

What Will Licensing of Condo Managers Look Like in Ontario?



By Rod Escayola
Gowlings WLG



Introduction

When Bill 106 (the legislation aimed at protecting condominium owners in Ontario) received Royal Assent on December 3, 2015, it set out to amend the existing *Condominium Act* but, as importantly, it also laid out a new licensing regime for condo managers. A year later, on December 17, 2016, the Province circulated its first set of proposed regulations to be adopted under the new *Condominium Management Services Act*. This regulation is still in draft form. Still, we are now getting a far clearer picture of the licensing process and licensing requirements of condo managers in Ontario.

MANDATORY LICENSING OF CONDO MANAGERS

Until now, property managers were not required to be licensed to provide their services. This will radically change once the legislation comes into force. When this happens (on a day to be set by the Lieutenant Governor), the new legislation will prohibit anyone from providing condominium management services unless they are licensed either as a Condominium Manager (for individuals) or as a Condominium Manager Provider (for a management “company”).

Someone who is not licensed as a condo manager (or as a condo manager provider) will not be authorized to directly or indirectly hold himself/herself out to be one and they will not be authorized to perform any of the functions of a condo manager. The prohibition against unlicensed individuals providing condo management services goes further. An unlicensed person will not be authorized to take any legal actions to claim any form of remuneration for condo management services. Basically, if you provide condo management services while unauthorized to do so, be prepared to have to do it for free... you may not be able to enforce the compensation clauses of the management contract if you are not licensed.

What are “Condo Management Services”?

To fully understand who this new licensing will apply to, we must first understand what is included in “condominium management services”, for which a licence is required. These services will include any of the following services provided to or on behalf of a condominium corporation:

- 1 Collecting or holding contributions to the common expenses or other amounts levied by, or payable to, a condo corporation;
- 2 Exercising delegated powers and duties of the corporation or its board of directors, including:
 - Making payments to third parties on behalf of the condo corporation;
 - Negotiating or entering into contracts on behalf of the condo corporation; and,
 - Supervising employees or contractors hired or engaged by the condo corporation.

Once the new regulations come into force, you will require a license to provide any of these services, unless you are exempt from licensing. More on who will be exempt further below.

There will be three kinds of licenses

The regulations presently contemplates three different types of licences:

- 1 The **General Licence**;
- 2 The **Limited Licence** (which will require some of the work to be done under the supervision of a supervising licensee);

3 The **Transitional General Licence** (which is set to assist in the implementation of the new licensing regime. These time-limited transitional general licences will be afforded to individuals with at least two years of demonstrable condo management experience and who are providing such services when the Act comes into force).

Let's unpack the specific distinctions and requirements of each of these licences.

THE LIMITED LICENCE

The purpose of a limited licence is to allow new condo managers to enter into the profession. In a nutshell, the limited licence will require that new condo managers work under the supervision of a supervising licensee for a period of at least 2 years before being able to apply for a general licence.

Limited licensees will only have 5 years to meet the requirements of a general licence as the limited licence will not be renewable beyond this period (unless not to allow a renewal would cause undue hardship to the licensee).

Limits of What a Limited Licensee Can Do

During the period of supervision, the condo manager under a limited licence will have to work within the following restrictions:

- The limited licensee will **not be allowed to enter into a contract or other agreement** on behalf of a condominium corporation without obtaining the prior approval of the supervising licensee;
- The limited licensee will not be allowed to manage, control or disburse monies from the corporation's **general fund** *without prior approval of the supervising licensee*;
- The limited licensee will not be allowed to sign a **Status Certificate** on behalf of a condominium corporation; and,
- The limited licensee will not be allowed to manage, control or disburse from the **reserve fund account**. This fund will be entirely out of reach of the limited licensee.

Who Can Apply For a Limited Licence?

In order to apply for a limited licence, the applicant will have to have successfully completed the educational and examination requirements. Unfortunately, the exact nature and extent of these requirements are not yet known but we know that the Registrar will be able to recognize prior programs of study, training, internship, courses as well as prior successful completion of examinations and tests or prior work experience.

Automatic Limited Licences

An automatically limited licence will be deemed to be granted to anyone who, at the time this legislation comes into force:

- has acquired **2 years or less** of demonstrable condo management experience; and,

- who was employed as a condo manager or was providing such services in the 3 months immediately before the coming into force of this law.

This deemed limited licence will continue to exist for a period of 150 days to give the manager sufficient time to apply for a limited licence (or a general licence if they meet the requirements). The Registrar may extend this 150-day period if not doing so would result in undue hardship to the applicant.

THE GENERAL LICENCE

In a nutshell, the general licence will be granted to condo managers who:

- 1** Have a limited condo manager licence (We have covered the limited licence above. In the future, these will be opened to managers with less than 5 years of experience);
- 2** Have successfully completed the educational and examination requirements. These have not been precisely fleshed out yet, but keep reading this article as you will see equivalencies and grandfathering provisions; and,
- 3** Have at least 2 years of condo management work experience under the supervision of a supervising licensee.

The required experience must include the following:

- Having planned and participated in meetings of the board of directors of a condo corporation;
- Having planned and participated in meetings of owners, including at least one AGM;
- Having participated in preparing a budget presented to the board of directors of a condo corporation;
- Having interpreted financial statements for a condominium corporation and having presented them to the board of directors;
- Having prepared and presented reports to the board of directors of a condo corporation; and
- Having overseen maintenance or repairs of units, common elements or corporation's assets.

Who Will be Grandfathered?

Condo managers will be exempt from these prerequisite requirements if, immediately before this new legislation comes into force:

- 1** The manager is a member in good standing of the **Association of Condo Managers of Ontario** as a Registered Condominium Manager; **or**,
- 2** The manager has successfully completed all of the following courses developed by ACMO:
 - Condominium Law;
 - Physical Building Management;
 - Financial Planning for Condominium Managers, and,
 - Condominium Administration and Human Relations.

In the future, someone who has held a general condo manager licence will be able to return to the profession without having to go through the limited licensing process if less than 2 years have passed since they held their general licence. This is to allow general licensees who have left the profession for less than 2 years to return to it.

Automatic Transitional General Licences

Existing managers will automatically get a **Transitional General Licence** if, at the time this legislation comes into force, they:

- has acquired more than 2 years of condo management experience (within a period of five years), and
- are employed as a condo managers and are providing condo management service to a client (or who was in the 3 months preceding the day the legislation came into force)

This transitional licence will continue to exist for at least 150 days. This period of transition will allow existing experienced condo managers to continue to act in this capacity while they apply to get the required licence under the new legislation.

The Registrar will be able to extend the transitional period if he is of the view that not doing so would cause undue hardship to the applicant. Otherwise, the transitional licence will expire. A condo manager will not be able to be on a transitional general licence for more than 3 years.

WHO IS EXEMPT FROM MANDATORY LICENSING?

While Ontario is imposing a strict licensing regime to anyone providing condo management services, there are exceptions under this new legislation. Indeed, under the proposed regulation, the following people will not be required to hold a licence:

- **Lawyers, architects, accountants, engineers and insurance brokers** authorized to offer these professional services and who are, indeed, providing such services;
- A **Reserve Fund Study provider** who is providing such a study;
- A **bank, credit union or caisse populaire**;
- A **receiver** appointed under the *Courts of Justice Act*;
- An **inspector** or **administrator** appointed under the *Condominium Act*;
- A **security guard** who is supervising an employee or contractor hired by the corporation or who is collecting/holding contribution to the common expenses provided that they promptly deliver the money to the corporation or to a licensed Condo Manager for the corporation;
- An **employee** of a licensed Condo Management Provider or of a condominium corporation who collects/holds contribution to common expenses, if the authority to collect and hold these contributions have been delegated to him/her in writing and if, promptly after receiving these monies, the individual delivers

them to the corporation or to a licensed condo manager for the corporation.

- A person exclusively providing repair or maintenance services, including landscaping services and cleaning services. This class refers to, amongst others, **superintendents**, concierges, custodians, etc.
- These individuals will not have to be licensed under the *Condominium Management Services Act* even if some of the services they render may otherwise fall under the definition of “Condominium management services”.

There are two additional very important exceptions to mandatory licensing: condo directors and self-managed corporations.

Condo Directors

Condominium directors, whether elected by the owners or appointed by the board to fill a vacancy, will not be required to be licensed, even if this person receives compensation for his/her work as a director pursuant to a by-law adopted by the corporation. However, it is important to note that any director who is providing condo management services in exchange for compensation or reward (or with the expectation of same) will be required to be licensed. At first glance, there may seem to be a contradiction in what I just stated. But stated otherwise, any director (paid or not) does not require to be licensed provided that they are not providing paid condo management services. The minute they do, they require a licence. It is therefore important, if you are a paid director to familiarize yourself with what constitutes condo management services to ensure you do not fall within the category of services requiring a licence.

Self-Managed condominium corporations

Similarly, self-managed condominium corporations will not be required to be licensed provided that the individuals managing the corporation do not receive compensation or rewards (and do not have any expectation of same). Basically, if you are paid or rewarded to manage the corporation, you need a license.

Conclusion

“Changes are coming”, as they say. Mandatory licensing will undoubtedly bring more credibility and reliability to those managers who are already working very hard and diligently. It will also certainly raise the bar for all the other ones. All in all, this will benefit countless community across the province.

This article was initially published in the CondoAdviser.ca and is reproduced here with permission. ■

Rod Escayola heads Gowlings’ Condominium Law Group. He is the editor of Gowlings’ condo law blog the Condo Adviser.ca. He also sits on the board of directors of his own condominium corporation.