



Executive Summary of Some of the Key Proposed Amendments to the *Condominium Act, 1998*

The following is an executive summary of some of the key proposed amendments that the *Protecting Condominium Owners Act, 2015* introduces to the *Condominium Act, 1998* (the “**Act**”). The summary is meant to highlight some of these proposed amendments as an overview.

By-laws

The proposed amendments to the *Act* will afford condominium corporations with the opportunity to update and/or introduce new by-laws once the provisions are proclaimed. Some of the areas that may be addressed by way of by-law are as follows:

Corporate Records:

- Owners’ record (obligation for unit owner to provide information and address for service, retention and release requirements).
- Prescribed records (introduction of “core” and “non-core” records, retention and release requirements).
- Right to examine condominium corporation’s records (request and response protocol).

Director requirements:

- New director qualification requirements.
- New disqualification provisions.
- New disclosure requirements.
- Mandatory director training requirement.
- Offence provision (failing to take reasonable care to prevent the condominium corporation from committing an offence).

Meetings:

- Preliminary notice requirement and procedure (to be sent prior to notice of meeting).
- Materials to be included in meeting package.
- Voting methods (including voting by telephonic or electronic means).

- Quorum requirements (protocol for when quorum is not achieved and ability to set higher quorum threshold by by-law).
- Protocol for unit owner called meeting to fill a director vacancy.
- Requisitioned meetings (new protocol and procedure including prescribed timeframes, required responses and opportunity to revise a requisition that is rejected by a board).
- Proxies (may be provided for one or more meeting of owners).
- Specifying what portion of a ballot or proxy form does not constitute a prescribed record.

Information Certificates

- To govern the information to be included in and specify additional issuance time periods for: (i) Periodic Information Certificate; (ii) Information Certificate Update; and, (iii) New Owner Information Certificate.

Non-leased voting units

- Replaces owner-occupied units.

Penalties/fines

- Prohibition on a condominium corporation issuing penalties or fines.

Deemed by-law provision

- Overriding any provision in a declaration or by-law that requires voters to provide their names/units when voting.

Condominium Authority Tribunal

- New dispute resolution process.

Mediation and Arbitration

- Introduces required updates including the Condominium Approval Authority exception.

Shared facilities joint by-laws

- Governing the use, maintenance, repair, insurance, operation or administration.

Threshold for Passing By-laws

- The threshold for passing by-laws in limited circumstances (i.e. for specified purposes only) will be lowered from “majority of units” to “majority of owners present or represented by proxy”.

Corporate Procedures

New Meeting Materials Required

Proposed amendments to the meeting materials are:

- If the meeting is an AGM – most recent Periodic Information Certificate and most recent Information Certificate Update must be sent to unit owners.
- If the meeting is for election of directors – statements and information candidates provide must be sent to unit owners.

New Notices

- Preliminary Notices – new notice to go out at least 20 days before notice of meeting.
- Notice of Candidates – proposed amendments include naming candidates who have notified the board by the date specified in preliminary notice.
- Notice of Meeting of Owners – proposed amendments include further prescribed material to be included in the Notice of Meeting of Owners.

New Procedure for Calling a Meeting

- Must now send preliminary notice (at least 20 days before sending notice of meeting).
- If meeting is for election of directors - preliminary notice must include a request that individuals who want to be candidates notify the board and that they include any material in the notice.

New Quorum Requirements

- Quorum for Board Meetings – Quorum for the transaction of business is more strict. Quorum requirement is retained based on the number of director positions, regardless of vacancies on the board.
- Owners – By-law registered in accordance with s. 56(9) may provide that the quorum for the transaction of business at a meeting of owners is unit owners who own 25% of the units, not 33 1/3% as previously prescribed.
- Owners' Meetings, Turn-over Meetings or such other meetings that are prescribed – Minimum quorum rules are relaxed for the transaction of business, 25% on the 1st and 2nd attempts, and 15% on the 3rd attempt to hold the meeting.

New Requirements for Record of Owners and Mortgagees

- 30 days after becoming a unit owner – unit owner must give notice in writing setting out name and identifying unit owner's unit.
- The corporation shall maintain a record of unit owner's name and identification of unit, unit owner's address for service, the mortgagee's name, identification of unit and

address for service and, if the unit owner or mortgagee agrees to electronic communication, then a statement of that method.

Condominium Authority Tribunal (CAT)

- The mandate of the Condominium Authority Tribunal (CAT) will be to resolve most disputes between condominium corporations and unit owners up to \$25,000.00.
- CAT's jurisdiction will exclude disputes involving termination of condominiums, title or ownership of land, and condominium liens. As of the date of this executive summary, the full details of CAT's jurisdiction have not been determined.
- CAT will have broad powers to make remedial orders, including directing compliance, payment of up to \$25,000.00 in damages, and ordering payment of legal costs and costs of CAT.
- The right to appeal a CAT order will be significantly limited.
- After CAT is established, any dispute that may be resolved by CAT will fall within its exclusive jurisdiction. This means that mediation, arbitration, and court applications will no longer be available for any disputes that fall within CAT's eventual jurisdiction.

Disputing Charge Backs

- When the proposed amendments to the *Act* come into force, in the interim period until CAT is established, a unit owner will have a new right to dispute a "charge back" in the Superior Court of Justice.
- After CAT is established, the unit owner may only dispute the charge back in court if the amount in dispute is greater than \$25,000.00. Amounts less than \$25,000.00 would be resolved exclusively by CAT.
- A charge back that is being disputed in court (or in CAT) will not have to be paid by the unit owner until the final determination of the proceeding.

Termination of Agreements

- Under the current rules, unit owner-elected boards of directors have a limited right to terminate certain agreements entered into by the declarant-appointed board of directors. Under the new rules, these agreements may be terminated without incurring a penalty or cancellation fee.

Information Certificates, Information Certificate Updates, New Owner Information Certificates, Status Certificates

Periodic Information Certificate (PIC):

- The proposed amendments to the *Act* provide that a PIC be sent out at least once every three months or at other times specified by Ontario Regulation 48/01.

- The PIC summarizes important legal, financial and insurance details about the condominium corporation.
- A PIC contains much of the same information that can be found in the status certificate of a condominium corporation.

Information Certificate Update (ICU):

- To be delivered if there is a change to certain corporate information, cancellation of insurance policies, loss of quorum on the board, or a change in information that a by-law requires be included in the update. The timeline to deliver an ICU will depend on the type of information change.

New Owner Information Certificate (NOIC):

- To be sent out to a unit owner within 15 days of being notified that said individual has become a unit owner in the condominium corporation.

Exceptions to PIC, ICU and NOIC Requirements (in a fiscal year):

In the following circumstance, a PIC, ICU or NOIC is not required:

- a turn-over meeting has been held;
- the condominium corporation consists of fewer than 25 units; and,
- the owners of at least 80 per cent of the units in the condominium corporation consent in writing to dispense with the requirements until the next fiscal year.

In addition, if the condominium corporation is a phased condominium, a PIC, ICU and/or NOIC is not required if a new board has been elected.

Status Certificates:

- Condominium corporations must now set out the financial implications of outstanding judgments and legal actions to which the corporation is a party.
- Condominium corporations must now provide a copy of all amendments to the budget for the current fiscal year.
- Condominium corporations must now provide a list of all shared facilities agreements.
- Condominium corporations must now provide a statement with regard to modifications that are substantial together with a statement of the purpose of them.

Shared Facilities

- Shared Facilities Agreements will have to be written and registered.
- Both positive and negative covenants will run with the land and will bind both the real property that has the burden as well as benefit of shared facilities.

- Such agreements may be enforced by a party to the agreement, a unit owner, a subsequent unit owner or corporation and any of its successors and assigns.
- The parties to a shared facilities agreement may make, amend or repeal joint by-laws or rules governing such agreements.

Records

- A definition of “core record” has been added.
- Additional records the condominium corporation is obligated to keep include:
 - returns and notices filed with the registrar;
 - proxy or ballots submitted at meeting of owners;
 - all records prescribed in regulations; and,
 - any additional records specified in by-laws
- Financial records must be retained by the condominium corporation for at least 6 years from the end of last fiscal period to which they relate as per the regulations (7 years as per the regulations), additional records specified in the by-laws should be retained for a period of time specified in such by-law and all other records have to be retained for a period of time prescribed in the regulations.
- Records may be retained by the condominium corporation in electronic or paper form in accordance with regulations.
- The regulations specify processes a person entitled to examine or obtain copies of records must follow, processes condominium corporations must follow in responding to such requests for records, fees the condominium corporation may charge for such examination or copying of records as well as forms for request for records or responses to those records.
- The condominium corporation is obligated to provide records to the condominium manager/or management provider which are reasonably required by them and the time and manner is prescribed in the regulations.
- Subject to some exceptions, a unit owner, mortgagee, purchaser or their duly authorized agent in writing can examine/obtain copies of records related to their unit and records with respect to requisition for meeting of owners.
- If the condominium corporation refuses, without reasonable excuse, such examination or copying of records, it can be held liable to pay a penalty not exceeding \$5,000 upon receiving written request for payment from that person.
- A unit owner, purchaser or mortgagee (not their agent) can recover the penalty from the condominium corporation by commencing an action in the Small Claims Court.

Non-Leased Voting Units

The owner-occupied reserved position on a board of directors will be retained with the following proposed amendments:

- an “owner-occupied unit” will be renamed as a “non-leased voting unit”;
- a unit will be a non-leased voting unit if the unit is used for residential purposes and the unit is not leased within the 60-day period before:
 - a board gives a preliminary notice of a meeting of owners; and/or,
 - a condominium corporation receives a requisition for a meeting;
- the reserved position will no longer be mandatory, and will only need to be reserved at a turnover meeting under certain conditions;
- residential condominiums where a majority of the units are “non-leased voting units” will no longer have a reserved position on the board of directors. This means that most condominiums will not have a reserved position on the board and there will be no need for two separate director elections.

Voting and Proxies

Recorded Votes

- In addition to votes cast by a show of hands, or by proxy, votes can be cast at a meeting of owners by a recorded vote that is marked on a ballot, marked on the instrument of proxy, or, if the by-laws permit, indicated by telephonic or electronic means, including by telephone, fax, e-mail, automated touch-tone telephone, computer or computer network.
- A person who casts a recorded vote is not required to identify that person’s name or unit.

Proxies

- An instrument appointing a proxy will be in a prescribed form and can be made for one or more particular meetings.

Insurance

The proposed amendments to the insurance provisions relate to defining a standard unit, and allocating the responsibility for damage that is covered by a condominium corporation’s insurance policy. More specifically:

- *Defining the standard unit:* A standard unit will be determined either by a by-law, or a definition to be prescribed, if a condominium corporation does not pass a by-law.
- *Owner’s Responsibility for Damage* A unit owner will be held responsible for the lesser of the cost of repairing damage caused to a unit, the common elements or a condominium corporation’s assets, or the deductible limit of the condominium corporation’s policy provided that the damage is not caused by an act or omission of the

condominium corporation, or its directors, officers, employees or agents, and provided that:

- the damage is covered by the condominium corporation's insurance policy; and,
- the damage is caused by an act or omission of either the unit owner, a lessee, a person residing in the unit owner's unit with the owner's knowledge or permission, or any other prescribed person or thing.

The proposed provisions eliminate the need for a by-law. However, a condominium corporation that may want to reallocate responsibility for damage will only be able to do so by way of a declaration amendment.

Performance Audits

- The scope of the performance audit has been expanded to include, in addition to the common elements, any real property owned by the condominium corporation (utility units, superintendent unit, etc.).
- The performance audit is no longer required to be conducted within the six and ten month time period but rather, now it must be conducted and filed before the first anniversary of the date of the registration of the condominium corporation (or such other time periods that may be imposed by regulation – none yet).

Reserve Fund and Reserve Fund Studies

- The purpose for a reserve fund has been expanded to:
 - allow the fund to cover the costs of major repair and replacement of units as well as the common elements;
 - allow the fund to cover costs incurred by the corporation to comply with other legislation (such as Human Rights Code, AODA), but only if the regulations will so provide; and,
 - if the amount in the reserve fund falls below a prescribed amount (no regulation yet on this), the condominium corporation will be required to obtain the advice of its reserve fund study provider about the reserve fund (note: no specification on what advice is to be required) and whether the provider recommends conducting a reserve fund study update before the regularly scheduled update.
- The condominium corporation may obtain an additional reserve fund study (in addition to the regularly scheduled reserve fund study updates) at any time, if deemed necessary by the board.
- There will be a new definition for the "component inventory" in the regulations (but the new definition has not been provided yet).