

# ONTARIO'S CONDOMINIUM ACT REVIEW

## *Stage Three Feedback Report*

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### Summary

## **INTRODUCTION**

Ontario's condo market has grown significantly since the *Condominium Act, 1998* came into effect over a decade ago. Condos now make up half of all new housing in the province, and over a million Ontarians live in condos today. The landscape is more diverse and the issues more complex than ever before.

Recognizing the need to update the province's condominium legislation, Ontario's Ministry of Consumer Services (now known as the Ministry of Government and Consumer Services) provided funding to Canada's Public Policy Forum to lead an innovative, public engagement process to inform the review of the Condo Act. Working with MASS LBP, which specializes in citizens' panels, the Forum engaged condo owners and other condo community stakeholders in a three-stage, 18-month review process to identify issues and propose recommendations that will contribute to the development of a modernized Condo Act.

This report summarizes key findings from engagement activities undertaken in Stage Three. The Government of Ontario is now working toward modernizing the Condo Act by drawing on the feedback and recommendations received from condo residents, stakeholders, and subject matter experts from across the province.

### **Our approach**

In Stage One of the public engagement exercise, hundreds of owners and other stakeholders from across Ontario's condo community met throughout fall 2012 to share their concerns and priorities regarding the Condo Act. Engagement activities included Residents' Panel meetings organized by MASS LBP, province-wide public information sessions, stakeholder roundtables, and public submissions. Outcomes of the four streams of engagement are captured in the *Stage One Findings Report*, which highlights common concerns around finance, governance, consumer protection, dispute resolution, and property management.

Stage Two started in spring 2013 with 36 owners, stakeholders, and subject matter experts forming five theme-based working groups tasked with reviewing the key issues and proposing feasible options for consideration. Their recommendations were then scrutinized by a panel of 12 experts from across the condo community to provide "sober second thought". The combined Working Group and Expert Panel deliberations resulted in over 100 recommendations published in the *Stage Two Solutions Report*.

The third and last stage began in fall 2013 with a final Residents' Panel meeting to review the *Solutions Report*. The general public had 45 days to provide feedback on the report through various channels, including an online feedback form, emails to [oncondo@ontario.ca](mailto:oncondo@ontario.ca), and other submissions to the Ministry, which received more than 1,400 responses offering valuable input.

To conclude Stage Three, the Forum convened five public roundtables across the province to give condo residents and stakeholders the opportunity to validate the recommendations. In particular, these sessions provided an opportunity to further explore the idea of establishing a "Condo Office", with participants identifying key priorities and funding models for consideration.

### **Key outcomes**

The various engagement streams confirmed general support for the Stage Two recommendations, particularly the following proposed changes:

- Smarter disclosure and prohibiting deferred costs and the sale or lease of assets considered as common elements, improving information for buyers and protecting owners against unpredictable fee increases.
- Enhancing access to records and other recommendations that contribute to greater financial transparency and accountability.
- Creating a quicker, more cost-effective dispute resolution system that will address power imbalances and provide information to the condo community.
- Increasing information, communication, and engagement through better education for new condo board members, and improving board accountability.
- Introducing condo manager licensing, minimum education requirements, and insurance or bonding to protect against mismanagement.
- Establishing a centralized Condo Office to provide information, support, and oversight to the condo community through a blended funding model that includes contributions from condo owners and members of the condo sector

### **FINAL MEETING OF THE RESIDENTS' PANEL**

The Residents' Panel established a platform for a diverse group of condo residents to come together to identify common priorities and ensure that recommendations would ultimately address their needs. To include a balance of perspectives, the 36 members of the Panel were randomly selected for geographic and demographic diversity.

After establishing guiding values and key priorities in Stage One, the Residents' Panel reconvened in September 2013 to determine if the outcomes of Stage Two aligned with the focus and direction they proposed at the start of the review process. Panelists discussed the strengths of the recommendations and additional concerns for further consideration by government. A detailed summary of their discussions can be found in *A Residents' Review of the Stage Two Solutions Report*, available on the Public Policy Forum website.

### **General feedback**

Following a thorough review of the *Solutions Report*, the Panel concluded that the recommendations respond to many of the priorities they identified in Stage One. Some of the welcome suggestions include education for board members, licensing of condo managers, protection against fee increases, better information for buyers, enhanced access to records, improved process for requisitioned meetings, and the creation of a dispute resolution office. Recognizing the importance of implementation, the Panel also emphasized the need for policymakers to consider design details that could help drive better outcomes and prevent unintended consequences.

### **The Condo Office**

Overall, the Panel supported the idea of a designated administrative authority to provide a range of services to condo communities. While the Panel did not reach consensus on the exact model of funding, it acknowledged that condo owners and members of the condo industry should take some financial responsibility for creating and maintaining such an office, and that pay-per-use and licensing fees should play a significant role in raising revenue. Many residents saw a modest unit fee as a reasonable expense, given the services that could be offered and the potential improvements that would result. However, some voiced concern about the possibility of costs being too high for condo owners already struggling to pay their monthly fees, or condo corporations not getting enough value for their money.

### **Areas for further consideration**

The Residents' Panel put forward a number of suggestions that could enhance the impact of modernizing the Condo Act, such as the following:

- Provide sufficient flexibility to address the diverse situations and preferences of different condo corporations across the province.
- Place adequate checks on the activities of boards, especially for reserve fund management.
- Develop a body of knowledge about how to encourage and maintain healthy relationships in condo communities.
- Reconcile gaps between the Residential Tenancies Act and the Condo Act to improve dispute resolution.

### **ONLINE FEEDBACK ON THE STAGE TWO SOLUTIONS REPORT**

The public was invited to provide feedback on the *Stage Two Solutions Report* by completing an online feedback form or by submitting comments to the Ministry through email, direct mail, and social media channels. While submissions continue to be accepted by the Ministry, the public had 45 days to complete the online form. From September 24<sup>th</sup> to November 8<sup>th</sup>, 2013, the Ministry received more than 1,000 forms from across Ontario, with condo residents making up the majority of respondents. Key findings include:

#### **Consumer protection**

The results show strong support for smarter disclosure and prohibition on deferred costs and selling or leasing back assets that could be common elements to condo corporations. Responses emphasize easily accessible information in plain language for buyers before and after purchase, as well as preventing the alteration of standardized documents. While respondents were generally supportive of the proposal to increase the minimum first year contributions to the reserve fund, some had questions about how this amount would be calculated. Many also applauded the recommendation to recognize the right to quiet enjoyment, yet some felt more could be done in this area.

#### **Finance**

Respondents are pleased to see recommendations that contribute to greater financial transparency and accountability. However, a few concerns remain about reserve fund usage and fraud prevention. To improve oversight of reserve funds, there should be careful consideration of new investments, owner approval of green energy projects, and a cap on spending before owner notification or voting is required. While supportive of the recommendations to reduce fraud, some respondents thought that the proposals did not go far enough and that the corporation's financial decision-making must become even more transparent to protect against kickbacks and other fraudulent activities.

#### **Dispute resolution**

There is strong support for a new timely, cost-effective dispute resolution process. Many are in favour of introducing a neutral third party, such as the quick decision-maker or dispute resolution officer proposed in the *Solutions Report*. Some respondents emphasized the need for the officer to make binding and enforceable decisions. However, qualification requirements, awarding of costs, and appeal rights remain unclear. Despite diverging views on who must intervene in tenant disputes, respondents strongly believe that either condo owners or corporations should have greater authority to deal with such issues.

## **Governance**

Survey respondents agree on the need for increased information, communication, and owner engagement. In particular, director training would enhance service and accountability, although requirements should not be too onerous considering the challenge of attracting board members. Frequent meetings, with more notice and information, will help to improve communication between owners and the board. Respondents also feel that the process for director removal should be simplified to address non-compliant boards, especially when proxy fraud and abuse are common concerns.

## **Condo managers**

The feedback indicates overwhelming support for condo manager licensing, minimum education requirements, and insurance or bonding to protect against mismanagement. Besides clarifying the two-stage licensing process proposed, respondents recommend penalties for non-compliance and proper training to ensure professional management. While condo manager licensing will help reduce risk for corporations, the financial implications for managers and owners must be considered.

## **The Condo Office**

Based on all the feedback, the Condo Office is welcomed as an accessible, independent, and authoritative body that provides information, support, and oversight to the condo sector. Respondents prefer to keep functions separate, especially manager licensing, and recommend granting adequate enforcement authority to avoid another level of bureaucracy. The majority of respondents support the blended funding model proposed as long as fees are reasonable. In addition to a combination of unit, user, and licensing fees, developer and general tax contributions should also be explored.

## **PUBLIC ROUNDTABLES**

To conclude Stage Three, the Forum convened five public roundtables across Ontario to help identify key priorities and funding strategies for the proposed Condo Office, as much feedback had already been gathered on the *Stage Two Solutions Report*.

From December 2013 to January 2014, the Forum convened sessions in Ottawa, Mississauga, Toronto, London, and Scarborough to cover a broad range of contexts and perspectives in the condo community. While the roundtables were open to the public, attendance at each session was capped at 20 people to facilitate constructive dialogue. Participants included interested condo owners and stakeholders who had previously contacted the Ministry to provide feedback or inquire about opportunities to get involved in the review process.

At each roundtable, participants worked in groups to determine how the Condo Office could add value and how it could be funded. Discussions focused specifically on the following four components: education and awareness, dispute resolution, condo registry, and manager licensing.

## **The Condo Office**

In keeping with the public survey results, most roundtable participants support the establishment of an authoritative body to provide information and oversee the condo sector. Views on its function and funding were less definitive as the Condo Office has not yet been designed. Participants were generally supportive of a blended funding model, so long as the cost impact to owners was limited. However, many believe that the combination of information and dispute resolution functions could serve to limit conflicts and build healthier condo communities.

Common concerns were related to the projected value and the enforcement capacity of the Condo Office. Many participants stated that such an office must deliver cost savings to owners in order to justify unit fees. To avoid another layer of bureaucracy, others emphasized the need for consequences, such as individual fines. Without binding decisions, the impact may be limited to providing information and reducing small claims.

#### *Education and awareness*

Of all the priorities in the area of education and awareness, increased information and education for owners and board members was ranked as most valuable. Specific suggestions include a checklist of board responsibilities, a phone helpline, decision-making tools for boards, flexible approaches to education, and leveraging existing programs to manage costs.

#### *Dispute resolution*

Quick settlement and dispute resolution for a low user fee were top priorities, although all features were seen as interconnected, with long disputes requiring more money and creating more tension. As good communication is a preventative measure, it would be beneficial to develop a dispute resolution process that resolves issues before they escalate. However, the option to go to court should always be available, especially given the complexity of some cases. Participants stressed the need to clearly define the scope, process, rules, and costs involved. To inform planning, one possible model for consideration is the Landlord and Tenant Board.

#### *Condo registry*

Common priorities include the requirement to file basic condo corporation information and the collection of corporate data for the benefit of buyers and owners. To improve transparency, participants recommend creating an up-to-date searchable database that could include such corporate documents as rules, bylaws, declarations, status certificates, reserve fund studies, and monthly financial records. As the condo registry is meant to provide value to owners and others in the industry, many participants also stressed that it is important to carefully consider what kind of information would best serve the needs of the condo community.

#### *Manager licensing*

Independent licensing and regulatory oversight was valued the most by participants, but mandatory education and insurance were seen as important and interrelated. As licensing alone may not change behaviour, repercussions are needed to deter mismanagement. Taking a more proactive approach, some participants recommend minimum requirements such as post-secondary education and English-language proficiency, as well as training for self-managed corporations.

### **Funding Options**

Since potential Condo Office finances are only projections at this time, participants found it difficult to explore funding approaches, although most agreed that a combination of strategies should be considered. Some suggested splitting between unit and user fees, whereas others believe that stakeholders, such as managers, developers, and governments, should also contribute.

Participants discussed a wide range of options that include various combinations of the following funding streams: unit fees, user fees, licensing fees, course fees, developer fees, fines and penalties, and property taxes. They also noted that initial start-up and general administrative costs will need to be factored into the budget, in addition to supporting specific functions within the Condo Office. Other funding ideas proposed by roundtable participants are listed below.

- Consider a monthly unit fee prior to establishing the Condo Office to accumulate adequate initial funding.
- Introduce a small monthly fee for education as relying solely on user fees will likely result in low uptake.
- Condo corporations can pay or provide reimbursements for director education, and refund any unused education amounts to the Condo Office.
- Fund a free online condo guide through monthly unit fees.
- Ensure a low user fee for dispute resolution but avoid the unfair subsidization of problematic condo corporations.
- Unit or user fees may be offset by the availability of general funding and revenue from penalties paid.
- Start with a monthly unit fee for dispute resolution, followed by the addition of user fees and a flat rate for developers as disputes are common in the first few years.
- Charge a nominal fee to access the condo registry, with no cost for filing.
- Filing for the registry can be funded by user fees and the collection of information can be funded by land transfer or purchaser fees.
- Fund the registry with buyer and monthly unit fees and charge user fees for specific services.
- For self-managed condos with 100 units or less, mandate a nominal fee in lieu of manager licensing fees.

#### *Key considerations*

Throughout the discussions, participants raised some concerns about increasing monthly unit fees. By relying on unit fees, costs for owners may continue to rise and this unlimited pool of revenue could be misused. While manager licensing fees can help fund the Condo Office, the added expense may also contribute to further increases in condo fees.

As funding will not come from government, some condo owners questioned the value they receive from paying taxes. Since education and services for homeowners, landlords, and tenants are publicly funded, they feel that the government should also provide similar supports to the condo community.

To ensure that fee structures are fair and appropriate, participants recommend that policymakers consider the diversity and sustainability of the condo community when determining the best cost model. As the key components discussed are all important, they also advise phasing in functions and funding streams to manage cost and capacity.

#### **NEXT STEPS**

The Government of Ontario is now reviewing the recommendations from Stage Two and the feedback gathered in Stage Three to modernize the Condominium Act. Policymakers will carefully consider all the advice shared throughout the review process to ensure the most balanced approach moving forward. While this review process has come to a close, there will continue to be opportunities for the condo community to provide comments and suggestions as new legislation is developed.