

Section 98 By-law - Acknowledgement Version – Procedures

Now that you have passed a Section 98 By-law - respecting modifications to the common elements - what are the procedures to be followed?

We begin with the following overview respecting the by-law:

The by-law is designed to meet the requirements of Section 98 of the Condominium Act (respecting common element modifications by owners), without requiring separate registrations for each requested modification. The idea is that the one-time registration of the by-law can meet the registration requirement. It is our view that the one-time registration of the by-law is sufficient, and that separate registration for each modification is not required. This is not certain and has not yet been tested in Court, but again we believe that there are good grounds to support this approach.

Owners who receive permission to make one of the modifications listed in the by-law must still sign the Acknowledgement form (which is a Schedule to the by-law). We explain in greater detail as follows:

Each time an owner wishes to make one of the "permissible" modifications listed in the By-law, that owner must take the following steps:

1. The owner must obtain the written consent of the Board to proceed. The Board would decide this at a Board meeting and, if approval is forthcoming, send a note to the owner confirming that the owner can proceed subject to signing an Acknowledgement form in accordance with the by-law. [Note: The change must also comply with any specifications or other requirements established by the Board. In most cases, if the Board has approved general specifications or other requirements for particular modifications, those specifications or other requirements could be included in the corporation's rules.]
2. The owner must sign the Acknowledgement which is Schedule "1" to the By-law.
3. Again, those Acknowledgement forms are not registered. You will keep them in the unit file for the particular unit and attach a copy to any status certificate issued for that unit. Also, in paragraph 23 of the status certificate, you would then refer to the fact that there is an agreement under Section 98 for the particular unit. You would go on to say that **"the terms of the agreement are set out in the corporation's By-law No. 6 and the particular modification which has been carried out is noted in the signed Acknowledgement form - Schedule '1' to the By-law - which is attached to this status certificate"**.

Paragraph 23 of the status certificate should also go on to say as follows: **"Modifications listed in By-law No. 6 made prior to the arrival of the current Condominium Act (May 5, 2001) are governed by all of the terms and conditions listed in that By-law, but the corporation does not have any Acknowledgement form for those modifications (carried out under the previous Condominium Act). Such forms are only required for modifications made under the current Condominium Act. Purchasers should check to see whether or not any such modifications have been made and should make note of the terms and conditions in By-law No. 6, because those terms and conditions apply to all owners of the units from time to time."**

Schedule "A"

OTTAWA-CARLETON STANDARD CONDOMINIUM CORPORATION NO. 859

BY-LAW NO. 6

BE IT ENACTED as By-Law No. 6 (being a by-law respecting common element modifications) of OTTAWA-CARLETON STANDARD CONDOMINIUM CORPORATION NO. 859 (hereinafter referred to as the "Corporation") as follows:

**ARTICLE I.
DEFINITIONS**

All words used herein which are defined in the *Condominium Act*, 1998, as amended, or any successor thereto (the "Act"), shall have ascribed to them the meanings as set out in the Act.

**ARTICLE II.
PURPOSE OF THIS BY-LAW**

This bylaw is being passed for the following purposes:

1. To confirm the types of common element modifications that owners are permitted to make, subject to the terms and conditions described in this by-law.
2. To record the Board's approval of the modifications, subject to the terms and conditions in this by-law.
3. To provide any required notice to owners and required voting approval for the modifications.
4. To establish the terms and conditions which apply to any such modifications and which accordingly constitute an agreement between the owner(s) and the Corporation pursuant to the Act and this by-law.

**ARTICLE III.
PERMITTED MODIFICATIONS**

Unit owners may make any one or more of the following modifications to the common elements, subject in each case to the terms and conditions set forth in Article IV hereof:

1. Terrace flooring or coverings, including raised decks.
2. Changing or adding locks to the doors to the unit (provided the owner provides a key to each lock to the condominium corporation).

3. Ramps, handrails and other physical aids for persons with disabilities.
4. On ground floor units with fences terraces, the addition of a gate to match existing rails, if necessary, a step in matching pavers

(NOTE: Water-cooled Air Conditioners are not permitted.)

ARTICLE IV. TERMS AND CONDITIONS

The within approval of the modifications described in Article III (herein called the "modification(s)") is subject to the following terms and conditions and any unit owner carrying out, or enjoying, any such modification(s) agrees with the Corporation and all other unit owners, on his/her own behalf and on behalf of his/her successors and assigns, to be bound by and to comply with all such terms and conditions, namely:

1. No modification shall be made or kept except with the prior written approval of the Corporation, such approval not to be unreasonably withheld. The modification shall comply with all additional plans, drawings, specifications, colours and/or other requirements as may be approved in writing by the Board or as may be set forth in the By-laws, Rules or Policies of the Corporation. Furthermore, prior to proceeding with the modification, the owner shall obtain and provide to the Corporation such permits and professional certificates as may be requested in writing by the Board.
2. All modifications shall comply with all municipal, provincial and federal legislation, including all municipal By-Laws and building regulations. The owner shall investigate and determine all occupational health and safety requirements that apply to any work related to the modification (including work related to installation, repair or maintenance of the modification) and shall ensure that all of those requirements are met.
3. The modification shall be maintained and repaired in a good and safe condition by the owner at the owner's sole expense. The Corporation shall not be responsible to maintain or repair the modification, nor shall the Corporation be responsible to obtain any insurance with respect to the modification. The modification shall be owned by the owner.

4. In the event that the owner fails to maintain or repair the modification as required herein, the Corporation may, at its option and after notifying the owner and affording the owner a reasonable opportunity to effect such maintenance or repair, carry out such maintenance or repair and all costs and expenses incurred by the Corporation in arranging and carrying out the maintenance or repair shall be payable to the Corporation by the owner and shall be collectible in accordance with Article IV(7) hereof.
5. The owner shall obtain insurance against any and all risks of damage or harm to persons or property or any other liability which may arise in connection with the modification. The owner shall provide to the Corporation proof satisfactory to the Corporation that such insurance is in place within a reasonable period of time following any request by the Corporation for such proof.
6. The owner shall fully and completely indemnify and save harmless the Corporation from and against any and all loss, costs, expenses, claims or damages, of whatever kind and however arising, as a result of a breach of any of these terms and conditions, or otherwise relating to the modification, including any claims against the Corporation for damages resulting from, caused by, or associated with the modification. Without limiting the generality of the foregoing, the owner shall be responsible for all costs and expenses incurred in order to remove the modification to afford the Corporation access to any portion of the property (for the purposes of carrying out repair or maintenance, or for any other reason) as well as reinstatement of the modification (if desired), and the Corporation shall have no obligation for any damage which may be caused to the modification as a result of any such required access.
7. Any amounts owing to the Corporation by the owner as a result of these terms and conditions shall be added to the owner's common expenses and shall be collectible against the owner, together with all reasonable costs, charges and expenses incurred by the Corporation in connection with the collection or attempted collections of the amount, in the same manner as common expenses, including by way of Condominium lien against the owner's unit in accordance with the *Condominium Act*.
8. In addition to any other rights and remedies available to the Corporation hereunder or otherwise, in the event that the owner contravenes any of the within terms and conditions, the Corporation shall be entitled, upon ten days written notice to the owner, to remove the modification and to restore the common elements to their previous condition. All costs and expenses associated with such removal and restoration shall be the responsibility of the owner and shall be payable by the owner to the Corporation, and collectible in accordance with Article IV(7) hereof.
9. The modification shall be carried out at the sole risk and expense of the owner.
10. Any notice required hereunder may be delivered as set out in the Act and in the by-laws of the corporation.
11. All of these terms and conditions shall be binding upon the successors, assigns and transferees of the owner.

12. Except where otherwise indicated, all of these terms and conditions shall similarly apply to any modification(s) carried out prior to the enactment of this bylaw.

NOTES:

- **Any other modifications to the common elements not listed herein may require separate approval by a vote of the unit owners in accordance with the Act, and the Declaration.**
- **The Corporation may carry out changes to the common elements provided it complies with the requirements in the Act.**

**ARTICLE V.
ACKNOWLEDGEMENT**

For any modification carried out (by an owner or previous owner of a unit) on or after May 5, 2001, the current owner of the unit shall sign an Acknowledgement in the form attached as Schedule "1". The Acknowledgement shall be held by the Corporation in the owner's unit file and the Corporation shall attach a copy of the Acknowledgement to any status certificate issued regarding the unit.

**ARTICLE VI.
PREVIOUS BY-LAWS OR RULES**

Where any provision in this by-law is inconsistent with the provisions of any previous by-law or Rule, the provisions of this by-law shall prevail and the previous by-law or Rule shall be deemed to be amended accordingly.

**ARTICLE VII.
MISCELLANEOUS**

1. Invalidity: The invalidity of any part of this by-law shall not impair or affect in any manner the validity and enforceability or effect of the balance thereof.
2. Waiver: No restriction, condition, obligation or provision contained in this by-law shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.
3. Headings: The headings in the body of this by-law form no part thereof but shall be deemed to be inserted for convenience of reference only.
4. Alterations: This by-law or any part thereof may be varied, altered or repealed by a by-law passed in accordance with the provisions of the Act, and the Declaration.

5. Preparation: This document was prepared in the year 2014 by Nelligan O'Brien Payne LLP in conjunction with the corporation.

The foregoing by-law is hereby passed by the Directors and confirmed by the owners pursuant to the Condominium Act, 1998 of Ontario.

DATED this 18 day of October, 2014.

OTTAWA-CARLETON STANDARD CONDOMINIUM CORPORATION NO. 859



Name: François Quirouatte

Title: President

I have authority to bind the Corporation.

SCHEDULE "1"

Acknowledgement Respecting Modification to Common Elements

TO:

OTTAWA-CARLETON STANDARD CONDOMINIUM CORPORATION NO. 859

("the Corporation")

FROM:

(please print name(s))

("the Owner")

WHEREAS:

1. The Owner is the registered owner of Unit ____, Level ____, Ottawa-Carleton Standard Condominium Plan No. 859.
2. Please choose one of the following [delete all that do not apply]:
 - (a) The Owner is not a spouse.
 - (b) The Owners are spouses of one another.
 - (c) The Owner is a spouse. The person consenting below is the Owner's spouse.
3. The Owner wishes to carry out or enjoy the following modification to the common elements:

("the Modification")

4. The Modification is item number ____ in Article III of By-Law No. 6 of the Corporation.
5. (If appropriate, add:) Additional detail respecting the modification is contained in the drawings and/or specifications attached as Appendix "1".

NOW THEREFORE:

The Owner acknowledges that the Owner is bound by all of the terms and conditions listed in Article IV of the Corporation's By-Law No. 6 and that the said terms and conditions constitute an agreement between the Corporation and the Owner as stated in that By-law. The Owner also agrees to comply with all other By-Laws and Rules of the Corporation that apply to the Modification.

DATE: _____

OTTAWA-CARLETON STANDARD CONDOMINIUM CORPORATION NO. 859

Per: _____

Name:
Title:

Per: _____

Name:
Title:

I/We have authority to bind the Corporation

Witness Signature
Print Name: _____

Owner Signature
Print Name: _____

Witness Signature
Print Name: _____

Owner Signature
Print Name: _____

Witness Signature
Print Name: _____

Spouse Signature (where required)
Print Name: _____