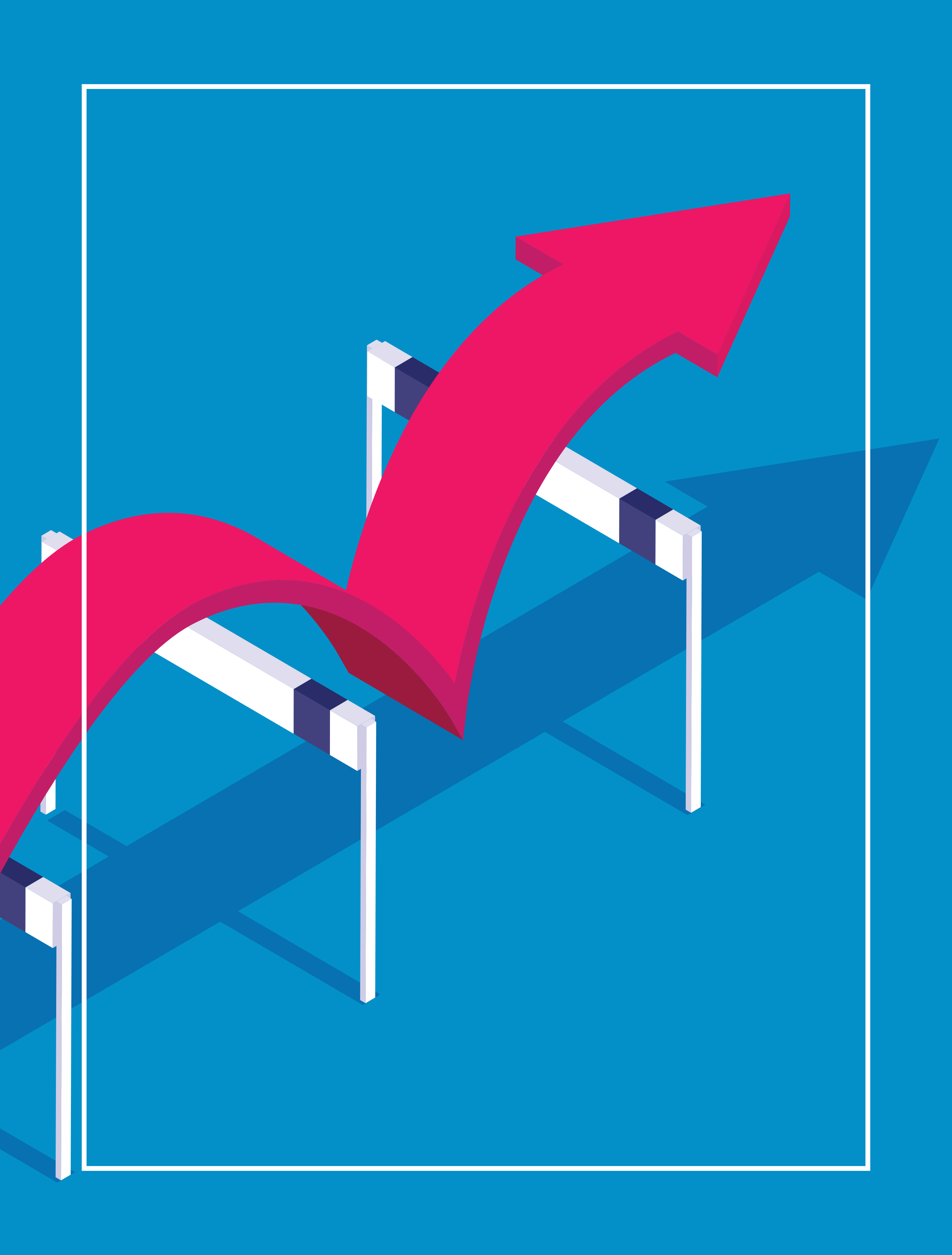

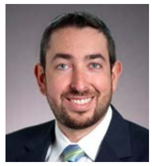

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Important Legal Steps for New Condominiums

Like newborn babies, a newly registered condominium corporation quickly goes through a number of developmental milestones, on its way to becoming a fully functioning building. Many of these milestones occur within the one-year period following either registration (i.e. when the building becomes a condominium by the registration of its declaration and description), or turnover (i.e. when the new owners of the building take control of the board of directors). This article summarizes some of these key developments.

Completing the Turn-over Meeting

Initially following the registration of a condominium, the board of directors is appointed by the declarant. The declarant-controlled board serves until the declarant has transferred ownership of majority of the units, at which time section 43 of the *Condominium Act, 1998* (the "Act") requires it to call a meeting of owners to elect a new board. This "turn-over meeting" must be called within 21 days after the declarant ceases to be the owner of the majority of the units. If the board does not call the meeting within the 21-day period, any owner or mortgagee can call the meeting.

The turn-over meeting triggers a requirement for the declarant to turn over certain basic records to the condominium, including copies of all agreements entered into by the corporation (or the declarant on behalf of the corporation), insurance policies and certificates, bills of sale, and records related to units or employees of the condominium. After the turn-over meeting, the declarant has 30 days to deliver a second set of documents, including warranties, architectural/engineering plans, the standard unit schedule, and certain financial records.

Completing the Performance Audit

A second important task for newly created condominiums is the completion of the performance audit. The condominium must, after being declared, retain an engineer or an architect to conduct a performance audit of the common elements. The performance audit inspects the common elements to identify any construction deficiencies. These deficiencies can range from minor matters (such as a poor paint job) to major (such as water penetration or structural issues).

Subsection 44(2) of the Act requires the performance audit to be conducted between 6 and 10 months after the registration of the condominium. The condominium must pay for the performance audit, and the cost forms part of the condominium's first-year budget.

The engineer or architect conducting the performance audit must submit their report to the board and also file the report with the Tarion Warranty Corporation. Completing the performance audit and submitting the report to Tarion within the required timeline is crucial as it will allow the condominium to make a claim to Tarion for any warranted common element deficiencies.

Conversely, if the performance audit is not completed or the report is not filed with Tarion, the condominium will lose its warranty protection for any construction deficiencies (*i.e.*, it must pay to fix these itself).

Collecting Shortfalls Under the First-year Budget

Pursuant to section 75 of the Act, the declarant is accountable to the condominium for the budget for the first year following its registration.

The declarant is required to pay the condominium the amount by which the total amount of common expenses incurred exceeds the total budgeted amount. The declarant must also pay the condominium the amount by which the total amount of fees, charges, rents and other revenue related to the use of the common elements is less than the budgeted amount.

Once the board has received the audited financial statement from its auditor for its first year, it has 30 days to notify the declarant in writing of any shortfalls between the budgeted common expenses and revenue and the actual common expenses and revenue collected. The declarant then has 30 days to reimburse the condominium.

Carrying Out a Reserve Fund Study and Developing a Reserve Fund Plan

The condominium must also conduct a reserve fund study within one year following registration. The study aims to ensure that the amount of common expenses contributed to the reserve fund is sufficient to cover the expected future costs of the major repair and replacement of the common elements.

Once the board obtains the results of the reserve fund study, it must propose a plan for the future funding of the reserve fund. The board must develop the reserve fund plan within 120 days of receiving the reserve fund study.

Within 15 days of proposing a plan, the board must send a notice to the owners containing (i) a summary of the reserve fund study, (ii) a summary of the proposed plan and (iii) a statement indicating the areas where the proposed plan differs from the study. A copy of this notice, along with a copy of the study and the plan, must also be sent to the condominium's auditor.

Reviewing the Condominium's Agreements

The Act allows condominiums to terminate certain agreements entered into by the declarant on its behalf. This is intended to prevent the condominium from being bound to agreements entered into by the declarant where it does not feel that the terms are fair or that the services to be provided are required. The post-turnover owner-controlled board should, together with management and its legal advisors, review each of the agreements to which the condominium is a party in order to determine whether these agreements should be terminated.

The agreements to be reviewed include management agreements (which may be terminated under section 111 of the Act), agreements with third parties for goods, services, or facilities to be provided to the corporation, and lease agreements for the common elements (which may be terminated under section 112 of the Act). If the board determines that any of these agreements are to be terminated, it must provide at least 60 days' written notice to the other party or parties to the agreement.

There are also some limited circumstances where shared facilities agreements or reciprocal agreements can be amended by court order under section 113 of the Act.

The above are just a few of the important issues facing a new condominium. It is critical that new condominiums build an appropriate team of professionals to guide them through these issues. Navigating these issues successfully should put the condominium on the path to a healthy and successful future! ■

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