

A Roadmap for The Amendments to The Condominium Act, 1998



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Part 1 – Some Initial Steps to Consider

I. Status Certificates

The coming amendments may result in an increase in operating costs. Some of the increases will be:

- Required new payments to the Condominium Authority of Ontario (CAO). Initially, \$1 per voting unit per month (\$1 per voter per month in the case of a common elements condominium). The CAO **monthly fees** are payable by the Condominium Corporation. The amounts are added to the Corporation's operating expenses, shared by all owners in accordance with the common expense contributions in the Declaration. The initial payment (covering September 1, 2017 to March 31, 2018) is due on December 31, 2017.
- For certain disputes, condominium corporations may also be required to make payments for Condominium Authority Tribunal processes. CAT **user fees for dispute resolution** (payable by the party that files the dispute) are as follows:

Filing Fee	For access to CAT's <i>unassisted</i> on-line dispute resolution system	\$25
Assisted Resolution Fee	For assistance from a dedicated mediator	\$50
Tribunal Decision Fee	For a decision from a dedicated adjudicator	\$125

****CAT may order the losing party to pay the above amounts (if incurred by the winning party)**

- Increased Management Fees (due to increased work for condominium managers as well as mandatory licensing fees for condominium managers and management providers).

The Province has now proposed licensing fees for condominium managers under the CMSA, and has received input from the public on those proposed fees.

As of November 1, 2017, the Condominium Management Regulatory Authority of Ontario ("CMRAO") is the designated administrative authority under the *Condominium Management Services Act, 2015* ("CMSA"). The CMRAO is responsible for licensing managers, and overseeing the regulation of the condominium management industry. The Province has now confirmed its proposed annual fee structure for licensing of managers:

Limited License	\$379.00 (annually)
Transitional General License	\$607.00 (annually)
General License	\$607.00 (annually)
Condominium Management	\$799.00 base fee PLUS \$350 per licensee employed by the firm (annually)

- Licensing fees will form the primary source of revenue for the CMRAO which will operate as a not-for-profit corporation.
- Possible increased Legal Costs (for review of and/or amendments to the corporation's governing documents)



and perhaps added guidance and assistance in relation to the new legislation).

As a result, condominium corporations may now wish to include wording along the following lines in their status certificates.

*The **Protecting Condominium Owners Act, 2015**, will bring some important changes to condominium law and administration in Ontario, including changes to the **Condominium Act**, as well as mandatory licensing for condominium property managers. As a result, condominium management fees are expected to increase. Also, condominium corporations will be required to make payments towards the new **Condominium Authority of Ontario**. The Corporation might also experience **increased Legal Costs (for review of and/or amendments to the corporation's governing documents and for added guidance and assistance in relation to the new legislation)**.*

These matters are expected to result in an increase in the common expenses, and the increase is currently estimated at between \$ and \$* per unit per month. These changes are expected to come into force in phases, from 2017 – 2019.*

**To be considered by the condominium corporation based on specific circumstances*

II. Budgets

Common expense budgets, prepared now, should to the extent possible take into account the increases noted above. The initial payment for CAO **monthly fees** (the \$1 per voter per month) – covering September 1, 2017 to March 31, 2018 – is due on December 31, 2017. All condominium corporations will be receiving notices / invoices from the CAO for such fees.

III. Review of Management Agreement

Condominium Corporations and Managers should be reviewing their current Management Agreements and considering any required changes (in light of the new legislation). Should the Manager's listed duties be revised? Should the fees be revised? Should the parties agree that added work – due to the legislative amendments – will be considered an extra for which the Manager will be entitled to charge reasonable extra fees (to be negotiated and agreed)? Will the Manager need any extra resources – such as added personnel support or computer hardware or software?

IV. New Hardware and/or Software – OPTION FOR CONSIDERATION

The legislative amendments will allow owners (who are interested in obtaining condominium corporation records) to receive certain records (“core records”) in electronic format – at no cost. See Section on “Records” – below.

As a result, condominium corporations (if they have not already done so) may wish to obtain the necessary hardware and/or software to allow for electronic record-keeping (and also for regular back-up of corporate records onto an independent and safe hard-drive) – not only for core records but perhaps for other records as well.

Also for certain records (for instance, minutes of Board meetings) that must be redacted for private information, the corporation could consider saving two versions of such records – one version that is available for owners, and a second unredacted version that includes private information (and is therefore not available for owners).

In addition, many condominium corporations (if they have not already done so) may wish to consider establishing a **website** with controlled access (for owners only) to certain records that are then quickly and continuously available on the website. This could drastically reduce requests (for records) from owners; and would also serve as an excellent opportunity for exchange of information between the corporation and all owners. A website might also be a good place to post some of the **information certificates** that all condominium corporations will be required to prepare (see below).

V. The Declaration

This may be a good time for a careful review of the Declaration, for consideration of possible amendments. For instance, amendments may be wise for the following reasons:

- To add chargebacks to an owner's common expenses (ie. where an owner causes the corporation to incur costs). A strong Indemnification provision in the Declaration is likely necessary in order to add chargebacks to an owner's common expenses. **This is a key reason that many condominium corporations may be considering amendments to their Declarations.**
- Perhaps to clarify or correct repair and maintenance obligations. The legislative amendments will be bringing changes to provisions respecting repair and maintenance.
- Perhaps to deal with responsibility for deductibles on the corporation's insurance. The legislative amendments will eliminate insurance deductibles by-laws, but existing by-laws *might* be grandfathered.
- Perhaps to deal with access to the units. Emergency access (without notice) will require a provision in the Declaration or By-laws.

VI. The By-laws

This may also be good time for a careful review of the By-laws, for the following reasons:

- To ensure that the by-laws are consistent with the amended Act and Regulations. Pre-May 2001 by-laws may particularly need up-

dating. But all existing by-laws should be reviewed for consistency with condominium legislation including the coming amendments.

- To remove undesirable by-law provisions; and to add helpful provisions.
- To add new by-laws permitted by the amendments (such as new voting by-laws, new by-laws respecting disclosure by directors and director candidates, new by-laws respecting information certificates, etc.). In our view, a standard new by-law provision respecting electronic or telephonic voting may be a good idea.
- To pass or revise standard unit descriptions. Many condominium corporations may be considering amendments to their standard unit descriptions – to remove high risk features (like flooring) from the standard units.
- To regulate permitted changes to the common elements by owners.
- Perhaps to deal with access to the units. Emergency access without notice will require a provision in the Declaration or By-laws.

VII. The Rules

Although not specifically related to the changes in condominium law, many condominium corporations are currently considering Rules to regulate:

- Smoking (including marijuana)
- Short-term tenancies
- The Definition of “Family” in many residential condominiums

Part 2 - After November 1, 2017

VIII. Electronic Notices to Owners

If you wish to be able to send Notices to an owner by email (or some other form of electronic communication), the Board must first pass a resolution stating the method(s) of electronic communication that can be used by the corporation; and the owner must then agree in writing to one or more of the corporation’s approved method(s). This written agreement can be provided in an email exchange or other written communication between the corporation and the owner. Alternatively, you could use the prescribed new form for this purpose. Either approach is legally acceptable. Anyway, the point is as follows: If you wish to be able to send Notices to an owner electronically, you must have the owner’s written authorization to do so.

IX. Mandatory Training for Directors

Directors who are elected (or re-elected) after November 1, 2017 will need to undertake mandatory training.

X. Information Certificates

After November 1, 2017, corporations will be required to issue information certificates:

- Periodic Information Certificates (PICs) must be sent twice yearly – within 60 days of the last day of the corporation’s first quarter and third quarter. It must contain the following information:

- 1 The address for service of the corporation (see para. 2 of the current status certificate form);
- 2 The names and address for service of the directors and officers of the corporation (see para. 4 of the current status certificate form);
- 3 A statement of all outstanding judgments against the corporation and the status of all legal actions to which the corporation is a party (see para. 18 and 19 of the current status certificate form);
- 4 A certificate or memorandum of insurance for each of the corporation’s current insurance policies (see para. 33(d) of the current status certificate form).
- 5 Name and address for service of the condominium management provider or the condominium manager, or any other person responsible for the management of the property.
- 6 Any physical address or electronic method of communication that the board has decided can be used to receive records requests, and any method of electronic communication that can be used to deliver copies of records to requesters.
- 7 A statement identifying any director in office who:
 - a. is a party to any legal action that the condominium corporation is also a party to;
 - b. was a party to a legal action that resulted in a judgment against the corporation and the judgment is outstanding; or
 - c. has common expense contributions that are in arrears for 60 days or more.
- 8 The total number of leased units for which the corporation has received notice of during the current fiscal year under s. 83 of the Condominium Act (similar to para. 24 of the current status certificate form).
- 9 The financial implications of all outstanding judgements against the corporation.
- 10 The financial implications of the legal actions to which a corporation is a party.
- 11 If an insurance policy maintained by the condominium corporation has a deductible, then a statement describing the deductible and the maximum amount of the deductible that could be added to the common expenses payable for an owner’s unit under section 105 of the act.
- 12 Identifying any required insurance policy that the corporation fails to obtain or maintain (similar to para. 26 of the current status certificate form).
- 13 If the corporation has passed a by-law that establishes what a standard unit is, then a statement identifying the number of the by-law.

- 14** A copy of any disclosures made by directors under the new disclosure requirements.
- 15** A copy of the corporation's budget for the current fiscal year and a copy of all, if any, made to that budget.
- 16** A statement whether the budget of the corporation may result in a surplus or deficit and the amount of the projected surplus or deficit (information from para. 9 of the status certificate).
- 17** Additional financial information:
- the balance of the reserve fund (information from para. 13 of the status certificate);
 - the annual contribution to be made to the reserve fund for the remainder of the current fiscal year (information from para. 15 of the status certificate);
 - the anticipated expenditures to be made from the reserve fund for the remainder of the current fiscal year; and
 - if the board has proposed a plan to increase contributions to the reserve fund.
- 18** The status of any outstanding claim for payment out of the guarantee fund under the Ontario New Home Warranties Plan Act by an owner (information from para. 21 of the status certificate).
- 19** A statement of whether the condominium corporation failed to comply with its obligations relating to paying the annual fee to the condominium authority under s. 1.30(6) of the Condominium Act or filing a return under Part II.1 of the Condominium Act.
- 20** A copy of any compliance order issued by the Registrar that has been made against a condominium corporation. See s. 134.1(9) of the Condominium Act.
- 21** The corporation's by-laws may require that additional information be included in the PIC.
- Information Certificate Updates (ICUs) must be sent following changes to the PIC information. To be sent:
 - Within 30 days following a change to:
 - the address for service of the corporation;
 - the address for service of the directors or officers of the corporation; - the directors or officers of the corporation;
 - the name and address for service of the condominium management provider or the condominium manager, if any, with whom the corporation has entered into an agreement to receive condominium management services;
 - the address or methods for receiving records requests or communicating about records requests;
 - the method of electronic communication that the corporation will use in connection with records requests and related communications.
 - Within 30 days after the corporation becomes aware of a change to the corporation's insurance deductible or to the maximum amount that could be added to an owner's common expenses in relation to the corporation's insurance deductible.
 - As soon as reasonably possible (and in any case within 30 days) after the corporation becomes aware that an insurance policy of the corporation has been terminated.
 - Within 5 days of quorum being lost on the Board.
 - New Owner Information Certificates (NOICs) must be sent to new owners within 30 days of giving notice in writing to the corporation under ss. 46.1(2) of the Condominium Act. The NOIC must contain the information listed below.
 - a copy of the most recent PIC;
 - a copy of the most recent ICU; and
 - all other materials set out in a by-law of the corporation.
- Note: Condominiums may be exempted from these requirements if the owners of 80% of the units' consent, in writing, and on an annual basis, to such an exemption.

XI. Notices to Owners

- The existing list of owner's names and addresses is the starting place.
- New owners will be obligated to provide their names and unit numbers to the corporation within 30 days of becoming an owner.
- Owners may also provide alternative addresses for service (other than the unit) but the address must be a proper mailing address in Ontario. Otherwise, the unit will be deemed to be the owner's address for service.
- The condominium corporation and owner may agree, in writing, that notices to the owner may be delivered by email or some other form of electronic communication.

XII. New Disclosure Obligations for Directors

Directors and Director candidates are required to disclose certain information about themselves and their families. Note that this applies to Directors seeking election at a meeting to be held after December 10, 2017 or Directors seeking to be appointed to the Board any time after November 1, 2017. Disclosure is only required if there is something to disclose, such as:

- Legal Proceedings involving the Corporation.
- Offences under *Condominium Act* in past 10 years.
- Interest in Contracts or Transactions involving the Corporation.
- Common Expenses in arrears for 60 days or more.
- If they are not an owner or if they are not an occupant (of a unit in the condominium).

XIII. Board Meetings

Board meetings will be possible by teleconference (without a by-law).

XIV. Pre-Notice for Owners' Meetings

For most meetings of owners, a Preliminary Notice of Meeting is required. The only exception being meetings called to elect Director(s) when there is no quorum on the Board. The Preliminary Notice must be sent at least 20 days before the actual notice of Meeting. It must be in a prescribed form. This is applicable to meetings scheduled to be held after December 10, 2017. [Note: The pre-notice timing is slightly different for requisitioned meetings.]

XV. New prescribed form for Owners' Meetings

This is applicable to meetings scheduled to be held after December 10, 2017.

XVI. Voting by Electronic or Telephonic Means

Condominium corporations can pass a by-law to authorize voting by Electronic or Telephonic Means. We recommend that all condominium corporations consider adding a provision about electronic or telephonic voting to their comprehensive by-law.

XVII. New Prescribed Proxy Form

Using the new prescribed form of proxy is now **mandatory**.

XVIII. Quorum for Meetings of Owners

For many meetings of owners, the quorum requirement drops to 15% on the third try.

XIX. By-law Voting

For certain new types of by-laws, the voting requirement is less onerous.

- Applies to new types of by-laws listed in the Regulations (such as new voting by-laws, new by-laws respecting disclosure by directors and director candidates, new by-laws respecting information certificates, etc.).
- These by-laws will require a confirming vote from the owners of a majority of units present or represented by proxy at a meeting of owners.

XX. Record-keeping and Access to Records

These matters have been completely revised. The amendments to the *Condominium Act* specifically confirm that condominiums may retain records either in paper or electronic format. Regardless of the format, the draft regulations establish the following primary retention periods for condominium records:

90 days

- Proxies and ballots (unless the Corporation receives written notice of actual or contemplated litigation to which the proxies/ballots relate within that timeframe)

7 Years

- Financial records
- Returns and notices filed with the Registrar
- Copies of status certificates
- Records received in relation to the new disclosure obligations of board members

- Records related to Board training
- Records related to employees
- Records related to specific units or owners;
- Records registered on title (including liens)
- Records related to common elements modifications
- Records related to litigation (7 years from the date on which the litigation concludes)
- Copies of expired warranties or guarantees (7 years from the date of expiration)
- Copies of reports from an engineer and/or architect Copies of expired insurance policies (7 years from the date of expiration)

Maintain at all times (forever!)

- Board minutes and minutes from owners' meetings
- Declaration, By-laws and Rules
- Documents turned over to the condominium by the declarant
- Copies of agreements entered into by the condominium
- Copies of all drawings and plans regarding the condominium property and/or assets
- Copies of existing warranties or guarantees
- Copies of existing insurance policies

For any other records not specifically mentioned in the regulations, those records must be kept for whatever period the Board deems necessary in order for the Corporation to perform its objects and duties.

The above-noted retention periods are considered minimum retention periods. These minimums can be extended if desired, and they **must** be extended in the event of contemplated or actual litigation, or where there is an outstanding request for records at the time that the minimum retention period draws to an end.

New Procedure to Govern Requests for Records

Step 1: The Request

The request must be made on a prescribed form, and it must identify the records requested and indicate preferred method of delivery (email, hard copy, or examination in person).



Step 2: The Board's Response

Within 30 days of receipt of the request, the Board must respond on a prescribed form, with an itemized estimate of the associated costs (if any), and identifying records that will **not** be disclosed, with an explanation.

Step 3: The Requester's Response

The requester responds to the Board, confirming which records he/she wishes to have, and including payment of the estimated cost.

Step 4: Access and Accounting

The Corporation delivers or provides access to the records requested (and paid for) by the requester. If the actual costs are more than estimated, the requester must pay the difference – but the difference cannot be greater than 10% of the estimate; if the actual costs are less than estimated, the Corporation must reimburse the requester for the difference.

Core Records

The regulations distinguish between “core” records (which are defined in the regulations, and are essentially the basic records of the condominium) and “non-core” records, for purposes of determining an owner's rights in relation to the particular records.

In general, core records must be made available on an expedited basis at a reduced cost. The timing and delivery of core records can be summarized as follows:

- If core records are requested in electronic format, they must be delivered either in electronic format or in paper form (at no charge) within 30 days of receipt of the request (i.e. within 30 days of Step 1); in other words, they would be delivered along with the Board's response in Step 2.
- If core records are requested in paper format, they must be made available for delivery/pick up within 7 days of the Corporation receiving the requester's response and payment in Step 3. The estimated cost must be limited to copying charges, at no more \$0.20 per page.
- If the requester makes a request to examine core records in person, the records must be made available for examination within 7 days of the Corporation receiving the requester's response and payment in Step 3. But in this case, the estimated cost can also include reasonable labour cost *during the examination*.

Non-core Records

For **non-core records**, the same four steps apply, but with different time periods and potentially different costs. Non-core records must be delivered or made available for access within 30 days of receiving the requester's response and payment in Step 3. In the case of non-core records, the estimated costs can include photocopying charges for paper copies (at no more than \$0.20 per page), and reasonable labour costs for the board to redact the record and to otherwise respond to the request. Some information in the corporation's non-core records is not available to be seen by owners. The draft Regulations include some additional detail about this “private” information. The draft Regulations also say that a request will be deemed to be abandoned in certain circumstances.

Possible Penalty

If a condominium, without reasonable excuse, does not permit a requester to examine or obtain copies of records, the condominium may be subject to a penalty of up to \$5,000. This is a significant increase over the \$500 penalty available under the current Act.

Enforcement

CAT now has jurisdiction to determine records disputes. [See the CAT Rules and Procedures on the CAO website.] A Small Claims Court claim is no longer the applicable procedure.

XXI. Returns – beginning January 1, 2018

Condominium corporations will be required to file initial, turnover, transitional and annual returns (and notices respecting changes) with the CAO. (Please refer the table on the next page for further details).

XXII. New Condominium Authority Tribunal (CAT)

For certain types of disputes, the new Condominium Authority Tribunal (CAT) will have jurisdiction over the dispute. Currently, CAT only has jurisdiction over disputes about **records**.

Part 3 - Still to Come

It is not yet known when most of these further amendments will come into force. That will be decided by the Province. But these further Amendments are expected to come into force within the next 1-2 years.

- No fines can be charged to Owners
- Unit entry without notice (in an emergency) only if Declaration or By-laws say so
- Possible to charge an owner for actual expenses, and to add those amounts to the owner's common expenses, if permitted by Declaration
- Shared Facilities Agreements to be mandatory in many cases
- Limits on legal rights of Declarants
- New procurement process (tendering) for certain contracts (to be prescribed)
- Various amendments respecting first year performance audits
- New procedures for Requisitioned Meetings
- Significant changes respecting Directors to be elected by “non-leased owners”
- Enhanced Disclosure Obligations for Declarants – including specifics about first year Reserve Fund budgeting. New Declarations also to say how Declarant arrived at common expense sharing
- More detail in relation to claims for First-Year budget deficits (including detail respecting calculations for phases of Phased Condominiums)
- Section 83 information (respecting tenants) to be provided in 10 days rather than 30 days
- Owners to be notified of budgets and certain budget overages
- Owner to be notified of specific additions to the owner's common

TYPES OF RETURNS TO BE FILLED WITH THE CAO

#	Item	Type of Return				
		Initial	Turnover	Annual	Transitional	Notice of Change
1.	Name of declarant	✓	✓		✓ (if no turn-over meeting)	
2.	Date of registration	✓	✓	✓	✓	
3.	Date of turn-over meeting		✓			
4.	Condo corporation name	✓	✓	✓	✓	
5.	Type of condo corporation (standard, common elements, etc.)	✓	✓	✓	✓	
6.	Condo corporation's address for service	✓	✓	✓	✓	✓
7.	Email address (optional)	✓	✓	✓	✓	✓
8.	Municipal address	✓	✓	✓	✓	✓
9.	Names of directors	✓	✓	✓	✓	✓
10.	Number of units *not applicable for Common Elements Condo Corporations	✓	✓	✓	✓	✓
11.	Maximum number of votes that could be counted at a meeting of owners	✓	✓	✓	✓	✓
12.	Name and address for service of condo manager and management firm, if any	✓	✓	✓	✓	✓
13.	Start and end dates of the corporation's fiscal year	✓	✓	✓	✓	
14.	Date of last AGM			✓	✓	
15.	Information about court-appointed administrator, if any			✓	✓	✓
16.	Information about court-appointed inspector, if any			✓	✓	✓
17.	Termination of the condo corporation in certain cases					✓

- expenses; Owner then to have a prescribed procedure to challenge this (if desired)
- Changes relating to Repair and Maintenance obligations, including new Definitions of Repair and Maintenance
- Reserve Funds: Additional permitted purposes; Specific Definition of “Adequate”; Expert opinion required if Reserve Fund balance falls below a certain prescribed amount
- Common Element Modifications: Revisions to “minor changes” that fall within Board’s authority; Also details about calculating the “cost” of a change
- Insurance Deductibles: Insurance Deductibles By-laws to be ineffective; Will require an amendment to the Declaration – Existing By-laws might be grandfathered.
- New prescribed Standard Unit Description (for condominiums that have no description)
- Clarification respecting permitted investments (CDIC requirement)

- Unreasonable noise prohibited (by the Act). Other unreasonable disturbances may also be prohibited by regulation
- New prescribed mediation and arbitration procedures (where corporation has not established procedures by by-law)
- Arbitration awards to be made public
- Court orders (for compliance): Clarification of rights to winning party to costs
- Increased penalties for Offences under the Act
- TARION – Conversions of existing buildings (to new homes) to be covered by Tarion ■

James Davidson is one of the founding partners of DHA and has been practicing condominium law for over 30 years. James represents condominium corporations, their directors, owners, and insurers throughout Eastern Ontario. His experience also includes building deficiencies, shared property interests, co-ownership and construction law. Jim is proud to be an associate (ACCI) and also a fellow (FCCI) of the Canadian Condominium Institute.