

# **CONDOMINIUM ACT REVIEW STAGE THREE PUBLIC SUBMISSIONS**

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**SUMMARY**

## **Condo Act Review**

### **Stage Three Public Submissions Summary**

This document includes public comments received by the Ministry of Consumer Services, (now known as the Ministry of Government and Consumer Services), between fall 2013 and winter 2014. The feedback focussed on Expert Panel recommendations in the Stage Two Solutions Report and was collected through:

1. The [oncondo@ontario.ca](mailto:oncondo@ontario.ca) (government email account)
2. Regular mail
3. Public Policy Forum feedback survey

Submissions were divided into six themes:

1. Condo Office
2. Consumer Protection
3. Financial Management
4. Dispute Resolution
5. Governance
6. Condo Managers

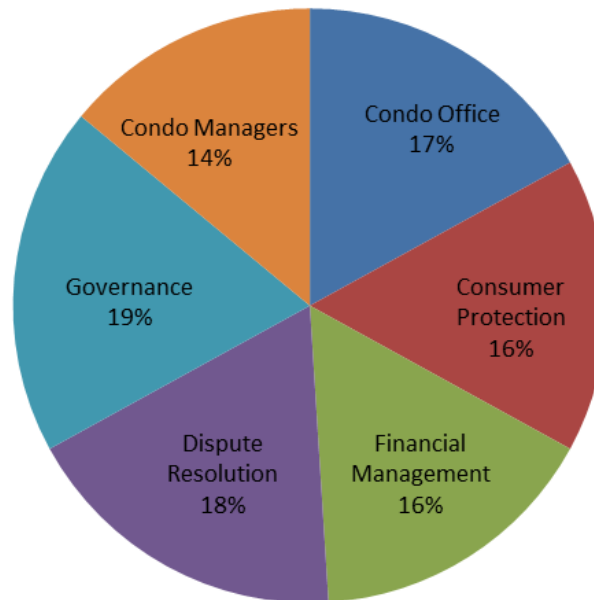
All comments have been paraphrased.

## Stage Three Public Submissions Overview

Condo Act Review Stage Three Feedback	
Input Source	Number
PPF Feedback Survey	1,024
ONCONDO Submissions	341
ONCONDO Inquiries	184
<b>Total:</b>	<b>1549</b>

## Themes Covered by Public Submissions

(Individual submissions often cover several themes)



## Condo Office

<b>THEME: Condo Office</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
<b>Establish a Condo Office</b>	<p>Many respondents thought the establishment of a Condo Office was a good idea and were very supportive of the recommendation.</p> <p>Some respondents voiced qualified support for the Condo Office, on the condition that the office would be effective and not overly bureaucratic or full of “red tape.”</p> <p>Some respondents were critical of the Condo Office. Of these respondents, some believed that the Condo Office and its proposed features were not necessary for condo owners and boards. Others said that these services could be provided by a third-party.</p> <p>Some respondents had questions about the organizational structure of the Condo Office – who would run it, who would sit on the board, what would be the necessary skills and qualifications of the employees? Others emphasized that the Condo Office governance must be independent, impartial, transparent and accountable to condo owners. Others asked whether the Condo Office would have enforcement powers.</p>
<b>The Condo Office’s role</b>	<p>Many respondents highlighted dispute resolution as a feature that would be very beneficial to condo owners.</p> <p>Others emphasized that the information provided to owners and boards would be of great value.</p> <p>Some wanted the Condo Office to have expanded jurisdiction and enforcement power over condo issues. Others noted that owners and boards should have ability to appeal Condo Office decisions to a higher authority (e.g. divisional court).</p>
<b>Financing the Condo Office</b>	<p>Many respondents voiced support for unit fees, provided that these were set at a reasonable rate and used to provide the services needed by owners and boards. Some respondents expressed that a small monthly fee was a smart investment, given the increased consumer protection that the Condo Office would offer owners.</p> <p>Many respondents stated the condo manager licensing should be self-funded. Some respondents were critical of unit fees and believed that the Condo Office should be funded solely by user fees. Others suggested the office be funded by general tax revenues.</p>

<b>THEME: Condo Office</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
	<p>Some respondents suggested that dispute resolution services be funded mainly through user fees. Of these respondents, many expressed concern that if the user fee for dispute resolution services is too low, an incentive for frivolous or drawn-out disputes may be created.</p> <p>Others suggested that condos without many disputes would be subsidizing dispute resolution costs for other condos.</p> <p>Some respondents suggested other funding sources, including development charges and condo sales fees.</p>

## Consumer Protection

<b>THEME: Consumer Protection</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
<b>Smarter disclosure</b>	<p>Many respondents were strongly in favour of smarter disclosure.</p> <p>Of these respondents, many highlighted the increased consumer protection that would result for new condo buyers from a standardized declaration and new condominium guide about the basics of condo living. Others emphasized the importance of ensuring that all of the smarter disclosure documents for new buyers are written in plain language and not “legalese.” Some respondents also stressed the importance of providing information such as the condo guide in a variety of forms (e.g. in print, online, etc.), to ensure accessibility for all condo owners.</p>
<b>Selling or leasing back assets that could be common elements</b>	<p>Many respondents were strongly in favour of prohibitions on the selling or leasing back of assets that could be common elements.</p>
<b>Deferred costs</b>	<p>Many respondents were strongly in favour of prohibitions on deferred costs.</p>
<b>Subsidization</b>	<p>Many respondents supported separate metering and sub-metering agreements.</p>
<b>Minimum contributions to the reserve fund</b>	<p>Many respondents supported the recommendation regarding developer minimum contributions to the reserve fund</p> <p>Some respondents had questions about how the formula for minimum reserve fund contributions would be determined. Others emphasized that such a recommendation would only be effective in protecting condo owners if the government were to ensure that reserve fund planners are properly qualified for the task.</p>
<b>Noise</b>	<p>Many respondents strongly supported the recommendation to amend the Act to recognize the right to quiet enjoyment and the board’s responsibility to take reasonable steps to enforce it. Of these respondents, some identified disputes over noise as one of the most pressing issues facing condo communities.</p> <p>Some respondents stated that the recommendation did not go far enough and that the Act should address noise issues in a more detailed manner, with comprehensive guidelines for board members dealing with conflict over noise. Others expressed that without concurrent changes in building construction, complaints and disputes over noise would continue to take place.</p>

<b>THEME: Consumer Protection</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
	Some respondents also pointed out that because noise is experienced differently by different people, any approach to dealing with noise issues in condominium must be balanced and fair to all condo residents.

### **Financial Management**

<b>THEME: Financial Management</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
<b>Communication and education</b>	<p>Respondents were strongly in favour of increased communication and education for owners about financial matters. Of these respondents, many emphasized that owners have a basic right to know about the financial condition of their condo.</p> <p>Some respondents emphasized that any financial education materials for owners should be accessible through a variety of platforms, including both online and offline sources. Others recommended that budget materials provided to owners should be easy to read.</p> <p>Some respondents asked how the new Act would enforce the recommendation that the board notify owners of off-budget spending, and if there would be penalties for boards that did not do so. Others recommended that mandatory notice also be given to owners when new contractors are hired by the board or management company.</p>
<b>Reserve funds</b>	<p>Many respondents were in favour of the recommendations concerning reserve funds. In particular, many respondents voiced strong support for mandatory reserve fund budgets.</p> <p>Some respondents raised concerns about board non-compliance with the new reserve fund requirements proposed in the report.</p>
<b>Operating budgets</b>	<p>Many respondents were strongly in favour of the recommendations concerning operating budgets.</p> <p>Some respondents expressed concern about the recommendation to not place caps on surpluses.</p>
<b>Reserve fund investments</b>	Respondents were divided on the recommendations concerning reserve fund investments.

<b>THEME: Financial Management</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
	While many were supportive of increased flexibility for boards wanting to invest these funds, others highlighted the need to carefully select investment vehicles and ensure there is no risk to the principal.
<b>Fraud</b>	<p>Many respondents supported the recommendations to reduce fraud.</p> <p>Some respondents expressed concern that the recommendations did not go far enough and that the corporation's financial decision-making must become even more transparent to protect against fraudulent activities. In particular, respondents stated that owners should be notified of new contractors and their bids so that any kickbacks can be better identified.</p>

### **Dispute Resolution**

<b>THEME: Dispute Resolution</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
<b>Dispute resolution office</b>	<p>Strong support for a new dispute resolution system. Respondents were strongly in favour of a neutral, third-party dispute resolution office which can resolve disputes more quickly and less costly than the current process of mediation and arbitration, as long as it does not add an additional layer of bureaucracy or large cost to the condo sector.</p> <p>Respondents expressed the need for the dispute resolution officer to be unbiased, and handle disputes in a timely manner. Respondents felt the scope of services offered by the dispute resolution office require individuals with strong qualifications with a high level of training and expertise in condo law, with a possible role for existing condo mediators and arbitrators.</p> <p>Most respondents were in favour of a reasonable charge to owners and boards to access the services of the dispute resolution office. Other funding options raised include cost recovery by the successful party.</p> <p>Respondents raised some questions regarding the scope and services provided by the dispute resolution officer. Some respondents wondered whether condo managers or lawyers could represent condo boards at the dispute</p>



<b>THEME: Dispute Resolution</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
	<p>resolution office. Others expressed concern with the proposed dispute resolution office's ability to handle disputes as it may receive a large number of applications following implementation.</p> <p>There was some concern that the dispute resolution office would not be able to handle all disputes, and that a separation between the quick decision maker and dispute resolution officer may be confusing.</p> <p>Some respondents emphasized the need for settlements handled by the dispute resolution officer to be binding and enforceable.</p>
<b>Quick decision maker</b>	<p>Strong support for a quick decision maker that can issue binding decisions in a timely and cost-effective manner.</p> <p>Some respondents felt that the scope of the quick decision maker should be broad, with most condo disputes proceeding to a fast-track resolution. Others suggested that the quick decision maker and dispute resolution officer positions be combined into a single role.</p> <p>Some respondents suggested that the quick decision maker be permitted to issue fines or penalties in its decisions as an additional enforcement mechanism.</p> <p>Some respondents suggested that shared facility disputes should be heard by the Condo Office.</p> <p>There was some concern from unit owners that if lawyers can be involved in the process, owners may be disadvantaged compared to the legal resources of the condo corporation.</p>
<b>Condo vs. developer</b>	<p>Some respondents felt that developer disputes should be heard by the Condo Office rather than proceeding to court.</p> <p>Others felt that new developer requirements would reduce the number of disputes.</p> <p>Additional suggestions included a temporary developer bond to cover costs should an issue arise within a period of time following turnover. Others suggested that developer disputes could best be heard through a revised Tarion process.</p>

<b>THEME: Dispute Resolution</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
<b>Condo vs. manager</b>	<p>Some owners felt that the dispute resolution office should hear owner vs. manager disputes, rather than a complaints process through the condo manager licensing authority. Others felt that managers are accountable only to the condo corporation and disputes with an owner should not be heard by the Condo Office.</p> <p>Others suggested that contracts between the management provider and the condo corporation should be reviewable by the Condo Office.</p> <p>Other respondents expressed the importance of a timely process for the transfer of board records from the management service provider to the condo corporation.</p>
<b>Condo vs. owner</b>	<p>Strong support for an alternative dispute resolution process for condo vs. owner disputes through the Condo Office. Respondents emphasized the need for a low-cost and impartial process for owners.</p> <p>Others suggested a mandatory internal attempt to resolve condo vs. owners disputes before an application can be made to the Condo Office.</p> <p>Some respondents suggested that no disputes are simple and require some level of mediation. Some respondents suggested mandatory mediation if the dispute is above a certain monetary threshold.</p>
<b>Condo vs. tenant</b>	<p>Some support for condo corporations and owners to have additional opportunities to resolve disputes with tenants through the Condo Office.</p> <p>Respondents suggested clarifying the interaction between the Condominium Act and the Residential Tenancies Act to provide condo corporations the ability to resolve condo owner vs. tenant disputes when the owner is not present (e.g. absentee landlord).</p> <p>Others expressed concern that condo corporations should not have the authority to intervene in landlord and tenant disputes. Instead, it was suggested that the condo corporation be given additional measures to ensure that landlords address disputes with their tenant.</p>
<b>Cost recovery</b>	<p>Some support for cost recovery, as long as it is fair to owners. Cost recovery should only be for expenses related to the Condo Office, and not legal fees, to even the playing field between owners and boards.</p>

## Governance

<b>THEME: Governance</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
<b>Access to records and information</b>	<p>Respondents were strongly in favour of the recommendations concerning access to records and information. Of these respondents, many voiced support in particular for the set timelines for boards responding to record requests. Many respondents also emphasized the importance of access to meeting minutes.</p> <p>Many respondents emphasized that easy access to the corporation's records is an owners' basic right. Others stated the importance of owner access to records in ensuring sound financial management of the corporation.</p>
<b>Meetings</b>	<p>Many respondents were strongly in favour of the recommendations regarding meetings.</p> <p>In particular, respondents emphasized the importance of standardizing proxies to avoid vote tampering and fraud.</p>
<b>Directors and officers</b>	<p>Many respondents were strongly in favour of the recommendations concerning directors and officers.</p>

<b>THEME: Governance</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
	<p>In particular, many respondents voiced strong support for a code of ethics, mandatory training, and increased minimum qualifications for directors.</p> <p>Some respondents voiced concern that mandating educational requirements for new directors could dissuade condo owners from volunteering for the board. Others stated that the minimum qualifications for directors did not go far enough and that directors should demonstrate the skills and expertise required of a board position. Some respondents also suggested that educational requirements should apply to both new and existing directors.</p> <p>Some respondents expressed concern that there are insufficient enforcement mechanisms to ensure director accountability. Other respondents also expressed that term limits for directors should be prescribed in the Act, and not left to the discretion of individual corporations through by-law. Other respondents expressed that the recommendations did not go far enough in addressing director conflict of interest.</p>
<b>Fines to enhance accountability</b>	<p>Respondents were divided on the recommendations concerning fines.</p> <p>Some respondents agreed with the expert panel that the application of fines within condo corporations could prove divisive and prone to abuse. Of these respondents, some supported the proposal that the ability to impose fines should be considered as a disciplinary function of the Condo Office.</p> <p>Some respondents expressed strong support for the use of fines to encourage accountability on the part of owners, directors, and managers. Of these respondents, many were especially supportive of the use of fines in cases where board members and managers neglected their responsibilities.</p>
<b>Rights and responsibilities of owners and directors</b>	<p>Many respondents were strongly supportive of the recommendation for a basic statement of owners' and directors' rights and responsibilities.</p> <p>Of these respondents, many stated that lack of knowledge on the part of owners and boards about their respective rights and responsibilities was a major source of problems within condo corporations.</p> <p>Some respondents expressed concern that without enforcement mechanisms, a statement of rights and responsibilities would do little to encourage accountability and ensure that owners and boards are meeting their respective obligations.</p>

## Condo Managers

<b>THEME: Condo Managers</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
<b>License managers and management firms</b>	<p>Respondents strongly supported licensing for condo managers and management firms. In particular, respondents were strongly in favour of a code of ethics, educational requirements, and disciplinary action for non-compliance.</p> <p>Many respondents highlighted the importance of licensing in enhancing competency, accountability and professionalism. Some respondents also emphasized the importance of having an independent body to oversee licensing and education. Others stated that the licensing and regulation of condo managers must be fully self-funded.</p> <p>Respondents were divided on the recommendation that condo managers be subject to a mandatory police record check. While many respondents supported this recommendation as a way to ensure greater protection for owners' investments. Others cautioned that some convictions have no bearing on an individual's ability to manage a condo and may disqualify an otherwise competent and suitable candidate.</p>

<b>THEME: Condo Managers</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
	Some respondents voiced concerns that licensing would drive up costs for corporations that are professionally managed. Others were concerned that the fees associated with condo manager licensing may be cost-prohibitive to some existing condo managers.
<b>The new condo manager licensing authority</b>	<p>Many respondents voiced strong support for the creation of an independent organization, at arms-length from government, to oversee the licensing of condo managers and management firms.</p> <p>Other respondents stated that licensing and regulation would be better overseen by an existing organization, such as the Association of Condominium Managers of Ontario or the Real Estate Council of Ontario.</p>
<b>Grandparent experienced managers</b>	<p>Respondents were divided on the recommendation to grandparent experienced managers.</p> <p>Many respondents stated that condo managers with significant professional experience should be exempt from some of the licensing requirements. Others expressed that professional experience alone could not ensure competency and accountability, and that all condo managers should be required to fulfill the licensing requirements in their entirety.</p>
<b>Code of ethics</b>	Many respondents were strongly supportive of the creation of a professional code of ethics for condo managers.
<b>Insurance and bonding</b>	<p>Many respondents were strongly in favour of mandatory fidelity, professional liability, and errors and omissions insurance for condo managers.</p> <p>Some respondents had concerns about how this recommendation would be enforced.</p>
<b>Self-managed condos</b>	<p>Respondents were divided on the recommendation that directors of self-managed corporations should be exempt from the condo manager licensing requirements, provided that they do not receive any financial compensation for management services.</p> <p>Some respondents stressed the importance of allowing condo corporations the choice of self-management or professional management. Of these respondents, many stated that some smaller corporations can simply not afford to hire a professional manager and are fully capable of managing the corporation without one. Others argued that self-management should be allowed only if additional requirements are placed on the directors of these corporations, including the need to consult with lawyers, accountants, and engineers on the business of the corporation.</p>

<b>THEME: Condo Managers</b>	
<b>Issue</b>	<b>Comments (Paraphrased)</b>
	Other respondents stated that self-management should not be allowed because of the risk of mismanagement by the board.