

# Section 98 of the Ontario Condominium Act, 1998

## Changes made by owners

98. (1) An owner may make an addition, alteration or improvement to the common elements that is not contrary to this Act or the declaration if,

- (a) the board, by resolution, has approved the proposed addition, alteration or improvement;
- (b) the owner and the corporation have entered into an agreement that,
  - (i) allocates the cost of the proposed addition, alteration or improvement between the corporation and the owner,
  - (ii) sets out the respective duties and responsibilities, including the responsibilities for the cost of repair after damage, maintenance and insurance, of the corporation and the owner with respect to the proposed addition, alteration or improvement, and
  - (iii) sets out the other matters that the regulations made under this Act require;
- (c) subject to subsection (2), the requirements of section 97 have been met in cases where that section would apply if the proposed addition, alteration or improvement were done by the corporation; and
- (d) the corporation has included a copy of the agreement described in clause (b) in the notice that the corporation is required to send to the owners. 1998, c. 19, s. 98 (1).

## No notice or approval

(2) Clauses (1) (c) and (d) do not apply if the proposed addition, alteration or improvement relates to a part of the common elements of which the owner has exclusive use and if the board is satisfied on the evidence that it may require that the proposed addition, alteration or improvement,

- (a) will not have an adverse effect on units owned by other owners;
- (b) will not give rise to any expense to the corporation;
- (c) will not detract from the appearance of buildings on the property;
- (d) will not affect the structural integrity of buildings on the property according to a certificate of an engineer, if the proposed addition, alteration or improvement involves a change to the structure of the buildings; and
- (e) will not contravene the declaration or any prescribed requirements. 1998, c. 19, s. 98 (2).

## When agreement effective

(3) An agreement described in clause (1) (b) does not take effect until,

- (a) the conditions set out in clause (1) (a) and subsection (2) have been met or the conditions set out in clauses (1) (a), (c) and (d) have been met; and
- (b) the corporation has registered it against the title to the owner's unit. 1998, c. 19, s. 98 (3).

## Lien for default under agreement

(4) The corporation may add the costs, charges, interest and expenses resulting from an owner's failure to comply with an agreement to the common expenses payable for the owner's unit and may specify a time for payment by the owner. 1998, c. 19, s. 98 (4).

## Agreement binds unit

(5) An agreement binds the owner's unit and is enforceable against the owner's successors and assigns. 1998, c. 19, s. 98 (5).

**Note: On a day to be named by proclamation of the Lieutenant Governor, section 98 of the Act is repealed and the following substituted: (See: 2015, c. 28, Sched. 1, s. 88)**

## Modifications made by owners

98. (1) An owner may make a modification if,

- (a) the board, by resolution, has approved the proposed modification;
- (b) the owner and the corporation have entered into an agreement that,
  - (i) allocates the cost of the proposed modification between the corporation and the owner,
  - (ii) sets out the respective duties and responsibilities, including the responsibilities for the cost of repair, maintenance and insurance, of the corporation and the owner with respect to the proposed modification,

and

- (iii) sets out the other matters that the regulations require;
- (c) subject to subsection (3), the requirements of section 97 have been met in accordance with the regulations in the cases where the regulations specify that those requirements are to apply; and
- (d) the corporation has included a copy of the agreement described in clause (b) in a notice that the corporation is required to send to the owners, if the corporation is required to send that notice. 2015, c. 28, Sched. 1, s. 88.

### **Definitions**

(2) In this section,

“cost” means the cost as determined in accordance with the regulations, if any; (“coût”)

“modification” means an addition, alteration or improvement to the common elements or the assets, if any, of the corporation that is not contrary to this Act, the declaration, the by-laws or the rules.

(“modification”) 2015, c. 28, Sched. 1, s. 88.

### **No notice or approval**

(3) Clauses (1) (c) and (d) do not apply if the proposed modification relates to a part of the common elements of which the owner has exclusive use and if the board is satisfied, on the evidence that it may require, that,

(a) the other owners, on an objective basis, would not regard the proposed modification as causing a material reduction or elimination of their use or enjoyment of units that they own or the common elements or assets, if any, of the corporation, as determined by the regulations;

(b) the proposed modification will not give rise to any expense to the corporation;

(c) the proposed modification will not detract from the appearance of buildings on the property;

(d) the proposed modification will not affect the structural integrity of buildings on the property according to a certificate of an engineer, if the proposed modification involves a change to the structure of the buildings; and

(e) the proposed modification will not contravene the declaration, the by-laws, the rules or the prescribed requirements, if any. 2015, c. 28, Sched. 1, s. 88.

### **When agreement effective**

(4) An agreement described in clause (1) (b) does not take effect until,

(a) the conditions set out in clause (1) (a) and subsection (3) have been met or the conditions set out in clauses (1) (a), (c) and (d) have been met; and

(b) the corporation has registered it against the title to the owner’s unit. 2015, c. 28, Sched. 1, s. 88.

### **If default under agreement**

(5) The corporation may add the costs, charges, interest and expenses resulting from an owner’s failure to comply with the agreement to the contribution to the common expenses payable for the owner’s unit. 2015, c. 28, Sched. 1, s. 88.

### **Agreement binds unit**

(6) The agreement binds the owner’s unit and any easement or covenant, whether positive or negative in nature, in the agreement shall run with the unit. 2015, c. 28, Sched. 1, s. 88.

### **Enforcement**

(7) The following persons may enforce the easement or covenant against each other:

1. A party to the agreement.

2. The owner or any subsequent owner of the unit.

3. Subject to the regulations, the corporation and any of its successors and assigns. 2015, c. 28, Sched. 1, s. 88.

**Section Amendments with date in force (d/m/y)**

## **For assistance, contact:**

Condo Owners Association Ontario 416-561-7373 <https://www.coaontario.com>

Condominium Authority Ontario 416-901-9356 <https://www.condoauthorityontario.ca>