



FR Condo Law Group Presents:

## **Survival Guide for Condo Directors**

### **Phase 1 of the Condominium Act Amendments**

**David E. Thiel**

416-941-8815  
dthiel@foglers.com

**Carol A. Dirks**

416-941-8820  
cdirks@foglers.com

**Khalid Karim**

416-864-7402  
kkarim@foglers.com

**December 2017**

# TABLE OF CONTENTS

<b>1.</b>	<b>INTRODUCTION</b>	<b>3</b>
	The Purpose of this Update	3
	What is the 'New Condo Act?'	3
	How did we get here?	3
<b>2.</b>	<b>CONDOMINIUM ACT, 1998 CHANGES – the first PHASE</b>	<b>4</b>
	Disclosure Obligations for Candidates	4
	Disclosure Obligations for Directors	4
	Training	4
	Information Certificates	5
	Preliminary Notices and Notices of Meeting	5
	Director Candidates	5
	Auditor Candidates	5
	Other Material	6
	Quorum	6
	By-law Voting Thresholds	6
	Method of Voting	6
	Proxies	6
	Retention Periods	6
	Access to Records	6
	Core Records	7
	Non-Core Records	7
	Costs of Access	7
	Penalty	7
	Disputes	7
<b>3.</b>	<b>CONDOMINIUM RETURNS (IN FORCE JANUARY 1, 2018)</b>	<b>7</b>
	Types of Returns	8
	Notice of Change	8
	Public Registry	8
<b>4.</b>	<b>CONDOMINIUM MANAGEMENT LICENSING</b>	<b>9</b>
	Licensing	9
	Types of Licenses	9
<b>5.</b>	<b>CONDOMINIUM AUTHORITY OF ONTARIO ("CAO") AND CONDOMINIUM AUTHORITY TRIBUNAL ("CAT")</b>	<b>9</b>

# 1. INTRODUCTION

## ***The Purpose of this Update***

The condominium legislation in Ontario is undergoing massive changes. This update is to provide a brief summary of where we stand in **December of 2017**.

The information in this update is only an overview. For example, there are many exceptions and transition issues which are not fully explained here. Directors and managers may need to consult with the condominium's legal counsel for more information on specific issues.

## ***What is the 'New Condo Act?'***

In a nutshell, the 'New Condo Act' was enacted as Bill 106, *Protecting Condominium Owners Act, 2015*. This Act amends the Condominium Act, 1998 as well as enacts the *Condominium Management Services Act, 2015*.

## ***How did we get here?***

Reform of the condominium legislation has been discussed for many years. This resulted in consultations with the public and the process essentially has evolved as follows:

- Since mid-2012: Various consultations with condominium industry and the public
- May 27, 2015: Introduced for first reading
- October 7, 2015: Passes second reading
- December 2, 2015: Passes third reading
- December 3, 2015: Bill 106 received Royal Assent
- November 1, 2017: First phase of changes to Act came into force. **\*\*IMPORTANT** – only certain portions of the legislative changes have come into effect as of late 2017.

## 2. CONDOMINIUM ACT, 1998 CHANGES – THE FIRST PHASE

The first phase of Condominium Act changes, relating to the broad categories below, came into force on November 1, 2017. These are essentially the portions of the *Condominium Act, 1998* (the "Act") for which regulations have been finalized. Other changes to the Act will come into effect at some unknown future date(s).

The broad categories in the [first phase](#) of the *Condominium Act, 1998* changes are:

- Director Disclosures and Training
- Communications to Owners
- Meetings and Voting
- Records

Each of these will be addressed in turn below.

### A. DIRECTOR DISCLOSURES AND TRAINING

Candidates for election to the Board, as well as elected directors now have disclosure obligations to the Corporation and to the unit owners. Directors will now also be required to have "director training".

#### ***Disclosure Obligations for Candidates***

When a preliminary notice of meeting is sent for a meeting that includes the election of directors (see below re: 'preliminary notice'), individuals providing notice of their intent to be a candidate would be required to include a statement including the required disclosure. The disclosure would then be included with the notice of meeting.

If the candidate does not provide a notice of intent to be a candidate or the required disclosure in advance, then the candidate would need to make the disclosure at the meeting.

What's in the disclosure? The list is lengthy, but includes information regarding legal proceedings involving both the candidate and the corporation, information on any convictions under the Act or Regulations, disclosure of interests in contracts and transactions involving the corporation or the developer, and a statement if the candidate is in common expense arrears more than 60 days.

Our office has developed a form (available upon request) that can be completed to fulfill the candidate disclosure requirements.

#### ***Disclosure Obligations for Directors***

For post-turnover Boards, the disclosure obligations of board members is similar to that required and explained above concerning candidates. Keep in mind that under the new s.29(2)(f) of the Act, a director who does not provide the required disclosure within the required time immediately ceases to be a director.

#### ***Training***

Directors are required to complete training within six months of being elected or appointed, if elected or appointed after November 1, 2017. The Condominium Authority has made the training available through its website. Directors have the right to be reimbursed for the costs directly incurred in the required training.

## **B. COMMUNICATIONS FROM THE CORPORATION TO UNIT OWNERS**

Condominium Corporations are now required to send out information bulletins or "certificates" to all unit owners.

### ***Information Certificates***

The new s.26.3 of the Act references requirements for certain "information certificates" to be sent by the Corporation to owners and mortgagees. These are to include:

- Periodic Information Certificate ("PIC")

This information certificate is to be provided by the condominium to owners twice per fiscal year, within 30 days of the end of the first and third fiscal quarters. Much of the information is similar to what might be found in a Status Certificate, although there are quite a few additional requirements and explanations required.

- Information Certificate Update ("ICU")

To be required upon various events, including upon any change in directors, management and addresses for services for same.

- New Owner Information Certificate ("NOIC")

To be sent within 15 days of a new owner giving notice in writing of becoming an owner. The NOIC is to include a copy of most recent PIC and ICU, and any other materials required by the by-laws.

## **C. MEETINGS AND VOTING**

For each condominium owners' meeting (including requisition meetings), there are now new requirements in terms of the notices to be sent out to all owners, and the information to be contained in those notices. Each owners' meeting will essentially follow at "two step" process -- being the issuance of a preliminary notice and then followed by a notice of meeting.

### ***Preliminary Notices and Notices of Meeting***

The Act requires the preliminary notice of meeting to be sent at least 20 days before the sending of the notice of meeting. The Regulations provide that both the preliminary notice and the notice of meeting must be on a standardized form.

### ***Director Candidates***

If the meeting includes election of directors, the preliminary notice must include a request that candidates notify the board in writing of their intention to be a candidate. The candidates would also need to provide any required disclosures together with their notice of intention to be a candidate. The preliminary notice must also include the text of s. 29(1) of the Act, together with the applicable portion of the Regulation regarding candidate disclosures.

### ***Auditor Candidates***

Where the removal or appointment of the auditor is to be included on the meeting agenda, the preliminary notice must also include a request that owners wishing to propose a candidate for auditor do so in writing prior to a stated deadline. Such information would then be included in the notice of meeting.

## ***Other Material***

The preliminary notice must also request that if owners wish to include any material with the notice of meeting, that it be provided by a stated deadline.

The Board would not be required to include such material in the notice of meeting unless the submission is made on behalf of at least 15 percent of the owners, and the submission does not request to add anything to be presented at the meeting that is contrary to the Act or Regulations.

## ***Quorum***

There is a change in quorum requirements for where the Corporation is having difficulty achieving proper quorum to transact business at certain kinds of meetings. For turnover meetings, annual general meetings (and any other meeting to elect directors or appoint a new auditor), quorum would be at least 25% of owners on the first and second attempts to hold the meeting, and 15% on subsequent attempts.

## ***By-law Voting Thresholds***

Certain types of by-laws now have a lower threshold of owner approval – including certain matters relating to records retention, information certificates, candidate disclosure, means of communication to owners, requirements for owners' meetings and board meetings.

The lower threshold is "majority of votes cast" at the meeting. For all other By-laws, the old standard of "majority of all units" continues to apply.

## ***Method of Voting***

Voting will be permitted by telephonic or electronic means if the By-laws so provide.

## ***Proxies***

Proxies must be completed using a standardized form to be provided by the Ministry.

## **D. RECORD KEEPING AND RECORDS REQUESTS**

### ***Retention Periods***

There are two primary retention periods, being a seven year minimum for financial records and other operating records of the corporation and an unlimited retention period for fundamental corporation documents.

### ***Access to Records***

The records access process is summarized as follows:

- i. **Request** –Using a standardized form the requester must identify the records requested and the preference as to access (e.g. delivery by email, hard copy, examination in person).
- ii. **Board Response** – The Board is required to respond within 30 days using a standardized form, including itemized estimate of cost of access, and identifying any records or portions of records not to be provided, and the reasons for same.
- iii. **Requester Response** – The requester must respond using a standardized form confirming the records requested, together with any payment.

iv. **Access and Accounting** – Access provided and accounting of actual costs to the requester.

Some details of the process depends upon whether documents requested are 'core' or 'non-core' documents.

### ***Core Records***

Core records include documents such as the declaration, by-laws, rules, shared facilities agreements and various current documents such as current fiscal year budget, recent minutes, and reserve fund study plan.

If the request is for electronic delivery, the corporation may not charge for providing the records. The corporation must deliver the documents within 30 days of receiving the request. Accordingly, the records would be delivered at the same time as the Board Response.

If the requester does not agree to electronic delivery, then the corporation may charge for printing/copying costs only. Paper copies must be made available or delivered within 7 days of receiving the Requester Response together with payment of the estimated copying cost.

If the requester requests to examine the records in person, the records would need to be made available within 7 days of receiving the Requester Response together with payment of the estimated costs. Here, the corporation could charge labour costs for examination and copying and printing costs if applicable.

### ***Non-Core Records***

The process described above applies to non-core records, with the following changes:

- the corporation must provide access to the records within 30 days of receiving the Requester Response together with payment of the estimated allowable costs.
- labour costs could be applied (subject to discussion below) for providing access even if the request is for electronic delivery.

### ***Costs of Access***

Photocopying may be charged at a rate of up to \$0.20 per page. Labour and delivery fees must be reasonable and constitute reimbursement of the corporation for the actual costs incurred by the corporation in providing access to records.

### ***Penalty***

If the Corporation, without reasonable excuse, does not permit access to records under s. 55 of the Act, the corporation is subject to a penalty of up to **\$5,000**.

### ***Disputes***

Disputes will be heard by the Condominium Authority Tribunal.

## **3. CONDOMINIUM RETURNS (IN FORCE JANUARY 1, 2018)**

These requirements are scheduled to come into force on January 1, 2018. Like business corporations, condominium corporations will now be required to file a "return".

In essence, condominiums will be required to file information statement (the 'returns') with the Registrar. The key elements of the Regulations are as follows:

## ***Types of Returns***

The four types of returns and the deadlines for filing for each are as follows:

- i. Annual Return -- between January 1 and March 31 of each year
- ii. Initial Return – for new condominiums – within 90 days of registration
- iii. Transitional Return – on or before March 31, 2018
- iv. Turn-over Return – within 90 days of the turn-over meeting

All of the returns require a long list of basic information including, but not limited to, the following:

- i. Address for service, municipal address
- ii. Total number of units, total number of voting units
- iii. Names of directors
- iv. Name and address of property management company

Each type of return also requires certain specific additional information.

## ***Notice of Change***

A corporation must file a Notice of Change (outlining changes in various issues) with the Registrar within 30 days of the change. The applicable changes include, but are not limited to:

- i. Every change in the address for service for the corporation
- ii. Every change in the electronic mail address for the corporation
- iii. Every change in the property management company, or in the address for service for same

Keep in mind that the Condominium Act, 1998 itself (not the Regulations) specifically requires the Notice of Change where there is a change in directors elected or appointed to the Board.

## ***Public Registry***

The Regulations also set out the details of a Registry which is to be made available to the public on the Condominium Authority of Ontario's website (and possibly other means). The Regulations provide that the publication of the Registry is to commence on **April 1, 2018**.

The Registry will contain certain information from the aforementioned returns, including, but not limited to address for service of the Corporation, names of directors, name and address of service for the property management company.

The Regulations place some limits on the availability of the aforementioned public information including that the information is not to be made available in bulk (subject to certain exceptions) and that the person accessing the information has agreed to use the information for personal purposes only.

## 4. CONDOMINIUM MANAGEMENT LICENSING

### *Licensing*

Implemented by the new Condominium Management Regulatory Authority of Ontario ("CMRAO")

- Essentially, anyone providing "condominium management services" must be licensed to do so.
- The definition of "condominium management services" is broadly defined.
- A large number of exceptions, including certain accountants, architects, engineers, lawyers, insurance brokers, banks and various other roles

### *Types of Licenses*

- Limited  
Basic educational requirements, up to two years of experience
- Conditions  
include supervision, limitations on scope of activities
- General  
Educational Requirements – Association of Condominium Managers of Ontario ("ACMO") Courses being Condominium Law, Physical Building Management, Financial Planning for Condominium Managers and Condominium Administration and Human Relations and has more than two years' experience
- Transitional General  
Up to three years transition time
- "Condominium Management Providers" (essentially, the property management firms including sole proprietorships) would also need to be licensed and would be subject to various other requirements.

## 5. CONDOMINIUM AUTHORITY OF ONTARIO ("CAO") AND CONDOMINIUM AUTHORITY TRIBUNAL ("CAT")

### CONDOMINIUM AUTHORITY OF ONTARIO ("CAO")

The CAO has been established by the Ministry to administer various issues to improve condominium governance, including training of directors, providing information to the public, appointing a Registrar to oversee reporting requirements by condominiums (e.g. the returns discussed above), and establishing the CAT.

### *Fees to be Charged to Each Condominium Corporation*

- The funds to operate the CAO will be raised through special powers to collect fees from condominium corporations in accordance with the below table (found on the CAO website)

Fee	Service Description	Amount
Monthly assessment / fee per voting unit payable through corporations*	<ul style="list-style-type: none"> <li>• Helpful and easy to use information for owners on condominium living</li> <li>• Mandatory training for condominium directors</li> <li>• Self-help tools and guided pathways for resolving common issues and disputes</li> <li>• The Condominium Authority Tribunal (CAT) for online guided negotiation, mediation and adjudicative services for disputes prescribed in regulation</li> <li>• Public registry of all condominium corporations for increased transparency and accountability (if required by regulation)</li> </ul>	\$1 per month/\$12 per year

- The CAO has sent packages to condominiums to provide details on how corporations can register and pay their assessments. Initial assessments will cover the period from September 1, 2017 to March 31, 2018, and are due to the CAO by December 31, 2017.

### CONDOMINIUM AUTHORITY TRIBUNAL ("CAT")

The CAT is a specialized tribunal for condo dispute resolution on specific kinds of matters. A condominium corporation, an owner or a mortgagee have the right to refer disputes to the CAT. Members of the Tribunal are appointed by the CAO.

The CAT includes online dispute resolution service, a mediation service and an adjudicative function. Essentially, currently the process is entirely online, although exceptions may be made in some cases for live testimony for example at the decision stage.

The types of disputes that the CAT are authorized to handle will be established by regulations. Currently, only disputes concerning records requests are authorized to proceed to the CAT.



**David Thiel**

416-941-8815

dthiel@foglers.com



**Carol Dirks**

416-941-8820

cdirks@foglers.com



**Khalid Karim**

416-864-7402

kkarim@foglers.com