



What is an Indemnity Agreement?

Pursuant to section 98 of the Condominium Act, 1998; (“Act”), before a unit owner can make any change to the common elements the following must occur:

- (a) the change must be approved by the Condominium’s board of directors;
- (b) the Board must ensure the change is consistent with the provisions of the Act and the Condominium’s declaration; and,
- (c) the unit owner must enter into an indemnity agreement with the Condominium, and register the agreement on title to the owner’s unit.

These conditions are mandatory. If a unit owner makes any change to the common elements without satisfying all of these conditions, the unit owner is in breach of the Act.

An indemnity agreement, often referred to as a “section 98 agreement” or “alteration agreement”, is an agreement between a condominium and one or more unit owners. It regulates who is responsible for a unit owner’s change to the common elements. It does not cover changes to the inside of a unit if they do not form part of the common elements.

What are the options?

(i) One-Off:

The first option is a “one-off” agreement. This option often covers a single change made by a single owner. This option is costly, but provides specificity for complicated or very unique changes to the common elements. The challenge is that for every change made, a “one-off” agreement is needed.

(ii) Bulk Indemnity Agreements:

This second option is an indemnity agreement offered to all unit owners at once, often called a “bulk indemnity agreement”. The purpose is to allow all unit owners to participate collectively in a comprehensive agreement. Although participation in the bulk indemnity agreement is optional, there are substantial advantages associated with a bulk indemnity agreement. First, with the “one-off” agreements the unit owner is typically responsible for all costs. However, with a bulk indemnity agreement, the cost of the agreement is typically borne by the condominium. Second, with a bulk indemnity agreement, rather than preparing and registering numerous agreements for every unit owner, the condominium can prepare and register one standard agreement, which covers numerous unit owners’ changes to the common elements. Changes made in the future would shelter under the pre-existing agreement.

There are two distinct categories within a bulk indemnity agreement. The condominium may create a bulk indemnity agreement with an attached schedule. This schedule lists all anticipated and possible changes. Any change not listed in the schedule would require a “one-off” indemnity agreement. The alternative is an indemnity agreement with no schedule. In this case the indemnity agreement does not set out a list of specific changes, rather, it will apply to any changes receiving board approval.

A bulk indemnity agreement with a schedule provides a more predictable, clear outcome, while giving up some of the flexibility and adaptability that a bulk indemnity agreement without a schedule provides. There are advantages and disadvantages with both choices. As a result, a condominium’s choice will depend on its unique circumstances, and the input of legal counsel.



What process is required for a bulk indemnity agreement?

Once the board of directors has decided to create a bulk indemnity agreement, our firm will draft a sample. The draft is then sent to the board of directors for review. The board can make changes to the sample, with input from the property manager. Once the board is satisfied with the agreement, a copy is sent to the owners.

Our firm starts the mailing process by acquiring address labels for all of the unit owners from the property management. We also acquire all of the deeds or transfers for each unit from the Land Registry Office. A package is then prepared and sent to unit owners. This package includes an introductory letter, a copy of the proposed bulk indemnity agreement and a signature page. The letter describes the purpose of the bulk indemnity agreement, explains that participation is optional, and sets a deadline for response. The signature page is required to register the agreement on title to all of the participating units. Once all of the signature forms are received and the deadline has passed, our offices will register the indemnity agreement on title to all of the participating unit owners' units.

Before the expiration of the deadline set out in the introductory letter, an owners' information meeting is encouraged to discuss the bulk indemnity agreement and answer any questions the unit owners may have. Our firm often finds that the participation rate is higher for those condominiums that hold information meetings or add the bulk indemnity agreement to the agenda for the annual general meeting.

What are the fees?

The fee for a bulk indemnity agreement varies depending upon the number of units in the condominium. The fee includes the preparation of the agreement, one (1) mailing to the unit owners, frequent reporting to the client, and registration of the indemnity agreement. Please refer to our rate sheet for a more detailed breakdown of fees. Upon request, our firm offers additional services such as reminder notices (for a fee of \$300.00 plus disbursements and applicable taxes per mailing) and single mailings to unit owners that misplace their forms (\$25.00 plus disbursements and applicable taxes per mailing). Disbursements and taxes are extra.

For a quote or more information on our process, please contact our firm's practice group chair, Robert Mullin, at (800) 746-0685 or rmullin@smithvaleriotelaw.com.

