

**FINE & DEO'S KITEC GUIDE**  
**(FOR NON-URGENT CIRCUMSTANCES)**

The following is a general guide to the timing and procedure in most condominium corporations where Kitec plumbing products (hereinafter referred to as “Kitec Plumbing”) is found to be present. The procedure below applies where owners are solely responsible for the replacement of Kitec Plumbing servicing their units. This guide does not apply where the condominium corporation must replace common element Kitec Plumbing

Please note that the procedure changes significantly where the Kitec Plumbing servicing the units is the responsibility of the condominium corporation or where there have been recent Kitec Plumbing failures in the building.

The steps outlined below are being provided as a general guide to assist a board and management with devising a tailored plan for your Kitec Plumbing issue.

**Non-Critical Kitec Plumbing Replacement**

1. Have the engineering firm retained by the condominium corporation (“**engineering consultant**”) confirm the presence of Kitec Plumbing, its location and more specifically, its condition. Identify if it’s in the units and/or the common elements etc. Have the engineering consultant outline/identify any immediate risks and recommend any necessary interim measures to be completed. The selection of an engineering consultant is important and it is best if the same engineering consultant is used throughout the process.
2. Consider advising the condominium corporation’s insurance broker about the existence of Kitec Plumbing. Our best information at this time is that:
  - a. There is no obligation to advise your insurer of the existence of Kitec Plumbing if there has been no failures; and ,
  - b. If there have been no failures, premiums will not rise even if the insurer is informed about the matter.
3. With the engineering consultant’s support, develop a plan to monitor the condition of the pipe and connectors and establish a plan to implement the proper remediation of the Kitec Plumbing.

4. Obtain a legal opinion on whether unit owners or the corporation must replace the Kitec Plumbing in the units.
5. Contact all owners and alert them to the presence of the Kitec Plumbing (particularly important where owners are carrying out renovations before the Kitec Plumbing is replaced).
6. It is recommended to hold an owners' meeting to discuss the implications and proposed plan to address the issue. The condominium corporation's lawyers and engineering consultant should be present to answer questions and to help explain the various requirements of the *Condominium Act, 1998* and how they apply.
7. Insert a status certificate disclosure regarding Kitec Plumbing to be prepared by the condominium corporation's lawyers. The introduction of the Kitec Plumbing disclosure provision should be discussed with the condominium corporation's lawyers as soon as Kitec Plumbing is discovered. The status certificate must be updated as circumstances change.
8. The condominium corporation's lawyers should provide a draft of a general notice to owners incorporating the following information:
  - a. a description of Kitec Plumbing and the known risks associated with Kitec Plumbing;
  - b. a brief summary or overview of the engineering consultant's initial report;
  - c. an outline of the owners' responsibility for the Kitec Plumbing;
  - d. an outline of who will pay (owners usually responsible for unit and condominium corporation responsible for common elements); and,
  - e. an outline of what comes next, timelines, if the board intends to hold any future meetings with owners (recommended) and other general information.
9. Have the engineering consultant provide an opinion on the timing of Kitec Plumbing replacement (is the replacement urgent and if not, when should the Kitec Plumbing be replaced?).
10. Have the engineering consultant create specifications for the work to be used generally and for tendering the work. Please note that remediation to be conducted in the units must be kept separate and apart from any tender the condominium corporation undertakes for the remediation of the common elements and the condominium corporation's assets.
11. Have the engineer create a complete procedure for those unit owners that intend to self-remediate.
12. Send a letter to owners describing the process (this is not the formal section 92 notice referred to in 14 below). This letter should be prepared by the corporation's lawyers and will include more details on the process (i.e. expected dates, information regarding the remediation notice which incorporates section 92 of the *Condominium Act, 1998*). This communication and all communication to owners will emphasize that:
  - a. owners will be provided with a reasonable period of time to self-remediate their respective units. The work conducted by the owners in this regard, must be paid for by the owner and: i) completed within the timeframe specified (i.e. prior to the date set for section 92 of the *Condominium Act, 1998*); ii) in accordance with the requirements set by the condominium corporation's engineering consultant; and, iii) reviewed and certified by the condominium corporation's engineering consultant; and,
  - b. once the deadline for remediation under section 92 passes (to be provided by a separate notice – see 14 below), the condominium corporation will proceed to conduct the work

on behalf of the owners under the corporation's coordinated program. Accordingly, those owners who wish to participate in the condominium corporation's coordinated program would not have to take any action as they will be automatically entered into the corporation's coordinated program on the passage of the section 92 date in the formal notice (mentioned in paragraph 14 below).

13. Tender the work. The tender documents are to take into account a 20% drop-out rate, just to be cautious - for those owners that may choose to do the work themselves (usually less than 2% of owners go this route). If a board expects more than 20% drop-out rate, this must be incorporated into the tender.
14. Formal section 92 notice sent to owners: The condominium corporation's lawyers will draft a formal s.92 notice, which will include the price of the work under the condominium corporation's coordinated program for each unit and the complete (and numerous) steps required to self-remediate. This notice will encourage participation in the corporation's coordinated program and will contain a complete timeline in the following order:
  - a. A 3 -4 month deadline for owners who choose to self-remediate; and,
  - b. The date upon which the condominium corporation's coordinated program begins, which will be after the 3-4 month period in (a) above.
15. The condominium corporation is to keep proper records of the remediation costs for every unit participating in the coordinated program in the event that the condominium corporation must exercise its lien rights for any defaulted amounts.
16. As noted above, owners who decide to conduct the work on their own accord will have a pre-defined period of time to replace Kitec Plumbing in their individual units and have the installation inspected by the engineering consultant for compliance. Subject to the engineering consultant's recommendation, a time period of 90 to 120 days is typical, where there are no Kitec Plumbing failures.
17. The condominium corporation's coordinated program will start 30-60 days after the time period in 14(a) above passes (i.e. the deadline provided by the formal section 92 notice). Owners who do not remediate by the deadline in 14(a) can be liened if they do not pay the costs of the remediation to their unit under the corporation's coordinated program.

### **General Notes**

As noted above, all work must be inspected by the engineering consultant to ensure that all pipe replacements are made in conjunction with the building design. This inspection is at the cost of the individual unit owner and in addition to the actual replacement cost.

A condominium corporation may wish to ask the their lawyers for wording that might be placed in the status certificate to confirm that no Kitec Plumbing exists in the building once all work is completed.

Consult with management at all times to manage logistical and other issues.