

# Condo Certification

## Guidelines for the Architect's Certification under The Condominium Act

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### Summary

The architectural and land surveying professions play an important role in safeguarding the property and financial interests of all concerned, with respect to registration of condominiums in the Province of Manitoba. Under The Condominium Act, the requirements for the submission of certain documentation by the respective professions as part of the registration process, ensures that a basic record, with an appropriate level of accuracy, exists with the Property Registry Department.

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### BACKGROUND

This Practice Bulletin is intended to provide guidance to members and firms with respect to the required standard of care for an architect's certification under The Condominium Act, clarify the intent under the legislation and ensure more consistent submissions to the Property Registry.

In 2007, the Province of Manitoba implemented certain changes under the existing legislation, separating the existing three sections of the registration submittal process for condominiums and seeking the MAA's advice with respect to appropriate submission requirements for both new and existing construction. In 2015, broad sweeping changes to The Condominium Act came into force; and included certain changes regarding the 'Content of Plan' and certification process of the architect and land surveyor.

### INTENT

Based on discussions with the provincial government, the intent of the certification process involving the architect and land surveyor, is to ensure that documentation which must be filed with the Property Registry, serves as a reasonably accurate basic public record of the existing building(s), upon registration of a condominium. In that regard, the government is relying on both the expertise of the specific disciplines identified, and the professional standards which are dictated by the respective licensing bodies, in serving the public interest.

Documentation serves the purpose of clearly defining both exclusive and common elements; and would also facilitate the reconstruction of a similar structure(s), in the event of a catastrophic event. Plans are not intended to be construction documents, nor a definitive description of the condominium project at any given point in time, since any construction changes are not required to be filed.

### LEGISLATIVE PROVISIONS:

#### **Content of plan**

- 15(1) A plan (other than a bare land unit plan) must include the following:
- (a) a plan of survey (in three parts) showing
    - (i) in the first part, the horizontal boundaries of the land and the buildings and survey monuments,
    - (ii) in the second part, the boundaries of (A) each unit by reference to the buildings; and (B) any common elements or parts of them that are described in the declaration for the use of the owner or a designated unit,
    - (iii) in the third part, plans, exterior elevations and building sections required to convey the general building assemblies for each building in which one or more units are located;
  - (b) a description of any interests appurtenant to the land that is to be governed by this Act;
  - (c) any additional information or materials required by the regulations.



## REGULATORY

Practice Bulletin

**A.4**

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### **Certificate of land surveyor**

15(2) The plans referred to in subclauses (1)(a)(i) and (ii) must be accompanied by a land surveyor's certificate confirming that those plans are correct and that they do not conflict with the plans referred to in subclause (iii).

### **Certificate of architect**

15(3) The plans, exterior elevations and building sections referred to in subclause (1)(a)(iii) must be accompanied by an architect's certificate confirming that

- (a) the buildings have been constructed substantially in accordance with those plans, exterior elevations and building sections; and
- (b) those plans, exterior elevations and buildings sections are substantially accurate.

### **SUBMISSION REQUIREMENTS**

In accordance with the legislation, Parts 1 and 2 must be certified by a land surveyor registered to practice in Manitoba and Part 3 must be certified by an architect registered to practice in Manitoba. The architect must also review Parts 1 and 2, to confirm that they are substantially accurate relative to the building(s) constructed and the documentation certified by the architect.

### **The architect must sign the certification statement on the documentation to be filed (a seal is not required).**

Documentation which is to be filed with the Property Registry relative to the Part 3 aspect, will vary for new construction and the registration of existing buildings which are converted to condominiums.

### **New Construction**

The Part 3 submission is to include the following:

- Site plan(s), indicating the location of the building(s), site layout and identification of all accessory structures;
- Building plan(s), dimensioned for all levels and indicating roof, wall and floor assemblies;
- Exterior elevations, indicating the exterior finishes of the building;

- Building Section(s), indicating the dimensions and general building assemblies.

### **Existing Construction**

The Part 3 submission is to include the following:

- Site plan(s), indicating the location of the building(s), site layout and identification of all accessory structures;
- Building plan(s), dimensioned for all levels and indicating roof, wall and floor assemblies that can be determined with nondestructive examination;
- Exterior elevations, indicating the exterior finishes of the building. Large scale, monochrome photographs may be utilized in lieu of measured drawings;
- Building Section(s), indicating the dimensions and general building assemblies that can be determined with nondestructive examination.

Members must ensure that the submission which is provided to the Property Registry is consistent with the above-noted guidelines, as opposed to simply providing a complete set of construction documents, which contain far in excess of the documentation required; this would be as much of a concern as filing insufficient information to provide the necessary guidance intended under the provisions of Section 15(1) of The Condominium Act.

Note that documentation which is filed on the public registry, in accordance with the provisions of this legislation, cannot include any statement which indicates that it is not distributable (see Copyright section below).

### **When can the architect certify?**

Members who are involved in the provision of architectural services on new construction for a condominium project, may be pressured to provide certification under The Condominium Act prior to completion of the construction project. It is acceptable for a member to provide architectural certification, once a sufficient level of the construction has been completed to confirm that construction of

the building(s) is substantially in accordance with the documentation filed as part of the submission. If proper attention is paid to the submission requirements and the appropriate documentation is filed, then certification can certainly take place in advance of completion of the project.

### **Part 9 Buildings**

An architect's certification is required for all condominiums, including Part 9 buildings where no architect may have been involved in the preparation of construction documents. In providing the architect's certification for the purposes of The Condominium Act, the architect does not assume any liability for the construction documents (unless the construction documents were also prepared and sealed by that architect). Rather, the architect's certification is required to confirm, based on the recognized expertise of a licensed architect and under professional seal, that the buildings have been constructed substantially in accordance with the documentation provided and the diagrams of the units and common elements (including those provided as part of the land surveyors portion of the submission), as entered into the public record, are substantially accurate.

### **THE ARCHITECT'S CERTIFICATE**

While The Condominium Act dictates the requirements, the MAA and Province have agreed that following wording provides a greater level of clarity with respect to the intent of the legislation and will therefore be used for the Architect's Certificate:

*I hereby certify that the buildings have been constructed substantially in accordance with the plans, exterior elevations and building sections, and that the diagrams of the units and common elements in relation to those plans, exterior elevations and building sections are substantially accurate.*

### **PROFESSIONAL STANDARDS**

The professional standards which apply to the architect's certification will vary, depending on whether the architect was also the Architect of Record (for new

construction) or not (as may be the case for new construction of a Part 9 building and/or conversion of an existing building).

### **Certification by the Architect of Record on New Construction (Both Part 3 and Part 9)**

The professional obligations relative to the accuracy of the documentation that is filed with the Property Registry is at the highest level, when the Architect of Record is concerned. As the standard is that documentation which is filed accurately records the building(s) that has been constructed (at an "As-Built" level), documentation should be restricted to that which is required and nothing more; since the certification statement relative to the accuracy of documentation, applies to all documentation that is filed.

Documentation concerning Parts 1 and 2 must also be carefully reviewed, at the time that the architect's certification is provided, to ensure that it is consistent with the Part 3 submission; and reflects any alterations that might have occurred late in the construction process (ie. a jog into a particular unit, to enclose some additional mechanical equipment).

### **Certification of Conversions or Part 9 Buildings Designed by Others**

The professional obligations relative to the accuracy of the documentation that is filed with the Property Registry is more limited in scope, but applies to all visible elements that can be determined with nondestructive examination.

While the architect's certificate will not apply to those aspects that are not visible following construction, the expectation is that there are no obvious problems or errors with the documentation intended to be filed.

The following examples are offered to assist in clarifying the level of professional observation and review that is expected, given the reliance on the assurance provided by the architect's certification:

.1 The elevator in the building, as constructed, is in reasonably the same location as reflected on the documentation

(and not an obvious distance further away from the stairwell, than reflected on the drawings);

.2 The roof line following construction is reasonably consistent with the elevations and sections prepared (and not at an obviously different pitch).

#### COPYRIGHT

Members should be aware that the Crown has further redistribution rights which are inherent with all documentation that is filed on the public registry, including any and all documentation that is filed in accordance with the provisions and requirements under The Condominium Act. Accordingly, documentation which is to be filed relative to Subsections 15(1)(a) for Parts 1, 2 and 3 for the public registry cannot be accepted, should it include any form of statement which indicates that such documentation is not distributable (this applies to both architects and land surveyors submissions).

It should be noted that redistribution rights that apply to the Crown, should not be considered to alter or compromise the intended protection of intellectual property that is afforded to architects for their work under The Copyright Act at the federal level; and should be considered similar to the issuance of a limited license, which automatically grants the right to use and redistribute the documentation that has been filed, for specific legitimate purposes.