

CONDOMINIUM ACT REVIEW STAGE ONE PUBLIC SUBMISSIONS

SUMMARY

Condo Act Review Stage One Public Submissions Summary

This document summarizes public submissions received during stage one of the Condo Act review.

Submissions summarized in the document include any public comments or input received by the Ministry of Consumer Services, (now known as the Ministry of Government and Consumer Services), in fall 2012 through:

1. The oncondo@ontario.ca email account
2. Regular mail

Submissions were divided into six themes:

1. Governance
2. Dispute Resolution
3. Finance
4. Consumer Protection for Buyers
5. Condominium Management
6. Other

These public submissions were one of the four discussion streams in stage one that informed the content of the Stage One Findings Report.

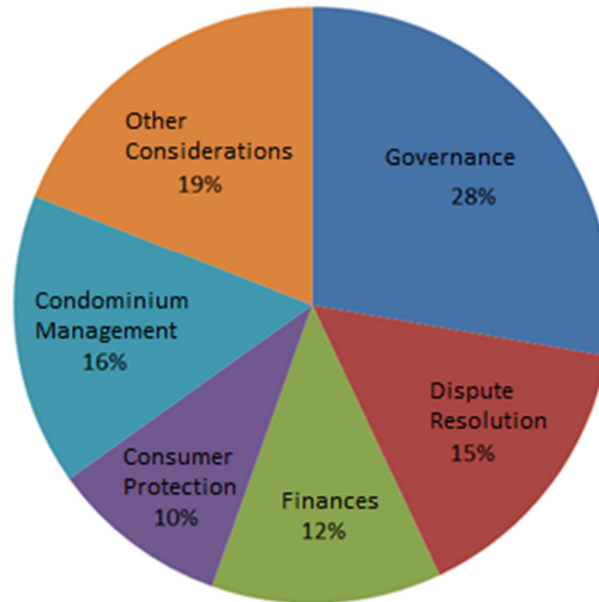
All comments have been paraphrased.

Stage One Public Submissions Overview

Condo Act Review Stage One Feedback	
Input Source	Number
ONCONDO/Mail Submissions	178
ONCONDO/Mail Inquiries	278
Total:	456

Themes Covered by Public Submissions

(Individual submissions often cover several themes)



Governance

THEME: Governance	
Issue Identified	Comments (Paraphrased)
Concerns that some directors stay on the board for long periods of time	<p>Many residents have expressed a desire to see term limits established for board members.</p> <p>Some have noted that term limits could reduce institutional knowledge and limit the retention of good directors.</p>
Rules governing use of proxies at owners' meetings unclear or too restrictive	<p>Current rules not clear or flexible. Proxies much more relevant for quorum than for election of directors because many proxies do not specify who to vote for. Owners should be able to give full discretion to proxy holder to vote for directors.</p> <p>Some comments expressed concern that boards or other residents "gather" or "hoard" proxies to influence election outcomes. Some have suggested a limit on the number of proxies one person can hold.</p> <p>Some expressed concerns about the potential for altering proxy forms after they have been signed.</p>
Challenges for residents seeking disclosure of corporation records including board meeting minutes, owners lists, etc.	<p>Access to records critical to allow residents to scrutinize their boards and reprimand if necessary (e.g. list of owners for requisition meetings).</p> <p>Cost and time allowed to access records often a significant barrier.</p> <p>Others note that corporations should be able to charge owners while managers oversee the review of records, as currently costs can only be applied to the activity of copying.</p> <p>Some interest in board meeting minutes being posted in common areas and specifying the details of which board members attended meetings and who specifically voted for or against items.</p>
Board members often lack the expertise and knowledge required for their role	<p>Many residents have suggested that some sort of training be required for condo directors.</p> <p>Many have also objected to a training requirement out of concern that it would discourage people from volunteering to be directors.</p>
Condo buyers/owners don't understand the shared responsibilities of condo living	<p>Propose mandatory education for new or prospective owners on the "benefits and potential pitfalls" of condo living. Realtors also need to be educated about condos and explain the differences to buyers.</p>

THEME: Governance	
Issue Identified	Comments (Paraphrased)
Threshold of 90% for amendments to the declaration difficult to attain	<p>The 90% requirement is too stringent and not realistically attainable in practice. A particular challenge in buildings with high levels of seniors or non-resident owners.</p> <p>The requirement for 90% of owners to consent to amend a declaration should be lowered to 66 2/3%.</p>
Board position reserved for election by owner-occupied units	<p>Concerns expressed about the confusion created by this requirement and the complexity it can create for owners' meetings.</p> <p>Some have suggested that the requirement be eliminated or that it not apply in buildings with greater than 50% owner-occupied units.</p> <p>Another proposal has suggested that the Act should require that the majority of the board be of owners who occupy their units (i.e. not just elected by owner-occupants, but the board members need to be owner-occupants themselves).</p>
Clarify rights and obligations of corporations entering units	<p>Some interest expressed in more clearly specifying the circumstances where the corporation or its agents may enter a unit and more specific requirements regarding notice.</p>
Difficulty attaining quorum at owners' meetings	<p>Unit owners should be charged a fee for not attending owners' meetings.</p> <p>Improve notice requirements and/or reminders for AGMs to improve attendance.</p>
Voting allocation for Residential and Commercial Units in a mixed-use condominium	<p>The Condominium Act needs to be changed to assure that the allocation of votes must be reasonably equitable taking into consideration the amount of space each vote represents as a proportion of the whole. In some buildings, commercial units can have a disproportionate vote compared to the share of the building they occupy (i.e. they occupy 10% of the building's space, but have a 35% share of the vote).</p>

Dispute Resolution

THEME: Dispute Resolution	
Issue Identified	Comments (Paraphrased)
The current dispute resolution process is too cumbersome to resolve minor disputes. Mediation/arbitration is costly and time consuming for all parties	<p>An alternative dispute resolution mechanism is required to resolve minor disputes as most are left unresolved because the process is complicated.</p> <p>There should be mandatory informal meeting between the two parties to clarify the issue and find a resolution prior to formal dispute resolution.</p> <p>Suggestions include a Government Ombudsperson/Review Board or Tribunal.</p>
Enforcement of clear non-compliance with declaration or by-laws too difficult	<p>Rules and by-laws need to be easily enforceable.</p> <p>Parties should be able to get a court order more quickly for clear issues of non-compliance.</p>
If a corporation obtains an award of damages in an order made against an owner or occupier of a unit, the cost, together with the legal fees, are added to the common expenses of the unit	<p>Some have suggested ss. 134(5) puts unfair onus on the condominium owner to ensure they have a sound case in court because if they lose, they may be responsible for the board's legal fees. This section may deter owners from pursuing legitimate legal action.</p>
If an owner fails to repair damages the corporation can add the cost to the owner's contribution of common expenses	<p>Under ss. 92(4), it is unclear what costs are lienable and how they are collected by the corporation from the owner.</p>
Boards can use corporation's finances to fund legal expenses	<p>It is unfair to owners that boards can use corporate finances to fund legal costs associated with dispute resolution.</p>
Introduce an Investigation and Enforcement Unit for condominium owners	<p>Introducing an enforcement body to investigate board could serve as a deterrent for mismanagement.</p>

Finance

THEME: Finance	
Issue Identified	Comments (Paraphrased)
Permitted use of reserve funds	<p>The Act needs to define the meaning of “major repairs and replacement” more clearly. Some corporations and auditors treat routine annual maintenance (e.g. landscaping) as a reserve expense.</p> <p>Corporations should be permitted to use reserve funds for things other than just “major repairs and replacement” such as investments that could reduce costs (e.g. energy or water conserving upgrades) or are needed to meet government requirements.</p>
Disclosure of financial information to owners	<p>Corporations should be required to provide owners with financial information to all owners on a regular and ongoing basis.</p> <p>Corporations also need to respond promptly to requests for such information.</p>
General concerns about special assessments	<p>Concerns about the frequency of special assessments and lack of clarity about the circumstances where they are permitted.</p> <p>Some have suggested that owners are given insufficient notice about impending assessments and too short a time period to pay (e.g. three monthly payments, where 12 would be easier for planning purposes).</p>
Permission of owners not required for reserve fund expenditures	<p>Owners should be informed about proposed reserve fund expenditures above a certain amount of money before they take place so that residents can understand how the expenses meet the requirement of “major repairs and replacement”.</p>
Reserve fund studies and contributions levels	<p>The Act needs to ensure that corporations follow the repair schedule set out in the study or provide explanations for altering the plan.</p> <p>The Act needs to provide greater clarity about reserve funding requirements and how they are met.</p> <p>The Act needs to provide more specific and standardized requirements for a reserve fund study and provide more oversight of persons conducting the studies.</p> <p>Some question why all owners need to contribute to a reserve fund for future repairs that will only benefit future owners.</p>

THEME: Finance	
Issue Identified	Comments (Paraphrased)
Repairs and maintenance	<p>The Act needs to better delineate who is responsible for repairs and maintenance of units and common elements.</p> <p>Section 91 causes particular confusion by allowing the declaration to assign common elements maintenance responsibilities to owners.</p>
Clear roles for auditors	<p>The Act needs to provide greater clarity about the roles and responsibilities of auditors. Some suggest that owners should not be permitted to be auditors.</p>
Use of excess funds	<p>Some wished the Act allowed corporations more flexibility to use excess funds rather than contribute to the reserve fund.</p> <p>Conversely, others feel that the Act should place stricter rules on budgeting by boards and the use of funds.</p>
Changes to common elements made by corporations	<p>Unclear whether section 97 approved expenditures can be paid from the reserve fund.</p> <p>Some feel that section 97(2) is subject to abuse by corporations as a way to make substantial changes without providing notice to owners.</p>

Consumer Protection

THEME: Consumer Protection for Buyers	
Issue Identified	Comments (Paraphrased)
Plain-language disclosure requirements	Require Builders and/or Boards to provide plain-language disclosure documents related to: rules and bylaws; past Board minutes; more accurate information of the condition of the building in the status certificate; access to “as built” plans; and advertising materials to ensure the final product matches the advertised.
Establish a condominium Owner’s Bill of Rights	There should be an Owner’s Bill of Rights added to the Act that clearly identifies owner’s rights and responsibilities in relation to the Act, the board and the manager, including disclosure entitlements.
Advertisement of artificially low condo fees in the first year	Do not allow the builder to include long-term cost provisions in the declaration where the corporation must buy or lease back parts of the common elements from the builder (i.e. heating system, guest suite, etc.).
Establish a standard unit description to clarify insurance and warranty coverage	Although some corporations have included standard unit descriptions in their bylaws, when no bylaw is in place “after damage” insurance and warranty coverage can be difficult to determine.
Lack of clarity around the usage of condominium units as short-term rentals	Builders should be required to determine at the outset whether the building will be a hotel-condo or residential.
Disclosure Responsibility	The Act should assign the legal responsibility for ensuring that a new owner received and understands the disclosure documents provided.
New purchaser education	Mandatory education/training sessions for new purchasers should be required to inform them of the requirements of condominium living prior to purchase.
Builder maintains ownership of particular building facilities	Do not allow the Builder to advertise amenities that “come with the condo” but then have the Builder retain ownership of the amenity facilities (i.e. gym).
Assurance of proper sale agreement completion	The Act should stipulate that the purchaser withhold 10% of funds to the Builder for a fixed period of time until all matters have been resolved between the two parties.
Purchaser in possession of a unit prior to title being conveyed	The requirement that a purchaser in possession of a unit prior to the title being conveyed pay a “phantom mortgage” should be removed because they do not have usage of the unit.
Hidden problems in the build quality of a condominium (ONHWPA)	Increase warranty protection so that builders can be held liable for concealed construction problems.

THEME: Consumer Protection for Buyers	
Issue Identified	Comments (Paraphrased)
Separate Tarion warranty for townhouse condominiums (ONHWPA)	Tarion should have a separate warranty program for townhouse condominiums that obliges the builder to obtain the unit owner's approval for reporting to Tarion.
Lower the Tarion deposit requirement when resolving differences (ONHWPA)	The present Tarion requirement of a \$1,000 deposit to obtain conciliation services is unfair given that the purchaser has already paid a registration fee with Tarion.
Confusion between Agreements of Purchase and Sale provisions in the Condominium Act and Regulations	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.

Condominium Management

THEME: Condominium Management	
Issue Identified	Comments (Paraphrased)
Licensing of condominium managers	<p>Condominium managers should be licensed under guidelines established by the Ministry of Government and Consumer Services (MGCS) to ensure professionalism within the industry.</p> <p>Some individuals argue that licensing is unnecessary as inclusion of roles and responsibilities of Managers under the Act, along with enforcement capabilities, would be sufficient.</p> <p>There were also concerns that self-managed condominiums should have flexibility with regard to licensing requirements.</p>
Initial qualification of condominium managers through mandatory education/training programs	<p>Managers should be required to demonstrate a minimum level of competency in the duties and responsibilities of the position prior to serving as a manager.</p> <p>Suggestions include accredited educational programs run by the Ministry of Training Colleges and Universities, ACMO, and other private organizations.</p>
Establishment of a regulatory body to oversee the licensing/regulation of Condominium managers	<p>An oversight body should be established to oversee the regulation of condominium managers, including enforcement for non-compliance.</p> <p>Suggested regulatory bodies include: MGCS, The Real Estate Council of Ontario (RECO), and ACMO.</p>
Continuing qualification of condominium managers through ongoing training/education sessions	<p>Condominium managers should be required to take ongoing training/educational programs in preparation for a re-certification test at pre-determined intervals (i.e. every five years).</p>
Clarify the roles and responsibilities of condominium managers in the Act	<p>The words management of the condominium appear barely seven times in the entire Act, and not once are the terms “condominium manager” or “condominium management company” listed.</p> <p>Condominium managers hold an immense amount of responsibility, and their role in relation to the Board should be clarified.</p>

THEME: Condominium Management	
Issue Identified	Comments (Paraphrased)
Require that condominium managers undergo a Fit and Proper Person Test prior to serving as a Manager	The basic competencies of condominium managers should be gauged prior to them serving as a Manager. Suggestions for basic competencies include: mental ability; criminal record check; age requirements; non-bankruptcy; and no outstanding complaints filed against them.
Restrictions to the condominium manager's ability to enter into service contracts with suppliers (i.e. landscaping, utilities, etc.)	Condominium managers have a conflict of interest in managing a condominium corporation's finances and hiring service providers because they can overpay for contracts with personal affiliations. Suggestions include: a requirement to open all contracts to a public bid; financial auditing; and disallow condominium managers from financial management to remove the conflict of interest.
Require that condominium managers are bonded or carry fidelity insurance	Regulation of Condominium managers is not sufficient. Condominium managers should be bondable for a pre-determined amount to prevent criminal activities such as theft of the corporation's funds. It was suggested that, to cover errors in mismanagement, condominium managers maintain fidelity insurance.
Mandatory code of ethics for condominium managers	A clearly defined code of ethics should be established to define the general roles and responsibilities of Managers in relation to boards and residents.
Annual requirement for condominium managers to report to the corporation services rendered	An annual review of services rendered and financial dealings on behalf of Residents should be held and results communicated to all residents via a written report.
Prohibit condominium managers from receiving gifts or commissions, particularly from service providers	A section should be included in the Act that prohibits condominium managers from taking commissions or gifts from contractors or service providers. Services procured should be the best value for money for the corporation, and not subject to personal bribes.
Establish punitive enforcement mechanisms for condominium managers who violate their roles and responsibilities	There should be some way of enforcing penalties against condominium management companies for misconduct or unethical practices where the costs are not recovered through the condominium corporation but directly from the management company.

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Issue Identified	Comments (Paraphrased)
Establish a registration and rating system for condominium management companies	The Government or an organization should register condominium managers and keep a record of complaints filed against them to determine a rating system that condominium corporations can refer to when hiring a manager.
Owners, not boards, vote to renew the condominium management contract	<p>The condominium manager should be appointed by the owners not the board, and the Manager's term be renewed annually by a majority of the owners at the Annual General Meeting.</p> <p>Others have argued that this would be overbearing and disrupt the proper management of the corporation.</p>
Limit the roles and responsibilities of condominium managers	Condominium managers are overworked and underpaid. They have to wear many hats and be experts in all facets of running a condominium. Amendments to the Act need to include a section that indicates condominium managers' expectations of boards and residents.
Term limits for management contracts	Corporations should be restricted in the length of contract they can enter into with a condominium manager or management firm (e.g. 1-3 years).

Other

THEME: Other	
Issue Identified	Comments (Paraphrased)
Second hand smoke (also possibly <i>Smoke-Free Ontario Act</i>)	<p>Ban smoking in all units and balconies.</p> <p>Amend the Act to explicitly allow condominiums to establish by-laws or rules banning smoking in units and balconies.</p>
Property taxes (also <i>Assessment Act</i>)	<p>Condominiums should not be subject to the same property tax rates as single family homes because they do not received the same level of municipal services as many are privatized (i.e. garbage collection).</p> <p>During occupancy, the Act enables double taxation of residents who pay a tax bill to the municipality and are charged an estimated property tax by the developer.</p>
Greater clarity about status of renters (also <i>Residential Tenancies Act, 2006</i>)	Rights and obligations of renters in relation to other residents are unclear. The Act and/or MGCS/MMAH should better delineate the landlord-tenant-corporation relationship and the role of condo law vs. tenant law.
Better condominium information for owners	MGCS should provide better and more widely promoted information about condos and have a condo hotline to provide advice or general info to owners.
Design and readability of the Act	The amended Act should be organized and written so that it is clear and understandable to a wide range of users, not just condo managers, lawyers and professionals.
Individual metering of utilities, i.e. electricity, heat and water (also <i>Energy Consumer Protection Act, 2010</i>)	<p>Metered electricity for units adds costs for residents.</p> <p>Units should have utilities (electricity, heat, water) metered to promote fairness and conservation.</p>
Classifications and exemptions based on building types.	The Act should take into account size differences of condos and the burden that more onerous requirements may have on smaller ones (e.g. licensed condo manager, dispute resolution). It should not be a one size fits all approach.
Pet restrictions	<p>Rules about number of pets and size need to be more easily enforceable.</p> <p>Pets should be permitted in condos subject to specific requirements (e.g. size, noise, etc.).</p>
Age restrictions (also <i>Ontario Human Rights Code</i>)	The Act should better enable condos to restrict residency by age (e.g. adult only).

