

Real Estate

Changes to decades-old Alberta condo legislation 'long overdue,' lawyer says

By **Ian Burns**

(October 18, 2017, 7:28 AM EDT) -- Alberta has announced new protections for condo buyers, a move a real estate lawyer said will mark the first major changes to the province's condominium legislation in over 50 years.



Roberto Noce, Miller Thomson LLP

"Albertans deserve to be protected when making a big purchase like a home or investment property," said Minister of Service Alberta Stephanie McLean. "We have taken the first steps toward reassuring Albertans that their investments are properly looked after, so they can feel confident when investing in the condo market."

Steps the government is taking are requiring developers to give a final move-in date, with buyers being given the option to renegotiate or cancel their contract and get their deposit back if that date is not met; requiring developers to give a realistic estimate of condo fees a buyer can expect to pay when they move in; and creating new rules so developers must hold buyers' deposits in trust with a lawyer while their condos are being built.

The bulk of the new regulations will come into effect Jan. 1, 2018, with the remainder coming into force April 1.

Roberto Noce, who practises condominium law with Miller Thomson LLP in Edmonton and Calgary, said the "long overdue" changes are significant as they tip the scales of rules toward condo buyers. He noted Alberta was the first province to adopt condominium legislation in 1966, but with the exception of a few tweaks it has "virtually stayed the same."

"The changes will definitely provide great comfort and certainty to buyers in the condominium market," he said. "With more Albertans moving into the market, it was time to give this legislation a refresh and make sure buyers were better protected in terms of what is probably their most expensive purchase in their lifetimes."

Ray Mikkola, a condominium lawyer with Pallett Valo LLP in Mississauga, Ont., said the changes Alberta is making are "really needed" and a good step forward.

"It's going to protect purchasers better, and it's going to be more responsive to the democratic realities of condo governance," he said.

A lot of the changes being implemented by Alberta are similar to what is being seen in Ontario and British Columbia, said Noce.



Ray Mikkola, Pallett Valo LLP

"Ontario has been going through a very lengthy process as well with respect to changes in their legislation and there are a lot of similarities," he said. "The licensing of property managers, trying to balance the interests of boards and owners and trying to give buyers better protections in marketplace — we're definitely using some of those concepts from Ontario as well."

Mikkola agreed, saying the Alberta government's new rules "seem to be providing for a number of things Ontario has for a number of years," pointing to the provision of requiring deposits for condo units to be held in trust.

"I always think about how important it is for a lawyer or an escrow agent to collect deposits, because all you need is a sales trailer to collect tens of thousands of dollars from people and then just disappear suddenly," he said. "So maybe in Alberta they said this is sort of thing is missing, so that's why they are now proposing to include it."

The government of Alberta is also conducting public consultations for a second set of regulations, which are focused on condo governance. An online survey is asking for feedback on issues such as how meetings are run and how votes take place, what kind of say owners get in rules boards make, and the possible establishment of a condo tribunal to more easily resolve disputes as an alternative to the courts.

Noce said current governance rules are antiquated and some of the changes in the second part of the consultations will "definitely bring [Alberta] condominiums into 2017," but noted the many stakeholders that play a part in condo living.

"You have boards, tenants, the development industry, you have property managers," he said. "There are owner groups who feel the pendulum has swung too far in favour of boards who have too much power over owners, and if you ask boards, they feel they don't have sufficient tools to make improvements or deal with difficult owners. So as you can appreciate with anything, depending on where you stand on this issue will definitely bias your opinion."

The survey is available until Nov. 10. The new rules are expected to be finalized in 2018.