Chart 5

Sample schedule of maintenance responsibilities*

I	II	III	IV	V
Items	**Common elements under corporation responsibility**	**Exclusive use common elements under corporation responsibility**	**Unit components under corporation responsibility**	**Certain other components under unit owner's responsibilitywith-out respect to ownership of the component**
Plumbing and related systems and components thereof.	All maintenance, repair and replacement of portions of plumbing constituting service to more than one unit. Water damage to common elements or units other than the one which is the primary source of the problem through negligence of the occupants of such unit.	If any, same as in Column II.	Only to the extent that a malfunction or threat of same has originated outside the unit in which the malfunction occurs or may occur.	All portions, including fixtures and appliances attached thereto. Water damage to a unit, when the primary source of such problem is through negligence of the occupants of that unit.
Electrical and related systems and components thereof excluding appliances, fixtures and lights serving only one unit.	All, in all regards.	All, in all regards.	All; especially note that switches, wall sockets, circuit breakers and any other items which serve one unit but lie outside its legally defined boundaries are the corporation's responsibility.	—
Heating and cooling systems and components thereof which serve the separate units.	—	—	—	All, in all regards.
Parking spaces.	All surface parking spaces, in all regards.	Exclusive use common element parking spaces, in all regards.	—	—
Refuse collection system.	All, in all regards.	—	—	—
Grounds, including all landscaped and paved areas and other improvements thereon lying outside the main walls of the buildings.	All.	Paving, privacy fences, gates as a general common expense.	—	—
Building, exterior roof, vertical walls, foundations.	All in all regards with certain exceptions expressed elsewhere herein regarding routine cleaning.	—	—	—
Windows.	All which do not serve a Unit, in all regards.	—	In all regards except routine cleaning.	Routine cleaning.

Doors, main entry to Units.	—	—	All surfaces exposed to corridor including door panel, buck, trim and sill.	Interior of door panel interior trim. Hardware set including lock and door chime assembly and hinges/ closure.
Terrace doors.	—	—	In all regards except routine cleaning.	Routine cleaning.
Terraces.	—	In all regards except routine cleaning.	—	Routine cleaning.
Screens, terrace doors and windows.	All which do not serve a Unit, in all regards.	—	—	All in which serve the Unit in all respects. Replacements to be of same color, grade and style.

*From "Managing a Successful Condominium Association", a report published jointly by the Urban Land Institute and the Community Associations Institute, based on a manuscript authored by the Community Management Corporation, Reston, Virginia.

Notes

Maintenance responsibilties:

This chart and the titles and headings used herein are not intended to describe or encompass all maintenance functions nor to delineate all respective responsibilities between the Unit Owners, severally, and the Corporation. The placement of responsibility under any specific column does not always accurately reflect the precise character and nature of ownership. The appropriate sections of the Declaration determine ownership.

Column I: **Items.** Items appearing in this column are illustrative and not exhaustive.

Column II: **Common elements under corporation responsibility.** Responsibility for determining and providing for the maintenance, repair and replacement requirements of the Common Elements and determining the costs thereof shall be primarily the responsibility of the Corporation and such designees to which it may delegate certain such responsibilities.

Column III: **Exclusive use common elements under corporation responsibility.** Responsibility for determining the maintenance, repair and replacement requirements of the Exclusive Use Common Elements shall be a shared responsibility between the Corporation and the Owner of a Unit to which a specific Exclusive Use Common Element is exclusively, appurtenant, **provided, however,** that the Corporation shall have the final responsibility for determining the need for and accomplishing such maintenance, repair and replacement activities.

Column IV: **Unit components under corporation responsibility.** The items in this column are legally and by definition a part of a Unit but are attached or directly connected to or associated with the Common Elements and Common Expense items in such a way that a clear distinction between Unit Owner and Corporation responsibility cannot be made. Moreover, such items frequently involve matters of concern relative to the general health, safety and welfare of all of the occupants of the building. Thus, certain costs which appear to benefit a single Unit Owner but which affect other Unit Owners are declared a Common Expense, especially when the correct functioning of an activity or element is integral to or supportive of the legally defined Common Elements and Common Expenses.

Column V: **Certain other components under Unit Owner's responsibility without respect to ownership of the component.** The items in this column are not intended to be exclusive and all-encompassing and do not affect responsibilities otherwise expressly provided for.

3. The agreement should specify how, when and by whom instructions are to be given to the firm or its representative. Generally, a specific board member is authorized to instruct the representative, with the exception of emergency situations when the property management representative assumes the responsibility.

4. The management functions should be differentiated and enumerated. The agreement should specify that the representative will make himself available at all reasonable times and for whatever periods are necessary to fulfill his management duties which may include attending board meetings, inspecting the property, supervising emergency repairs to the units and common elements, collecting common expense arrears, and hearing and disposing of complaints. This is particularly important if no resident staff is employed. The question of whether complaints by owners relative to common elements go to the board or directly to the agent should be answered in the agreement.

5. The terms of the agreement, the conditions for accelerating the termination of the agreement and the notice, if any, required for its renewal should be specified.

6. The agreement should specifically authorize the representative to spend funds. All funds should be spent in accordance with budgetary projections, and the firm's representative should do nothing which would be at a substantial variance from the budget without express board approval. The provision of signing authority for expenditures should also be included in the agreement. (See the chapter on Financial Administration.)

7. The contract should require disclosure by the firm or its representative of instances in which services or supplies are obtained from companies in which the firm or representative has a financial interest.

8. The agreement should cover the preparation of financial statements indicating their frequency and content.

9. The firm's duties and compensation in the event of a major destruction or termination are rarely included in management contracts. At the very least, the contract should provide that responsibilities arising from such contingencies shall be determined by the board, including the right to cancel the management agreement.

10. The firm must provide and file all forms made necessary by the employment of personnel, including unemployment insurance, Canada Pension Plan, and other requirements for permanent or temporary employees.

11. The agent should agree to maintain an inventory of all corporation property including furniture, gardening equipment and supplies, typewriters and any other such corporation property.

12. The agreement should include a statement of the terms for compensation.

13. The agreement should specify that the management company and its employees have adequate bonding and insurance coverage on their activities.

14. The agreement should allow for the suspension of the contract after a period of time deemed sufficient to test the performance of the management services.

15. If service employees engaged by the management firm are also to be employed directly by owners, it may be useful to fix the charges, availability of such employees, and priorities for internal unit work.

The list is not all inclusive, but is intended only as a guideline for some of the items which might be included in a management contract. (The above "Check List for Management Agreement" is substantially the same with some additions and deletions, as the "Check List for Condominium Management Agreement" published in *Condominium and Co-operatives* by David Clurman and Edna L. Hebard.)

Qualifications for condominium property management firms

Considering that society demands certain verifiable qualifications from almost anyone who provides a service to the public, it is most disconcerting that there is not even a minimum standard of training required for persons who are entrusted with the deposition of large sums of money and real estate on behalf of others. Condominium owners should have some assurance that the persons who administer their affairs have the experience required to protect their investment.

People in the condominium property management industry appear to realize that they have a responsibility to see that higher standards are developed and applied to all those offering condominium management services. This is encouraging in light of the changes that must be made.

We accept the fact that condominium property management is distinct, in many ways, from other forms of property management and as such requires specific training. Certainly, there must be a minimum standard of training for all persons engaged in property management.

A review of existing courses offered to those in the management field reveals a lack of agreement as to the necessary content. However, several different opportunities exist for those interested in property management. We have provided a general overview of some of the courses available:

1. The Institute of Real Estate Management

I.R.E.M., an American organization, offers courses to people active in building and property management.

The Institute offers a designation, Certified Property Manager (C.P.M.), which can be obtained without taking a specific course in condominium management. There are presently approximately 270 Certified Property Managers in Canada.

The specific course offered by I.R.E.M. on condominium management is of approximately one week duration, with an examination immediately following the lectures. Although the course manuals and examinations are based on U.S. legislation and practices, the lecturers used by the Greater Toronto Chapter are usually Canadian. Dependance on U.S. materials is not seen as detrimental by I.R.E.M. because the courses focus on the theory of property management rather than the institutional framework of real estate. It is the opinion of the Institute that their general program covers many of the essential aspects involved in condominium management. It is their philosophy that a properly trained Certified Property Manager is of invaluable assistance to all forms of property management needs. The Institute sponsored a seminar on the management of condominiums which was held in Toronto in June, 1977. The schedule for the seminar encompassed both lectures and assigned readings and the participants were assessed by means of an examination. As with all I.R.E.M. courses, the individuals who enrolled in the condominium seminar generally had several years of active experience as building and property managers before enrollment in the course.

2. Colleges of Applied Arts and Technology
George Brown College offers a two-year course in residential property management. The course generally attracts people who have work experience who wish to enter the field of property management. The course includes 64 hours of instruction devoted specifically to condominium management.

The Housing and Urban Development Association of Canada (HUDAC) and the Ontario Housing Corporation were involved in the establishment of the George Brown College course. The first graduates from that program were available in the spring of 1977.

Several other community colleges offer a variety of less intensive educational opportunity. Seneca College, Algonquin College, and Fanshaw College periodically offer week-end exchange sessions which deal with condominium management. While these sessions are most helpful to those interested in condominium property management, they cannot be compared to the courses offered by I.R.E.M. or George Brown College. However, we believe they could be expanded to provide additional depth and help fill the present lack of education programs. We compliment the community colleges for their assistance in the area of property management seminars.

3. The Institute of Housing Management
The Institute, founded in 1976 by Canadian property managers, is developing a 19-part home study program in property management which will include condominium management.

The Institute, which is co-operating with HUDAC in the preparation of course material, anticipates that the course will be offered through colleges of applied arts and technology in 1978.

The courses cover a variety of topics relating to condominium property management. A review of the course content reveals that the following topics are included in most of the courses: condominium documents; budget preparation; management contracts; condominium legislation; maintenance schedules; emergency procedures; and insurance trust agreements.

Condominium boards of directors interested in obtaining commercial management should recognize that the management of condominiums is only one facet of property management. When they are considering employment of a manager or management firm, they should verify the property management credentials of the applicant. The boards should be concerned with the formal training the applicant has obtained. In the past, opportunities for education in condominium management have been limited. However, the range of courses now available or soon to be presented — seminars through I.R.E.M., extension courses through I.H.M. and the course at George Brown College — are extensive.

Recommendation No. 54:
The Registrar of Condominiums assist the condominium property management industry in determining the proper content and duration for a prescribed course or choice of courses in the field of condominium property management.

The adopted course content should be reviewed for input with the regional condominium associations prior to preparation in order to ensure general acceptance and co-operation.

Code of ethics
In addition to improving the qualifications of management firms, there is a need for professional standards within the industry. There is particular concern that the principals of any management company or any person acting on behalf of them in a management capacity should provide a declaration of involvement in any business interests they may have which could be construed as interrelated or conflicting with the condominium project. There is great concern that conflict of interest situations should not be permitted.

We applaud the efforts of the newly formed Institute of Condominium Managers of Ontario which has begun to work on a proposed code of ethics to cover the following: "standards of professional conduct; standards of advertising; trust fund administration; arms length contract of business; disclosure of interests; tendering practices; fair competitive practices; adherence to educational standards; no encouragement to breach of contract".

Recommendation No. 55:
A. A code of ethics be established by representatives from the property management industry and condominium associations, in conjunction with the Registrar of Condominiums.

B. Such guidelines apply to all firms offering commercial condominium management services in the Province of Ontario.

Registration of management companies
Two alternatives exist for the regulation and discipline of property management companies: self-regulation by the industry or compulsory licensing by the province. We have serious reservations about the effectiveness of provincial licensing and discipline of management companies. If the industry is serious about moving towards the establishment of higher standards, we would encourage them to take immediate action to organize their industry as a self-governing and self-disciplining body and suggest that the provincial government enact the necessary legislation granting the authority for regulation and discipline. Such a move could effectively remedy many of the concerns expressed and this initiative would be preferable to registration being imposed on the management firms by the government.

Recommendation No. 56:
Representatives of the property management industry in conjunction with the Registrar of Condominiums work to prepare legislation to enable the property management industry to become a self-regulating and self-disciplining body.

This alternative would be more desirable and result in greater protection to owners and greater involvement by the management firms. However, if this development does not appear possible in the very near future, the Ministry of Consumer and Commercial Relations should proceed with registration of management firms.

Recommendation No. 57:
In the absence of action taken by the property management industry towards self-regulation, The Condominium Act be amended to require that all individuals and companies engaged in condominium property management for a fee be registered with the Registrar of Condominiums.

Chapter 9
Property taxation

Origin of the problem

Currently residential condominium units are assessed at the same proportion of market value as single-family residential property generally. This level varies across the province as it is dependent upon the level of residential assessment in each municipality. Until 1975, condominium units were assessed at the same proportion of value as multi-family residential property.

The relatively high levels of property tax assessment levied on residential condominium units prior to the enactment of Section 90(2) of The Assessment Act in 1975 stemmed from municipal assessment policies instituted as early as the 1950's. Long before condominiums were developed in Ontario, municipal assessors, despite the lack of legislative authority to do so, had assessed multi-residential property and commercial/industrial property generally at a higher level of value than single-family residential property. Almost without exception, the level of assessment on single-family property was lower than on all other classes of property in all major Ontario municipalities.

This practice of differential assessment continued throughout the 1960's. The inability of municipalities to establish uniform levels of assessment for all property was one of the principal reasons for the provincial takeover of assessment in 1970. An indication of the magnitude of the differentials is shown in data published by the Ontario Committee on Taxation in 1967:

Assessment differentials, 1963

	Level of assessment		
	Residential (Single)	Apartment	Difference
	(i)	(ii)	(iii) (i ii)
Toronto	31.2%	54.3%	57.5%
North York	33.7	50.7	66.5
Hamilton	34.7	48.5	71.5
Scarborough	33.0	62.0	53.0
Etobicoke	36.0	54.1	66.5

(Source: Ontario Committee on Taxation, *Report*, Queen's Printer, Toronto, 1967, Vol. 2, p.249)

Subsequent assessment equalization studies made by the Department of Municipal Affairs in 1968, 1969 and 1970 confirmed these assessment differentials throughout Ontario.

The increase in property values since 1970 has reduced the average levels on all property by as much as two-thirds. It has also increased the differentials between single-family residential property, which has risen in value by the greatest amount, and all other classes.

When condominium ownership was initiated in Ontario, in 1967, the first projects developed as condominium were either conversions of existing rental developments or new projects that had been originally designed for rental. The conversions were not revalued at the lower single-family residential level. They were kept at the multi-residential level in order to maintain consistency with rental units, often located in neighbouring buildings. The new condominium buildings were likewise assessed at the multi-residential level to maintain consistency with the conversions.

Provincial assessment

Provincial assessment in 1970 was based on two principal policy objectives — reassessment in 1974 for taxation in 1975, and maintenance of the existing municipal tax base during the interim period. This latter objective is reflected in Section 85 of The Assessment Act which requires that the assessment rolls returned in 1970 for taxation in 1971 be the assessment rolls during the interim period. The achievement of this objective required that existing condominium assessments be defended and that new condominium units be assessed at the multi-residential level.

Condominium assessment appeals

Beginning in 1970, but expanding significantly in 1971 and 1972, condominium owners organized large-scale appeals against their assessments. The Assessment Division of the Ministry of Revenue defended the assessments on the basis of Section 90 of The Assessment Review Court Act, 1972, a county judge or the Ontario Municipal Board to alter an assessment only if it could be demonstrated that the assessment was inequitable with respect to the assessment of similar real property in the vicinity. Assessors argued that "similar" should be regarded as physical similarity, thereby rationalizing a level of assessment equivalent to that on rental properties. Condominium owners argued that "similarity" should be considered in a broader sense. They claimed that the form of tenure — freehold rather than leasehold — should be taken into account in establishing the level of assessment.

As the volume of appeals increased, one case was accepted by all parties as a test case. York Condominium Corporation No. 26 at 551 The West Mall in Etobicoke had been assessed in the normal manner at the multi-residential level. The owners successfully appealed the 1971 assessments which were reduced by the Assessment Review Court. The Assessment Division appealed the decision to the county judge where the Assessment Review Court's decision was confirmed by Judge Phelan in October, 1971.

Judge Phelan's decision was appealed by the Assessment Division to the Ontario Municipal Board. The Board confirmed his decision and left the assessment at the level established by the Assessment Review Court.

The Assessment Division appealed the Board's decision to the Court of Appeal to determine if the Board had correctly applied Section 90 and if it had properly interpreted the term "similar real property". In its decision handed down in September, 1975, the Court of Appeal deemed it inappropriate to give an answer to these questions, but it did direct the Board to rehear the case.

Bill 8, amendment to Section 90
During the five years while the York Condominium Corporation No. 26 appeal was working its way through the courts, the volume of appeals by condominium owners increased substantially. Since there was no definitive case law on the interpretation of Section 90, there were conflicting decisions at the Assessment Review Court, depending on the facts of the situation and the evidence submitted. In some instances, the Review Court reserved judgement; in others, the position of the Assessment Division was upheld and the assessments were confirmed; and, in others the appeals were allowed and the assessments were reduced. The Assessment Division appealed all reductions to a county judge or the Municipal Board where decisions were reserved pending a final decision with respect to York Condominium Corporation No. 26. In addition, some unit owners whose assessments were not reduced appealed to a county judge. Other owners dropped their appeals and accepted the Assessment Review Court decision. To further complicate the situation, some owners did not realize that their assessment must be appealed each year in order for the appeal to be effective.

Thus, by the fall of 1975, the appeal picture with respect to condominium units was very complex. There were units with duplicate appeals -- the unit owner and the corporation. There were units with cross appeals — the owner (and/or corporation) and the Assessment Division. There were units not under appeal although the owners thought they were. There were units under appeal — by the Assessment Division — which the owners did not realize had been appealed.

It is generally accepted that by the fall of 1975, there were between 25,000 and 30,000 condominium appeals outstanding. The vast majority of these appeals were before the Assessment Review Court, with several hundred at the county judge level and a few before the Ontario Municipal Board.

Recognizing that condominium unit owners were being unfairly assessed in relation to the owners of single-family residences, and because the reassessment had been postponed until 1976, the Government introduced Bill 8 in November, 1975.

Bill 8 amended Section 90 by adding a subsection, 90(2), which provided that condominium units should be assessed at the same level as owner-occupied single-family residence in the vicinity. This legislation applied for 1976 taxes and subsequent years, but was not made retroactive.

Tax rebates
The outstanding condominium appeals were quickly settled on the basis of the level of assessment applied to single-family residences and the municipalities made refunds of taxes to condominium owners throughout 1976.

As the year progressed, some owners who thought their units were under appeal found that they were not and were therefore not eligible for a refund. There are several reasons for this confusion:

(i) The appeal was not filed properly in the first place. It might have gone to the municipality or regional assessment office rather than the Assessment Review Court. While there is a policy to forward these to the Assessment Review Court some may have been mislaid;
(ii) The appeal lapsed. If the decision of the Review Court was not appealed, it became final;
(iii) the appeal was not filed. Those owners who did not realize that a separate appeal must be filed for each year may not have appealed after the first year even though they kept the original appeal open.

Whatever the reason, these owners began a campaign to obtain a tax rebate. They were joined by other owners who had not appealed their assessments and asked for a rebate, or tax credit, when they saw the effect of Section 90(2) on their 1976 taxes. Several condominium corporations and condominium associations supported these requests for tax rebates on properties that had been under appeal when Bill 8 was enacted.

Submissions to the Study Group
During the public hearings, a number of submissions requested that rebates or credits be given to those owners who had not appealed their assessment. In no instances did the rationale for the request go beyond a belief that a rebate was necessary in the interests of equity. Often the requests were included in a more general statement on property taxes and the lack of municipal services. Thus, it was not possible during the hearings to ascertain from the briefs why owners who had not appealed believed they should receive rebates.

The case for rebates as made during submissions, and in other forums, appears to be as follows:

- The enactment of Bill 8 constitutes an admission that condominium units were inequitably assessed.
- Condominium units had been inequitably assessed since they were first permitted.
- The Province assessed the bulk of condominium units and is, therefore, responsible for the inequities.

The concern of condominium owners who believe they have been unjustly dealt with concerning their assessments is appreciated. Nevertheless, it would be irresponsible to accept the requests for retroactive rebates without considering them in the wider context of the entire property tax system and property tax reform as proposed in *Budget Paper E* of the 1976 Budget and the *Report of the Commission on the Reform of Property Taxation in Ontario* (Blair Report).

Condominiums are only one aspect of a property tax base that has, over the past thirty years, become increasingly distorted. The distortions and differentials have produced serious inequities for many types of property, particularly when these properties are compared with single-family residential homes. The government recognized the existence of these differentials and accepted responsibility for removing them in 1969 when the province assumed responsibility for property tax assessment. Until property tax reform is implemented, the vast majority of property in Ontario will be subject to the differentials established prior to 1970.

Between 1970 and 1975, condominium units were assessed at a level higher than single-family residences as part of a policy to maintain the tax base developed by municipalities when they were responsible for assessment. This policy was not an attempt by the Ontario government to discriminate against condominium units in any way; it was followed solely in order to maintain the tax base as it existed in 1970.

Section 90(2) gives tax relief to one group of property owners that will not be achieved by other owners until a reformed property tax system is put into effect. In this respect, the province has discriminated in favour of, rather than against, condominium owners.

In addition, it is recognized that not all condominium owners benefitted equally from Section 90(2). The right of appeal is a legal one that must be exercised and one that cannot be given by default. The assessment appeal system may appear complicated to condominium owners, but they have the same access to it as all other owners. The fact that some owners did not have appeals outstanding in December, 1975, may be due to misinformation or lack of knowledge of the system, indifference to the problem, or even satisfaction with their taxes. This does not give them special status. It merely places them in the same category as all other property owners who have not appealed their assessment (see chapter on Municipal Services).

It is the responsibility of condominium owners, just as it is incumbent upon all consumers, to be attentive to issues that significantly affect their lives, particularly in instances where clear instructions are put directly into their hands. Such is the case regarding tax assessment appeals. The Assessment Notice, which is received annually by all owners, explains the appeal procedure and can be used to directly lodge an appeal (see Chart 6).

For all of the foregoing reasons, the provisions of the Assessment Act pertaining to condominium assessment appeals should not be amended.

Recommendation No. 58:
Property tax rebates or tax credits not be given retroactively to the owners of condominium units who did not have appeals outstanding in December, 1975.

Chart 6

Complaint Procedures

(Section 52 of The Assessment Act, R.S.O.1970, Chapter 32)

If you believe you have been improperly assessed in any way, you or your agent may give notice of the complaint in writing to the Regional Registrar of the Assessment Review Court. See the front of this Notice for the address of the Regional Registrar and the last day for lodging a complaint.

Notice of Complaint

IF YOU WISH TO USE THIS NOTICE for lodging a complaint against your assessment, state your reason(s) in the space below, sign and forward to the Regional Registrar.

.....

.....

.....

Name of Owner or Agent (Please Print) .....

Telephone No. Residence .....

SIGNATURE OF COMPLAINANT OR AGENT

Business .....

MAILING ADDRESS

IF YOU WISH TO LODGE A COMPLAINT AGAINST YOUR ASSESSMENT AND RETAIN THIS NOTICE, you may obtain a Notice of Complaint form from the office of your local Municipal Clerk, or include the following information on a separate sheet of paper headed "Notice of Complaint", and forward to the Regional Registrar:

1. Name, Mailing Address, and Telephone No. of Complainant.
2. Location and Description of Property under Complaint (see front of Notice of Assessment).
3. Assessment Roll Number (see front of Notice of Assessment and set down in the order in which they appear on the Notice of Assessment the numbers shown under the headings CNTY. (County or Region), MUN. (Municipality), MAP (Map Division), SUB. (Subdivision). PARCEL, TENANT).
4. Reason(s) for Complaint.
5. Signature of Complainant or Agent.

Chapter 10
The condominium corporation

A unique element of a condominium corporation is its nature as a privately owned and operated community whose activities are directed internally. From the information received during the public hearings, it became apparent that the first two years of a corporation's existence are the most critical. It is during this period that the framework of the corporation is created and precedents are set which will often have a long-term effect on the owners.

Much of the responsibility for creating a successful condominium community rests with the developer. It is he who creates the corporate structure and who therefore has the greatest impact. The developer who accepts the responsibility for the community he has created should communicate as effectively as possible with the owners. This enables the developer to determine where the problems in the project are and lets purchasers know that the developer has some concern about their comfort and satisfaction.

Records and information

It is virtually impossible for a group of inexperienced individuals to step in as members of the board and commence running a corporation. Great assistance is necessary at the initial stages from the developer, who also has a vested interest in ensuring the project's success. It was repeatedly mentioned by condominium groups that one of their most serious problems was the lack of information which could assist the new Board of Directors, about the project itself including such items as who the maintenance contractors are, what warranties are available, what mechanical and electrical systems are in the project, and who is available, if anyone, from the developer's business for assistance. Because of difficult start-up problems with developers, many owners may be over-anxious to remove the developer's influence entirely from the board as soon as possible. This can be a mistake. As the person who put the project together and who has access to all those who were involved in it, he can, in fact, be of valuable assistance to a board. As some board members have indicated, any of the owners who were most satisfied with condominium living were in corporations where the developer-purchaser relationship was co-operative and informative. Greater emphasis should be directed towards this end by the parties involved.

Section 9b(1) of The Condominium Act requires that a meeting of owners be held by the developer within 42 days after he has transferred ownership of more than 50 per cent of the units. Section 15b(1) provides owners and mortgagees the right to investigate the records of the corporation relating to the disposition of money paid by an owner through common expenses. (From the time a purchaser becomes an owner, Section 15b of The Condominium Act gives him the right of access to the corporation's records).

These two sections deal with separate areas of concern to condominium owners. One of the problems encountered in applying Section 15b(1) is the lack of definition for the word "records". The reason these two sections should be tied together is that the "turn-over" meeting of owners referred to in Section 9b(1) should be expanded to include the provision of enumerated documents to the first owner-represented Board of Directors. The documents which a developer would be required to turn over to the owner's Board should also constitute "records" within the context of Section 15b.

Recommendation No. 59:

The Condominium Act be amended to require that a developer or his representatives provide the following items at the turnover meeting of the corporation referred to in Section 9b:

A. Warranties and guarantees on all "equipment" for the common elements or any other item for which the corporation is required to provide maintenance or repair (see chapter on Construction).

Warranties and Guarantees on items within the units for which the unit owner bears responsibility should be turned over to the owner on occupancy of the unit or on completion of the sale transaction.

B. As-built architectural, structural, engineering, eletrical, mechanical and plumbing plans, plus underground site services, site grading, drainage, cable television and landscaping, which are part of the condominium property and for which the board has responsibility of repair and maintenance.

C. Copies of all contracts and agreements entered into by the developer which affect the corporation, including service contracts, management contract, site plan agreement, insurance agreements, and easements or licenses.

D. A financial statement prepared no earlier than 30 days prior to turnover for the period from registration to not less than 30 days prior to the date of the statement. The statement should include the depreciation period of capital equipment for the common elements, budget, balance sheet of income and expense, and all financial records necessary to prepare the financial statements.

E. A table showing the maintenance responsibilities as a schedule (see Chart 5 for an example).

F. Bills of sale or transfers for all furnishings, equipment, etc., which are not part of the common elements.

G. Current documentation — declaration, description, by-laws, rules and regulations.

H. Minute books of corporation and corporate seal.

Recommendation No. 60:
The Condominium Act be amended to define the word "records" to include items in Recommendation No. 59 but not limit the definition to those items. In addition to items in Recommendation No. 59, the definition of "records" should include any financial reports supplied by the corporation's manager, minutes of annual meetings and board meetings, any amendments to documentation passed by the corporation, and all notices of meetings.

There are several sections in The Condominium Act and in the regulations to The Condominium Act which imply that every condominium corporation requires a corporate seal. Yet, nowhere in the legislation is it specifically required. Some examples are Section 8a(2), which requires a lease of the common elements to be under seal, and Forms 6b, 7 and 8 of Reg. 98.

Recommendation No. 61:
The Condominium Act be amended to require that every condominium corporation have a corporate seal.

Problems of "sweetheart" contracts
It is not uncommon for a development firm to contract with its own subsidiary company to provide services to the condominium corporation at highly favourable rates to these companies, an excessive cost which must be borne by the corporation until the contract expires. One example of such a "sweetheart" contract is an Ontario developer who rented condominium corporation facilities including space and hot water to a subsidiary at below market rental and charged the condominium corporation the market rate for use of the laundry machines.

In other instances, prior to registration, the developer may sign a contract with a service company that gives the corporation incompetent or uneconomical services. Any time a developer makes a bad deal with a service company prior to registration, the condominium corporation is stuck with a business relationship it probably would not have approved if its Board of Directors had been in control at the time of contract negotiation.

Recommendation No. 62:
The Condominium Act be amended to provide that no contract entered into by the developer's board be for longer than 18 months from registration unless ratified by a board elected by purchasers. This, however, should not replace the owners' rights to terminate a management contract pursuant to Section 15(a).

Responsibilities of the board
Once the board is in place and all the information has been turned over by the developer, the board must clarify its responsibilities and obligations in terms of The Condominium Act and the documents governing the corporation. The following are the major duties and responsibilities of the board:

1) Ensuring proper maintenance of the common elements and facilities.
2) Keeping proper financial records.
3) Preparing budgets and setting common expense fees.
4) The formulation of rules and regulations and by-laws.
5) Approving any legal action against owners who fail to pay their common expense fees or who do not abide by the condominium documentation.
6) Enforcing compliance with the documentation.
7) Choosing a lawyer and recommending an auditor (see chapter on Financial Management).
8) Employing qualified property managers, independent contractors or employees, and supervising their work.
9) Appointing committees and assisting them in their tasks, particularly in larger corporations.
10) Overseeing the development of recreational and social programs to meet the needs of the owners.
11) Ensuring adequate insurance coverage.
12) Notifying owners of assessments and meetings which require the owners to vote.
13) Ensuring that all employees of the corporation are fidelity bonded.
14) Representing the interests of the owners in matters dealing with common elements.
15) Communicating with the owners so that the corporation's business is conducted in an atmosphere of openness and trust.

A newly elected board should define the responsibilities of its officers and elect its members to the offices for which they are most qualified. The president is the senior officer and presides at all meetings of the board and owners. The vice-president takes over the president's duties when the president is unable to fulfill them. The secretary is responsible for transcribing and distributing minutes of meetings, keeping an accurate minute book, maintaining the official records of the corporation, handling proxies assigned to the board, ensuring that notices of meetings are given, filing of amendments to documents and communicating board activities to the owners. As soon as possible after the election of a board, the secretary should notify the owners of the names of the board members, committee chairmen and their addresses and phone numbers. The treasurer, before the beginning of the corporation's fiscal year, is responsible for preparing the annual budget which is presented to the board. It is his responsibility to ensure that the corporation operates within its budget.

The treasurer should maintain the financial records of the corporation and prepare the monthly statements of receipts and disbursements, including a list of delinquent owners and ensuring that action is taken against them. The treasurer should also arrange for the annual audit of the corporation and generally be able to handle all inquiries of a financial nature.

The board of directors also bears responsibility for "grooming" new talent and this can best be achieved by utilizing the "farm system". By this method the board creates committees to assist the board in its daily operations (for example, the finance and social committees). From this committee system the board can find other owners within the corporation who are prepared to actively participate in the ongoing affairs of the corporation. The committee system serves a dual purpose. It trains those who might eventually be prepared to undertake a role on the board of directors and it provides an opportunity for an existing board to gain the assistance of interested owners.

Protection for board of directors
Since The Condominium Act specifically excludes the application of The Corporations Act, the extent of directors' liabilities are not, at present, determined by statute.

The job of serving on the board of directors of a condominium corporation can be onerous, as well as satisfying. The duties of the corporation, as set out in The Condominium Act, are to manage the property and assets of the corporation.

Under The Corporations Act of Ontario, the manner of handling corporation business and the legal responsibility of members of the board of directors are clearly set out. Under The Condominium Act, however, this is not the case. The liability which could, in fact, attach to condominium board members would have to be decided on the basis of common law principles.

The majority of condominium declarations or by-laws provide that the members of the board shall be indemnified by the members of the corporation for any act carried out by them, provided the board members have not acted unlawfully or with willful neglect. The Study Group feels, however, that this protection is inadequate.

Indemnification is an after the fact protection. It would be better to avoid law suits in the matter in the first place.

Recommendation No. 63:
The Condominium Act be amended to provide that board members be exculpted for any act done in good faith in the carrying out of their duties as specified in the declaration and by-laws.

It also became apparent during the course of the hearings that many boards, while carrying out their intentions in a fair and reasonable manner, were doing so without proper procedure, or on interpretations of a statute and documents which were not legally sound. Many consumer groups expressed their concern over their lack of expertise in dealing with the Act and documents. One brief even suggested that all condominium corporations be required to have legal counsel. The Study Group is not prepared to make a recommendation of that nature mandatory, but we do feel many boards would find that legal advice on various matters would be of great assistance. Although many corporations expressed their concern about the cost of retaining legal counsel, proper use of a lawyer can save money in the long run. Legal services will normally cost more in stop-gap procedures than on a continuing preventative basis.

Many briefs stated that although their corporations would like to retain a lawyer, they did not know how to find one with the proper expertise. This is one of the roles which could be filled by local condominium associations. An effective local association could be valuable in directing board members not only to competent counsel but also to accountants, management firms, independent contractors and municipal and provincial officials involved in the condominium field.

The corporation and legal actions
The power to sue
It is clear that a condominium corporation has the power to sue if a contract with the corporation is breached by another party.

Section 26 of The Interpretation Act vests in a corporation the power to sue and be sued, and exempts individual members of the corporation from personal liability for its debts, obligations or acts, if these powers do not contravene the provisions of the Act incorporating the corporation.

A slight ambiguity arises with respect to an asset of the corporation. The corporation has the power under Section 9(15) of The Condominium Act to own real and personal property and under The Interpretation Act would therefore have the power to sue if the property is damaged.

However, under 9(16), owners of the corporation share its assets in their respective common interest proportions. It is not clear whether this means that the owners of the corporation would have to join in any law suit with respect to these assets, or whether the condominium corporation is acting as a trustee on behalf of the owners.

The situation is clearer with regard to common elements. Under Section 9(18) of The Condominium Act, the corporation may bring any action with respect to the common elements. If the common elements become damaged, the condominium corporation may bring an action.

A problem arises with respect to common elements that were incomplete or improperly built by the builder. The condominium corporation itself was not a party to any agreement with the builder as to what common elements were to be supplied or the quality of workmanship to be provided and so has difficulty in showing that the builder owed a duty to it.

Notwithstanding this problem, in the case of *Frontenac Condominium Corporation No. 1 vs. Joe Macciocchi and Sons Ltd.* the condominium corporation was permitted to bring an action with respect to construction deficiencies in the common elements. In this case, it was considered prudent to have included, as plaintiffs, the unit purchasers as a class, for if the condominium corporation did not have the power to sue for construction deficiencies, then the unit owners as a group might have had the power.

A problem arises with this technique because, if the basis of the claim is that the builder represented that there would be certain items included in the common elements, then the only people constituting the class of plaintiffs would be those who originally purchased from the builder. Subsequent owners would not be a part of the class.

If the class action is the proper vehicle for legal action based upon deficiencies then surely the recoveries from the builder belong to those purchasers, not to the owners on resale and not to the condominium corporation.

The Condominium Act gives the corporation the duty to manage the affairs of the corporation. This implies both rights and responsibilities with which the board is charged. In any community of this type, unit ownership is constantly changing and all the owners may not be parties to the contract with the party with whom there is a dispute. Thus, there must be a vehicle through which the rights of *all* the owners affected by such a dispute can be resolved. If the only alternative available to achieve a resolution is by legal action, then it should be the condominium corporation which represents all the owners where their interests are affected. In a condominium community the individual owners' lack of privity should not be an issue.

The rights to legal action between owners and the corporation and the corporation and "outsiders" should be clearly spelled out in The Condominium Act. Condominium corporations should be able to represent all owners without having to resort to court applications to determine if they must proceed by way of a class action.

Recommendation No. 64:
The Condominion Act be amended to provide that the condominium corporation may act as a representative of the unit owners with respect to the common elements, the corporation's assets and two or more of the units in the corporation, notwithstanding that the corporation was not a party to the contract on which the action is brought.

The power to be sued
The situation with regard to the rights of a claimant against the condominium corporation is even more unclear.

The condominium corporation may be sued for a breach of contract and if the action arises as a result of a breach of duty as an occupier of land, the condominium corporation is deemed to be the occupier of the common elements (according to The Interpretation Act and Section 7(12) of The Condominium Act.

However, it is unclear whether or not there is a distinction between the condominion corporation's obligations as an occupier of the common elements and general tort (civil wrong) liability.

It may be that a solicitor for a plaintiff will have to distinguish between these liabilities and sue the corporation only if there is a tort resulting from its obligation as the occupier of the common elements. The solicitor might have to sue the unit owners as a class if there is some other tort, such as libel resulting from a statement in the condominium newsletter.

Recommendation No. 65:
The Condominium Act be amended to provide that the condominium corporation may be sued as representative of the unit owners as a class.

Under Section 9(17), a judgment for the payment of money against the corporation is also a judgment against each owner at the time the cause of action arose. In the event the claimant wins, he can hope that the condominium corporation pays. Otherwise, the sheriff's office would seize the corporation's assets and probably the bank accounts, in spite of arguments that the corporation is merely holding this money in trust for the unit owners.

In this sense, the owners of the condominium corporation do not have the limited liability protection of The Interpretation Act.

If the condominium pays, it may levy a special assessment against each current unit owner or take money out of operating revenue, which would amount to the same thing.

If there are insufficient assets, the claimant may proceed against the unit owners at the time the cause of action arose. In this situation, the unit owner who may be a former unit owner, would be responsible for a portion of the judgment in the same proportion as was allocated to this unit in the common expense allocation in the declaration without limitation. It is thus possible for the amount recovered from the unit owner to be more than the value of his unit. This emphasizes the value of having a good condominium liability insurance policy (refer to chapter on Insurance).

To make the situation more complicated, there is the following statement in *Frontenac Condominium Corporation No. 1. vs. Joe Macciocchi and Sons Limited:* "There is no limited liability protection for the owners, as is normally understood. If a judgment is made against the corporation, each unit owner is responsible for a percentage of the judgment which is the same as his percentage for sharing the common expenses."

This quote implies that the interpretation of the legislation, that it was the unit owners at the time the cause of action arose who were liable, is not the case.

Currently, Section 9(17) creates great difficulty for creditors who must recover money owing to them by the registration of a writ of execution. The registration of a writ of execution in the Sheriff's Office entitles a creditor to seize the assets of a judgment debtor. The registration of a writ against title to the property enables the creditor to recover the money owed to him at the time the unit is dealt with.

Since Section 9(17) of The Condominium Act states that the creditor's rights are limited to those who owned units at the time the cause of action arose, it imposes great additional expenditures in time and money on the creditor who is required to trace individuals who may no longer be the owners of the premises.

One of the difficulties facing Ontario's condominiums is the inability to borrow money from many lending institutions (see chapter on Lending Institutions). This factor, coupled with the difficulties a creditor is faced with in attempting to recover money that a court has decided is owing to him, could lead to increased problems for Ontario's condominium corporations.

Recommendation No. 66:
The Condominium Act be amended to provide that a judgment against a condominium corporation is deemed to be a judgment against the owners at the time of the judgment.

Condominium meetings

The operation of a condominium corporation requires owner participation at various levels. Owners must learn to co-exist in a community in which their daily lives are somewhat regulated by a statute and subordinate documents. Owners who feel a responsibility towards the condominium corporation attend general meetings of the owners to vote on issues brought before them by their board of directors or other owners. Many owners who play a more active role in the condominium's operation become members of the board of directors and attend directors' meetings.

At the public hearing and in briefs presented, many directors and owners said that confusion often existed at meetings because owners were not familiar with methods of running meetings. This is understandable, especially in the early stages of a corporation's existence, since most owners would not be exposed in their daily lives to meetings requiring clear structure and efficient procedures.

Many corporation briefs, for example, expressed concern over owner apathy. They claim it is nearly impossible to get owners out to meetings to deal with issues only they can vote upon and which require high voting percentages. The condominium owners' participation to date seems to be reactive to particular issues, rather than one of ongoing interest in the community in which they live. However, owners are far from the only group at fault, for problems also arise from disarray within a board or interference from a developer.

Since the Study Group was charged with bringing forth a package of measures to improve condominium living, many of the comments here are not properly the subject of legislative amendments. Rather, they are often designed to give guidance to those corporations experiencing difficulties. For this reason, it is worthwhile to outline the conduct of directors' meetings, owners' general meetings, and annual meetings.

Directors' meetings and annual meetings

The frequency of board meetings should be determined by its members. This decision will depend on the size of the corporation, the type of corporation and the amount of work to be done by the board. For every board meeting, the owners should be notified of the time and place and be invited to attend, except for discussions of disciplinary actions, when necessary. Such notification not only allows owners to exercise their right to participate, but encourages an atmosphere of open communication, which board members should always strive for. Convincing owners that they are needed at meetings is crucial. Owners must be shown that their participation will pay off in the long run.

As well as personal communication, a corporation newsletter, for example, is a very effective means of communication between boards and owners. A newsletter can be used to publicize the agenda for the board meeting in advance and request owners to submit in writing any matters they might wish the board to discuss. Once owners know they are welcome, the board should use its best efforts to make the experience rewarding for those who do attend.

In the case of annual meetings, advance publicity of the meeting and of the names and qualifications of those seeking election may stimulate interest and attendance. Again, the newsletter or personal communication are both useful.

The following procedural guidelines might be considered for both directors' meetings and annual meetings:

a) start punctually
b) ensure Directors have had an opportunity to review the agenda and any back-up materials so that they are informed for discussions
c) call the meeting to order
d) secretary reads the minutes of the previous meeting and deals with business arising from them (a good idea is to distribute the minutes prior to the meeting for review; time can also be saved by a motion to dispense with reading of minutes and to accept them as written)
) report from the treasurer
f) report from the property manager
g) report from the auditor
h) committee business (either standing or special committees)
i) deal with new business
j) comments from owners
k) adjournment (it is a good idea to set a definite time for adjournment at the beginning to encourage moving the meeting along in a business-like way)

Board members should try to deal with the business at hand as quickly and thoroughly as possible. Otherwise, a prolonged, non-productive meeting will discourage owner and even board member attendance. The quality and length of a board meeting will depend largely on the effectiveness of the chairperson. Those chairing the meetings should become familiar with Robert's Rules of Order and Wainberg's Company Meetings including Rules of Order.[1]

Notice of meetings

Sections 9a(5) and 9a(6) of The Condominium Act deal with providing notice of meetings to owners and mortgagees, and identify which owners are entitled to receive the notices.

At the public hearings, concern was expressed by directors and owners that under existing legislation, serving notice must be effected on the owners and mortgagees, either personally or by prepaid post.

Service of notice personally requires that each owner be served in person; as proof, an affidavit that service was effected must be sworn by the person serving the notice. If there is more than one owner of a unit; husband and wife, for example, each must be personally served.

Services of notices by prepaid mail to the owner and mortgagee also requires a separate letter for each owner. The cost of sending these notices by mail can add substantially to a condominium corporation's budget.

Under the existing legislation there is also no control over absentee owners, who may rent their units without notifying the corporation of their addresses. Although there is no requirement that a corporation serve owners or mortgagees at other than their addresses shown on the register, many boards feel they must seek out the absentee owners.

Recommendation No. 67:
The Condominium Act be amended to permit a board of directors to give notice to owners by delivery of the notice to the unit. The requirement of service by pre-paid mail or personally would apply only when service is being effected on a mortgagee or owner who has notified the corporation of his address and is not in occupancy.

Meeting of owners

A condominium corporation is required to hold the first annual meeting not later than three months after title to 50% of units has been transferred by the developer to the purchasers, and the next annual meeting not more than 15 months thereafter.

Under the existing legislation, there is no requirement that information be disclosed to the owners, but it is required that they be notified of any business to be dealt with at the meeting. Unless the Board of Directors so chooses or it is set out in the condominium's documents, no financial or background information need be made available in advance.

[1] J.W. Wainberg, *Wainberg's Company Meetings including Rules of Order*, 2nd ed. (Toronto: Canada Law Book Co., 1969) 230 pages including table of cases, glossary, forms and index. The only Canadian work dealing directly with rules for company meetings. Henry M. Robert III, ed., *Robert's Rules of Order Revised* (New York: William Morrow and Co., 1971) 323 pages, including table of rules, plan of study with lessons outline and index. This book has for many years been the standard guide to the rules of parliamentary procedure observed by Congress (the fact that it is an American text does not preclude its application in Canada).