

ONTARIO'S CONDOMINIUM ACT REVIEW

ONCONDO Submissions

Summary

PROCESS OVERVIEW

As part of the first stage of Ontario's Condominium Act Review, the Ministry of Consumer Services invited the public to send in their comments and ideas to the oncondo@ontario.ca email account or via regular mail. ONCONDO submissions served as one of the four discussion streams that comprised Stage One of the review process, which involved gathering views on key issues and options. As other discussion streams targeted specific locations and engaged smaller groups, providing further options for public input helped to ensure broad participation from the condominium community in Ontario. Although this stream of public engagement will remain active throughout the review process, only submissions received by the end of November were included in this summary and considered for the Stage One Findings Report.

Between June 8, 2012 and November 30, 2012, 455 emails were received, of which 177 were submissions and 278 were general inquiries. The theme most frequently addressed in the submissions was condominium governance. In the order of their frequency, additional themes included condominium management, dispute resolution, financial management, and consumer protection. Considerations outside of the five main themes were second most common among all submissions. While all the input provides a valuable overview of perspectives in the wider condominium community, it is important to note that comments received represent personal opinions and, as such, may not be factually accurate. Refer to Appendix B for a more detailed overview of input received.

SUMMARY OF COMMENTS

Condominium Governance

A high number of submissions were about condominium governance and the issues raised were quite diverse compared to some of the other themes addressed. Concerns over board terms, rules for proxies, and access to records were most commonly noted. Submissions also highlighted the need for board and buyer education, as well as confusion over the owner-occupant elected board position. While less frequent, comments regarding unclear rules for entering units, disproportionate votes in mixed-use buildings, and the challenge of amending declarations and attaining quorum at owners' meetings were also received.

Recommendations

Proxies

- Allow owners to give full voting discretion to proxy holder in board elections to clarify current rules on proxies.
- Limit the number of proxies held by one person given concerns over the manipulation of election outcomes.
- Prevent the alteration of proxy forms after they have been signed.

Access to Records

- Significant interest in reducing cost and time-related barriers to record access.
- Enable corporations to charge owners for record requests as fees are currently limited to the activity of copying.
- Post board meeting minutes in common areas and include such details as board member attendance and how they voted on specific items.

Education/Training

- Many recommended mandatory board training while others note that such a requirement may discourage people from volunteering to be directors.
- Require education for new buyers on the advantages and responsibilities of condominium living.
- Ensure that realtors are not only knowledgeable about condominium living, but they also provide a clear explanation to new and prospective owners.

Owner-Occupant Board Representation

- Eliminate the requirement for an owner-occupant elected position or its application in buildings with a majority of owner-occupied units to reduce confusion and complexity for owners' meetings.
- Require the majority of the board to be made up of owners who occupy their units.

Other Suggestions

- Many suggested establishing board term limits although possible negative implications regarding institutional knowledge and the retention of good directors were also noted.
- Lower the current owner approval requirement for changing the declaration (e.g. 66 and 2/3 percent) as 90 percent is too stringent and not realistically attainable, especially in buildings with high levels of seniors or non-resident owners.
- Clarify the rules regarding when a corporation or its agents may enter a unit and notification prior to entry.
- Charge unit owners a fee for not attending owners' meetings to address quorum issues.
- Consider equitable allocation of votes in mixed-use buildings by taking into account the amount of physical space each vote represents as a proportion of the whole.

Dispute Resolution

The number of submissions addressing dispute resolution was moderate, with comments focusing on only a few specific topics. Most of the input highlighted the inefficiencies of current processes given that mediation and arbitration can be costly and time-consuming. Enforcement for clear cases of non-compliance was also mentioned as a challenge in many of the submissions. Additional concerns include the lack of clarity regarding liens, board use of corporation funds to cover legal fees, and owner responsibility for all legal fees if damages are awarded to the corporation.

Recommendations

- Many recommended establishing an alternative dispute resolution mechanism, such as an ombudsman, review board, or tribunal, to address minor disputes.
- Require a preliminary meeting between disputing parties to clarify the issue and find a resolution prior to formal dispute resolution as mediation and arbitration can be costly and time consuming for all involved.
- Ensure that rules and by-laws are easily enforceable by expediting court orders for clear issues of non-compliance.
- Reconsider placing the responsibility for all legal fees on the unit owner if the corporation is awarded damages to avoid discouraging owners from pursuing legitimate legal action.
- Clarify what costs can be subject to liens and how they are collected by the corporation.
- Create an enforcement body to investigate concerns of board mismanagement.

Condominium Management

While various issues on condominium management were shared, the number of submissions received on this theme was moderate. Much of the input was centred on the qualification and licensing of condominium managers. Suggestions included defining roles and responsibilities, testing for basic competencies, ensuring appropriate financial management, requiring enforcement and protection for misconduct, and improving current recruitment and contracting practices.

Recommendations

Licensing and Regulation

- There was strong support for licensing condominium managers, with flexibility for self-managed buildings; however, some noted that clarifying roles and responsibilities and including enforcement capabilities in the Act may be sufficient.
- Establish an oversight body to regulate condominium managers and provide enforcement for non-compliance; suggested options include the Ministry of Consumer Services, the Real Estate Council of Ontario (RECO), and the Association of Condominium Managers of Ontario (ACMO).

Mandatory and Continuing Education

- Mandate the demonstration of a minimum level of competency in the duties and responsibilities of the position through accredited educational programs run by the Ministry of Training Colleges and Universities, ACMO, or other private organizations.
- Require condominium managers to take ongoing training/educational programs in preparation for a re-certification test at pre-determined intervals, such as every five years.

Financial Management

- Prevent conflicts of interest by clarifying the ability of condominium managers to enter into service contracts, requiring all contracts to be open to public bidding; conducting financial audits, and perhaps restricting the role of managers in financial management.
- Prohibit condominium managers from receiving gifts or commissions from contractors or service providers to ensure the best value and to prevent corruption.
- Conduct an annual review of services rendered and financial dealings on behalf of the corporation, and share results with all residents through a written report.

Accountability

- Require condominium managers to be bonded for a pre-determined amount or to carry fidelity insurance to prevent criminal activities and cover errors in mismanagement.
- Enforce penalties against condominium management companies for misconduct or unethical practices.

Defining Roles and Responsibilities

- Clarify the roles and responsibilities of condominium managers in the Act and in a code of ethics, with an emphasis on their role in relation to the board and residents.
- Consider limiting the roles and responsibilities of condominium managers as they tend to be overworked and underpaid, which can lead to unintended cases of mismanagement.

Other Suggestions

- Require that individuals undergo a fit and proper person test prior to serving as a condominium manager; suggested criteria included mental ability, criminal record check, age requirements, and no outstanding professional complaints against the individual.

- Establish a registration and rating system for condominium management companies as a hiring tool for condominium corporations.
- Although some argue that the recruitment of condominium managers and the renewal of management contracts should be overseen by owners rather than boards, others have noted that such an approach could be overbearing and disruptive for the corporation.

Financial Management

The diversity of issues and the number of submissions received on finances were moderate. Comments were largely related to reserve funds, especially their usage, reserve fund studies, and contribution levels. Submissions also included concerns over access to financial information, the frequency of special assessments, and the lack of clarity regarding the repair and maintenance of common elements. Less frequent were submissions related to the role of auditors, the use of surplus funds, declaration amendments related to cost allocations, and changes to common elements.

Recommendations

Reserve Funds

- Define the meaning of “major repair and replacement” more clearly as some corporations and auditors treat routine annual maintenance (e.g. landscaping) as a reserve expense.
- Permit corporations to use reserve funds for investments that could reduce costs, such as green technology upgrades or changes needed to meet government requirements.
- Inform owners about proposed reserve fund expenditures above a certain amount to ensure that they understand how the expense meets the eligibility requirement.
- Standardize requirements for a reserve fund study and provide more oversight of persons conducting these studies.
- Ensure that corporations follow the repair schedule set out in the study or provide explanations for altering the plan.
- Although suggestions have been made regarding greater clarity about funding requirements and how they are met, some question why all owners need to contribute to a reserve fund for future repairs that will benefit only long-term or future owners.

Common Elements

- Define responsibility for repairs and maintenance of units and common elements.
- Provide greater clarity regarding changes to common elements to prevent abuse by boards and to determine when expenditures can be covered by the reserve fund.

Other Suggestions

- While some would like more flexibility regarding the use of excess funds, others recommend stricter rules on budget management.
- Clarify when special assessments are permitted to address concerns about their usage.
- Ensure sufficient notice for impending assessments and a reasonable timeframe for payment.
- Require boards to provide all owners with financial information on a regular and ongoing basis and to respond promptly to requests for such information.
- Provide greater clarity about the roles and responsibilities of auditors and ensure that owners are not permitted to serve as an auditor for their corporation to avoid conflict of interest.
- Maintain the strict conditions currently in place for amendments to the declaration and the description that sets the proportion of common expenses paid by owners of individual units.

Consumer Protection

Concerns related to consumer protection for buyers were diverse although the number of submissions received on the theme was relatively low. Many of the comments emphasized the need for plain-language disclosure requirements and an owners' bill of rights and responsibilities. Other submissions highlighted such issues as artificially low condominium fees advertised in the first year, confusion over unit insurance and warranty coverage, as well as the lack of clarity around rental units. While less common, various suggestions were also made to increase awareness of condominium living, ensure fair and proper procedures in the sale of a unit, and address issues with Tarion warranty coverage.

Recommendations

Disclosure Requirements

- Many suggested the need for plain-language documents that clearly outline rules and by-laws, and include building plans, advertising materials, and board minutes from the previous year to ensure accurate information on the current status of the corporation.
- Establish a condominium owners' bill of rights that clearly identifies rights and responsibilities, including disclosure entitlements.
- Prohibit the inclusion of long-term cost provisions in the declaration where the corporation must buy or lease back parts of the common elements from the builder.
- Clarify the mixed-use or residential status of a condominium in the governing documents of the corporation, especially in the case of hotel-condominiums with short-term rental arrangements.
- Require the purchaser to issue a signed document to the developer, board, or condominium manager that acknowledges receipt and confirms understanding of the disclosure statement.
- Prevent builders from retaining ownership of amenities advertised as features that "come with the condominium" (i.e. a gym).

Sale of Units

- Allow the purchaser to withhold 10 percent of funds from the builder for a fixed period of time until all matters have been resolved between the two parties.
- Prohibit the requirement to pay a "phantom mortgage" for purchasers in possession of a unit prior to title being conveyed as they have not been granted usage of the unit.
- The lack of standardized language between "written evidence of compliance" in the Act, and "Deposit Receipts" in the regulations makes it unclear what forms are required when holding money in trust.

Tarion Warranty

- Increase warranty protection to ensure that builders can be held liable for concealed construction problems.
- Establish a separate warranty program for townhouse condominiums that obliges the builder to obtain the unit owner's approval for reporting to Tarion.
- Lower the deposit requirement for conciliation services as the purchaser has already paid a registration fee to Tarion.

Other Suggestions

- Mandate education/training sessions for new purchasers to inform them of the requirements of condominium living prior to purchase.
- Require a standard unit description in the by-laws to clarify insurance coverage.

Additional Considerations

Besides addressing the five main themes, submissions covered a range of other issues and options primarily related to second-hand smoke, property taxes, tenant rights and responsibilities, and improving information for owners. Recommendations also included enhancing the design and readability of the Act, requiring individual metering of utilities, ensuring flexibility based on building type, as well as placing restrictions on pets and the age of residents.