

# Reserve Funds in Crisis

Presented by: Raymond H. Mikkola BA LLB  
ACMO CCI Toronto and Area Chapter

# Reserve Funds in Crisis

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- The Cause of the Crisis
- Solutions to the Crisis
- Conclusion

# 1. The Cause of the Crisis

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## a. Purpose of the Reserve Fund

- To fund major capital repair and replacement
- Statutory minimum contribution
- Reserve fund studies prior to May 5, 2001
- Reserve fund studies after May 5, 2001

# Condominium Act, 1998

## S.O. 1998, CHAPTER 19

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93. (1) The corporation shall establish and maintain one or more reserve funds. 1998, c. 19, s. 93 (1)

### Purpose of fund

(2) A reserve fund shall be used solely for the purpose of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 93 (2).

### Designation not required

(3) A fund set up for the purpose mentioned in subsection (2) shall be deemed to be a reserve fund even though it may not be so designated. 1998, c. 19, s. 93 (3)

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## Contributions to fund

(4) The corporation shall collect contributions to the reserve fund from the owners, as part of their contributions to the common expenses. 1998, c. 19, s. 93 (4)

## Amount of contributions

(5) Unless the regulations made under this Act specify otherwise, until the corporation conducts a first reserve fund study and implements a proposed plan under section 94, the total amount of the contributions to the reserve fund shall be the greater of the amount specified in subsection (6) and 10 per cent of the budgeted amount required for contributions to the common expenses exclusive of the reserve fund. 1998, c. 19, s. 93 (5)

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Same, after first reserve fund study

(6) The total amount of the contributions to the reserve fund after the time period specified in subsection (5) shall be the amount that is reasonably expected to provide sufficient funds for the major repair and replacement of the common elements and assets of the corporation, calculated on the basis of the expected repair and replacement costs and the life expectancy of the common elements and assets of the corporation. 1998, c. 19, s. 93 (6)

Income earned

(7) Interest and other income earned from the investment of money in the reserve fund shall form part of the fund. 1998, c. 19, s. 93 (7).

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## **b. The Funding Plan**

- Reserve fund studies are mandatory**
- For new corporations, within one (1) year of registration**
- For pre-existing corporations, not later than May 5, 2004**

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- **Within 120 days, Board must propose a funding plan which ensures that “the fund will be adequate for the purpose for which it was established”.**
  - **Board must send the proposed funding plan to owners (and auditor) not later than 15 days after proposing the plan**
  - **Plan takes effect 30 days after mailing**

## 2. Solutions to the Crisis

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### a. Special Assessment/Increase Common expenses

- Review declaration and by-laws
- Explain need for special assessment to owners
- Consider timing of payments
- Take enforcement action

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## b. Borrow needed monies

- Need by-law
- Satisfy lender's requirements
- Consider in particular where health or safety is a concern, or where savings will result (energy retrofit)
- 56(3): "A corporation shall not borrow money for expenditures not listed in the budget for the current fiscal year unless it has passed a by-law...specifically to authorize the borrowing".

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## c. Defer the repair or funding of the Reserve Fund

- Plan must specifically disclose where the plan is at variance with the reserve fund study recommendations
- BUT! Board must ensure that the fund “will be adequate”
- Directors have a duty to act honestly and in good faith and to “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances”
- May have a problem maintaining your directors’ and officers’ E & O insurance!

# Conclusions

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1. Reserve Fund studies are not optional.
2. Reserve Fund plans are not optional.
3. Timings imposed by the Act and the regulations are not “merely guidelines”.
4. Owners’ memories are short

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5. The Board is in charge, and is responsible to ensure compliance with the Act by the Corporation
  6. Great care must be taken in proposing a funding plan which is not consistent with the reserve fund recommendations.
  7. Rely on professionals.