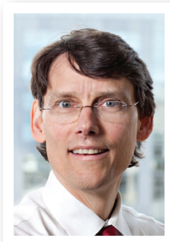
Amendments to the *Condominium Act:* Phase 1 of The New Regulations



By James Davidson
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I begin with the following recap: Extensive amendments to the *Condominium Act, 1998* ("the Act") have received Royal Assent, and are now just waiting to be proclaimed in force. But before the amendments can be proclaimed in force, the province must pass new Regulations that will contain additional detail contemplated by the amendments.

To somewhat complicate matters, we're told that the Regulations will be passed in ***phases***; and we're therefore assuming that the amendments to the Act will also be proclaimed ***in phases*** (each phase comprising sections of the Act covered by the particular phase of new Regulations).

The province has now published a draft of the **first phase of the new Regulations**. They can be found at:

www.ontariocanada.com/registry/showAttachment.do?postingId=23688&attachmentId=33910

The province has also published a summary of the draft regulations. The summary can be found at:

www.ontariocanada.com/registry/showAttachment.do?postingId=23688&attachmentId=34032

Before continuing, I should also note that CCI and others are suggesting some revisions (to these draft Regulations), so we may well see some changes (if the Ministry can be persuaded). But for now, I think it makes sense to assume that the new Regulations will be pretty similar to these draft Regulations.

The key topics covered by the First Phase are as follows:

- Notices from corporations to owners and mortgagees
- Required Disclosure by Directors and Director Candidates
- Mandatory Training for Directors
- New Procedures in relation to Meetings
- Quorum and Voting
- Voting Requirements for By-laws
- Record-keeping and durations
- Access to records

From a review of the draft Regulations, the target date for proclamation of this first phase appears to be July 1, 2017. In other words, it appears that the province plans for the first new Regulations, and the related sections of the Act, to come into force on July 1, 2017. Note, however, that many of the new requirements applicable to meetings will only apply to meetings held at least 40 days thereafter. The idea is that the new requirements should only apply to meetings if the entire meeting process – beginning with the preliminary notice – starts after the first phase becomes law.

In summary: The first phase of the amendments will likely come into force on July 1, 2017.

Here are some of the highlights:

Information Certificates (to be issued by condominium corporations)

Condominium corporations will be required to provide certificates to owners, containing specific information set out in the new Regulations.

The draft Regulations describe specific information to be provided by condominium corporations to their owners in the following certificates:

(a) Periodic Information Certificates ("PIC") – to be sent twice per fiscal year with various details related to the corporation including the address for service, insurance, finances, Board of Directors, reserve fund, etc.

(b) Information Certificate Update ("ICU") – to be sent upon certain "triggering" events. These "triggering" events may include changes to the address for service of the Corporation, changes to insurance, Board vacancies, etc.

(c) New Owner Information Certificate ("NOIC") – to be sent to new owners of a condominium unit with the most recent PIC and ICU that was sent to owners.

There is a **proposed exemption** from these requirements for condominiums with less than 25 units. The proposed exemption would allow small condominiums to obtain the consent of **80 percent** of the owners to dispense with these requirements.

A note about insurance deductibles by-laws

According to the draft Regulations, the information to be contained in a PIC must include the following:

> *If an insurance policy obtained and maintained by the corporation in accordance with the Act contains a deductible clause that limits the amount payable by the insurer, a statement that,*
>
> *(i) describes any such deductible clause, including the portion of a loss that would be excluded from coverage,*
>
> *(ii) clearly identifies, for any such deductible clause, the maximum amount that is to be added to the common expenses payable for an owner's unit under section 105 of the Act* ***or as a result of a by-law passed under clause 56 (1) (i) of the Act before the repeal of that clause came into force,*** *and*
>
> *(iii) warns owners of their liability as described in subclause (ii).*

Does this mean that insurance deductibles by-laws – passed before the amendments to the Act come into force – will remain effective? If not, why would there be any need for a condominium corporation to refer to them in the corporation's PICs?

This is unquestionably confusing. But in my view, the amendments to Section 105 of the Act are clear: Insurance deductibles by-laws will no longer be effective after the amendments to Section 105 come into force. But again, why then refer to insurance deductibles by-laws in the PICs? I think there may be two answers:

(a) Insurance deductibles by-laws will of course continue to apply to any insured events that occurred before the amendments come into force. Adjusting those "pre-amendment losses" may take some time; and

(b) The amendments to Section 105 may not be part of the planned First Phase. Therefore, insurance deductibles by-laws may still be effective for some time to come – ie. until Section 105 is ultimately amended.

We're checking with the province to see if we can get some confirmation on this.

Notices from corporations to owners and mortgagees

The Amendments include changes to the provisions respecting notices to owners and mortgagees.

The amended Act contains a new section (46.1) setting out the obligations of owners to give notice to the corporation of **the owner's name and unit** as soon as possible (and in any event not more than 30 days) after becoming an owner. The draft Regulations set out the various methods (generally prescribed statements) by which an owner can provide this information to the corporation. The amended Act also allows an owner to give an **alternative address for service** (different from the owner's unit).

The current Act says that owners can consent to receive notices **electronically**; but the draft Regulations refer to a specific new form by which owners would express this agreement.

The draft Regulations contain similar details in relation to mortgagees who wish to be included on the corporation's record and in relation to mortgagees agreeing to accept communications electronically.

Corporations will be required to maintain a record of names, unit numbers, addresses for service and indications of agreement to accept electronic communications. For existing owners and mortgagees, if the information in the corporation's current record is complete and accurate, the owner / mortgagee will not be required to provide a new notice.

Required Disclosure by Directors and Director Candidates

Directors and Director candidates will be required to disclose certain information about themselves and their families.

Directors and candidates will have new disclosure obligations. The timing and methods of disclosure may vary depending upon when the information is received by the director / candidate and depending upon the election or appointment procedure that is being followed in the particular case. Except as noted below, these obligations do not apply to "pre-turnover" directors. Here's what must be disclosed:

- If the candidate is a ***party to any active legal proceeding to which the condominium corporation is a party,*** this must be disclosed along with a general description of the proceeding.
- If the candidate's / director's ***spouse, child or parent, or spouse's child or parent is a party to any active legal proceeding to which the condominium corporation is a party,*** this must be disclosed along with a general description of the proceeding.
- If the candidate / director has been ***convicted of an offence under the Condominium Act or Regulations in the past 10 years,*** this must be disclosed. [This disclosure obligation also applies to pre-turnover directors.]
- If the candidate / director has an ***interest in a contract or transaction (other than as a purchaser, mortgagee or owner/occu-***

pier of a unit) to which the condominium corporation is also a party, or to which the developer (or a developer affiliate) is also a party, this must be disclosed along with certain details of the contract or transaction.

- If the candidate is a unit owner and his or her common expenses are in ***arrears for sixty days or more,*** this must be disclosed.
- Any additional disclosure obligations ***set out in the corporation's by-laws.*** [Such disclosure obligations can also apply to pre-turnover directors.]

Mandatory Training for Directors

One of the key changes is the introduction of mandatory training for Directors.

We know from Section 29 of the Amended Act that there will be mandatory training for condominium directors. The draft new Regulations don't tell us what the required training will be – only that the training will be designated by the Minister or by the new Condominium Authority (once created). However, the draft Regulations do say that:

- The ***cost*** of the training is to be ***covered by the condominium corporation.***
- The required training will ***not apply prior to turnover.***
- The required training will ***only apply to directors elected or appointed after the new training requirements come into force.*** [In my view, being "elected" would include being "re-elected".]
- New directors will have ***six months*** (following their election or appointment) to complete the required training.
- The training will be ***good for seven years.*** Thereafter, a director would have to "re-take" the training if he or she is again elected or appointed to the Board.
- The Condominium Authority will keep ***records of the persons who have completed the training.*** A condominium corporation will have the right to see those records respecting the corporation's own directors.
- A director who completes the training will also be required to send ***evidence of such to his or her condominium corporation(s).***

New Procedures in relation to Meetings

There will be some significant changes in relation to Board Meetings and Meetings of the Owners. For meetings of owners, the key change is the new requirement for delivery of a preliminary notice.

Owners' Meetings:

The amended Act and the draft Regulations require that corporations deliver a **preliminary notice of meeting** at least twenty days prior to the notice of meeting. The draft Regulations provide a detailed list of what must be contained in a preliminary notice, and they also refer to a **prescribed form for preliminary notices.** Some of the key items to be included in a preliminary notice are:

- A statement of the purpose of the preliminary notice.
- A statement of the purpose of the meeting, including any proposed changes to the Declaration, By-laws, Rules or Agreements to be discussed at the meeting.
- The projected date of the meeting.
- A statement respecting the additional material from owners that may be included in the notice of meeting (and the circumstances by which that material can be included in the notice of meeting – ie. by way of a submission from owners who own 15% of the units).
- Details respecting elections to be held at the meeting, and respecting steps to be taken by candidates for election (in order to be included in the notice of meeting).
- Details respecting removal or appointment of an auditor (if included in the meeting business), and steps by which an owner can propose someone for auditor (ie. for the proposal to be included in the Notice of Meeting).
- Details respecting a proposed change to the common elements (if the meeting is being called as a result of a requisition under Section 97 of the Act to consider a proposed change to the common elements).
- Details respecting any proposed amalgamation to be considered at the meeting.

Note, however, that the Regulations say that the requirement for a preliminary notice does not apply if the purpose of the meeting is to fill vacancies on the Board when the Board is without a quorum.

Note that this requirement for a preliminary notice of meeting **will also apply to requisitioned meetings.** So, for a requisitioned meeting, the timing will be as follows:

- The Requisition is received;
- Within 10 days of receipt of the requisition, the Board must respond to the requisitionists (as to whether or not the Board will call the meeting). [If the Board's response expresses concern about the calling of the requisitioned meeting, this may prompt further dialogue between the Board and the requisitionists.]
- Assuming the meeting request is proper, the Board must then call and hold the meeting within 40 days after the above-noted 10-day response period.
- This gives the Board five days (following the 10-day response period) to prepare and deliver the preliminary notice of meeting.

We're also told that the changes to Section 46 of the Act (respecting requisitions) **won't be included in the first phase of the amendments.** So, the current 35-day period to call and hold a requisitioned meeting will continue to apply (for some period of time). Therefore, during this "transition period" the draft Regulations say that the preliminary notice – for a requisitioned meeting – must be sent 15 (not 20) days before the actual notice of meeting (giving the Board five days following receipt of a requisition to prepare and deliver the preliminary notice!).

The Regulations also contain a detailed list of what must be contained in the actual Notice of Meeting (including a meeting called to fill vacancies where there is no quorum on the Board); and again refers to prescribed forms for such notices.

Board meetings:

Boards will be entitled to hold Board Meetings by **teleconference or other method of concurrent communication** (without any requirement for a by-law to authorize this).

Quorum and Voting

For many meetings of owners, the quorum requirement will be reduced (after two unsuccessful attempts).
There will be a prescribed proxy form.
Owners will in many cases be entitled to a secret vote.

Under the proposed Regulations, quorum for the ***third attempt*** to hold a meeting will be reduced to 15% for the following types of meetings:

- **AGMs**
- **Turnover Meetings**
- **Any meeting to appoint a new Auditor**
- **Any meeting to elect Directors**

Condominiums will also be deemed to have a standard by-law provision stating that owners voting by ballot, by proxy or by telephonic or electronic means must always be permitted to vote **secretly** – without revealing their names or unit numbers. (It will only be possible to amend this standard by-law provision after turnover.)

There will also be a mandatory proxy form (which has not yet been included in the Regulations).

Voting Requirements for By-laws

For some types of by-laws, the required voting approval will be less onerous.

For some new types of by-laws, there will be a lower voting approval requirement. These new types of by-laws can be approved by a **confirming vote from the owners of a majority of units present or represented by proxy at a meeting of owners.** This applies to by-laws:

1. To add information to be included in a periodic information certificate, an information certificate update or a new owner information certificate.
2. To specify more frequent time periods for sending a periodic information certificate.
3. To specify additional disclosure obligations under subsection 29 (1) (f) and 29 (2) (f) of the *Condominium Act*, and any related time periods for those additional obligations.
4. To govern the manner in which required information is presented at a meeting of owners, and identifying additional material to place before the owners at the meeting.
5. To govern the manner in which an individual may notify the board under clause 45.1 (1) (a) of the act, and the manner in which an owner may provide material to the board under clause 45.1 (1) (b) of the act.
6. To govern additional materials that are to be included in a preliminary notice or notice of meeting sent by the condominium corporation.
7. To specify the method of electronic communication the condominium corporation can use in relation to communication by the corporation under the *Condominium Act* and the accompanying regulations.
8. To govern the manner in which an owner may be present at a meeting of owners or represented by proxy.
9. To allow for voting by telephonic or electronic means under s. 52(1)(b)(iii) of the *Condominium Act*.
10. To specify additional records that must be maintained and to increase required retention periods.

Record-Keeping and Durations

Section 55 of the amended Act specifically says that condominiums may retain records either in paper or electronic format. The draft Regulations contain additional detail about how records are to be kept using either method.

Regardless of the format, the draft Regulations establish the following minimum retention periods for condominium records:

(a) An unlimited retention period for fundamental corporation documents (all of which are specifically listed in the draft Regulations).

(b) A 7-year retention period for most financial and operating records (which are again specifically listed in the draft Regulations);

(c) A 90-day retention period for proxies, ballots and recorded votes from meetings of owners.

In summary: The draft Regulations specifically list the retention periods applicable to most of the corporation's records.

For any other records not specifically mentioned in the Regulations, the records must be kept for whatever period the Board deems necessary in order to fulfill the corporation's objects and duties.

The corporation can, of course, retain a record for a longer period of time, if desired; and **must** retain relevant records in the event of contemplated or actual litigation, or where there is an outstanding request for records when the minimum retention period draws to an end.

Access to Records

There will be a new, detailed protocol for owners to gain access to corporate records; and for payment of related costs to the corporation.

The amendments to the Act and the draft Regulations establish an entirely new framework for accessing the corporation's records.

The draft Regulations confirm that **owners, purchasers and mortgagees** (or their agents) have the right to request records from condominiums. While a requester is required to declare that the request for records is "solely related to their interest as an owner, a purchaser or a mortgagee of a unit", **they are otherwise not required to state the reason for the request.**

There are four main steps for accessing records, summarized as follows:

(a) **Step 1: The Request**
- The request must be made on a standardized form (to be established by the Ministry), and it must identify the records requested and indicate preferred method of delivery (email, hard copy, or examination in person).

(b) **Step 2: The Board's Response**
- Within 15 days of receipt of the request, the Board must respond on a standardized form (also to be established by the Ministry), with an itemized estimate of the associated costs (if any), and identifying records that will **not** be disclosed, with an explanation.

(c) **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.

(d) **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.

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 establishing the applicable timing for completion of the above-noted steps and for the related costs.

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

- o If core records are requested in electronic format, they must be delivered either in electronic format or in paper form (at no charge) within 15 days of receipt of the request (i.e. within 15 days of Step 1); in other words, they would be delivered along with the Board's response in Step 2.
- o 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.
- o If the requester makes a request to examine 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.*

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.

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 $5,000.00. This is a significant increase over the $500 penalty available under the current Act.

Similar to the current Act, an owner may enforce payment of the penalty through the Small Claims Court. The contemplated amendments to the Act also specifically confirm that the Small Claims Court has the jurisdiction to order production of documents where appropriate.

Conclusion

My concluding note is as follows: There are many changes coming; and there will be lots more work to do, at least until we're all comfortable with the new procedures. ■

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THE NEWSLETTER OF THE CANADIAN CONDOMINIUM INSTITUTE/INSTITUT CANADIEN DES CONDOMINIUMS

National News

Fall 2016

Message from the President

BY BILL THOMPSON, BA, RCM, ACCI, FCCI
CCI NATIONAL PRESIDENT

You know that feeling that you get when you arrive home after an extended vacation? You know the one that I am talking about. You feel excited to be home, yet sad that the vacation is over. You know that you have a million things to do, and that reality is just around the corner. You are excited to tell your friends and family about your adventures, yet disappointed that the adventure had to come to an end.

I can only imagine that this is very similar to the feelings that must be racing through Geoff Penney's and Peter Harris' minds. They have been on an adventure with CCI. They have challenged their comfort zones and pushed their limits while serving on the National Executive for CCI.

This AGM, their adventure on the National Executive is coming to an end. Both Gentlemen (and they truly are gentlemen), will be stepping off of the Executive at the end of an extremely long and dedicated tenure, leading CCI through its rebirth and transformation from the original model, to the new streamlined Executive. They have given their wisdom, their passion, their time and a large part of their lives for the benefit of the Canadian Condominium Institute, and for that we will always be in their debt.

Their extended adventure has taken them across the country to virtually every province and allowed them to meet and befriend so many people and have so many exciting adventures, that they must certainly be conflicted in their emotions right now. These gentlemen played hard, worked hard, and should be commended for their dedication, commitment and pure passion for CCI. Although they are leaving the National Executive, they are still valuable members and resources to CCI and will be called on often in the future I am sure. Thank you guys for everything that you have done, and will continue to do, in the best interest of CCI. It has been a pleasure working with you. You are both consummate professionals.

Another notable change coming up is the retirement of Diane Gaunt. Diane has been a foundational influence at CCI, having served CCI, first through Taylor Enterprises and recently through Association Concepts as our Executive Director. During Diane's time with CCI she has seen the growth of CCI from a fledgling association with barely a few chapters and membership counting in the hundreds, to today. Today we have sixteen chapters across the country and have members in virtually every province. Diane has been with us since there were perhaps ten thousand condominium units across Canada, to the current estimated 2.6 million units! She has seen us struggle to get in front of government and has helped us to become the leading resource for all things condominium to the public and government alike.

Her knowledge of our past has constantly been available to us to remind us where we have been, and that "the way has already been tried", when she saw us spinning our wheels in futile efforts. Her guidance and constant nudging have kept many Past Presidents on track, and kept our volunteer forces engaged and passionate for decades.

I want to thank Diane, on behalf of all of the members for the help and leadership that you have given to us over all of these years. Diane, we wish you happiness and exciting times in your retirement, but hope that you will drop in from time to time when you find yourself looking to reconnect with some of your friends.

I also want to remind everyone that we will be saying thank you to all of these CCI difference makers on Friday October 28th at the Awards dinner which will follow the Annual General Meeting in Collingwood. Please attend if you can, and thank these wonderful people in person.

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We are pleased to present the latest issue of the CCI National News (Fall Edition) for you to enjoy. The edition can be found in both print and web editions in PDF HERE.