarehouse) Legally Competent: The persons signing the lease must be legally competent to sign contracts so that they can make decisions based on their best interests.
- Persons who have not attained the age of majority (18) or who have mental incapacity are considered incompetent to sign lease contracts.

Identifiable Description

- The rental space must be readily identifiable using the address and/or unit number.

Consideration: Exchange of something of value

- In a lease, the consideration is the amount of rent, its frequency, the method of payment, and the recipient.

Lease Purpose:

The purpose for which the premises is rented, such as 'single-family residential', must be included in the lease.

Start/End Dates(Term): The lease must describe the date of commencement and the date of expiry, otherwise the lease cannot be enforced.

- After the term of the lease, the rights on the rental property reverts to the landlord.
- When the expiry date is missing, it may be considered sale of property rather than a lease.

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What is Expected: The lease must include the expectations (rights and obligations) from each party such as the rules, regulations, policies, and procedures.

9.1 Key Documents for Tenant Selection Rental Application

Rental Application

- The rental application, in compliance with applicable legislation, helps landlords decide about a prospective tenant and gets necessary permissions for checking credit and references.

Completed Application

- The rental application must be complete and signed, which indicates that the applicant has nothing to hide.

Income

- The landlord must check and verify information for potential problems such as income, frequent address changes, short- lead time to move-in, applicant living with friends or relatives, gaps in employment, and inability to pay rent deposit.
- The investigation may reveal previous evictions and/or financial problems of the applicant.

Frequent change of address

- May indicated problems… were they evicted? Did they skip out on rent?

Short lead time

- Why do they need to move so soon? Should be investigated Living with relatives

Frequent job changes

Paying last month's rent and first months red flag if they do not want to

Credit Report

- A current credit report allows landlords to check the financial ability of the tenant to pay rent.
- Typically look at credit score, account history and current status of accounts
- Usually need their consent
- Can easily be tampered with or fraudulent
- Consent clause

Parts of a Credit Report

Credit Score:

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- Single number with a descriptor
- ranges from 300 to 850, with a higher number indicating better credit rating and possible acceptance by a landlord.

History of Accounts: Any 'Red Flags' in the credit report may indicate problems with payments to credit cards and loans, only making minimum payments on revolving credit, or late payments on one or more credit cards.

- One or two missed payment not necessarily red flag

Current Status: The payment history of a tenant may be excellent, but the account may currently be in default. References

References

Landlords should check references from various sources to ascertain the character of a prospective tenant.

Employment References: Employment status, income, and stability of employment are some of the factors that must be verified.

- Gaps in employment is an indication of unstable income.
- Ask questions

Landlord References

- Can check geowarehouse to confirm but it will only tell you the registered owner not the property manager if they have one
- if you are asking a current landlord for reference they could also give you a false one to try to get rid of the tenant if they are bad (when did the tenancy begin, when did it end, how much rent etc.)

Proof of Employment and Income: Paystubs, Notice of Assessment from CRA, the HR department of current employer, employee list, company phone directory. may be referred to for verification.

Perform an online search

- Personal social media sites
- Company details
- Professional networking sites
- Landlord references

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- Name search
- Phone number or email address search

Past Landlord References: References from current and previous landlords may provide vital information to the landlord to verify if the tenant would meet obligations and work well with the landlord.

Personal References: Tenants should be asked to provide personal references even if they are likely to be biased. Online Search: Personal social media sites of the tenant may be searched to checked to collect as much information as possible about the prospective tenant.

9.2 Agreement to Lease (OREA Form 400)

Lease versus agreement to lease

Usually contains 4 main categories of clauses

1. Clauses that detail the parties to the agreement
2. Clauses that need some input or action by the parties to complete them
3. Standardized clauses that require no input
4. Additional clauses to the agreement, either individually or in a schedule to the agreement

Information detailing key aspects of the Parties

Dates of the agreement

- The date must be the date when the agreement is signed and not when it is prepared.
  - Must be expressed as an ordinal number (3rd) as opposed to cardinal number (3)
  - Month must be written in full
  - The year must be written as a 4-digit number Full legal names of tenants
- the full legal names tenant are verified to prevent chances of error or fraud.
- Must be verified Full legal names of Landlord
- Full legal names of the landlord (verified) Address of landlord
- Completed in full contain no errors
- Phone number to be included

Typical Clauses to complete the Agreement to Lease

Premises: Contain information on the rental property in question

- The municipal address and full legal description (optional) of the property should be inserted.

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Term: The term of the lease identifies the start date and the length of tenancy.

Rent: This section specifies the amount of rent (in words and figures), the date of payment, and the rental period.

Deposit and Prepaid Rent: The amount of deposit and the rent for the first rental period, usually given as 'first and last' month. Deposit is typically paid 'Upon Acceptance'.

Use: in a residential lease, this section clearly states that the premise will be used as 'Single-Family Residential'.

Services and Costs: Identifies the services and the party which is responsible to pay

Parking: Identifies the parking space and number of spaces. Irrevocability: Specifies the party (landlord or tenant), the date and time until the other party can accept or counter the offer.

Notices: The fax number and/or email addresses for delivery of information to the landlord and the tenant. Additional

Terms and Schedule: One or more clauses may be added here, and the parties may be directed to an attached Schedule.

- Preprinted Clause that Cannot be Changed

Typical Clauses in an agreement to Lease that Do Not Allow for Changes

Execution of Lease: This clause specifies that the landlord and the tenant agree to execute a formal lease and the landlord will inform the tenant about rules, regulations, rights, responsibilities, and information about the Landlord and Tenant Board.

Access: This clause permits the landlord to access the premises for inspection, to show to prospective tenants, purchasers, and others.

- Must meet notice requirements

Insurance: Tenant is required to carry insurance for fire and property damage, and public liability insurance for the entire tenancy period

- It allows the landlord to demand proof of the insurance at any time

Residency: requires the landlord to inform the tenant if they are a non-resident , or become a non-resident at any time

Use and Distribution on Personal Information: In this clause the landlord obtains tenant's consent for credit check, and collection of other personal information appropriate for the tenancy.

Standard Clauses

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Standard Clauses

- No room for changes

Conflict or Discrepancy: If there is a conflict between a preprinted clause and an inserted clause, the inserted clause will take precedence. (must be legal)

Family Law Act: Warranty from the landlord that spousal consent is not required to execute the lease.

Consumer Reports: The landlord obtains permission to obtain credit and personal information of the tenant.

Binding. Agreement: States that the agreement, when accepted and signed, is legally binding on all parties.

Acknowledgement: The landlord and the tenant acknowledge that they have received copies of signed and accepted agreement.

- Authorize the brokerage to forward a signed agreement to their respective lawyers

Signature Requirements

- Initials are required in the circle at the bottom of every page where a signature page does not require initials
- Initials of all parties are required to any chances made to the agreement
- The signature page (page 3 of the agreement) is signed by both the landlord and tenant
- Confirmation of acceptance is signed by the last party who signs the agreement to indicate the agreement has been accepted
- Both the tenant and the landlord sign the acknowledgement section at the bottom page to indicate they have received a signed copy of the accepted agreement

Signature date

- insert the date the landlord or tenant signs the offer. Use words and numbers to avoid confusion

Electronic signature

Acceptable as long as all parties consent to eh use of electronic signatures if any party to an agreement insists on using written signatures, as a salesperson you must oblige

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- mortgage providers and financial institutions may also insist on paper documents with written signatures Witness signatures
- electronic signatures do not require witnessing
- witnesses must be 19 years of age or elder
- they should not be another party to the agreement who will benefit from it
- do not have to read the document but must be present when signed
- witness needs to state only that the party intended to sign a legal document
- if there is no cooperating brokerage the salesperson must also sign the commission trust agreement which states that any money received or to be received as part of the transaction complies with all the rules and regulations and will be held in trust

Timing of initials and signatures

- must sign only have they have understood the document

Add a schedule to an Agreement

- must fulfil
  - state that it is part of the agreement
  - name the parties to the agreement
  - state the date of the agreement
- as with any other page, both parties must initial the agreement at the bottom of the page

Purpose of a schedule

- add-on to an agreement to lease where the parties can insert clauses that clarify or add additional terms to the lease where the parties can insert clauses that clarify or add additional terms to the agreement
- any terms added must be allowable under the Residential Tenancies Act, and must clearly state the term, including who is responsible for adhering to the term and who pays related costs

Agreement to Lease for Real Property Commonly Used Additional Clauses

- Salespersons should ensure that any clauses inserted in the Agreement to Lease are legal and clearly written so that there is no misunderstanding or dispute between the parties.
- Depending on a specific situation, property, or a prospective tenant, a landlord or their salesperson may insert any of the following common clauses to the Agreement to Lease form.
- A conditional clause for tenant's credit check.

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- Rules for use of any facilities shared with other tenants.
- Any rules for pets.
- Rent free periods or discounts.
    - Required maintenance that is not likely to be addressed before tenant moves in
    - Unfinished renovation
    - Promised amenity not being available upon move in
    - Over supply of rental properties in the market to entice a tenant to move in
        - Most include the amount of the discount and the date it is in effect
- Key deposits, remote entry devices, or additional set of keys.
- Cost of any other services or utilities in addition to the rent.
- Warranty clauses regarding the inclusion and/or condition of appliances.
    - Who is responsible for maintaining they are in working order?
- Components of a clause
- Who is doing it
- Who is paying
- What is to be done
- Within what time limit
- What happens in the event it is not done
- Can it be waived

Agreement to Lease for Condominium Commonly Used Additional Clauses

- Rules and Regulations: A clause requiring the tenants and their guests to adhere to condominium rules and regulations, responsibilities, and restrictions.
- Locker: When a locker is to be provided to the tenant, this clause ensures that the tenant agrees to abide by rules and regulations regarding use and restrictions on use.
- Approval by Board: A conditional clause should be inserted if the landlord requires approval of the new tenant from the board of directors.
    - Due to minimum age of leasing etc.
    - Applies equally to owner and tenants
- Additional Costs for Using Common Areas: If the use of common areas is subject to any costs, a clause would ensure that the tenant is aware of these costs.

Amendments and Other Notices and Waivers

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Landlords usually insert conditions such as credit check, personal references, etc. in the Agreement to Lease, and these forms are used to inform the tenant about the outcome of these checks.

Amendments: A landlord or a tenant may sometimes need to amend the terms of an accepted Agreement to Lease, which must be signed by both parties to become effective.

- If one of the parties refuses to accept the amendment, the originally accepted agreement remains enforceable.
- Fully cross reference the amendment to the agreement
    - Names of parties
    - The premise concern
    - Date of initial agreement
- Insert clause or words being deleted and the exact replacement clause
- No abbreviated instructions
- Insert the irrevocable date

Notice of Fulfilment of Conditions: This form allows a party to notify the other party that one or more conditions have been fulfilled and the agreement is now a binding contract.

- This form can be used for both 'Condition Precedent' and 'True Condition Precedent'.

Waiver: Waiver allows a party to waive their right to fulfill a condition in the Agreement to Lease in order to make it a legally binding agreement.

This form can only be used if the condition is the agreement is written as a 'Condition Precedent'.

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