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Condo Commentary

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ONE YEAR AFTER THE AMENDMENTS TO THE CONDOMINIUM ACT – ARE WE ANY BETTER OFF?

by Carol Dirks

It's been a rollercoaster year, to say the least, for Ontario's condominium industry in our collective efforts to implement the changes to the *Condominium Act, 1998* (the "**Act**"). As every reader knows, these changes first came into effect on November 1, 2017, they represent only the first phase of a series changes which are planned and in the Act (and to its regulations) but are not yet "in-force" and the regulations for these have not been released. It remains to be seen as to whether the new provincial government will implement these other changes.

After getting through the panic, the multitude of new timelines, the new procedures and, yes, all of those forms, the one year anniversary of the first changes is an appropriate time to reflect on these changes and ask the question: "*Are condominium corporations, their unit owners, and our industry really better off?*".

- **Notices of Owners' Meetings**: After the initial adjustment and cost of having two mail-outs, the overall impact is a fairly positive one. The circumstances where owners complain that they were not aware in advance of the upcoming owners' meeting has been significantly reduced. There is also a marked improvement in the ability of prospective director candidates to give notice of their candidacy to the Corporation and to have their information included in the meeting packages. The fact that all director candidates must also complete a disclosure form (attesting to certain statements) and to have those disclosure forms included in the meeting package fortifies the legitimacy of the election process.
- **Requisition Meetings**: The Act still requires a Board of Directors to call and hold a meeting of owners within 35 days of receiving a requisition pursuant to subsection 46(1). However, with the new requirement for the Corporation to send a preliminary notice of meeting, this leaves little to no time for the Corporation to receive and review the requisition, and to possibly consult with legal counsel as to the validity of the requisition, before having to call the meeting. More time for the Corporation to review the requisition and obtain legal advice would significantly reduce the panic and stress often associated with a requisition.
- **The New Form of Proxy**: Having a standardized proxy form which owners are **obligated** to use is a good thing. However, the complicated nature of the proxy form, with multiple fields, and the accompanying instructions ignores its recipient audience and, in some respects, increases confusion as to the intentions of the owner giving the proxy. For example, what if the proxy is initialed by the owner in some areas, but the owner innocently omitted to initial in others?

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Owners should not be required to have a law degree to be able to successfully complete a proxy form. Also, the new proxy form does little to safeguard against issues of proxy fraud which have plagued some Corporations in the past where individuals forge an owner's signature on a proxy form.

- **Information Certificates**: The periodic information certificate contains valuable basic information which, surprisingly, many owners may not be aware of. Owners should be aware of who their directors or their property management company are at any given time, whether the Corporation is a party to a legal action, or what the amount of the Corporation's insurance deductible is. While the completion of the periodic certificate is not particularly onerous, sending it out once a year (as opposed to required twice a year) would have likely been sufficient and would have resulted in cost-savings for a lot condominiums, especially given that a condominium is required to send an information change update in the event of specific changes such the directors, quorum on the board of directors, or a change in the condominium's property management provider.
- **Records Requests**: Like the proxy form, having a standardized form by which an owner can submit a records request and expect a timeline for a response is a favourable change. The legislative amendments provide a mechanism by which the owner and the Corporation can track an owner's record requests and the responses given. However, in practice, difficulties arise in the response process which has been made more complicated than often needs to be. If an owner has a simple request for a copy of a record, many property managers would prefer to respond by sending out the record to the owner as opposed to taking the time to complete the responding form. This is a shortcoming in the process. Further, the regulations dealing with all parts of records, retention, and requests are lengthy and not particularly straightforward.
- **Directors' Training**: The requirement that directors appointed, elected or re-elected on or after November 1, 2017, receive mandatory training is a positive change. The Condominium Authority of Ontario directors' training program (which is free) provides an accessible and comprehensive program on the various topics which all directors should be familiar with. If directors are not willing to take the time after their election or appointment to complete the mandatory directors' training course then it is correct that they should not be permitted to continue as a director.

While the above changes are, in most cases, a step in the right direction, there remain a number of critical changes which have yet to be implemented. It has now been three years since the amendments received royal assent and our industry (and indeed all condominium unit owners) are still waiting for the rest of Act's changes to come into force. These changes are important and significant, dealing with topics such as the adequacy of reserve funds, developer disclosure obligations, and modifications to the common elements and services. Hopefully, they will come into effect in a reasonable well considered timeline.