FALL 2017

CONDOCONTACT

CREATING A VIBRANT, WELL-INFORMED EASTERN ONTARIO CONDOMINIUM COMMUNITY

A ROADMAP FOR THE AMENDMENTS

TO THE CONDOMINIUM ACT, 1998

Canadian Condominium Institute

CCI

Eastern Ontario Chapter

Institut canadien des condominiums

WE ARE PROUD TO ANNOUNCE THE OPENING OF

Davidson Houle Allen LLP Condominium Law

OUR LAWYERS VALUE THE MANY TERRIFIC YEARS OF SERVICE we have provided to our clients while at Nelligan O'Brien Payne LLP, one of eastern Ontario's most recognized law firms.

As of January 1, 2017, we are proud to continue on with this tradition of excellence at our new firm: Davidson Houle Allen LLP. Our experienced condominium law lawyers provide effective advice in the following areas:

- Interpreting the Condominium Act
- Construction Deficiency Issues
- Tarion Warranty Claims
- Litigation
- Mediation and Arbitration
- Corporate Governance
- Interpreting Declarations, By-laws, and Rules
- Co-tenancy and Joint Ownership Properties
- Enforcement Issues
- Liens / Power of Sale
- Human Rights Complaints
- Employment/Labour issues
- Financing and Loans

Davidson Houle Allen LLP
Condominium Law

EASTERN ONTARIO'S CONDOMINIUM LAW FIRM

Need advice? We have answers. **Ottawa 613-231-8359 | Kingston 613-531-7905**

Visit our Condo Law News Blog at: **davidsoncondolaw.ca**

KELLER ENGINEERING

YOUR CONDOMINIUM ENGINEERS

www.kellerengineering.com

613.224.1594

OTTAWA

107-1390 Prince of Wales Drive
Ottawa, Ontario, K2C 3N6

KINGSTON

202-4 Cataraqui Street
Kingston, Ontario, K7K 1Z6

FALL 2017

CONDOCONTACT

CANADIAN CONDOMINIUM INSTITUTE
CCI Eastern Ontario (CCIEO)

Canadian Condominium Institute
CCI
Institut canadien des condominiums
Eastern Ontario Chapter

P.O. Box 32001
1386 Richmond Road, Ottawa, Ontario K2B 1A1

Telephone: 613-755-5145

Fax: 613-755-4086

E-mail: info@cci-easternontario.ca

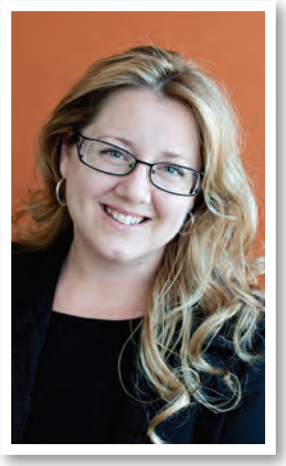
Website: CCI-EasternOntario.ca

Linked in: CCI Eastern Ontario

Twitter: @cciEastOntario

Operations Manager: Josephine Fitzgerald
Email: jfitzgerald@cci-easternontario.ca
Tel: 613-755-5145
Fax: 613-755-4086

INSIDE



Nancy Houle, LLB
President-CCI-Eastern Ontario
Lawyer/Avocate
Davidson Houle AllenLLP

As I look out my window while I prepare this greeting, I see fluffy white snowflakes. It makes me think of all the tremendous things we get to enjoy to during this wonderful winter season: skiing, skating, tobogganing, hiking, bonfires and hot chocolate, hockey games, and above all time with family and friends during the upcoming holiday season.

The winter season is also a great time for indoor education! With all of the exciting changes impacting our industry, this is the time for all members of our condominium community to work together to gain and share knowledge. There is no question that there is a lot to learn and grasp; however, that is why CCI EO is working hard to find ways to deliver effective and timely courses, sessions and seminars through these changes. If we all embrace these changes and work collectively to educate our community, we can be leaders in the implementation of these changes.

> **"We are also excited to announce that CCI EO was celebrated at the National Fall Leaders Forum"**

Following the recent AGM, the CCI EO Board of Directors is thrilled to welcome its newest member, Allen Scantland, and returning members Andrée Ball and Justin Tudor. At our recent strategic planning session, during which we set the seminars and topics for the coming year, we reviewed all of the recommendations received from our members over the past year. We hope that our members are pleased to see their suggestions and recommendations put into practice.

We are also excited to announce that CCI EO was celebrated at the National Fall Leaders Forum:

- CCI EO was awarded the Newsletter of the Year Award.
- Our very own Constance Hudak was the recipient of the prestigious Distinguished Service Award. The Distinguished Service Award was created to honor individuals who have made an outstanding contribution to CCI or the condominium community either at the chapter or national level. It is a national honorary designation to be awarded to thos e deserving individuals who, by their volunteer work or other achievements have brought distinction to CCI, exemplify the standards that CCI promotes and serve as a positive role model for others.

Your CCI EO Board looks forward to an exciting, and challenging, year!

I also take this opportunity to wish all of our members a safe, happy and health holiday season!

A LEVEL OF SERVICE
ABOVE THE REST

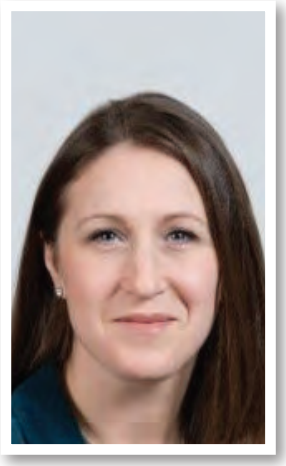
It's more than a condominium. It's one of your biggest investments – and your home. Shouldn't every aspect of it be of the highest quality?

For 40 years, ACMO has worked to improve the quality of the condominium management profession. With access to quality education and a strong network of professionals, condominium managers with the RCM designation provide a higher level of service to you, your fellow board members, and the industry as a whole.

Bring a higher standard home. Choose a manager with the Registered Condominium Manager designation. | ACMO.org

RCM

ACMO 40
CELEBRATING 1977-2017



Andrée Ball,
Director of Client Relations,
Keller Engineering

It finally happened! On November 1st, 2017, the *Condominium Act, 1998*, as amended by the *Protecting Condominium Owners Act, 2015*, came into force. It has been a long-anticipated and equally long-awaited change. How has this affected the thousands of condominium corporations which pepper the Eastern Ontario landscape? This jumbo issue of CondoContact pulls together articles written by prominent members of our condominium community in the hopes to assist our readers in understanding the principal amendments.

Let's start by talking about the Act itself. You may hear the Condominium Act referenced in several different ways: the new Act, the amended Act, the Condo Act, simply the Act, and possibly others. If you look at the online government version it is simply called Condominium Act, 1998, even with all the amendments. It will be titled as the Act throughout this publication.

The journey to November 1st 2017, has been a long and winding one, at times confusing. How did we get here? Where is here? Jim Davidson of Davidson Houle Allen LLP, have created **A Roadmap for the Amendments to the *Condominium Act, 1998*** to help guide Condominium Managers and Board Directors through the changes.

With all the amendments, it was inevitable. Mangers are now required to be licensed in order to manage condominium corporations. Who needs a license? When do they need a license? How does one get a license? In our first in depth look at one of the amendments, **Mandatory Licensing for Condominium Managers**, Rodrigue Escayola from Gowlings WLG provides the who, the when, and the how, and the how much, of mandatory licensing.

There are new disclosure requirements for candidates running for the Board of Directors. Kati Aubin and Richard Elia from Elia Associates, explore the four main disclosure points in **Enhancement of Director Disclosure**. They explain why candidates seeking election or even re-election to the Board need not be leery of these disclosures.

From affordable dispute resolution to board director training, the CAO is here to help. But what is CAO? Who is CAT? Jocelyn Duquette from Gowlings WLG provides us with a comprehensive look into The Condominium Authority of Ontario and the services they provide to protect the condominium community.

In **Chargebacks: Are they – or will they be – permitted?** Jim Davidson and Victoria Craine from Davidson Houle Allen LLP, explore if the current wording of the indemnification provisions commonly found in condominium declarations will allow chargebacks to be added to an owner's common expenses. Will your Corporations need to consider an amendment to its declaration?

With the amendments of the Act came new procedures for owners' meetings along with additional deadline dates. Up to 5 days… Within 10 days… At least 20 days… it can seem very confusing. But don't agonize over this, Kati Aubin and Richard Elia from Elia Associates provide us with easy to follow guidelines in **Changes to the Unit Owners Meetings – New Timelines and Procedures**.

You asked, we answered. In **So Many Changes! So Many Questions! Q&A with Kim, Constance and Christy** the questions submitted by you, our readers, are answered. But it doesn't stop here, keep your questions coming for future publication.

And lastly, something heartwarming. Many of you are familiar with the remarkable work carried out by Habitat for Humanity but did you know that they in the midst of building their very first condominium corporation in Orleans? Alexis Ashworth, CEO of Habitat for Humanity, explains in Habitat for Humanity: **Every Hand Makes a Difference** why this is more than a condominium corporation, it's a community, a home for the Fitzsimmons, Moustabchir, Aningmuiq and El-Hajj families.

Grab yourself a coffee or tea and settle into your favorite chair…enjoy the read.

Contributing to CCI Condo Contact Editor's Contact Information

A benefit of CCI membership is the opportunity to share perspectives with one another by contributing and reading articles in CCI-Eastern Ontario's quarterly newsletter *CondoContact*.

If you are a condominium director, owner or manager, and have a unique tale to tell or advice to relay to other condominium boards, let us know! If you are a professional or represent a trade company offering services or products to condominiums and have a relevant article, let us know! The subject matter should be current, concise and helpful. Topics should relate to management and operation of condominiums and not be of a commercial nature.

ARTICLES MAY BE FORWARDED TO:

The Editor
CondoContact
Canadian Condominium Institute, Eastern Ontario Chapter

P.O. Box 32001
1386 Richmond Road
Ottawa, ON K2B 1A1
OR Email:
info@cci-easternontario.ca

Special Limited Time Promo Pricing on Cardiac Science Powerheart AEDs

Powerheart® G3 Plus

The Powerheart AED G3 Plus is ideal for lay rescuers to use in public access defibrillation areas such as schools, athletic fields, and workplace environments.

MSRP $1795

Powerheart® G5

The Next Big Thing in Defibrillation

The Powerheart G5 is the first AED that combines RescueCoach™ prompting, fast shock times and variable escalating energy.

MSRP $2395

POWERHEART G3 Plus Package Price: $1,395 ENTER PROMO CODE: **AEDLC-10939** AT CHECKOUT

Bonus!

An Intellisence ICPR feedback device included a $229 value!

POWERHEART G5 Package Price: $1,995 ENTER PROMO CODE: **AEDG5** AT CHECKOUT

Canadian Red Cross eShop

For order information please contact:

F.A.S.T. Rescue Inc.

sales@fast-rescue.com

www.products.redcross.ca

POWERHEART AEDs come with:

- A soft carry case
- A second set of adult electrodes
- Rescue Ready response kit

(scissors, razon, mask, gloves, software, connection cable & training CD rom)

"Everything you need to be rescue ready!"

The only devices to combine:

- Variable escalating energy
- Daily self tests
- Automatic shock delivery
- Realtime CPR* coaching

**2015 Resuscitation Guidelines*

CARDIAC science™

To purchase, please visit: **products.redcross.ca** **While quantities last!*

*Lease Payment reflects a term of 48 equal payments of $49.99 + taxes with a $10.00 buy-out at end of lease agreement. *POWERHEART G5 Models ONLY

Contact F.A.S.T. RESCUE at 866.706.7283 for:

Defibrillator training, on-site and online safety training and safety supplies

www.fast-rescue.com

A Roadmap for The Amendments to *The Condominium Act, 1998*

Jim Davidson,
Davidson Houle Allen LLP

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 *unassisted* 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:

    a. the balance of the reserve fund (information from para. 13 of the status certificate);

    b. 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);

    c. the anticipated expenditures to be made from the reserve fund for the remainder of the current fiscal year; and

    d. 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

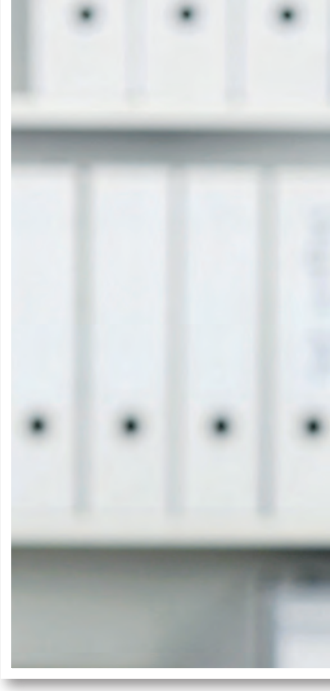
#	Item	Type of Return				
		Initial	Turnover	Annual	Transitional	Notice of Change
1.	Name of declarant	✓	✓		✓ (if no turn-over meeting	
2.	Date of registration	✓	✓	✓	✓	
3.	Date of turn-over meeting		✓			
4.	Condo corporation name	✓	✓	✓	✓	
5.	Type of condo corporation (standard, common elements, etc.)	✓	✓	✓	✓	
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.

By Rod Escayola
Gowlings WLG



Mandatory Licensing for Condominium Managers

As most of our readers already know, Managers now require to be licensed to manage Condominiums. This new mandatory licensing is overseen by the new Condominium Management Regulatory Authority of Ontario. In this article, we will speak of this new licensing.

THE NEW CONDOMINIUM MANAGEMENT REGULATORY AUTHORITY OF ONTARIO

As part of the province-wide changes to how the condominium industry is regulated, the province has set up a new regulatory body to oversee condominium managers and managements firms. This new body, called the Condominium Management Regulatory Authority of Ontario (the CMRAO), is a self-funded, non-profit corporation. The CMRAO will:

- ✓ Licence managers and management providers,
- ✓ Oversee education requirements; and
- ✓ Oversee and manage complaints against managers (including complaints pertaining to breaches to a new Code of Ethics).

These new standards will enhance the integrity of this important part of the condominium industry and will help enhance trust in condominium management services.

The CMRAO became fully functional on November 1st, 2017.

MANDATORY LICENSING

One of the main purpose of the CMRAO is to oversee the licensing of Condominium Managers. While licensing was made mandatory on November 1st, 2017, managers will have until January 29, 2018 to apply for a licence. In essence, we are now within a period of transition leading us to fully mandatory licensing. It will be illegal to provide condominium management services without a licence as of January 30, 2018.

What is management?

To fully understand the requirement to be licensed, it is best to first start by defining what is condominium management. Condominium management includes any of the following services provided to, or on behalf of, a condominium corporation:

- ✓ Collecting or holding contributions to the common expenses (or other amounts levied by or payable to the corporation);
- ✓ Exercising delegated powers and duties of the corporation or its board of directors, including:
  - o making payments to third parties on behalf of the corporation;
  - o negotiating or entering into contracts on behalf of the corporation;
  - o supervising employees or contractors hired or engaged by the corporation.

Anyone providing any of the above services to a condominium corporation in exchange for compensation will require a licence. This reference to receiving compensation is important. Indeed, self-managed corporations, for instance, when involving individuals who are not being paid for these services, do not require a licence.

Who is exempt from this mandatory licensing?

While Ontario is imposing a strict licensing regime to anyone providing condominium management services, there are exceptions under this new legislation. Indeed, 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 Condominium Manager for the corporation;
- ✓ An employee of a licenced Condominium 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 licenced Condominium 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* while providing services in their professional capacity, 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.

Condominium Directors

Condominium directors, whether elected by the owners or appointed by the board to fill a vacancy, will also not be required to be licensed. However, it is important to note that any director who is providing condominium management services in exchange for compensation or reward (or with the expectation of same) will be required to be licensed.

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 licence.

Managers applying from another jurisdiction

Individuals with an equivalent condominium management licence from a jurisdiction outside of Ontario may also be exempt from some of the licensing requirements.

WHICH LICENCE TO PICK?

Managers applying for a licence have three options. They can apply for one of the following licence:

- ✓ A general licence
- ✓ A transitional general licence
- ✓ A limited licence

Please see below what are the licensing requirements for each of these licences. To facilitate your review of the following requirement, feel free to consult our flow chart on next page.

The General Licence

The General Licence is for managers who have two or more years of condominium management experience and have completed the educational requirements. Managers need to have provided condominium management services in the 90 days preceding November 1st, 2017 to be eligible to apply for a General Licence.

Required Experience

For a manager's experience to be recognized as valid, it needs to include:

- ✓ Planning/participating in board meetings and AGMs;
- ✓ Preparing budgets;
- ✓ Interpreting financial statements;
- ✓ Presenting to boards; and
- ✓ Overseeing the maintenance and repairs of units, common elements, assets.

Required Education

To satisfy the educational requirements, managers need to have met one of the following three options:

Option 1: The manager must have successfully completed the four courses developed by the Association of Condominium Managers of Ontario (ACMO) as a pathway to its Registered Condominium Manager (RCM) designation:

- ✓ Condominium Law
- ✓ Physical Building Management
- ✓ Financial Planning for Condominium Managers
- ✓ Condominium Administration and Human Relations.

Option 2: The manager must have successfully completed ACMO's RCM exams.

Option 3: The manager must have five or more years of condominium management experience and must have successfully completed ACMO's four challenge exams.

Managers can take these courses through Mohawk College, Humber College or George Brown College. Managers can also take these courses with any condominium management provider (i.e. a management firm) they are employed by and that is authorized by ACMO to offer such courses.

There may be some equivalencies

Please note that, in place of the four courses listed above, the CMRAO Registrar may recognize as equivalencies:

- ✓ Prior work experience;
- ✓ Prior successful completion of exams or tests; and
- ✓ Prior completion of courses, internships, programs of study, seminars and training programs.

The General Licence will have to be renewed on a yearly basis and is expected to cost $607 per year.

The Transitional General Licence

The Transitional General Licence is for managers who have two years or more of Condominium management experience but have not yet completed the educational requirements. Under this licence, managers will be allowed to do the same work as under a General Licence. Managers who are granted a Transitional General Licence will have up to three years to complete the education requirements and apply for a General Licence.

To satisfy the education requirement, these managers will need to either successfully complete the four ACMO courses listed above or to successfully complete the four ACMO challenge exams.

The Transitional General Licence will have to be renewed on a yearly basis and is expected to cost $607 per year. Here again, the initial licensing fee will costs $405 to cover the first 8 months until June 30, 2018.

The Limited Licence

The Limited Licence is for managers who have less than two years of condominium management experience in the last five years. As soon as managers with a Limited Licence have two or more years of condominium management experience and once they have fulfilled the education requirements, they will be able to apply for a General Licence.

Managers with a Limited Licence will need to work under the supervision of a manager with a General Licence or with a Transitional General Licence. There will also be limitations to what a Limited Manager can do.

The Limited Licence will have to be renewed on a yearly basis and is expected to cost $379 per year. Here again, there will be an 8-month prorated initial licensing fee in the amount of $253, which will cover the fees until June 30, 2018.

LICENSING OF CONDO MANAGEMENT PROVIDERS

Management providers also need to be licensed. When applying for a Management Provider's licence, the applicant will need to provide:

- ✓ The **legal name** of the business and name of the company's designated Principal Condominium Manager. The applicants will also need to list each person who owns or controls 10% or more of the shares in the corporation. If the provider is a partnership, the applicant will need to list all partners;
- ✓ The **mailing address, email address** and information related to any dwelling that is used to carry-out the management business;
- ✓ The applicant will have to provide **information** and documentation on any bankruptcies, unpaid judgement, employment terminations, status of licences, charges, findings of negligence or any current investigations for each director or officer of the management provider (or for each partner)

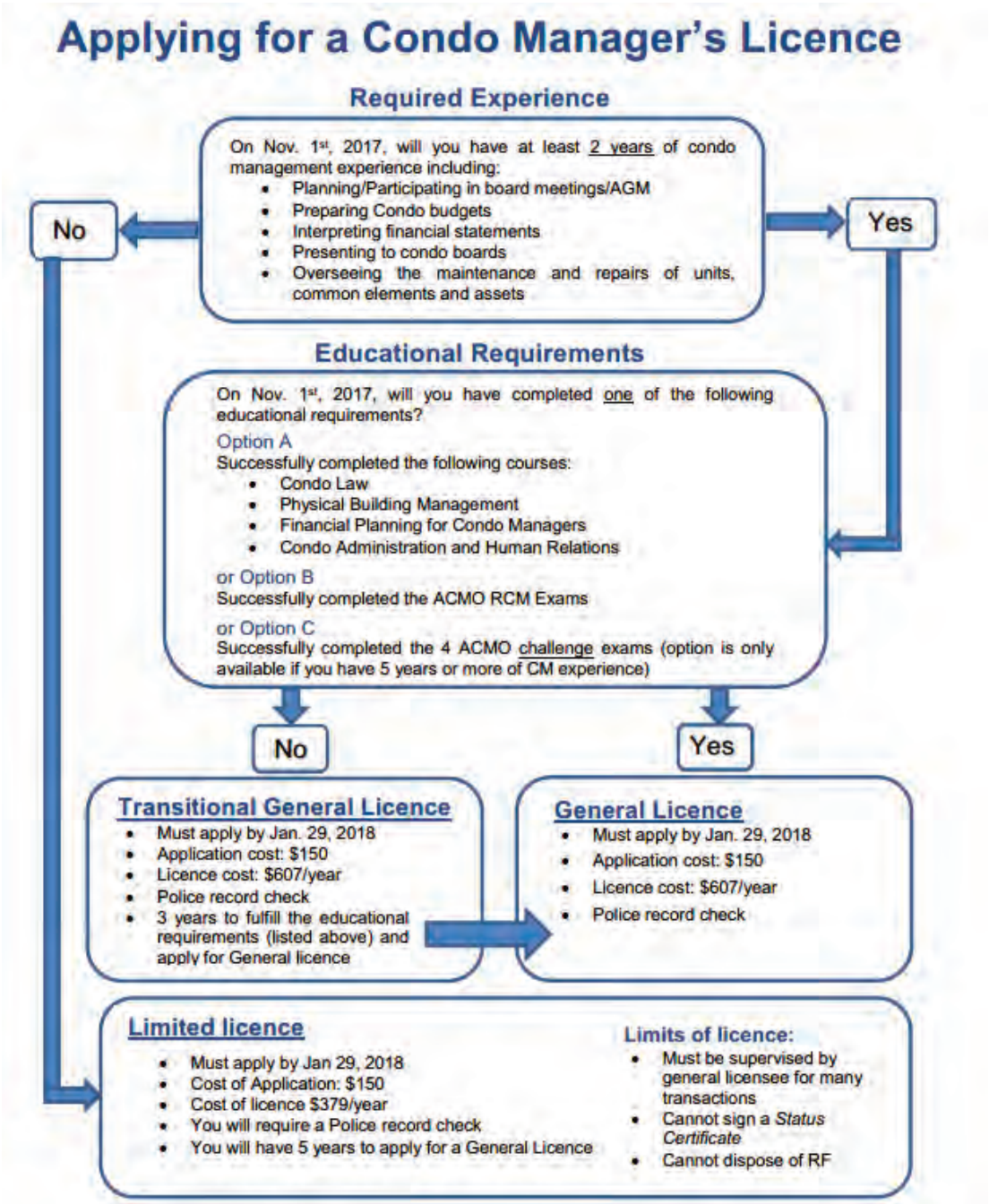
The cost to hold a Management Provider Licence will be calculated as follows:

- ✓ $150 for the application
- ✓ $799 plus $350 per year for each licensed employee

As was the case for the other licences there will be an initial pro-rated fee for the first 8 months.

How to apply for a licence

All applications are done online through the CMRAO website (http://www.cmrao.ca/).



Managers must create an account, select the licence they wish to apply for, complete the application forms and pay the application fee. Expect each application to cost $150.

The CMRAO staff will review applications to ensure that managers meet all requirements of the licence they are applying for. If the manager meets these requirements, he or she will be advised to log back in and pay the annual licence fee applicable to their licence. Upon receipt of the required payment, the CMRAO will issue and send in the manager new licence.

It is recommended that managers regularly visit the CMRAO's website, as it will be the best and most reliable source of information relating to its role as the authority overseeing Condominium managers and management firms.

MANAGERS WILL NEED TO PROVIDE A RECENT POLICE CHECK

Regardless of the licence a manager applies for, he or she will need to provide a recent police check.

The Ottawa Police services offers a choice between online and in-person applications. They strongly encourage online applications. Regardless of the option you pick, you will be required to provide two pieces of government issued ID, showing your photograph and signature, as well as your full name and date of birth.

Continued on page 22...

DUCT CLEANING

ADVANCED AIR QUALITY

A family business you can trust.

DUCT CLEANING • MAKE-UP AIR SYSTEM CLEANING

ROBOTIC VENTILATION SYSTEM INSPECTIONS

613-831-9695

www.advancedairquality.ca ***ducts@advancedairquality.ca***

DRYER VENT CLEANING

ADVANCED AIR QUALITY

A family business you can trust.

DRYER FIRE STATS

- There are over 15,500 dryer fires per year in North America
- Yearly dryer fires in North America result in over 88 Million Dollars in damages
- There are over 300 injuries due to dryer fires annually
- There are over 15 deaths due to dryer fires annually

DRYER VENT CLEANING • DRYER VENT INSPECTIONS

BATHROOM EXHAUST CLEANING

613-831-9695

www.advancedairquality.ca dryers@advancedairquality.ca

Online Application

The online application is accessible 24/7. To use the online process, you are required to have a bank account and a credit history. The Ottawa Police services uses Equifax to verify your identity through your credit information.

The Ottawa Police offers three levels of criminal record background check. Managers require a "Level 2 check", which includes a criminal record and judicial matters check. Managers should expect this to cost approximately $65 (with a surcharge if they are a Gatineau/Hull resident). You will be required to create an online account to apply for a police check online.

In Person Application

To apply in person, managers need to go to 2670 Queensview Drive, from Monday to Friday, between 7:30 am to 5:30 pm. The cost for an in-person application is about the same. You should download and complete the form prior to attending the service centre.

Online through the CMRAO

Last month, the CMRAO announced that it has partnered with Sterling Talent Solutions to offer a convenient online criminal record check solution. Managers who opt to avail themselves of this service, can complete their criminal record checks online. The cost is $19.80 + taxes, which can be paid by credit card. The results will be processed and releases within one business day. It is unclear at this time whether this option is only available for GTA residents.

Please note that, the results of a manager's check, obtained online through the CMRAO in this manner, will be released and shared with the CMRAO at the same time as they are released to the manager. Managers who use this option will not need to mail in their police record check.

We are living in interesting times. This mandatory licensing for managers, coupled with mandatory training for directors and all of the tools and information available to condominium owners will significantly improve the protections in place for condominium owners. ■

Rod Escayola is a partner at Gowling WLG focusing his practice on condominium law. Rod is also a director at his Condominium and the co-founder of the Condo Directors Group, which provides directors with a forum to network and learn from each other. The preceding article is adapted and reprinted with permission from CondoAdviser.ca.

Enhancement of Director Disclosure

By Kati Aubin
Elia Associates

By Richard Elia
Elia Associates

"If you tell the truth, you don't have to remember anything." – *Mark Twain*

The first reaction most of us have when told that we need to reveal potentially sensitive personal information is to tell the person to, in so many words, mind their own beeswax. The problem is that when you are a director of a condominium corporation, your beeswax can impact the condominium corporation in untold ways and is, therefore, no longer, necessarily, your own personal concern. Director disclosure can mean the difference between a condominium corporation making the right decision for the condominium and making the right decision for a director; the former is the goal, the latter can constitute fraud.

Existing director disclosure and conflict of interest requirements in the *Condominium Act* (the "**Act**") are, to put it bluntly, next to useless. Currently, directors are required to disclose a material interest in a material contract (whatever that means), and even then, only when that material contract is considered by the Board. This standard requires no further disclosure to fellow Board members or to owners – no listing of why they are interested in sitting on the Board, what their goals are for the condominium, whether they are in conflict with the condominium – and can lead to unexpected, protracted, and costly litigation when true motives are uncovered.

Take, for example, the decision of *Skyline Executive Properties Inc. v Metropolitan Toronto Condominium Corp. No. 1385*, 2002 CarswellOnt 5670. In that matter, Skyline owned a number of units at the condominium and was involved in the short-term rental business. This was contrary to the condominium's declaration which prohibited such arrangements. Skyline made several attempts to get elected to the Board and, as the condominium corporation alleged, was attempting to get on the Board to block the enforcement of this provision. As the Act was drafted at the time, Skyline was not required to make any disclosures prior to running for the Board regarding its material interest in the running of the condominium, nor was it required to disclose its interest in the ongoing litigation. With the director disclosure changes in the Act, this kind of situation is not necessarily prevented, but the new duties of disclosure would have required Skyline to make voting owners aware of the conflict before running for the Board.

There are four main points of disclosure required under the new Act:

1. Whether the individual, their spouse, child, or parent, is party to any legal action where the condominium corporation is also a party;
2. Whether they have any direct or indirect interest in a contract or transaction to which the corporation is a party; and
3. Whether they have been convicted of an offence under the Act within the 10 years preceding their candidacy;

4 Whether they are in arrears of their common expenses for sixty (60) days or more.

As you may have guessed from the language above, this disclosure needs to happen in advance of announcing an intention to run for the Board. When the pre-notice for owners' meetings or the AGM goes out calling for candidates for the Board, make sure that the pre-notice highlights the fact that disclosure needs to be submitted along with candidacy/biographies. This will ensure that when the notice of meeting goes out, disclosure goes out along with the names of the candidates. Candidates need to know: **no disclosure = no candidacy!**

In the event that you have someone announcing their candidacy at a meeting, rather than in advance, that does not exempt them from the disclosure obligations; they will simply need to make their disclosure at the time of the announcement, whether orally or in writing. This, of course, begs the question about the person who actively and/or forcefully solicits proxies for their election to the Board without announcing their candidacy through the Notice of Meeting. This person would only be required to make their disclosure in person at the meeting and not in advance – the way the Act is worded, this would be legal, but seems to skirt the objective of these changes, which is to give advance notice of potential conflicts so that voting owners can make informed decisions about who to vote for. If the disclosure is made orally at the meeting, it would be best to ensure that someone is recording the disclosure and retains it for future reference so that it can be proven that disclosure was, in fact, made and what the contents of that disclosure were.

There is also the issue of appointed directors. These individuals are not exempt from disclosure. Where they are appointed prior to their first Board meeting, the appointed director must submit their disclosure in writing. Where they are appointed at their first Board meeting, the disclosure can be either orally or in writing. Although, again, it would be prudent for the Board to record the fact and contents of the oral disclosure for future reference.

But the disclosure obligations don't end there. Disclosure obligations for a Board Member are ongoing and continue to apply for the duration of the Board Member's term. Specifically, when there is a change of information that falls under the disclosure obligations, a Board Member has to disclose that information either within thirty (30) days of becoming aware or at the first Board meeting to occur following becoming aware, whichever comes first. This information must be provided to the Board in writing.

Unfortunately, these disclosure obligations do not apply to Board Members elected or appointed prior to November 1, 2017. **However**, disclosure obligations do apply if the same person runs for a subsequent term or is subsequently reappointed.

So, what does all of this mean? It means that owners will have a better idea of who they are electing; it means that fellow Board Members will understand the interests and history of their colleagues; it means that unscrupulous individuals seeking a spot on the Board will have a harder time getting there; and it means that someone who wants on the Board just to award a contract to a relative has to broadcast that information to the community. Ultimately, it means a more transparent and open community, where dirty laundry shouldn't stay hidden for long.

Disclosure can feel invasive to the person revealing information about themselves, but if you've done nothing wrong, you've got nothing to hide. And to the person receiving the disclosure, the information can be invaluable in ensuring that the right person (and not just the loud person) gets on the Board. ■

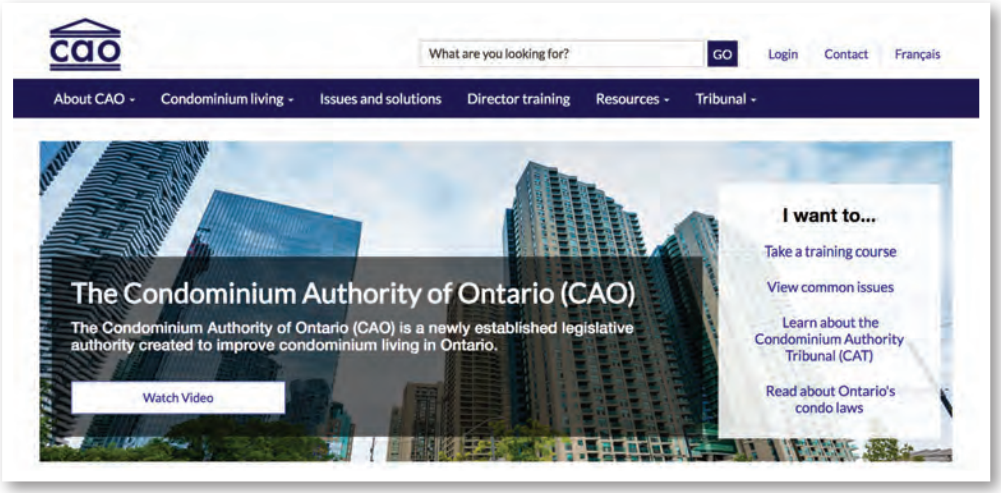
Kati Aubin is a lawyer with Elia Associates, PC specializing in condominium law and litigation. She has been practicing law for over four years and takes great pride in helping condominium communities come together and solve their problems in creative and sustainable ways. Outside the courtroom, Kati enjoys travel, experimenting (not always successfully) in the kitchen, and participating in local theatre programs.

Richard has been actively involved in the area of Condominium Law for over 20 years, advancing the objective of effective and ethical advocacy. In 2001, Richard opened Elia Associates, which has grown to have offices in Ottawa, Barrie, Toronto and Oakville.

Richard actively participates as a member of several chapters of the Canadian Condominium Institute. He holds a Masters of Law and the ACCI designation.

The Condominium Authority of Ontario

by Joe Duquette
Gowling WLG



After many years of discussion and speculation, the new changes to the condominium industry are finally here! This article focuses on the new Condominium Authority of Ontario and the Condominium Authority Tribunal.

What is the Condominium Authority of Ontario?

The new Condominium Authority of Ontario (the "**CAO**") has been set up by the Province of Ontario to offer services and to protect and serve the condominium community. Since September 1st, 2017, the CAO is the designated condominium authority in Ontario and its mandate is to provide condominium-related information and education. It also oversees the Condominium Authority Tribunal (the "**CAT**").

What does the CAO do?

The CAO provides various services to condominium stakeholders. These services include, namely:

- Helpful and easy to use information on condominium living;
- Mandatory training for condominium directors;
- Setting up and maintaining a public registry of all condominium corporations and their directors for increased transparency and accountability;
- Self-help tools and guided pathways for resolving common issues and disputes; and
- Overseeing the CAT, which provides online guided negotiation, mediation and adjudication services for certain disputes.

The CAO's website (www.condoauthorityontario.ca) provides a lot of information to condominium owners and condominium directors, including basic information about condominium ownership as well as a guide for condominium buyers.

How do I register my corporation with the CAO?

All corporations are mandated to register with the CAO. This is not optional and must be done **before December 31, 2017**. This mandatory registration will help create this public registry of all existing condominium corporations. It will also help manage and offer the CAO services. A corporation who fails to register, will not have access to the CAO services.

To get this process started, the CAO has sent out an invitation to all condominium corporations. However, this may be a logistical challenge in and of itself as there is currently no registry of all existing condominium corporations. As such, the CAO does not necessarily have a current address for all corporations. Naturally, not having your address already makes it difficult for the CAO to write to you.

It is crucial that you verify if your corporation has been registered. If you are managed, it is best to inquire with your condominium manager. If you have not received your CAO invitation, you or your condominium manager can contact the CAO at info@condoauthorityontario.ca.

Once your corporation is registered, you'll be able to pay the new assessment fees.

How much will the Condominium Authority of Ontario cost to condominium owners?

Naturally, the CAO and the CAT will require funds to operate. The CAO will be collecting the following fees for its services:

- An assessment fee of $12 per voting unit, per year;
- $25 filing fees for parties wishing to access the CAT's online dispute resolution system where they can negotiate in a neutral forum and attempt to resolve their dispute;
- $50 for the services of a dedicated mediator who will attempt to settle the dispute in a collaborative manner between the parties;
- $125 to get a formal adjudication of the dispute by a member of the CAT.

The base fee ($1 per voting unit, per month) is payable by the corporations. Naturally, corporations will collect this from its owners. It is worth noting that the fee is calculated based on the number of voting units (residential or commercial). This excludes all parking and storage units from the calculation of this fee. The first instalment will have to be paid **before December 31, 2017**. It will cover the period from September 1, 2017 to March 31, 2018.

This new assessment fee will form part of the corporation's common expenses. As such, while the fee will be calculated on the basis of $1/month per voting unit, not all units will actually be paying $1. Some will be paying more and others will be paying less. It will all depend on each unit's percentage of contribution to the common expenses. This percentage is found in your declaration's schedules.

Mandatory Director Training

The *Condominium Act* now imposes mandatory training on all condominium directors. The CAO is responsible for administering such training. The CAO will also be authorized to accredit training and courses from other organizations. Every condominium director will have to take the required training within six (6) months following his/her election or appointment. A director who does not take the required training within this time frame will automatically be disqualified from the board.

Any director that has been appointed or elected prior to November 1, 2017 will be grandfathered and will not have to take this new training until their next election or appointment to the board. Stated otherwise, if you were already on the board prior to November 1, 2017, you will not have to take training until your next election.

The training is available on the CAO's website and consists of 21 modules. You can take these modules for free. Generally, the modules last less than 20 minutes and the platform is easy to use. Even if you are not required to do the training, any condominium director (and owners) would be well advised to complete these modules to get familiar with the new legislative scheme and regulation.

The training will be valid for a period of seven (7) years. After that, we expect that directors will have to take additional training. Eventually, it may be a good idea for the CAO to recognize ongoing training rather than expect directors to take the same basic training every seven (7) years. Giving credits for ongoing training would encourage directors to seek ongoing education and to stay abreast of changes in the condominium industry. This is more likely to make more informed directors than a mandatory basic course every seven (7) years.

Condominium corporations will have to reimburse all costs, charges and expenses incurred by directors taking the training. Such reimbursement will have to be made within 30 days. The fact that the regulation refers to both "costs" and "charges" leads to conclude that the corporation may have to reimburse directors for all reasonable out-of-pocket expenses incurred to seek such training. A written confirmation of completion of training will have to be provided to the director, to the condominium corporation and to the CAO.

What is the CAT?

As part of the revamping of the *Condominium Act*, the Province of Ontario has set up the Condominium Authority Tribunal (the "**CAT**") to adjudicate specific condominium disputes. This new tribunal is expected to have exclusive jurisdiction to hear, and make legally binding and enforceable decisions on, certain condominium disputes. It is important to note that the CAT will not have jurisdiction over every condominium dispute. Only those over which it is given jurisdiction by regulation.

> **"This new tribunal is expected to have exclusive jurisdiction to hear, and make legally binding and enforceable decisions on, certain condominium disputes."**

As of now, the only matters delegated to the CAT pertain to disputes regarding a corporation's records (under section 55 of the *Condominium Act*). It is interesting to note that, even when the dispute to be adjudicated is between two owners (or occupants), the parties commencing the application will have to notify the corporation.

If the CAT is eventually granted the required jurisdiction, the Tribunal will have the authority to:

- Order someone to comply with the legislation or governing documents;
- Order someone to do or not to do something over which the tribunal has jurisdiction;
- Order someone to pay damages of up to $25,000 (which happens to be the Small Claims Court jurisdictional limit);
- Order a party to pay the legal costs of the other party;

- Order a party to pay the cost of the tribunal (this is different from the cost of the other party);
- Order any other relief the Tribunal considers fair in the circumstances.

Any order for costs, penalty or compensation will have to be paid within 30 days of the tribunal's decision (unless ordered otherwise). Corporations will be able to add to a unit's common expense any monetary award it obtained. Similarly, an owner will be able to set-off any monetary award it obtained against the contributions payable by the unit. This means that an owner could get a break and not have to pay his or her common expenses until he has recovered the amount the corporation was ordered to pay him/her.

The CAT will not have jurisdiction:

- Over disputes involving condominium managers or builders;
- Over disputes between two corporations sharing assets or common elements;
- Over disputes pertaining to easements or involving occupier's liability (when someone gets injured on common elements);
- To make an order permanently evicting someone;
- Over disputes arising from liens.

For now, and until the Tribunal's jurisdiction is expanded, all other disputes must be dealt with outside of the tribunal, through existing mechanisms. It may therefore not be wise to delay existing compliance matters in the hope to have the CAT adjudicate upon them.

Conclusion

Ready or not, the condominium industry is changing! Many changes were implemented on November 1st, 2017 and there are many more coming. Only time will tell whether these new requirements will fulfill their purposes. Condominium corporations should consult with legal counsel to ensure they are complying with their obligations. ■

Joe Duquette is a lawyer at Gowling WLG, focusing his practice on condominium law. Joe is also a director at his condo. The preceding article is adapted and reprinted with permission from CondoAdviser.ca.

CHARGEBACKS: ARE THEY – OR WILL THEY BE – PERMITTED?

Jim Davidson,
Davidson Houle Allen
LLP Condominium Law

Victoria Craine,
Davidson Houle Allen
LLP Condominium Law

Many condominium declarations contain an indemnification, or "chargeback", provision ("indemnification provision") that outlines the circumstances in which a condominium can charge back costs to an owner, and add those costs to the owner's common expenses. The specific language of each indemnification provision can vary from declaration to declaration. However, the following wording is very common:

> *"Each unit owner shall indemnify and hold harmless the condominium from and against any loss, costs, damage, injury or liability whatsoever which the condominium may suffer or incur resulting from or caused by an act or omission of such owner, their agents, occupants, tenants, (etc…) to or with respect to the common elements and/or all other units* (except for damage covered by the condominium corporation's insurance)."

Again, condominium corporations generally rely on these indemnification provisions to add chargebacks to an owner's common expenses. The chargebacks can include a variety of costs, such as management, administrative and legal costs associated with an owner's breach of the condominium's governing documents.

The question is: **Is the wording of the indemnification provision sufficient to cover these particular costs?**

Anticipated amendments to the *Condominium Act* will provide some clarity in terms of what can and cannot be charged back to a unit owner as a common expense (further explained below). In the meantime, a recent Divisional Court decision has provided some judicial guidance on how condominiums should be interpreting their indemnification provisions.

The Divisional Court in *Wexler v. Carleton Condominium Corporation No. 28* dealt with the interpretation of an indemnification provision (that was almost identical to the above-noted wording) contained in the condominium's declaration.

In the *Wexler* case, an owner had sued the condominium corporation – and lost. The issue then became: Did the condominium corporation have the right to a special cost award (i.e. to recover ALL of its legal costs) based on the indemnification provision? The Court said "no". The Court said that the indemnification provision did not apply (at least to the legal costs relating to that particular Court dispute).

Based on the language of the indemnification provision, the Divisional Court stated that the provision "is not applicable as there has been no loss, costs, damage, injury or liability suffered or incurred with respect to the common elements and/or all other units caused by an act or omission by the unit owner." In other words, the language of the indemnification

provision did not give the corporation the authority to recover other costs and expenses beyond those specifically related to the common elements and/or all other units. The Court essentially said that the legal costs (at least in that case) didn't fall within the wording of the indemnification provision.

This is a particularly noteworthy decision, because, as noted above, many condominium declarations have indemnification provisions that contain similar wording to the wording in CCC No. 28's indemnification provision. Based on the Wexler decision, such a provision will only apply to losses, costs, damages, injuries, or liability caused by an act or omission of the owner with respect to the common elements and/or units. Accordingly, the standard language used in many indemnification provisions in Ontario may only be sufficient to recover costs and expenses that relate to the "common elements and/or all other units" and the concern is that some costs may not qualify.

As a result, condominiums may want to consider amending their declarations to replace these indemnification provisions with clearer indemnification provisions.

This is especially so in light of coming changes to the *Condominium Act*. The anticipated amendment to section 7(4) of the *Condominium Act* will state that a condominium declaration may specify the common expenses of the condominium and the circumstances that may result in the addition of any amount to the contribution to the common expenses payable for the owner's unit to indemnify or compensate the condominium. These changes will confirm that a condominium may only add costs it incurs to the common expenses for a unit when the declaration clearly permits such a chargeback. As such, condominiums will only be entitled to seek indemnification from a unit owner through common expenses when the declaration clearly so permits. A provision in the By-laws or Rules does not appear to be sufficient, except where this is otherwise authorized by the Act.

Further, the coming amendments will also provide a new process for unit owners to challenge any costs or expenses added to their common expenses as a "chargeback". Currently, the only process available for a unit owner to challenge a chargeback is through the Courts. When the new amendments come into force, a unit owner will be able to challenge a chargeback by way of Application to the Condominium Authority Tribunal – CAT – for quite modest fees. Furthermore, condominium corporations generally won't be able to recover legal costs of the CAT process (i.e. if the corporation seeks assistance from legal counsel to respond to the owner's Application).

As a result, unit owners will have an accessible and inexpensive process available to challenge certain costs that that have been charged to their common expenses. When challenging certain costs that have been charged back to their common expenses, unit owners may try to rely on the *Wexler* decision and section 7(4) of the amended *Condominium Act* that together MIGHT be taken to confirm that the typical language used in condominium indemnification provisions does not indemnify the condominium from all costs and expenses it incurs to enforce the Act, Declaration, By-laws and Rules.

Overall, it is important for condominiums to consider amending their indemnification provision to carefully outline the costs and expenses that the condominium may charge back to the unit owner's common expenses. In particular, if a condominium wishes to recover fees such as administrative fees, additional management fees and/or legal fees related to violations of the Act, Declaration, By-laws or Rules (by adding such amounts to the owner's common expenses), it is a good idea to ensure that the indemnification provision contained in the declaration clearly permits such chargebacks. While amending a condominium's declaration will not allow the condominium to avoid the new process when a unit owner challenges a cost or expense, it will certainly give the condominium a better chance of success in recovering such costs and expenses. ■

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.

Victoria Craine is an associate lawyer at DHA. She provides a full range of services, including general corporate advice to corporations, building deficiency litigation, and proceedings involving disputes between condominium corporations and residents.

Changes to the Unit Owners Meetings – New Timelines and Procedures

By Kati Aubin
Elia Associates

By Richard Elia
Elia Associates

Technology may have done away with the necessity of scrolls or tricorn hats for the dissemination of news, but information will always be in style. The changes coming to the *Condominium Act* (the "**Act**") underline this fact as though it was heralded with a hand bell and a firm *Oyez Oyez Oyez*!

This article will focus on unit owner meetings and the new procedures coming down the pipe regarding Notices and timelines for Annual General Meetings ("**AGMs**") and Requisitioned Meetings.

Currently, Pre-Notice of these meetings is not strictly required by the Act, although it has come to be acceptable good practice. Other good practices not currently required by the Act include asking for questions likely to come up at the meetings in advance so the Board can prepare and providing a rough agenda, so owners can know what to expect at the meeting and repeat what the meeting will be about.

The "Pre-November 1" Act gives no guidance to Boards regarding when a Notice should be sent, what that Notice should look like, or what a compliant requisition looks like. It suggests, but does not mandate, a form of proxy. This can lead to allegations of favouritism, conflicts of interest, even suggestions that the auditor is somehow a pawn of the Board. None of these allegations are helpful and can make the meeting process more complex, drawn out, costly, and ultimately less acceptable to the community.

The changes coming to the Act will be "form driven" and will (we hope) give Boards much-needed guidance on timelines and formatting. They will also, hopefully, allow Boards to respond to the above allegations by demonstrating compliance with a stringent procedure set within the Act. The forms will dictate much of the content and structure of (1) Pre-Notices, (2) Notices, (3) Proxies, and (4) Requisitions.

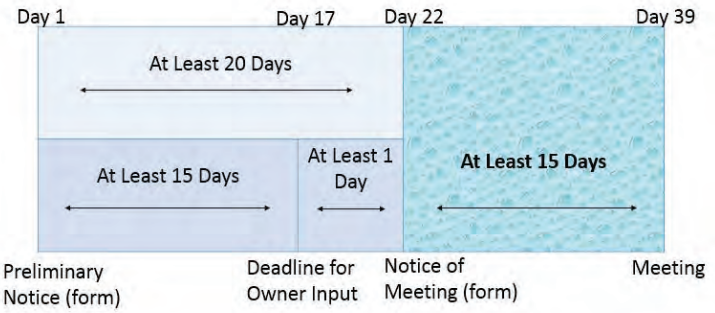
We highlight that these changes will not come into effect until 40 days after November 1, 2017 (December 10, 2017). If this seems arbitrary, it actually isn't! If a Board starts following the new owner meeting guidelines on November 1, 2017, the timelines (by our calculations) will make it so that the earliest a meeting can be called is 39 days after November 1 (December 9, 2017). All subsequent meetings will be governed by the changes, so the 40-day buffer gives Boards and owners an opportunity to learn and implement the new requirements without getting caught between the old and the new.

Before we get into the nitty gritty of the new requirements, we want to highlight one final important interpretive note: the meaning of "at least". All the new requirements set

timelines in which things must be done within "at least" a specified number of days. Interpretation of "at least" has led to the conclusion that you don't count the day of mailing or the day of the event when calculating timelines. What does this mean practically? It means that when the Act says that you need to give at least 15 days' notice, you actually have to allow 17 days to be compliant. You will see below that there are a lot of "at least's in the new Act, so it will be a bit of a wait-and-see approach to see how they play out and interact with each other. The date calculations we have done here are conservative so as to err on the side of caution.

All that to say …now may be the time to invest in a great desk calendar!

AGMs



The Pre-Notice for an AGM must go out at least twenty days before the Notice goes out. Within that time, owners are allowed at least fifteen days to provide their input, and the Board/Management then has at least one day to get out the Notice of Meeting. We note that while the minimum is one day, we expect that the Board/Management will need about four days to prepare the Notice. The prescribed timeline gives you twenty-two days from Pre-Notice to Notice and sixteen days to receive owner input – there are an extra five days in there that the Board can use to review the owner input and ensure that the Notice is as accurate and up-to-date as possible. Once the Notice has been prepared, it must go out at least fifteen days before the AGM.

NOTE: The entire 39-day process for organizing an AGM can be made longer if necessary, but it cannot be made shorter.

Pre-Notice

Now that we have gone through the timelines for sending out Pre-Notices, what exactly is a Pre-Notice and what information must the Board include in one?

The purpose of a Pre-Notice is to inform and remind the community that an important meeting is coming and to provide them with the details of what will be happening at the meeting.

The Pre-Notice will need to contain the following information:

1. Purpose of the meeting
2. Projected meeting date (suggests flexibility if same becomes necessary)
3. Deadline for submitting information (at least fifteen days)
   a. Candidates for Director positions
   b. Candidates for auditor
   c. Other matters
4. Number of positions on the Board
5. Number of positions on the Board up for election and the term of each position
6. Number of positions on the Board that must be owner-occupied
7. A copy of section 29(1) of the Act, setting out the qualifications and disclosure obligations in order to stand for election on the Board
8. Any other information or matters to be addressed at the meeting (for example, if a section 97 vote will be taking place)

The Pre-Notice will be in a prescribed form.

If you think about it, the Pre-Notice makes a lot of sense (which is why a lot of condominiums already send them out as a matter of course): if you want to include the biographies of Board candidates in your notice of AGM, you need to put out a call for that information so that it can be included.

We note that if an owner recommends an auditor following the Pre-Notice, and within the fifteen-day timeline, then the Board has an obligation to include the recommendation in the notice.

Notice

You've made it to day twenty-two – great! Now what? Again, the Notice will be in a prescribed form. However, we do know what the Notice will need to contain the following information:

1. A statement about quorum – how many owners are needed in order to achieve quorum, and how quorum is tallied.
2. A statement about how an owner can be present at the meeting and how they can vote based on the manner in which they plan on being present.
3. If Board members will be elected at the meeting, then information about the composition of the Board and the vacancies that need to be filled (how many positions, how long the terms are, which positions need to be owner-occupied).
4. If candidates have come forward following the Pre-Notice, then the notice should contain their information and disclosure statements.
5. Sections of the Act and Regulations regarding the disclosure requirements for Director candidates.
6. The name and address of the candidates proposed for auditor.

7. If this is an owner-requisitioned meeting, then the materials the owners wanted included in the notice.

8. If this is a meeting to vote on a section 97 or 98 alteration, change, or improvement, then information regarding the alteration, change, or improvement, the cost of same, and how it will be paid for.

9. Any other information or materials set out in the corporation's by-laws or rules.

Requisition Validity

When a Board receives a requisition for a meeting from the owners, it can often feel like an attack and invite an aggressive response; however, requisitions can be a good barometer for the temperature of the community and an indication to the Board that something isn't quite right. Sometimes it can be an innocent misunderstanding and the Board can use the meeting as an opportunity to explain its position and clear up any confusion; in other cases, requisitions can indicate that the community wants a change in the direction of the leadership at the condominium and can serve as a wake-up call to Boards that whatever they're doing, it isn't landing well.

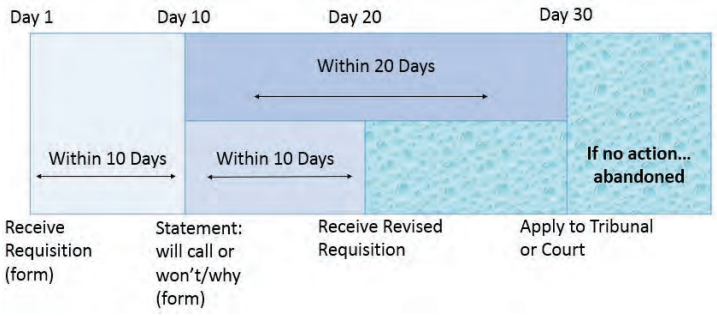
In any event, the changes to the Act will help clear up disputes about a requisition's validity by again providing a prescribed form to be used. The changes will also require that the requisitionists provide an address for service – this can simplify matters for the condominium corporation in responding and may identify the de-facto leader of the requisitionists.

The timelines will give the Board ten days upon receipt of the requisition to review and reply to the requisitionists whether the Board will be calling the meeting as requested. If the requisition won't be called, then the Board will need to indicate in this response what is wrong with the requisition from the standpoint of compliance with the Act such that the meeting won't be called. This response will also be in a prescribed format.

If there are flaws in the requisition and the Board communicates as such, the requisitionists will then have ten days to respond and revise the requisition in order to make it compliant with the Act. If the requisitionists don't respond or correct the requisition within ten days, then the requisition is considered abandoned and the meeting does not need to be held.

There is a second path for requisitionists when the Board refuses to hold a meeting: upon receipt of the response from the Board indicating that a meeting will not be held, the requisitionists then have a further twenty days to file a complaint with the Tribunal. Again, if no action is brought within twenty days with the Tribunal, then the requisition is considered abandoned and the meeting does not need to be held.

We therefore recommend that the Board wait the full twenty days after its response to the requisitionists before making a final determination as to whether or not the requisition is abandoned.

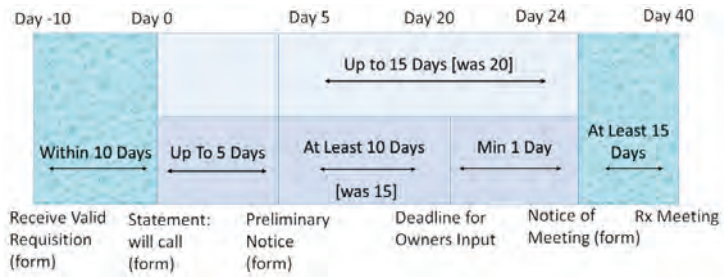


Requisitioned Meeting

Once a valid requisition has been received – whether initially valid or corrected pursuant to the path outlined above and the Board has used the ten days to review and respond – the Board has forty days from informing the requisitionists that the requisition is valid and a meeting will be held to actually hold the meeting. At this time, a "will-call" statement form will need to go out to owners. We note that, unlike the AGM timelines noted above, the timeline for a requisitioned meeting is finite and needs to be respected – per the Act, the meeting must be called within 40 days of the Board deciding to hold the meeting.

Within that 40 days from the "will-call" to the meeting, a number of communications need to go out to the owners. The first timeline to consider is that the Board has up to five days to consider the requisition and send out a Pre-Notice regarding the meeting to owners. We note that this is a very tight timeline – previously, the Board had about two-and-a-half weeks to respond to requisitions. Another shortened timeline is how long the Pre-Notice needs to go out to owners: down to at least fifteen days from twenty. These shortened timelines don't just impact the Board – as the Pre-Notice needs to go out at least fifteen days before the meeting, owners only have ten days to respond to the Pre-Notice. The Board then has to take a minimum of one day from the deadline for owner input before issuing the Notice to incorporation the input into the Notice of Meeting. The Notice of Meeting will then need to be sent out at least15 days before the requisitioned meeting.

Given that all of this needs to happen within 40 days, the Board will need to be very proactive and take a page from Santa's book: when making a list of deadlines, be sure to check them at least twice.



General Information on Proxies, Voting, and Quorum

The final matters to consider are the various ways in which the changes in the Act will regulate the meetings themselves.

Before going ahead with the meeting, the Board will need to determine whether or not it has achieved quorum. The changes to the Act will change the thresholds for determining quorum: at the first date announced for the meeting, at least 25% of owners need to be represented at the meeting, whether in person or via proxy. If this threshold is not met, then the meeting will be adjourned to a later date. The second time the meeting attempts to go ahead, the threshold is again 25%. If this is not achieved, then the meeting is adjourned a second time. At the third meeting, the threshold lowers to 15%. The way the Act is worded, this lower threshold remains in place until the meeting achieves quorum. The Act does not make it clear whether every adjourned date will require the re-issuing of a Pre-Notice and Notice and waiting the required period, or if the Board can proceed with re-issuing the Notice and waiting that required amount of time.

With respect to proxies, another prescribed form has been provided. We note that there shouldn't be issues surrounding proxies, but, unfortunately, that has not been our experience. We have seen arguments over the ink used, the signature, and the form of the proxy. Proxies today seem to be suffering from a make-it-up-as-you-go epidemic, so the hope is that the prescribed form will put to bed many of the conflicts that this inevitably leads to. The form will standardize the identifying of the person receiving the proxy, the manner in which the proxy holder may be appointed, signature requirements, and how to date the proxy.

Finally, we turn to voting. The changes to the Act will permit voting electronically where possible. While we see the benefits of permitting electronic voting in our digital age, we do have hesitations about the overall benefits of this change – online voters will miss out on the discussion at the meeting, making it harder for the Board to engage in meaningful conversation over the merits of why certain decisions were made to owners. Time will tell if the benefits outweigh the drawbacks in this regard.

So, there you have it. We've come a long way from a powerful set of lungs in the market square, pronouncing the news of the day to the masses, but at the end of the day, it's still about what it's always been about: information (and communication?). The more the better. ■

Kati Aubin is a lawyer with Elia Associates, PC specializing in condominium law and litigation. She has been practicing law for over four years and takes great pride in helping condominium communities come together and solve their problems in creative and sustainable ways. Outside the courtroom, Kati enjoys travel, experimenting (not always successfully) in the kitchen, and participating in local theatre programs.

Richard has been actively involved in the area of Condominium Law for over 20 years, advancing the objective of effective and ethical advocacy. In 2001, Richard opened Elia Associates, which has grown to have offices in Ottawa, Barrie, Toronto and Oakville.

Richard actively participates as a member of several chapters of the Canadian Condominium Institute. He holds a Masters of Law and the ACCI designation.

So Many Changes! So Many Questions!

Q&A with Kim, Constance and Christy

Kimberly Renwick, Condominium Manager, Condominium Management Group

Christy Allen, Partner, Davidson Houle Allen LLP

Constance Hudak, Vice President, CCI Ottawa Chapter

In the Summer issue of CondoContact our readers were asked to send us questions they had regarding the *Condominium Act, 1998* amendments. CCI-EO Board Members, Kim Renwick, Condominium Manager, Constance Hudak, Condominium Board Director, and Christy Allen, Condominium Lawyer are here to answer your questions.

Q: It seems that we've been talking about the Condominium Act amendments for several years. As a Board Director I am unsure what to think about all of this. How are things going to change for Board Directors? I would like to know what other Board Members are thinking.

Constance (Board Director): I am generally not loath to share my views but in this case, it is not so easy. I just do not know enough yet. In terms of knowledge, as a Board President and someone associated with CCI training for a number of years I have absorbed enough in term of experience and the practice of the old Act that I was "comfortable". My fellow Board members relied on Section 37 by which we acted honestly and in good faith and exercised care, diligence and skill as would reasonably prudent persons. We also benefitted from positive and constructive property management relationships.

I do not mind the practical (my definition of practical) parts of the new Act such as requiring Board Directors to review their Declaration and By-laws – there are many Board Directors who have not yet read theirs' and this is like forced "house cleaning". I support the new disclosure obligations for Directors – a big step up from just being alive and sane and not bankrupt! I support the mandatory training for Directors and the licensing of Condo Managers. It is the reporting blanket that I am concerned about. By the time this article will be in print, most of us will have been advised by our Condo Managers that this increased reporting (the Periodic Information Certificates, the Information Certificate Updates, the New Owner Information Certificates) and mandatory training will cause our Management fees to increase. Increased workload means increased fees. But I ask if that increased reporting workload will make my condominium better – will problems, renovations and repairs be handled better? I care about the latter not the former.

Q: Will the CCI Directors course be completely changed this coming year to teach us what is required of Board Directors under the new condo Act?

Constance (Board Director): CCI-EO had adapted its Director Training to reflect the new requirements of the Act and as more amendments come into force over the next two years we will keep pace as well.

The course material is continuously updated to reflect the most relevant condominium matters and has already been adapted and

changed to reflect the changes in the new Condominium Act. Over 140 Board Directors attended the fall Directors' Course held in November and received training and material that reflected all the changes as they are known in areas such as:

- Director requirements and disclosures
- New meeting and voting procedures and requirements
- New reporting requirements such as PIC's (Periodic Information Certificates) and ICU's (Information Certificate Update), NOIC (New Owner Information Certificate)
- Overview of new regulatory bodies such as the CAO (Condominium Authority of Ontario), CAT (Condominium Authority Tribunal) etc.
- Property Management - increased role to support reporting and new licensing requirements
- Financial Management and Reserve Fund cycle

Furthermore, the course attendees were advised of future changes that are expected in the coming year - where such changes are known. Also, CCI-EO's expert presenters were able to highlight those area where existing by-laws and practices may become obsolete and where Corporations should begin to review their core documentation such as declarations and by-laws and begin to update accordingly.

What has not changed with the new Act is the complexity factor. The knowledge, expertise and judgment that need to be exercised by Directors continues to be very demanding and with increased reporting and disclosure requirements the complexity factor has increased in my opinion. Therefore, adequate and continuous training remains key. While it is a very positive step that Director training is now mandatory, this on-line self-paced training is very minimal. At best it is a set of pointers to subject matter areas that need to be explored in much greater depth. This is CCI-EO's strength. We provide the depth - we unravel the complexity - we support Board Directors to enable them to exercise their fiduciary and management responsibilities to the best of their ability.

Q: When do we stop using the current Condominium Act from 1998 and begin to use the new one? What should we be doing now in preparation for this?

Christy (Condominium Lawyer): The current *Condominium Act* will not be replaced altogether – it is just undergoing major amendments. The amendments are happening in phases, the first of which came into force on November 1st, 2017. The November 1st amendments include a number of important changes to the way condominiums operate in Ontario, including (but certainly not limited to):

- The obligation to provide regular Information Certificates to all owners;
- New mandatory forms (including Information Certificates, proxy form, request for records, meeting notices etc.)
- A new process for owners' requests for records (which requires the delivery of particular forms, both by the requester, as well as the Board's response); and
- Director disclosure and director training requirements.

In addition, as a result of the amendments to the *Condominium Act*, the Condo Authority Tribunal (the "CAT") is now up and running. Currently, the CAT's jurisdiction is limited to resolving disputes respecting records requests, and these disputes will generally be resolved online.

As noted above, the changes that have come into force are not the end of the changes we can expect. More changes are coming in 2018 and/or 2019, so stay tuned!

In terms of preparation, the best thing that owners and directors can do is to educate themselves on the changes that have now taken place, and those that are yet to come. Education can take a variety of forms. First and foremost, where a condominium has the benefit of a professional Condo Manager, your manager will be a great resource on the changes to the *Condominium Act*. In addition, CCI-EO offers a variety of educational resources, including this newsletter, as well as free seminars that cover the changes that have, or will, come into force. The new legislative authority, the Condo Authority of Ontario ("CAO"), also offers a variety of free resources, available online (at www.condoauthorityontario.ca), designed to educate condominium community members on the changes. Likewise, a number of community participants have and continue to publish articles, blogs and seminars outlining the changes to the Act, and how the changes will affect condominiums. Where the issues are more complex, your condominium's legal counsel will be a great resource to assist you in navigating through the changes.

One thing condominium boards may want to consider now is having their condominium's declaration, bylaws and rules reviewed by their condominium lawyer to confirm compliance with the changes to the *Act*, and to assess where those governing documents may be strengthened in light of those changes.

Finally, don't forget to register your condominium with the CAO (and to pay your initial "dues") by December 31, 2017!

Q: If the majority of the current Act has been revised, then what parts of it have remained? Knowing this will save us time in consulting the new Act on a day-to-day basis.

Christy (Condominium Lawyer): The vast majority of the *Condominium Act* as it existed prior to November 1st, 2017 continues to exist, with some modifications. So, the provisions of the Act that so many people have become familiar with over the last 16 years continue to exist – they are just, in some cases, modified. Some of the changes are more significant than others, but the most significant changes are the addition of Part 1.1 "Administration of this Act" and Part 1.2 "Condominium Authority Tribunal". These new Parts, together with new regulations passed pursuant to these Parts, result in the creation of the CAO and the CAT, which together create a new framework of regulation of condominiums in Ontario.

In addition to the foregoing, there are various revisions to the Act and related new regulations, which contain additional detail on a number

of new processes that condominiums must follow (including, for example, the process governing requests for records, providing information certificates, filing of returns with the CAO, new meeting notice requirements, new disclosure obligations for Director candidates, etc…).

Given the foregoing, condominium owners and directors will most likely find themselves consulting the regulations connected to the *Act* almost as frequently as they consult the *Act* itself.

Q: When will a reference guide be available that we can use on a daily basis or are we obliged to refer directly to the new Act for everything?

Christy (Condominium Lawyer): Unfortunately, because of how significant the changes are, there are no easy ways to learn about all of the changes to the *Condominium Act*. The safest approach when assessing what the requirements of the *Act* are in any given scenario will be to consult the *Act* (and regulations) itself and to speak with your Condominium Manager and/or lawyer as may be required.

That said, you will find more helpful information at the CAO website – www.condoauthorityontarion.ca– so that is an excellent starting place for most inquiries.

There will no doubt be a learning curve, but eventually, owners and directors will become as familiar with the new amended version of the Act as they were with the previous version. This said, as noted above, there are a variety of resources available that outline in general terms the major changes and the impact on condominium operations, which will undoubtedly provide great support as owners and directors make their way through the changes.

Q: What should happen to our current management agreement with all the changes that have been enacted? Do we need a new contract?

Kim (Condominium Manager): Your property management firm should be providing you with either a new management agreement or an addendum to your existing agreement. If you have not yet received it, it is coming! Bear in mind that it does take time to draft the new agreement or addendum to ensure all mandates required by the new Act are included.

One of the most important responsibilities from the Board's perspective is reviewing the amended management agreement. Once received, it is imperative that the Board review the changes in order to have a clear understanding of what is changing and what is required of them and their condominium manager.

Q: What might be some of the changes Corporation's might see in a new or amended management agreement?

Kim (Condominium Manager): You can expect changes to largely be focused on the additional work that a licenced condominium manager will be required to perform that was not in their list of services in the management agreement, including dates for sending all owners extensive information packages, mandated reporting guidelines to the Condo Authority of Ontario, standard forms to be used, Condominium and owner information storage requirements and new software required to accomplish the storage.

The main questions Boards should ask and discuss are:

- Is there an increase in the management fee?
- Is there an increased requirement for on-site time?
- Will additional staff be required to assist with the additional workload?
- Are there services that are not included in the management agreement that could be billed in addition to the fee?

Although there are a lot of changes your Condominium Manager is there to facilitate them on behalf of the Board. An abundance of

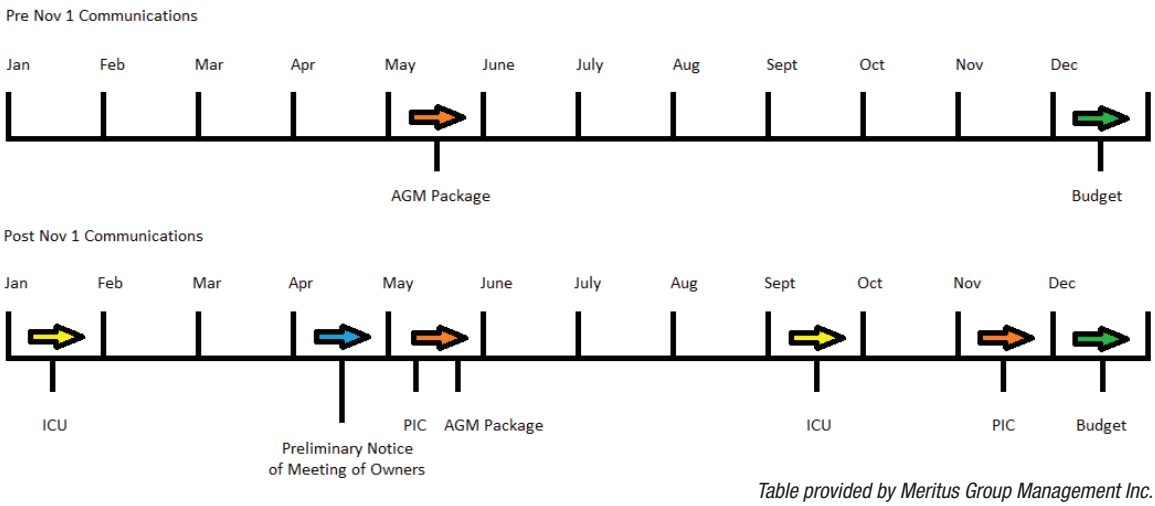


Table provided by Meritus Group Management Inc.

change is happening at once, or so it seems, but soon enough it will become regular day to day management of all condominiums.

Q: The requirement to provide owners with additional information is a little overwhelming. This will drastically increase mailing costs for Corporations. Any tips?

Kim (Condominium Manager): The new requirement for the various information certificates is certainly unfamiliar but will soon become second nature. Below you will find a flow chart which demonstrates the timelines for issuing the various certificates within a calendar year. Keep in mind that these dates are for Corporations with a fiscal year that runs from January 1st to December 31st.

Keep in mind that it's recommended that each Corporation request authorization from unit owners to start a blind copy e-mail distribution list. This will allow your Condominium Manager to email the detailed

packages to your owners which will keep printing and postage costs low, saving the Corporations a great deal of money.

We want to hear from you our readers. Keep your questions coming, send them to info@cci-easternontario.ca. Your question may be included in the next issue of CondoContact. ■

Kimberly Renwick is a full time Condominium Manager with Condominium Management Group which she joined 12 years ago. Her condominium management experience ranges from townhomes, low-rises, high-rises, shared facilities and new construction. In 2016 she was elected to the CCIEO board of directors and is learning more every day.

Christy is one of the founding partners of Davidson Houle Allen LLP. She provides a full range of corporate and litigation services to condominium directors, managers, owners, and insurers. She also represents co-tenancy associations, and gives advice with respect to co-tenancies' governing documents.

Constance Hudak, Vice President of CCI Ottawa Chapter became active and interested in condominium issues upon the purchase of her first condo town home property ten years ago in Ottawa. Within CCI-Eastern Ontario she has served as President, and currently while Vice President she is also the Chapter's representative to the National Governing Body of CCI Canada. She is also Chairs the Chapter's Education Committee which is responsible for the development of all chapter training curriculum and material. She has held many senior executive positions and has provided direction and leadership to multi-million dollar projects involving business re-engineering, systems implementation and change management.

Constance's view is that "A condominium may be the place where you live and your private island, but put all the islands together, and then you have a major port city and business to manage."

Contributing to CCI **CONDO**CONTACT
EDITOR'S CONTACT INFORMATION

A benefit of CCI membership is the opportunity to share perspectives with one another by contributing and reading articles in CCI Eastern Ontario's quarterly newsletter *CondoContact.*

If you are a condominium director, owner or manager, and have a unique tale to tell or advice to relay to other condominium boards, let us know! If you are a professional or represent a trade company offering services or product to condominiums and have relevant articles, let us know!

The subject matter should be current, concise and helpful. Topics should relate to management and operations of condominiums and not be of a commercial nature.

Articles may be forwarded to:
Canadian Condominium Institute
Eastern Ontario Chapter
P.O. Box 32001, 1386 Richmond Road
Ottawa, Ontario, K2B 1A1
Email: info@cci-easternontario.ca

Canadian Condominium Institute CCI Institut canadien des condominiums Eastern Ontario Chapter

Did your corporation undertake any important projects recently?

Do you have a success story?

Did you learn lessons the hard way?

Whether you are a director or a property manager, please do share these valuable stories. Feel free to contact me and I will assist you in writing your article.

By sharing your experience we learn from the past and improve our collective futures.

info@cci-easternontario.ca

Canadian Condominium Institute CCI Institut canadien des condominiums Eastern Ontario Chapter

Canadian Condominium Institute | CCI | Institut canadien des condominiums
Eastern Ontario Chapter

SCHEDULE OF EVENTS
A YEAR AT A GLANCE

CCI Eastern Ontario would like to present our upcoming educational seminars/events for 2018. Please visit our website for details and registration information at www.cci-easternontario.ca

JANUARY
Volunteer Beer & Cheer
January 15

Lawyers, Guns, & Money
January 31

FEBRUARY
Baby or Boomer: Concurrent Panels on New and Aging Condominiums
February 21

MARCH
What's Hot on Pot?
March 21

APRIL
Condos & Cold Ones: A Night of Casual Conversation for Condo Directors
April 4

Spring Directors Course
April 28-29

MAY
Rules Rule!
May 23

JUNE
6th Annual ACMO/CCI EO Conference Tradeshow
June 9

SEPTEMBER
Night with the Experts
September 26

OCTOBER
Annual General Meeting
October 24

NOVEMBER
Fall Director's Course
November 17-18

Evening seminars are FREE for our members. Not yet a member? Sign up today.

Have Something to say?

Join CCI Eastern Ontario on Twitter & LinkedIn to participate in the conversation, remain informed and to gain access to our experts, providers and members.

LinkedIn CCI Eastern Ontario

@cciEastOntario

Visit our website CCI-EasternOntario.ca to gain access

Habitat for Humanity: Every Hand Makes a Difference

By Alexis Ashworth CEO,
Greater Ottawa-Habitat for Humanity

One thing is constant for everyone in the world: No matter where we come from or how old we are, we all need a roof over our heads. But it goes even further than that. Owning a home in a safe and decent environment is the kind of strength and stability every family desires.

This year, Habitat for Humanity Greater Ottawa (Habitat GO) completed construction of two single-family homes in Perth and Carleton Place and began building four condominium townhouses, which are Phase 1 of Leacross Landing, a 16-home development. This is the largest housing initiative that we've worked on to date and our first condominium project. The development in Orléans is also located close to a future light rail station and will provide families with excellent transportation access.

Since 1993, Habitat GO has partnered with 72 families in need of affordable housing. With the help and hard work of our donors, volunteers and staff in the Greater Ottawa area, we have helped more families purchase affordable places to live. They now have spaces where they can live healthier, gather together, build memories and plan for a brighter future.

The first four townhouses of our condominium development in Orléans will be purchased by the Fitzsimmons, Moustabchir, Aningmuiq and El-Hajj families. At the Groundbreaking Ceremony for the homes this spring, Tereza Fitzsimmons expressed her gratitude to Habitat GO, our sponsors, donors and all of the volunteers who are helping make her dream of affordable housing come true.

"Being a single mother is not easy, but finally all of my hard work has paid off," said Tereza, who was accompanied by her three children as she saw that first shovel go in the ground. "Now we will have a home to create memories in and a place my children can look back in 20 years and say, 'That's the home we grew up in'."

For Abdellatif and Saadia Moustabchir, their future home will be a far cry from the Ottawa Community Housing rental unit they currently live in. Originally from Morocco, the couple will be purchasing their new home with their three sons.

"We want to ensure a better environment that is healthy and safe for our children," said Abdellatif. "This is only possible thanks to Habitat GO and to all those who are helping make this dream in reality."

Every Habitat for Humanity family is offered "a hand up, not a hand out" as part of Habitat's homeownership program.

All Habitat future homeowners help build their homes alongside volunteers and they pay an affordable mortgage with payments that are geared to their income. Families with two parents must complete a minimum of 500 hours in "sweat equity" before purchasing their home by helping build it and volunteering in the community, while the commitment for single parents like Tereza is 350 hours.

The culmination of all of this hard work takes place at the Key Ceremony when the dream of owning their own home comes true for our Habitat GO families.

Earlier this year, I had the pleasure of seeing a little girl's face light up with joy as she saw her new bedroom for the first time at our Carleton Place build.

Tamara had a simple wish – to have a sleepover with her friends. She was sharing a bedroom in a drafty rental unit with her siblings. I did a home visit with this family as they were applying to become one of our Habitat GO homeowners, and her room broke my heart.

The day of the Key Ceremony, Tamara was running around the upstairs of the four-bedroom home, thrilled that she could finally have a sleepover with her friends. It's those small things that mean so much to a child.

It's one of the small benefits that becoming a Habitat homeowner means for Tamara and her family.

"We want to provide a safe and happy environment for our children where we can offer them a future that includes better lives and less of a struggle," said Tamara's dad, Shane.

Their new home has also already meant improved health for their family. Tamara's sister, Holly, suffers from asthma, and just weeks after moving in, her symptoms had already improved.

Her parents are now able to raise their children in a home free from drafts, without towels lining the kitchen floors to stop the cold air from coming in.

They will be able to build equity in their home instead of paying rent, and if they follow the trend of other Habitat homeowners, they will be able to send their children to higher education when the time comes.

I'm proud that Habitat GO's work has a positive impact on everyone, from participating families to sponsors to the people who help with construction. Every time one of our volunteers passes a home that he or she helped build, they recall the experience of raising a wall or installing a floor joist, of providing a hand up to a family in need of affordable housing.

That's why we're truly grateful to all the volunteers, sponsors and donors who continue to make our work possible. Every hand truly makes a difference. It's thanks to individuals, companies and organizations like the Canadian Condominium Institute – Eastern Ontario Chapter that we can continue to build quality homes and partner with families to help them build strength, stability and independence through affordable homeownership. ■

Alexis Ashworth is the Chief Executive Officer of Habitat GO. If you'd like more information on becoming a volunteer, sponsor or donor of Habitat GO, visit www.habitatgo.com.

IT HAS BEEN QUITE AN AMAZING YEAR FOR CCI-EO

The Great Canadian Condo Contest Winners!

As part of CCI's 35th Anniversary, the Great Canadian Condo Contest was launched.

Out of several submissions, a condominium within our community was selected. The award for Great Canadian Condo goes to…**Central 1, OCSCC No. 903,** located at 354 Gladstone Ave.

You can see the fantastic attributes of Central 1 described in their contest submission by visiting https://cci.ca/great-canadian-condo/best-condo.

Distinguished Service Award

Congratulations to CCI-EO very own **Constance Hudak!** She is this year's recipient of the Distinguished Service Award (DSA). This award honors individuals who have made outstanding contributions to the Canadian Condominium Institute or the condominium community. Constance is well deserving of this award. Her volunteer work and achievements at both the Chapter and National level promote our organization and serve as a positive example for others in our community.

H. Penman Smith Award - Most Outstanding Newsletter

CCI-EO is honored to have been selected as this year's H. Penman Smith Award for most outstanding newsletter. This award is given to the CCI chapter with the best newsletter in any given year. We owe this in part to our numerous contributors, without whom none of this would be possible.

New Members

WELCOME TO THE FOLLOWING NEW CCI EASTERN ONTARIO CHAPTER MEMBERS

PROFESSIONAL MEMBERS

Dejhana Waite
Alwington Communities Inc.

Jason Ruffolo
Limestone Property Management

Cory Villeneuve
Palladium Insurance Group

INDIVIDUAL MEMBERS

Dean Turner
F.A.S.T. Rescue Inc.

JoAnne Wilson

BUSINESS PARTNERS

Condominium Management Group

Axia Property Management Inc.
Ian Davidson

Paul Davis Ottawa
Jeff King

CORPORATE MEMBERS

RSCCC 52
CCC 495
OCSCC 1004
Prescott Condo Corp 7
CCC 152
OCSCC 1018
CCC 415
CCC 223
CCC 19
OCSCC 1000
CCC 661
OCSCC 961
CCC 934
FCC 11
CCC 586

CONDOCONTACT

CANADIAN CONDOMINIUM INSTITUTE
Eastern Ontario Chapter

2017/2018 BOARD OF DIRECTORS

PRESIDENT
Nancy Houle, LLB
Davidson Houle Allen LLP

VICE PRESIDENT/EDUCATION
Constance Hudak, MBA
National Representative

TREASURER
Stephanie Courneyea, CPA, CGA
McCay, Duff & Company LLP

SECRETARY/NEWSLETTER EDITOR/ACMO
Andrée Ball
Keller Engineering

MEMBERSHIP
Kimberly Renwick
Condominium Management Group

EDUCATION/MEMBERSHIP
Justin Tudor, P.Eng.
Keller Engineering

EDUCATION
Richard Elia
Elia Associates

EDUCATION/SOCIAL MEDIA
Michael Lewicki
Michael Lewicki Real Estate Broker

MEMBER
Allen Scantland

Simply the Best Condominium Insurance Choice

Over 35 years serving professional condominium managers and providing the best protection for corporations and condo owners.

For a Corporation Quote
877.627.6222
atrens-counsel.com

For Unit Owners Protection
Visit condogold.ca

Atrens-Counsel
Insurance Brokers
Part of Arthur J. Gallagher Canada Limited