

**CONDO OWNERS ASSOCIATION**

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# **ONTARIO'S CONDOMINIUM ACT REVIEW**

## **Stage 1: Stakeholder Roundtables**

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### **COA Feedback of Draft Summary Report**

**Presented by**

**Condo Owners Association**

**Please note:**

**COA recommendation changes and additions to the  
Draft received from Public Policy Forum**

CONDO OWNER'S ASSOCIATION

# ONTARIO'S CONDOMINIUM ACT REVIEW

## Stage 1: Stakeholder Roundtables

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### Summary Report from COA – Condo Owners Association

We have reviewed the draft Stage 1 Stakeholder Roundtables as presented by the Public Policy Forum. An overview of our notes as presented to the Forum elaborating additional information is listed below.

The overall experience for Stage 1 of the process was very beneficial. Our participation in the Residents Review panel confirms our mutual concerns with Condo Owners.

#### DISPUTE RESOLUTION

We are extremely concerned about the position of Property Managers and Property Management firms. The Property Management firm is the contracted provider of property management services which is administered by their employee (known as the Property Manager). Many times Condo Owners are blaming the Property Managers and not the Boards because they do not understand the command of control. Board of Directors often hide behind the Property Managers so they can shift the blame. Property Managers and their respective Property Management firms have a direct relationship with the Board of Directors and are at arm's length with Condo Owners. They depend on this relationship to ensure their substantial service contracts (in excess of \$150,000+). The Board of Directors have a fiduciary duty to represent the Owners and the Condo Corporation. Owners must be well informed that all of their problems are a result of the Board.

The inefficiencies in the Act's current mediation and arbitration approach is not effective because Board of Directors are often working with Property Managers to create manoeuvres against Owners with falsifying documents, proxies to cover their tracks. They also work together to prevent Owners from receiving records of the Corporation so Owners go into a mediation and arbitration without written facts and proof to substantiate their complaints. Board of Directors are too quick to involve corporation solicitors because they use them as an intimidation factor against Condo Owners.

#### Priority Issues

- Condo Owners are uninformed about their rights and responsibilities, as well as specific rules and regulations

- Condo Directors and Property Managers are in a direct position to abuse their rights and responsibilities, as well as specific rules and regulations
- Corporation Solicitors use a “precedence of previous rulings” to manoeuvre the ambiguity of the Condominiums Act to prevent owners from exercising their rights to documents of the corporation, view proxy’s in their original form etc. and they depend on other Provincial Acts (i.e. Privacy Act) to prevent Condo Owners from obtaining information
- Corporation Solicitors, Directors and Property Managers have and use their power of election and contractual services to intimidate owners.

### **Potential Solutions**

- Develop a form of insurance protection for Condominium Owners as part and parcel of Director & Officers (D&O) insurance
- Condo Corporation is responsible to pay the mediation expenses and a reimbursement from the Condo Owner will be mandated in the event that the Mediator deems in favour of the Corporation because this is as Consumer Protection Act
- Reporting system similar to the Better Business Bureau for Owners to report Board of Directors in non-compliance to the Condo Act.
- We have concerns on the mechanics and potential conflicts of interests relating to Dispute Resolution because of internal controls of Board of Directors; it will be very difficult to have an impartial body

### **Areas of Further Discussion**

- Change the rules on forcing the Board to call a Special Meetings on any grounds is very important to balance fairness in the Condominium. A minimum of 5 Owners should have the ability to request a meeting with the Board within a 14 day period or at the regular Board meeting if it is soon; to present an outline of their complaint in writing. In the event that the 5 Owners have not received a satisfactory response; they then have the option to request the Board to call a Special Meeting. This will force more Board governance and prevent extensive mediation and arbitration costs.
- Owners have the right to claim against the Directors & Officer Insurance in the event that the Directors are found to be in non-compliance of the condo Act.
- It is difficult to have an internal DRO for each Condo Corporation because of the power of manipulation by the Board of Directors and Property Managers
- Board of Directors who ignore the Condo Act must be held responsible for legal fees and dispute resolutions fees and these costs must be covered by the Directors and Officers Insurance

- **Concerns about Superior court rulings setting precedence and overriding present Condominium Act**
- Standardize Declaration for New and Existing Condominiums
- Fining (a regulatory complain process for Owners Protection) for Board of Directors in non-compliance to the Condo Act
- Fining process (a regulatory complaint process for Owners Protection) for Property Managers and Property Management Firms in non-compliance to the Condo Act
- Fining process (a regulatory complaint process for Owners Protection) for Solicitors of the Corporation for not abiding by fair business practice reflecting the Condo Act
- Solicitors **must be** appointed by the Condo Owners similar to the Auditor appointment to ensure that the Lawyers represent the Owners
- Board of Directors are refusing to provide updated owners lists (with email addresses) to Owners. They must be accountable to provide the list within a 2 week period of the request
- Board of Directors threaten and abuse Owners who are trying to obtain signatures for requisition meetings
- Owners who have dishonorably intentions to remove the Board resort to unethical, slanderous accusations and dishonest tactics to promote signatures for requisition meetings
- Board Members against other Board Member resorts to the same behaviour mentioned above
- Proxies must be held by 3<sup>rd</sup> party and/or online voting systems and not available for viewing by the Property Manager or any member of the Board of Directors.
- Scrutineers should be elected at the Annual General Meeting by the Condo Owners and not appointed by the Board of Directors. The Auditor should oversee the scrutineers
- Boards are changing qualifications to restrict off site owners from standing for election on the Board – they use forged proxies for the voting process
- There needs to be a better mechanism between Boards of Directors on shared facilities for multiple condo corporations. There also has to be a different allowance for buildings including commercial units and live-work units.
- Special legislation must be set out for live-work residential units so Condo Owners do not abuse these units by operating full scale commercial businesses in live-work residential units to avoid commercial taxes and to purchase units at less value than a commercial condo unit.
- Restrictive measures must be implemented to prevent Board of Directors from obtaining loans at high interest rates for energy retrofitting and green technologies.

#### **Priority Issues**

- Property Managers on behalf of Board of Directors requests are stamping Annual General Meeting packages with dates (20 days prior to meeting) but withholding the mail out so Owners are not receiving the packages until a few days or potential after the meetings

- Board of Directors ignore Owners requests to the records of the Corporation; if the Owner continues to request the records; the Board enlists the assistance of the Corporation Solicitor who also refuses the Owner access stating draft minutes are not records of the Corporation etc.
- Excessive costs applied by Board of Directors relating to price per page for requested records of the Corporation
- Board of Directors tampering with Board Meeting Minutes, AGM Minutes and records of the Corporation
- Need to address abuse of Live-Work units and their avoidance on MPAC tax issues while using residential units for commercial purposes.

### **Potential Solutions**

- Standardized Declaration Most building are universal in standard guidelines. As prepared in accordance with the Condo Act
- New Construction Standardized Declaration As prepared in accordance with the Condo Act
- Bylaws specific to each Condominium building
- Qualifications and Disqualifications as set out in Condominium Act 1998 cannot be altered
- Define Records of the Corporation i.e. does it include draft minutes, special requisition meetings etc.
- Licensed Property Managers should sign off on all Minutes if they are present at the meeting within 15 days of the Meeting
- Board of Director monthly approved minutes must be made available to Owners upon their request
- **All minutes of all meetings** (including Special meetings) must be signed off and approved on a monthly basis by the Board of Directors and made available to Owners upon their request
- Annual General Meeting Minutes in Draft form must be sent to the Condo Owners within 1 month of the Annual General Meeting to keep Owners informed
- There has to be a mechanism for Condo Owners to register complaints on minutes of the Corporation that are incorrect or have been tampered with
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### **Areas for Further Discussion**

- Establish education for Condo Owners (could be an on-line interactive course) so they recognize the importance of good governance with Board of Directors and cost savings on maintenance fees
- Develop a cost chart relating to building expenditures so Boards can use as a guide to understand proper pricing

### **Condominium Management (COA disputes this name)**

- The terminology of condominium management DOES NOT exist in the present condominium structure – they are known as Property Managers and Property Management Firms
- The confusion to change the name is **Governance (board) Versus Management (Property Management)**

**Please Note:**

- ACMO is publicly announcing an approval from the Ministry of Consumers Services that they are the licensing entity for all Condominium Managers – COA finds this extremely detrimental to this Review process and a direct conflict of interest in ensuring that Condo Owners have Consumer protection under the new Condominium Act.

**Priority Issues**

- Property Managers represent the Board of Directors and do not represent the Owners
- Property Management firms must be held responsible for their Property Managers under employee relationship of employment
- Property Managers quote Bill 168 unreasonably against Condo Owners
- Property Managers are not mandated to abide by the Condo Act
- Property Managers have knowledge and skills to manipulate the Condo Act to create a strong business relationship with Board and ensure their employer – Property Management Companies continued contract with that Condo Corporation

**Potential Solutions**

- Develop a Provincial - RECO (Real Estate Council of Ontario) style of licensing for Property Managers
- Mandate their profession through a specific Act geared to their profession (similar to the REBBA (Real Estate Business Brokers Act))
- Mandate an errors and omissions insurance to protect condo corporations on misinformation
- Mandates in the Act to prevent interaction ie. Property Managers cannot be Directors or owners in the Corporation
- Property Management firms must disclose referral fees or remunerations received from service providers they have recommended to their contracted Condo Corporations.

## Areas for Further Discussions

- See new Potential Solutions Above
- Manager fees are not directly related to the Corporation. The Property Management Company negotiates a contract for services of property management for the Condominium. This would include a Property Manager (employee) and sometimes an administrator (employee) The employees income is NOT negotiated by the Board of Directors nor should it be
- Services provided by the Property Management Company also include accounts payable and banking of the Corporation. These firms also recommend service providers and they do receive referral fees for the recommendations. These referral fees are not and must be disclosed to the Condo Corporation.

## Financial Management

- A limited amount of the operating expenses relate to repairs and maintenance
- The majority of the budget relates to reserve fund, utilities and service contracts ie. Property Management company, security and cleaning contracts.
- Stringent guidelines must be in place for green technologies so older condos do not find themselves in financial ruin spending to save and Owners not being able to afford their maintenance fees

## Priority Issues

- Builders accountability for deficit of 1 year is insufficient
- **Province to provide higher interest rate deposits/bonds** on reserve funds and include an inflationary blanket recognizing that the performance audit does not reflect market times
- It inappropriate to allow coverage from the reserve fund for new green technology initiatives. Restrictive measures must be implemented to prevent Board of Directors from obtaining loans at high interest rates for energy retrofitting and green technologies
- Insurance issues between Corporation and Owners re: corporation policy and owner policy
- Board of Directors and insurance companies changing standard unit bylaws without notifying owners. Lack of coverage on flooring and betterment problems will exist
- Fan coils and special filters are not being changed regularly if left in the hands of the owners and take into account off site owners therefore compromising potential insurance claims and water issues
- Warranty concerns because of insufficient coverage by Tarion under the New Home Warranty Act. Unfortunately Tarion DOES NOT represent owners and there are far too many examples of problems resulting after the 2 year coverage and there are limitations to what is deemed as structural.
- New buildings do not have enough security cameras and security keys so they increase the expenditures of the Corporation substantially within the first year

- The reserve funds of the Corporation may be handled through recommended financial service providers by the Property Management firms; is there a referral fee involved – disclosures must be mandated
- The reserve fund is handled by a financial company that the Board of Directors has chosen; is there a referral fee involved – disclosures must be mandated
- Since there is not one financial source for Reserve Funds; there is a higher risk of misappropriation of funding and lower interest rates
- Pooling of reserve funds may compromise the corporations unless it is Government administered. Property Management firms obtaining referral fees must disclose full particulars in writing.
- Even though this is hard to legislate, green technology companies may provide overpriced quotes to Board of Directors and/or loan options
- Concerns on overinflated costs pertaining to condominium refurbishment. Designers and contractors for simple wall paper, painting and floor coverings ie. Porcelain tiles are compromising financial stability of reserve funds and corporations (ie. 11 floors \$745,000.00) and potential depleting reserve funds for cosmetic issues.

### **Potential Solutions**

- Builders must be held accountable for the first 3 years not 1 year
- Property Management cannot be associated with the Builder during the full warranty period; conflict of interest concerns and full warranty periods to include structural must be extended.
- Create a Reserve Fund Bond (similar to a Government Savings Bond) exclusively for Condo Corporations at higher interest rates (this is an excellent benefit for additional Government funding)
- Mandate mechanical performance inspection prior to common element design expenditures from reserve funds

### **Areas for Further Discussion**

- Explore Government Reserve Fund Bond to provide better protection of investment and stronger interest rates
- Ensure accountability for Reserve Funds to avoid Board of Director and Property Manager abuse and kickbacks (reserve funds need to be audited)

### **Consumer Protection**

- New construction contracts prepared to represent the best interest of the builders is not protecting the rights of the Buyers
- Proper disclosures of representation are not mandated so Buyers are unaware who is representing their interest in the buying process therefore they enter into the agreement with a strong lack of information relating to occupancy, interest rates to determine occupancy costs, structure of taxes and maintenance fees embodied in occupancy costs; length of time for extensions, rules pertaining to leasing and/or



selling under assignments, turnover meetings and what is included in their purchase relating to responsibilities outside of their standard unit..ie balcony, windows etc.

- The price per square foot relating to maintenance fees at the point of sale creates a huge problem because with delays on closing and inflation these fees have a substantial increase in the first year creating an affordability problem for Owners. The Builder must include an inflationary protection for 3 years after registration.
- 10 banking days for Status Certificates compromises sale transactions and Property Managers abuse the time period and 95% of the time wait the entire time before they provide it meanwhile the declarations and bylaw are already preprinted and held in property management. The only hold up is the Status Certificate which is signed by Directors however many times Directors turn over signing authority to their Property Manager. Financial institutions to secure hundreds of thousands of dollars in mortgages require 5 banking days; therefore Status Certificates should be the same period of time – 5 banking days. In reality Status Certificates can and have been prepared in less than a day.
- Standardized declaration with key points exclusively at the front of the declaration to ensure full understanding by the consumer on standard points of most condominiums will protect and educate the consumer.
- The present method of builder's lawyers preparing different declarations for each condominium and all resale condos all having different declarations compromises the security and protection of the consumer. By-laws can be geared to each specific condominium but the overall declaration in plain English must be prepared considering the importance of 1.3 million condo owners understanding their rights and their ownership of their unit
- Short term rentals are increasing throughout the province identifying a hotel concept of 3 days – 8 days.. with no limitations on short term. It is an ideal circumstance for builders when selling their units as they promote these benefits to out of country investors but it becomes a safety and security concern of Condo Owners. It also increases wear and tear on common elements ie. Moving elevators, hallways and unit doors/door frames etc.
- Real Estate lockbox and/or keys – Property Management and Board of Directors are compromising the safety and security of their buildings depending on the rules they are implementing relating to lockboxes and keys. Some are taking Realtors Drivers Licenses / ID's as a deposit for keys; lockboxes are place in unlit areas of the complex opening the Corporation for potential law suits in case of physical harm claims, keys are identified with unit numbers on them and held at security in unlocked areas; many condos do not keep a register of Realtors showing and so on.
- Registered Sales agents under RECO and REBBA already have full disclosure mandates; the concern is unregistered sales personnel of Builder. Keys or Lockbox should be readily available and physically onsite

### **Priority Issues**

- It is impossible for buyers to read their condo purchase and sale documents on new construction because they are confusing, prepared by the builders lawyers and

protective to the builder. Disclosure of representation must be confirmed and key issues of the contract must be at the front of the agreement.

- Low price per square foot on maintenance fees at point of sale for new construction compromise Owners affordability
- Property Managers are not cooperative with Status Certificates many times and do not require 10 banking days
- Standards rules to protect the Corporation relating to lockboxes and keys recognizing the personal safety and security of the Realtors and the Corporation

### **Potential Solutions**

- Standardized declaration with by-laws relating to specific differences of the Corporation
- Builder has to guarantee an inflation % rate for maintenance fees increases and make up the difference on new construction to cover additional costs over a 3 year period
- Minimum term on short term rentals and defined rules and regulations
- Immediately implement up to 5 banking days on status certificate
- Guidelines relating to keys/lockbox recognizing safe standards practices
- Keys or Lockbox should be readily available and physically onsite. The best practice to ensure safety is for Security to hold both key or lockbox or to install lockbox in the staircases closest to the unit.

### **Areas for Further Discussion**

- Sales Agents Staff of Builder must be licensed to trade in Real Estate under RECO and REBBA regulation
- Full disclosure for representation must be mandated and affect Builders and Sales Agents Staff on site
- 95% of Status Certificates are prepared by the Property Management office and does not require solicitor intervention. Please see above notes. The Certificate only requires 1 signature from the Board of Directors (or Property Management) 5 banking days is more than sufficient.
- Status certificate must include discussions on special assessments because too many boards hold off on the decision process especially if they or a friend in the building is selling. Buyers have a right to know what they can expect to include legal proceedings and fees to date. Also, mediation and arbitration cases involving the Corporation should be noted. Status Certificate to guarantee no special assessment for a certain time period.

## Next Steps

The main concern of the Condo Owners Association is to ensure that Condo Owners are protected in this process. We believe that the present forum has a higher contribution from service related trades who may be party to a conflict of interest on their recommendations. We realize that the Ministry must embrace their professional experience and related suggestions but we also caution the Ministry when evaluating the final outcome of the review. Many of the existing problems in Condominiums result from uninformed and uneducated Board of Directors, Property Managers and their Property Management firms and Corporation Solicitors.

Although there are problems with Condo Owners as well; many become a problem as a result of their loss of rights, lack of protection for their unit; distasteful slanderous actions by the Board and the cold hard fact that they believe they have nowhere to turn.

In reality, there is substantial FEAR in the Condominium communities experienced by a number of condo owners. We believe the apathy amongst owners is caused by fear as well; sometimes if you know less you have no reasons to be upset. Turning a blind eye is much easier for many especially if they already know they cannot do anything.

We truly believe that once Property Management Firms and Property Managers are licensed under a delegated authority (not ACMO) under the Safety and Consumer Statuses Administration Act as a result of our Government working with the Ministry of Consumer Services and the Condo Act to protect Condo Owners Province wide; will ensure professionalism in the industry to create more consumer and Corporation protection.

We cannot stress how disappointed we are that ACMO has been publicly announcing their position as an approved licensing bureau for Property Managers. Are they approved by the Province of Ontario or not??

It is the responsibility of our Provincial Government in this Condo Review Process must ensure proper due diligence and lack of conflict of interest are identified as we move forward to ensure consumer protection for all Condo Owners. It is necessary for the Government of Ontario to have a regulated Consumer Protection Tribunal Process to protect Condo Owners.

CONDO OWNER'S ASSOCIATION