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**GROWING UP:
ONTARIO'S CONDOMINIUM COMMUNITIES
ENTER A NEW ERA**

Condominium Act Review
Stage Two Solutions Report

SEPTEMBER 2013



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The Public Policy Forum is an independent, not-for-profit organization dedicated to improving the quality of government in Canada through enhanced dialogue among the public, private and voluntary sectors. The Forum's members, drawn from business, federal, provincial and territorial governments, the voluntary sector and organized labour, share a belief that an efficient and effective public service is important in ensuring Canada's competitiveness abroad and quality of life at home.

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PREFACE

Ontario's Condominium Act Review aims at providing new rules and practices for the condominium community. Yet the initiative has another, equally important goal: it was launched to test a more collaborative approach to policymaking, called public engagement.

Linking public engagement to the Condominium Act was not a foregone conclusion. It could have been tested on any number of areas, from poverty reduction to environmental regulation. Our goal at the Public Policy Forum was to find a policy area where the issues were complex, a variety of interests and stakeholders were involved, and something particular needed to be done.

When we discussed condo renewal, we quickly realized it not only raises many complex regulatory issues, but, as self-governing communities, condos also raise important questions around governance and community-building. We agreed this looked like an excellent opportunity to try something new.

The condo review process, therefore, is as much a pilot project in collaborative policymaking as an effort to build better condo communities. At the conclusion of the process, the Public Policy Forum will produce a case study on the project as a whole. We hope the lessons learned will be of interest to officials across the Ontario Public Service and elsewhere, and that the results will encourage them to experiment with this kind of policymaking.

Many people have been involved in stage two of this initiative—too many to mention by name. I would be remiss, however, if I did not single out a few and thank them for their special contribution to the project. First, I wish to thank the Ontario Minister of Consumer Services (MCS), Tracy MacCharles, and her staff, for their strong support for the project. Giles Gherson, Deputy Minister of MCS, provided the vision and leadership that made the project possible. Throughout the process, the Ministry officials working on the project have shown extraordinary professionalism, good judgment, patience and energy. It is a pleasure working with them. Special thanks should go to Phil Simeon and David Brezer, who led the Ministry team.

Here at the Public Policy Forum, Winnie Wong has been an indispensable partner, providing expert advice and support, along with a number of other Forum members. The project has also benefitted from the unreserved support of our President and CEO, David Mitchell. I'm indebted to them all.

Finally, not only have I been impressed, but deeply heartened by the dedication of the working group and expert panel members. Their task was daunting, yet everyone gave generously of their time and worked respectfully with their colleagues to analyze the issues and arrive at recommendations. I salute them all!

Don Lenihan
September 2013



Expert Panel with Ministry officials and Public Policy Forum representatives

EXECUTIVE SUMMARY

This report marks the second stage in a far-reaching review of Ontario's 12 year-old Condominium Act. With condos now making up half of all new homes built in the province, there is a pressing need to overhaul the rules governing condo communities, provide better information to owners, and devise new tools for resolving disputes.

THE REVIEW PROCESS:

The first stage of the review, completed in early 2013, identified numerous shortcomings in the existing law. Participants, drawn from across the condo sector, proposed options for improvement and highlighted areas of agreement and differences of opinion.

Under stage two, we set up five working groups representing a broad cross-section of interests. These groups have sought to achieve the widest possible agreement and formulate recommendations for action. Each group has focussed on one of five areas:

- Consumer protection
- Financial management
- Dispute resolution
- Governance
- Condominium management

In addition, a 12-member panel of experts has provided a forum for "sober second thought". Panel members were selected for their expertise in key areas, such as consumer protection, engineering, condo development, finance and condo management, and to provide a balance of perspectives across the sector. Each panel member has also sat on at least one of the working groups.

The panel of experts has reviewed all the working groups' proposals in the context of four questions:

- Are the recommendations fair and balanced, given the various interests at stake?
- Are they consistent across the five areas so that they form a coherent whole?

- Do obstacles to implementation make them impractical?
- Do the recommendations offer effective solutions to the issues?

The proposals that have emerged from the working groups and the expert panel are not necessarily clear-cut recommendations. Some are qualified by dissenting voices, conjecture and questions.

In others, the working groups have left their recommendations open-ended, taking the view that new rules or practices need to evolve over time. In these cases, the report aims to capture the spirit of the group's discussion, rather than map out a precise course of action.

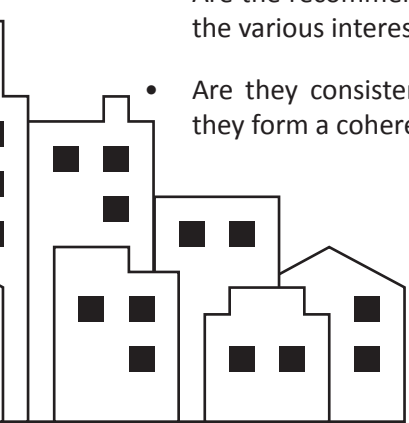
We have sought throughout the review to promote a collaborative process, where parties try to find shared interests and build on them.

This outcome is neither a criticism nor a weakness of the working group reports. The purpose of stage two of the review is to provide legal drafters and policy experts with some clear guidance on how the issues raised in the stage one findings report can best be resolved. In this respect, the working groups and expert panel have succeeded admirably.

We have sought throughout the review to promote a collaborative process, where parties try to find shared interests and build on them, rather than a competitive one where different interests seek to score points off one another. In the few cases where one or more members of a working group or the expert panel have differed strongly from the majority view, the report notes their dissent, with reasons to help readers grasp the full context.

The report also records a few issues where it has not been possible to reach agreement. In these cases, the government will need to decide how to move forward.

In the end, it will be up to the government to make final decisions on all the recommendations.



Our assumption has been that the stronger the consensus among participants, the greater the likelihood that government will act on a recommendation.

COMMON THEMES:

Several common themes have emerged during the first two stages of the review process. These themes crop up in many, if not all, the different topic areas, thus cutting across the mandates of the five working groups. They are important because they link the recommendations from different areas together, helping to make the report a cohesive whole rather than just a collection of disparate ideas.

The common themes include:

- **Education:** A central challenge of the Condominium Act review is to find ways of encouraging condo owners to look on their homes as part of self-governing communities or neighbourhoods and to understand and accept some responsibility to make those communities work. Education is thus central to the reform process
- **Information:** If owners and other participants are to make their communities work better, they need reliable, timely and relevant information. This information falls into two categories: first, how key parts of the system work, such as the board of directors or the reserve fund; second, specific issues, such as the state of the reserve fund, the reasons why specific items are on the agenda for official meetings (such as board meetings), or up-to-date information on a renovation project.
- **Condo board transparency and accountability:** The review process has provided ample evidence that many condo owners feel detached from their boards and building managers. Owners have said that they know too little about how or why decisions are made and executed, and they have called for improved transparency and accountability.
- **The power imbalance between boards and owners:** The basic tools for solving disputes under the existing Condominium Act are mediation, arbitration and the courts. These processes usually take a long time and legal costs mount quickly. This reality can be very frustrating for an owner

who has a grievance with a board. While the owner may not be able to afford legal counsel, the board often has access to a corporate lawyer and may feel less pressed to resolve a case quickly. In addition, a board can prevent owners from reviewing important documents and information. The result can be a very uneven playing field where owners who challenge their boards may be seriously disadvantaged. Owners and boards alike want this power imbalance redressed by giving the law more teeth to ensure that disputes can be resolved quickly and fairly. This report proposes a new organization that will offer quick, effective, inexpensive and fair dispute resolution processes to condo communities.

Owners and boards alike want this power imbalance redressed by giving the law more teeth to ensure that disputes can be resolved quickly and fairly.

- **The role of condo by-laws:** The working groups have found that once they settle on a solution to a particular issue, they have often had to move on to a second question: Should the solution be prescribed by law, enabled through condo by-laws, or simply encouraged as a best practice?

This report proposes that a significant number of recommendations be implemented through changes to condo by-laws. Because it is often difficult to pass new by-laws or amend existing ones, the expert panel has agreed in principle that voting requirements for by-laws need to be relaxed.

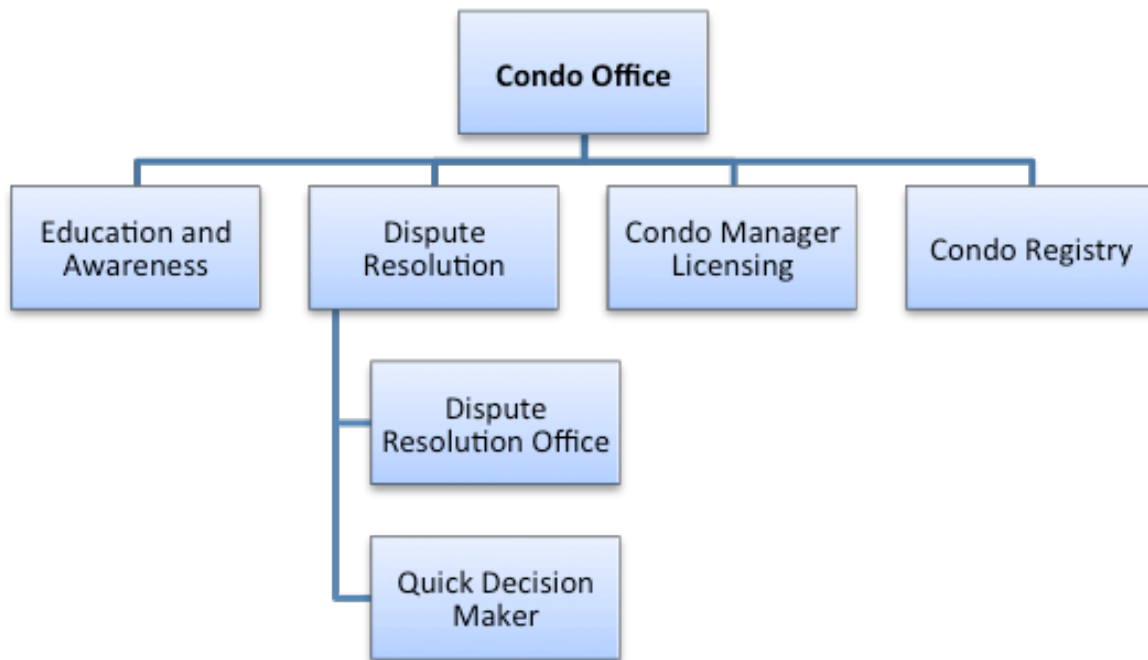
- **Engagement:** Many condo community members, especially owners, feel that they have no real power over the decisions and actions of boards, managers and developers. As a result, many of the reforms set out in this report aim to create the conditions for more meaningful owner engagement and participation. The recommendations are not exhaustive, but they make real and meaningful progress on some key issues, and have exceeded expectations.

- **Basic values:** In line with a call by condo residents consulted during the first stage of the review, the panel of experts has urged that the review process be based on seven basic values: **well-being, fairness, informed community members and stakeholders, responsiveness, strong communities, financial sustainability and effective communication.** These values are an integral part of the recommendations contained in this report.

KEY RECOMMENDATIONS:

The five working groups and the panel of experts have made over 200 recommendations. **Appendix 1 contains a list of all recommendations in this report. The other recommendations can be found in the working group discussion summaries.** Following are some of the most far-reaching recommendations:

What Will the Condo Office do ?



Condo Office:

- A new umbrella organization, to be known as the **Condo Office**, should be set up with four main functions: education and awareness; dispute settlement; licensing condo managers; and maintaining a condo registry. The Condo Office would operate at arm’s length from government, but with authority delegated by government. It would be funded by a combination of user fees and a modest levy (estimated at \$1 to \$3 a month) on each condo unit in the province.

Consumer Protection:

- Several reforms are proposed to ensure “smarter disclosure” (as opposed to just more disclosure). These include an easy-to-read **Condominium Guide** with essential facts about condo living, and measures that will cut through the complexity and make it easier to find important and relevant information.
- A prohibition on selling or leasing back assets that are normally regarded as part of the common elements, to the condo corporation, as this can inflate the cost of the

units. An exception is made for specifically-disclosed, energy-efficient equipment intended to benefit residents.

- A prohibition on deferring (and thus excluding from the first-year budget) operating expenses -- such as elevator maintenance -- which can leave consumers with the mistaken impression that their monthly fees will remain at a certain level when they are actually scheduled to rise.
- Greater certainty over who is responsible for repairing and maintaining certain components of the condo property, such as a balcony that is used by only one condo owner but is part of the common elements.

Financial Management:

- Boards should in future compile two budgets: an **operating budget** and a **reserve fund budget**. The reserve fund budget would be based on a more rigorously defined reserve fund study and would have to account for deviations from that study. Boards would have to notify owners of significant off-budget spending from the operating fund or reserve fund.

Boards should in future compile two budgets: an operating budget and a reserve fund budget.

- The trigger for notice to unit owners regarding changes a board intends to make to the common elements, etc. would be revised from 1% (or \$1,000) of the annual budgeted common expenses in any given month, to 3% (or \$30,000) of the annual budgeted common expenses in any given 12 month period.
- Improved communication and disclosure of condo corporations' financial data. A new online course would give owners a better understanding of financial documents.
- Greater flexibility for boards to use the reserve fund for alterations or improvements required by law, such as accessibility requirements; and for green energy improvements.

Dispute Resolution:

- The dispute-resolution arm of the Condo Office would help owners, directors and managers obtain quick, reliable, impartial, trusted and inexpensive (or free) information about the Condominium Act, the meanings of by-laws, and other important condo-related matters.

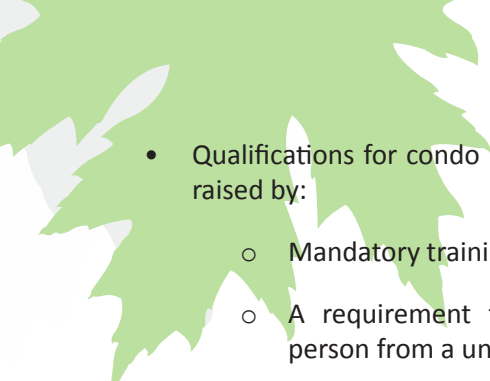
Clear requirements should be put in place to ensure that corporate records are easily accessible.

- The Condo Office would also house a **Quick Decision Maker** empowered to resolve disagreements by making quick, summary decisions on records, charge-backs, proxies, requisitions, and owners' entitlement to vote.
- More complex disputes would be referred to a new **Dispute Resolution Office**, also under the Condo Office umbrella. The office would have the expertise and authority to provide a quick, neutral, inexpensive and informed assessment of each case.

Governance:

- Minimum periods should be set for retention of condo corporation records.
- Clear requirements should be put in place to ensure that corporate records are easily accessible.
- The use of proxies should be clarified, and the rules for petitioning meetings should be reviewed.¹
- The threshold for quorums at condo meetings should be adjusted as follows: Up to two meetings could be called subject to a normal 25% threshold. If the quorum is not met at those two meetings, the Act's requirements would be deemed to be met and the third meeting would proceed with those present.

¹ Also known as a requisition for a meeting of owners.

- 
- Qualifications for condo board directors should be raised by:
 - Mandatory training for first-time members;
 - A requirement that no more than one person from a unit may be a director;
 - Allowing for by-laws that require a criminal record check;
 - Disclosure of legal proceedings between an individual and the corporation.
 - A code of ethics should be drawn up for board members, and a charter of rights and responsibilities for both unit owners and directors.

A two-stage licensing program should be put in place to ensure that condo managers across the province are properly trained and qualified.

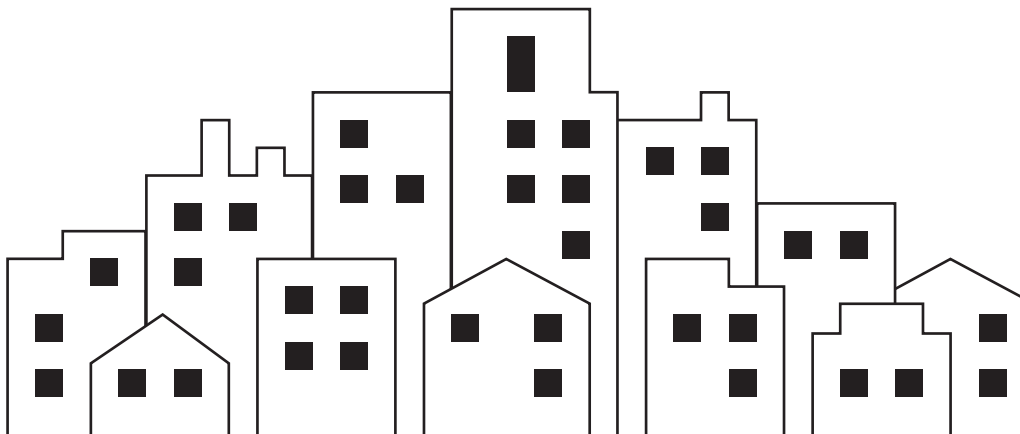
Condo Management:

- A two-stage licensing program should be put in place to ensure that condo managers across the province are properly trained and qualified. The first stage of this program would set basic criteria for entry into the profession. The second stage would build on this foundation, advancing knowledge of the field and developing appropriate skills through course work and experience.
- A new **Licensing Authority**, with powers delegated by government, would oversee licensing of condo managers. The licensing authority would fall under the Condo Office.

NEXT STEPS

We plan to launch the third and final stage of the review process in the fall of 2013:

- A residents' panel will review the stage-two recommendations.
- Government officials will draft an action plan for implementing the recommendations.
- Condo residents and other stakeholders will have an opportunity to review the action plan.



RENEWING THE CONDOMINIUM ACT: THE BIG PICTURE

A COMMUNITY-BUILDING APPROACH

Half of all new homes built in Ontario are now condominiums. With over 600,000 residential units in the province, about 1.3 million Ontarians live in condos. As the sector has expanded, so has the need to provide better information, create new tools to resolve disagreements, and help condo communities operate more efficiently and harmoniously.

Condo corporations come in all shapes and sizes, from small townhouses to huge highrises. This means that any effort to adjust the law and practices must be careful to ensure that changes that may work well for one type of community do not impact negatively on another.

The Condominium Act is the main piece of legislation that governs condo living. It is administered by the Ministry of Consumer Services and provides the legal framework for creating and operating condo corporations.

However, condos are much more than legal entities. They are *self-governing communities* that make their own by-laws and rules through their own elected governments (boards of directors). Indeed, the condo sector is often referred to these days as “the fourth order of government,” after municipalities, the provinces and the federal government.

The issues facing these communities are thus not just legal or technical. Often they are about *relationships* between a varied and often disparate group of interests. Strong communities require strong relationships—and nurturing these relationships takes much more than an act of the provincial parliament. It takes commitment and effort on the part of owners, board members, condo managers, developers, lawyers, consumer protection advocates and others. **Everyone has a role to play.**

In reviewing the Act, the Ministry of Consumer Services has recognized that **this “community-building” requires an approach based on collaboration and compromise.** Identifying the issues and the search for solutions must involve key stakeholders engaging one another in a respectful discussion of their priorities, concerns, interests and aspirations. The ministry therefore invited Canada’s Public Policy Forum—an expert in dialogue processes—to lead an innovative public-engagement process that would approach renewal from this perspective.

² <http://www.ppforum.ca/publications/ontarios-condominium-act-review-stage-one-findings-report>
³ <http://www.ppforum.ca/engagement-community>

The Public Policy Forum is now leading the Condominium Act review, a three-stage, 18-month process that is engaging a wide range of community members to identify issues, consider options and propose a plan to renew the Act.

The first of these three stages culminated in the stage one findings report,² released by the Public Policy Forum in January 2013. The report brought together findings from four different “discussion streams.” One of those streams was a residents’ panel, a body of 36 randomly-selected condo residents across Ontario. The panel provided advice on how to improve the Act from the perspective of owners and renters.

Perhaps the panel’s most important conclusion was that the reform process must not only strengthen the way condos are managed and governed, but must also help owners and other stakeholders build a stronger sense of shared responsibility for the well-being of their communities.

As the residents’ panel noted, all parties—owners, managers, directors, developers, and so on—have rights to what they can expect from other community members, but they also have responsibilities to contribute to the community. Many of the recommendations in this report aim at clarifying -- and sometimes rebalancing -- these rights and responsibilities, and providing the tools and processes to make that possible.

In the end, no amount of clarifying or rebalancing will build strong, healthy communities without the willing participation of owners, tenants, boards, developers, and managers. Successful communities require a commitment from all members to work together in good faith to build and maintain the relationships between them.

THE PROCESS AND PARTICIPANTS

The Condominium Act review is based on the Public Policy Forum’s public engagement framework³ and includes three basic stages:

- Stage One (fall 2012): Gathering views on issues and options.
- Stage Two (winter/spring 2013): Using dialogue and deliberation to transform options into well-defined solutions.
- Stage Three (fall 2013): Validating the proposed solutions and recommendations.

The stage one findings report provided a lengthy list of possible changes to the law, as well as a broad array of tools and practices that could contribute to community-building. In stage two of the process, participants have been asked to make choices from these options and propose concrete steps to implement them.

Stage two was launched on March 21, 2013 when some 40 experts gathered in Toronto for a one-day orientation session. The meeting allowed them to get acquainted, hear how the process would unfold, and discuss their respective roles.

The plan for stage two was to set up a series of small working groups to discuss the issues and options posed in the stage one report, then have the results from these discussions reviewed by a separate panel of experts. The participants in stage two were chosen to ensure that voices from all parts of the condo community were represented in the discussions. All have impressive experience in the condo sector.

Appendix 2 of this report provides details of the members of the working groups and the panel of experts, as well as further information on the selection process.

THE WORKING GROUPS: The issues and options in the stage one findings report were grouped in five categories:

- Consumer protection
- Financial management
- Dispute resolution
- Governance
- Condominium management

Under stage two, we set up five working groups based on these categories. Each group comprised between nine and 12 members. The members included representation from key interests in the condo community, while ensuring a high level of expertise in the specific topic areas.

Each working group was given a list of issues drawn from its topic area in the stage one findings report. The group was asked to consider the options proposed in that report, then work towards agreement on a preferred solution, based on effectiveness, cost, impact on other policy areas and, and so on. In addition, working groups considered how solutions proposed in their topic area might affect those in another area. For example, how might a call for more disclosure in the interests of consumer protection impact questions of

record-keeping in governance? Because the list of issues was ambitiously long for such a tight timeline, groups were asked not to raise new issues, unless they felt these were too pressing to be left off the table.

THE EXPERT PANEL: The process also included the formation of a panel of 12 distinguished individuals from across the condo community to function as a forum of “sober second thought”. This expert panel includes members with high-level expertise in a variety of areas, such as condominium law, condo management, finance, engineering, and consumer protection. Panel members are drawn from the working groups and their principal role has been to review the groups’ recommendations, guided by four key questions:

- Are the recommendations fair and balanced, given the various interests at stake?
- Are the recommendations consistent across the five areas so that they form a coherent whole?
- Do the obstacles to implementation make them impractical?
- Do the recommendations offer effective solutions to the issues?

All participants were warned of Ontario’s difficult fiscal situation, as well as owners’ and other stakeholders’ reluctance to shoulder new costs or fees. They were asked to bear these constraints in mind in formulating their recommendations, and to constantly ask themselves two questions: “What can government afford?” and “How much are owners or stakeholders willing to pay for improvements, such as licensing requirements for managers or quicker dispute resolution mechanisms?”

THE MINISTRY: Officials from the Ministry of Consumer Services attended all the working group and expert panel meetings. Although they were not officially members of these committees, they were encouraged to offer advice and provide comments and suggestions.

OTHER PARTICIPANTS: A deputy advisory group was struck at the beginning of stage one to provide advice to the deputy minister of the Ministry of Consumer Services.

THE STAGE TWO SOLUTIONS REPORT: A COMPREHENSIVE APPROACH TO REFORM

This stage two report combines the reasoning and recommendations of the five working groups, plus the expert panel's review of their work. Most of the material is drawn directly from summaries of the working group meetings.

The expert panel's role has been to provide "sober second thought," not to second-guess the working groups nor rewrite the discussion summaries. Where the panel has felt that changes, comments or additional recommendations are needed, it has provided them, and they are recorded in this report with the expert panel clearly identified as the source.

Appendix 1 contains a list of all recommendations in this report.

We have sought throughout the review to promote a collaborative process, where members of the working groups and the expert panel try to find shared interests and build on them, rather than a competitive one where different interests seek to score points off one another. In the few cases where one or more working group members have differed strongly from the majority view, the report notes their dissent with reasons to help readers grasp the full context.

All participants were asked at the initial orientation session to agree to the following statement:

Participation in stage two involves a commitment from all members of the working groups and/or the expert panel to participate in a collaborative process to review and renew Ontario's Condominium Act. As the process aims at resolving a matter of considerable public importance, the working groups and the expert panel are expected to arrive at balanced and impartial recommendations on renewal of the Act, for the benefit of all members of the condominium community, and all Ontarians. This, in turn, means that participants are expected to work together, respectfully and fairly, to promote the interests and values of the community as a whole, rather than just those of their particular organization or interest group.

Even though all participants supported this statement, many have deeply-held and divergent views and interests. It was to be expected that they would come into conflict at times, perhaps irreconcilably. Indeed, there were such moments, though far fewer than might be expected.

When differences have surfaced, **the basic rule for adopting a recommendation has been that it should be supported by at least a majority of members of the working group or expert panel.** Thus, phrases in the report such as "It was agreed that..." or "The working group therefore recommends that..." do not necessarily imply unanimity—even though it was achieved on many issues.

In a few cases—though not all—where one or more members have found themselves deeply opposed to the majority view, their dissent has been noted and reasons provided to help readers grasp the full context of the decision.

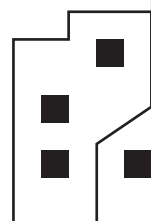
By the same token, the fact that the expert panel endorses this report does not mean that all of its members agree with every recommendation. Often, they do not. **To endorse the report is to recognize it as a fair and reasonable effort to accommodate a range of interests on a large number of complex and often divisive issues.** In a democracy, that is often as much as can be expected—but it is also enough to make real progress.

On issues where no agreement has been reached—and there are some—this is recorded in the report. Ultimately, the government will decide on a course of action.

Our working assumption has been that the stronger the consensus among participants, the greater the likelihood that government will act on the recommendation.

This report marks the conclusion of stage two of the review process. In cases where it differs from the discussion summaries of the working groups, the report should be viewed as the more authoritative statement.

Nevertheless, the discussion summaries remain key reference documents that will guide policymakers and legal drafters as the proposed changes to the Condominium Act take shape. On some issues, these documents contain further and more detailed recommendations that are not in this report. The working group discussion summaries are posted on the Public Policy Forum website (www.pppforum.ca).





Other Issues outside the Condo Act

During stage one of the review, participants identified many issues that went beyond the scope of the Condominium Act. In some cases these issues impacted other pieces of legislation. These included concerns around property taxes, new home warranty coverage for condominium conversions, construction quality and building performance, insurance rates and development trends.

Some of these issues were touched on during stage two, including the expert discussion. For example, the construction quality and building performance of condo properties with respect to noise.

As well, in response to the stage one feedback, Tarion announced on April 26, 2013 that it has begun to research the feasibility of providing warranty coverage for condominium conversions (e.g. churches, schoolhouses, hotels converted to condo properties). Tarion is expected to report its findings to the Ministry in December 2013.

NEXT STEPS

The third and final stage of the review process will be launched in the fall of 2013:

- It will begin with a fourth and final meeting of the residents' panel to review the recommendations in this report.
- Government officials will then draw on the stage two solutions report, the results of the residents' panel meeting and discussion summaries from the working groups to draft an action plan for implementing the recommendations.
- Condo residents and other stakeholders will have an opportunity to review the action plan.



COMMON THEMES

Although this report covers five major topics, several common themes have emerged during the first two stages of the review process. These themes crop up in many, if not all, the different topic areas, thus cutting across the mandates of the five working groups. Consider the following examples:

- The consumer protection working group calls for the creation of a widely distributed “condo guide” to help explain the basics of condo ownership and living to prospective buyers.
- The financial management working group recommends the creation of an online course to help owners read financial statements.
- The governance working group proposes a charter of rights and responsibilities to help owners and directors understand their role in the community.

These three recommendations come from different topic areas, but they all contribute to the common theme of “educating the community”. As such, they are part of a single, mutually-reinforcing set of recommendations on education. The report contains many other recommendations on the same theme.

The common themes link the recommendations from different areas to ensure that the report is coherent and cohesive.

The main themes that have emerged during the first two stages of the review are the following:

EDUCATION: We have seen that condo corporations are *self-governing communities*. This phrase links two basic ideas. To say the corporation is a *community* implies that its members share common interests and that the relationship among them is essential to promoting these interests. In short, they need one another. To say that the community is *self-governing* implies that it has the authority to choose its leaders and make its own rules. This, in turn, has implications for all members of the community in that it confers certain rights *and* responsibilities on them.

A central challenge of the Condominium Act review is to encourage condo owners to see their homes as part of this self-governing community, and to accept their responsibility to help make the community work well. This, in turn,

explains why the stage one findings report placed such a strong emphasis on education. The residents’ panel made the point clearly:

Community members and stakeholders (including residents, board members, lawyers, realtors and condominium managers) should actively and consistently acquire the knowledge and develop the skills needed to effectively fulfill their respective roles...to be active and informed community members and to protect and enhance their quality of life in condominiums.

The clear message is that, if the law is in need of reform, education is central to that reform. Educating the community, in turn, requires initiatives to promote learning among its members through, for example, shorter mandatory courses for new directors, more extensive ones for managers, and information brochures for owners.

ACCESSIBLE INFORMATION: An important step towards making condo communities work better involves the availability of information. Reliable, timely and relevant information about a building or the projects underway in it should be readily accessible to all members. For example: to participate fully and constructively in a meeting, owners need up-to-date information on the cost of a renovation or the state of their reserve fund. Any prospective buyer of a unit in a mixed-use condo property (one with residential units and commercial space) needs to know how the utility costs are shared between units and businesses. Such information should be quickly and easily available. At present, it is often not available.

TRANSPARENCY AND ACCOUNTABILITY: The stage one findings report noted that many condo owners felt left behind by their boards and building managers. They said they knew far too little about how or why decisions are made and executed; and they wanted greater transparency and accountability in the way their corporations are managed. At a minimum, enhanced transparency and accountability require better access to current information. But they also require wider opportunities to discuss the rationale behind controversial board decisions and, if necessary, an effective means to call a board to account. Many of the recommendations in this report, from access to documents to new rules for meetings, aim at enhancing transparency and accountability.

THE POWER IMBALANCE BETWEEN BOARDS AND OWNERS: The Condominium Act is an “administrative” law in the sense that compliance is not policed by the government the same way as, say, paying your taxes. The basic tools for solving condo-related disputes are mediation, arbitration or the courts. But these processes usually take a long time and legal costs mount quickly. These realities can be very frustrating for an owner with a grievance against the board. While the owner may not be able to afford legal counsel, boards often hire a corporate lawyer and may feel less pressed to resolve the case quickly. In addition, a board can prevent owners from reviewing important documents and information. The result is an uneven playing field in which owners who challenge their boards are seriously disadvantaged.

Some participants—mainly owners—see this imbalance as the single biggest flaw in the existing law. When owners disagree with the board or believe it is engaged in inappropriate activities, they have no easy way of resolving the issues or holding leaders to account. As one participant put it, “The law has no teeth.”

Owners want this power imbalance addressed. They want to ensure that disputes can be resolved quickly, effectively and fairly. Taken together, the reforms in this report — especially the new processes for dispute resolution — go a long way towards redressing the imbalance.

THE ROLE OF CONDO BY-LAWS: The working groups found that once they had settled on a solution to a particular issue, they often needed to address a second question: Should the solution be prescribed by the Condominium Act, enabled through by-laws, or simply encouraged as a best practice?

This report proposes that a significant number of recommendations could best be implemented through changes to condo by-laws. However, as the law now stands, it is often difficult to pass or amend condo by-laws. In practice, this means that badly-needed changes may never be implemented.

There is a deep tension here. On one hand, if a measure is enshrined in law, it has universal application, thereby eroding the autonomy of individual communities. On the other, using by-laws to bring about such changes carries the risk that, in practice, nothing will change.

The expert panel recommends that the threshold for passing by-laws should be lowered, but the appropriate formula requires further study.

ENGAGEMENT WITH THE COMMUNITY: If condo communities are the fourth level of government, they seem to share a common malaise with the other three:

public apathy. Public involvement in federal, provincial and municipal government has fallen over the last two decades. One reason is that citizens feel they have no real control over the decisions and actions of their governments. As a result, many have “tuned out”. The right response to such apathy is a concerted effort by governments to become more open, transparent, accountable and responsive, AND to find ways of engaging the public more meaningfully in decisions.

Much the same can be said about condo communities. If owners are disengaged and fail to fulfill responsibilities such as attending important meetings or voting in board elections, the challenge is surely to make membership more meaningful. This requires action in all the cross-cutting areas identified here—and possibly more.

Many of the reforms proposed in this report aim to create the conditions for more meaningful owner engagement and participation. But they are not exhaustive. Not everything can be accomplished in one round of discussions. The goal of stage two is to make real and meaningful progress on some key issues. In this, the working groups and expert panel have more than met expectations.

USE OF ONLINE TOOLS: Promoting the use of online tools cuts across all the common themes in that these tools can play a central role in education, access to information, transparency and accountability, and community engagement.

RESPECT FOR BASIC VALUES: In stage one of the review, the residents’ panel identified seven values essential to building successful condo communities:

- Well-being
- Fairness
- Informed community members and stakeholders
- Responsiveness
- Strong communities
- Financial sustainability
- Effective communication

The panel called for the renewal of the Condominium Act to be based on these values. This report aligns the values with the common themes. Thus, addressing the power imbalance between owners and boards is essentially about fairness and responsiveness. Similarly, improved education and information aim at ensuring that stakeholders are well-

informed and that there is effective communication within each condo community.

These values and common themes infuse the analysis and recommendations that follow. We ask you to bear them in mind as you read the rest of this report.

SUMMARY OF RECOMMENDATIONS

Following are highlights of the recommendations in each of the areas covered by the five working groups and the expert panel:

CONDO OFFICE:

- A new umbrella organization, to be known as the **Condo Office**, should be set up with four main functions: education and awareness; dispute settlement; licensing condo managers; and maintaining a condo registry. The **Condo Office** would operate at arm's length from government, but with authority delegated by government. It would be funded by a combination of user fees and a modest levy (estimated at \$1 to \$3 a month) on each condo unit in the province.

CONSUMER PROTECTION:

- **Smarter Disclosure:** The working group proposes a number of measures to promote awareness of key issues relating to a condo sale, and to make the information easy to find. Some examples of key improvements include:
 - an easy-to-read **Condominium Guide** that would contain essential facts about condo living and give prominence to the most important information.
 - a standard declaration to help educate purchasers and owners about important information regarding the condo property and corporation.
- **Prohibit Developers from Selling or Leasing Assets that could be Common Elements to a Condo Corporation:** Developers should be barred from selling or leasing assets to the corporation that would normally be considered as common elements, such as a recreation room, management office or guest suite. This practice often inflates common expenses after the first year. An exception to the prohibition should be made for any specifically-disclosed energy-efficient equipment intended to benefit the condo corporation.

- **Provide Information Online:** Developers should be required to create project-specific websites where disclosure statements and other relevant documents are posted. The website might be transferred to the condo corporation.

FINANCIAL MANAGEMENT:

- **Two Budgets:** Condo boards should be required to compile two budgets: **an operating budget** and **a reserve fund budget**. The reserve fund budget would be based on a more rigorously defined reserve-fund study and would have to account for deviations from the study.
- **Notify Owners of Extra Spending:** Boards should be required to notify owners of any significant off-budget spending from the operating or reserve fund.
- **Improve Communication:** There should be greater disclosure and communication of the condo corporation's financial condition.
- **Educate Owners:** Owners' understanding of condo finances should be strengthened through an online course on how to read financial documents.
- **Extra Flexibility for Reserve Funds:** Boards should have greater flexibility to use the reserve fund for:
 - Alterations or improvements required by law, such as accessibility requirements for wheelchairs; and
 - Green energy or other energy efficient improvements.
- **Revised Threshold for Changes "Without Notice":** The trigger for notice to unit owners regarding changes a board intends to make to the common elements, etc. would be revised from 1% (or \$1,000) of the annual budgeted common expenses in any given month to 3% (or \$30,000) of the annual budgeted common expenses in any given 12-month period.
- **Clarify Responsibilities for Repair and Maintenance:** The law should be clarified to reduce uncertainty over who is responsible for the upkeep of certain areas, such as a balcony that is used exclusively by the owner of a specific unit but is part of the common elements.

DISPUTE RESOLUTION:

- **A New Dispute Resolution Mechanism:** The new Condo Office would have a number of dispute-resolution functions:
 - **Provide Information:** The Condo Office would act as a resource for owners, directors and managers to get quick, reliable, impartial, trusted and inexpensive (or free) information about the Condominium Act, interpretation of by-laws, and other important condo-related matters.
 - **Make Quick Decisions:** The Condo Office would house a Quick Decision Maker who would be empowered to resolve disagreements by making quick, summary decisions on records, charge-backs, proxies, requisitions, and owners' entitlement to vote.
 - **Resolve Disputes:** The Condo Office would also take on more complex disputes through a second new and complementary mechanism, the Dispute Resolution Office, which would have the expertise and authority to provide a quick, neutral, inexpensive and informed assessment of a case. (The roles of Quick Decision Maker and Dispute Resolution Office could often be filled by the same person.)

GOVERNANCE:

- **Improved Record Retention:** Minimum periods should be set for retention of condo corporation records. Clear requirements should be put in place to ensure that corporate records are easily accessible.
- **New Meeting Rules:** The use of proxies should be clarified, and the rules governing requisitioned meetings should be reviewed.
- **New Quorum Threshold:** The quorum threshold for meetings should be adjusted as follows: Up to two meetings could be called subject to a normal 25% threshold. If that quorum is not met, the Act's requirements would be deemed to be met and the third meeting proceeds with those present.
- **Raise Qualifications for Condo Board Directors:**
 - Mandatory training for first-time members;

- A requirement that no more than one person from a unit may be a director;
- Allowing for by-laws that require a criminal record check;
- Disclosure of legal proceedings between an individual and the corporation.
- **Code of ethics and Charter of Rights and Responsibilities:** A code of ethics should be drawn up for board members, and a charter of rights and responsibilities for both owners and directors.

CONDOMINIUM MANAGEMENT:

- **Licensing Requirements⁴:** A two-stage licensing program should be put in place to ensure that condo managers across the province are properly trained and qualified. The first stage of this program would set basic criteria for entry into the profession. The second stage would build on this foundation, advancing knowledge of the field and developing appropriate skills through course work and experience.
- **A New Licensing Authority:** A new administrative authority, with powers delegated by government, would oversee the licensing of condo managers. This body would also fall under the Condo Office.

⁴ Ontario is working to introduce mandatory qualifications for condominium managers, the first of several anticipated changes from the province's Condominium Act Review to help increase protections for condominium owners, tenants, and buyers. <http://news.ontario.ca/mcs/fr/2013/07/qualifications-obligatoires-des-gestionnaires-de-condominiums.html>

DETAILED ANALYSIS AND RECOMMENDATIONS

1. CONSUMER PROTECTION

Buying a condo can be an intimidating experience. The documents involved are lengthy, often highly technical and full of legalese. As the stage one findings report noted, buyers often find the documents difficult if not impossible to decipher. Those who want to ensure they understand all the terms and conditions of their purchase likely have to hire a lawyer. This can be very costly, so many buyers—perhaps most—do not bother, leaving them vulnerable to misunderstandings.

The consumer protection working group was asked to find ways of protecting prospective buyers by enabling them to make better-informed decisions. The issues were grouped under six main themes:

- Smarter disclosure
- Prohibit developers from selling or leasing common elements (with an exception for green technology)
- Deferred costs
- Subsidization
- Minimum Contribution to the Reserve Fund (as recommended by the Financial Management Working Group)
- Noise (added by the panel of experts)

SMARTER DISCLOSURE

EDUCATE BUYERS: Ensuring that consumers understand the important conditions of their purchase is not so much about *more* disclosure as *smarter* disclosure. As the working group notes, much of the information prospective buyers need is already in the documents. The real issue is how to alert them to the issues relevant to them, and help them find the answers.

Working group members have drawn on their considerable experience to compile a list of items crucial to an informed decision. The group has made a number of recommendations to ensure consumers can obtain this information without undue difficulty before a purchase is finalized. The group has classified the information in two basic categories:

- **Generic** information about the purchase of any new condo unit, and the rights and responsibilities of unit owners and the corporation; and

- **Specific** information about the unit and the corporation.

The group recommends that these two categories be covered in separate documents.

- **RECOMMENDATION:** The ministry should prepare and publish an easy-to-read **Condominium Guide** containing essential facts about condo living, such as how corporations are governed, the rights and responsibilities of owners, and the care and maintenance of common elements. The guide would serve as a basic primer that developers would be required to give buyers at the time of sale. The 10-day “cooling off” period would give buyers time to read the guide before making a final decision on their purchase.

The expert panel agrees with the idea of compiling such a guide and notes that many of the consumer protection points it covers would also be included in the disclosure statement’s table of contents. The guide would be valuable, however, because the information would be presented in plain language.

POST DOCUMENTS ONLINE: Promoting the use of online tools is a natural way to advance consumer education, access to information, and transparency and accountability.

- **RECOMMENDATION:** Developers should be required to create project-specific websites where they would post the disclosure statement and other relevant documents. The website should enable word-searches for key terms.

STANDARDIZE THE DECLARATION: A declaration is a document that contains vital information about the condominium property as a whole, all of the units (rather than any particular unit), the condo corporation, and key regulations governing the property, the owners and residents. Because there is no standardized declaration form, these documents vary widely and can impose differing obligations on unit owners in different condo projects. For example, declarations may define unit boundaries differently which can lead to significant differences in an owner’s repair and maintenance obligations. As a result, important information may be missing or difficult to find.

- **RECOMMENDATION:** The ministry should create a standard declaration with provisions governing unit

boundaries, maintenance and repair obligations, and insurance requirements. The developer would be allowed to add one or more schedules imposing additional duties or obligations on the condo corporation or on specific unit owners.

Such a standardized declaration would not apply to declarations of vacant land, common elements, or industrial and commercial condominium corporations.

CLARIFY “MATERIAL CHANGE”: The information contained in the disclosure statement includes the budget for the corporation’s first year, and a copy of the existing or proposed declaration, by-laws and rules. A “material change” to the information contained in the disclosure statement allows a reasonable buyer to cancel the purchase.

- **RECOMMENDATION:** The Act’s definition of “material change” should be expanded as follows: Any change that results in an increase in a unit’s common expenses equal to less than 10% of the common expenses disclosed to the buyer shall not constitute a material change.

However, the working group also proposes exceptions to this rule:

- **RECOMMENDATION:** The “material change” calculation should exclude any new taxes, levies or charges that are imposed on the developer or on the condo project, and ultimately passed onto the buyer.

The expert panel considered whether inflation should be exempted from the 10% threshold.

- **RECOMMENDATION:** Any inflation factor for the first-year budget statement portion of the disclosure statement should be the lesser of a standard formula and a cap. This inflation factor should be excluded from the 10% threshold in the definition of “material change.”

IMPROVE STATUS CERTIFICATES: The status certificate for a resale condo provides important information on the financial status of the unit and the corporation. These details include, for example, whether the monthly common expenses are scheduled to rise, or if there is a lien on the unit. The stage one findings report called for status certificates to include extra information, as well as for a review of the fee charged for ordering a certificate.

- **RECOMMENDATION:** The certificate should include a range of new information, such as a warning that the unit has not been inspected for alterations (unless otherwise stated), insurance coverage on

outstanding litigation and the corporation’s policy on pets.

- **RECOMMENDATION:** The status certificate should include a copy of the original turnover disclosure statement and a summary of the most current reserve fund study.
- **RECOMMENDATION:** Increase the status certificate fee from \$100 to \$125 (including HST), to cover the costs of inflation since the Act was last revised.

The expert panel has added:

- **RECOMMENDATION:** Set a time-limit on how long the disclosure statement should have to be attached to a status certificate. It was suggested that this period should not exceed 10 years.

PROHIBIT SELLING OR LEASING ASSETS THAT COULD BE COMMON ELEMENTS

Many condo properties include amenities such as a guest suite, exercise or events room as part of the common elements. In recent years, some developers have begun separating these amenities from the rest of the common elements and then selling or leasing them back to the corporation. Although this is fully disclosed in the documents, buyers tend to assume that such amenities are part of the common elements and are included in the purchase price of their unit, just like the hallways or lobby. As a result, buyers are often taken by surprise when their common expenses rise to pay the mortgage or leasing fee on the new common amenity. The working group views the practice of selling or leasing back such assets as an unnecessary source of tension within communities and believes it should be discontinued.

- **RECOMMENDATION:** The Act should prohibit developers from selling or leasing back to the corporation assets that would normally be deemed common elements, including:
 - Recreational amenities;
 - Guest suites, a superintendent’s suite, manager’s office or any recreation administrator’s office;
 - Any lobby, stairwell, service room/area or storage room/area; and
 - Any heating, cooling, plumbing, drainage, mechanical, ventilation and/or servicing equipment or other facilities needed for the proper functioning and day-to-day operations of the condo property.

Some members of the working group have expressed the desire to permit the developer to sell or lease the assets to the condominium corporation, provided all costs and expenses to be incurred by or on behalf of the condominium corporation in its first year of operation are fully disclosed.

However, the working group calls for an exception to these rules in the case of energy-efficient equipment, such as a solar heating system, which can benefit owners and should be encouraged.

- **RECOMMENDATION:** An exception to the prohibition should be made for any specifically-disclosed energy-efficient “green energy” equipment intended to benefit residents, subject to the following conditions:
 - The equipment must exceed the minimum energy efficiency standards set by the Ontario Building Code and the Green Energy Act, 2009, as applicable.
 - The cost of all green energy equipment to be sold or leased to a condo corporation, and expected to be incurred in its first year of operation, must be fully disclosed.
 - The full replacement cost of the equipment must be disclosed for proper reserve fund accounting.
 - Annual payments on loans used to buy green energy equipment may not exceed the value of the energy savings for the same year, as calculated by a third-party engineer. In any case, the term of such loans may not exceed a certain period of time, perhaps 10 years; however, this requires further analysis and consideration.

The financial management working group also discussed this “green energy option” at length, and has proposed a similar threshold test for the acquisition of such equipment in relation to the use of the reserve fund (see Financial Management).

DEFERRED COSTS

The working group feels that the practice known as “deferring costs” should be discontinued. For example, the purchase price of elevators in a new building might include maintenance costs for the first year. As a result, no maintenance costs will be included in the condo corporation’s first-year budget. But the corporation will have to start paying these fees in the second year, thus

pushing up its expenses—and owners’ monthly condo fees. Although such costs are disclosed in the documents relating to the sale, consumers are often surprised by the increase. The working group unanimously agrees that this practice is an unnecessary source of tension and should be prohibited.

- **RECOMMENDATION:** Developers should be barred from deferring (and thus excluding from the first-year budget) any reasonably foreseeable operating cost or expense that would ordinarily arise in the first year of operation of a condo property.

SUBSIDIZATION

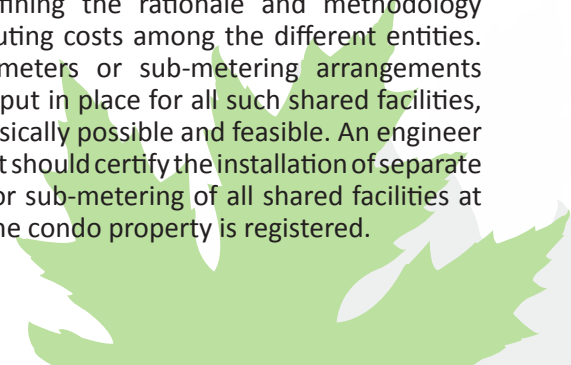
Unit owners sometimes find themselves subsidizing owners or tenants of commercial space in a condo property by paying more than their proportionate share for utilities (water, electricity and gas) or the use of common elements.

Cases have surfaced in mixed-use condo properties (i.e. those with both commercial and residential space) where developers do not install separate electricity, water or gas meters for commercial and residential users. Instead, there is just one meter and one bill. The total cost is then split among residential units and commercial tenants which some view as unfair.

A commercial enterprise such as a coffee shop uses far more electricity and water than individual residential units, but the pre-determined formula may assign a disproportionate share of the costs to the latter. The stage one findings report referred to this practice as *subsidization* and called for it to be reviewed.

Some working group members have expressed concerns regarding the difficulties in identifying and separating all applicable utility costs within the same building envelope.

- **RECOMMENDATION:** If a corporation has one or more commercial/retail shared-facilities or live-work units, each of these units should have its own utility meter.
- **RECOMMENDATION:** Where facilities such as a swimming pool or party-room are shared between more than one condo corporation or between a corporation and other parties, an agreement (i.e. a shared facilities agreement) must be drawn up clearly defining the rationale and methodology for distributing costs among the different entities. Separate meters or sub-metering arrangements should be put in place for all such shared facilities, where physically possible and feasible. An engineer or architect should certify the installation of separate metering or sub-metering of all shared facilities at the time the condo property is registered.



Some working group members have raised concerns about establishing a cost-sharing agreement as a universal requirement because it may be difficult to determine the precise utility consumption in respect of the Shared Facilities.

MINIMUM CONTRIBUTION TO RESERVE FUND

The discussions on minimum contributions to the reserve fund fall within the purview of the financial management working group. Nonetheless, members of the expert panel feel that this issue is important from a consumer protection perspective and should thus also be included in this section.

The financial management working group has discussed the question of reserve fund deficits with a view to ensuring that fund estimates are not set at an unrealistically low level in the first year budget for a condo corporation prepared by the developer.

- **RECOMMENDATION:** The minimum budgeted contribution to the reserve fund in year one should be the greater of:
 - i) The amount set out in the reserve fund study that the developer must undertake; or
 - ii) An amount based on a formula that remains to be determined, but would likely be based on construction costs.

Under this recommendation, developers would be required to commission a reserve fund study by an independent, third-party engineer or a qualified consultant. The study would be based on architectural drawings and specifications valid at the time that the developer plans to begin marketing the units in the project. It would estimate repair and replacement costs at the end of the condo corporation's first year of operation. That amount would be the reserve fund figure to be used in the first-year budget. The budget would be included in the disclosure statement.

The developer would be required to update the study after initial occupancy and prior to the registration of the condo property—at the developer's expense. If the engineer or consultant found cause to raise the reserve fund amount, the first year's common expenses would go up accordingly. This increase would not qualify as a material change, on the grounds that the developer had acted prudently and was not at fault.

NOISE

Many condo owners are deeply disturbed by recurring noise caused by their neighbours or noisy equipment. The annoyances range from loud footsteps on hardwood floors to musical instruments. When aggrieved owners ask their neighbours to reduce the noise, they are ignored in many cases. Similarly, efforts to persuade managers or boards to take remedial action may prove fruitless. One expert panel member has asked whether steps can be taken to ensure that owners' right to quiet enjoyment of their homes is respected.

Other members are sympathetic to owners who find themselves in this situation, but they also note that the issue is difficult to resolve.

When noise transmission occurs because of the building's design, it falls under the Building Code, which is separate from the Condominium Act and not part of this review. The Ministry of Consumer Services could work with the Ministry of Municipal Affairs and Housing to encourage a review of building standards.

Another expert panel member asked whether the Act could enshrine owners' right to quiet enjoyment of their home. However, some other members worried that such a move would be very difficult to enforce. Many older condo properties were not required to include much in the way of soundproofing, making it difficult to prevent the transmission of sound.

Another panel member reported that many corporations already have rules against excessive noise. The problem is that "quiet" is a subjective term, making such rules hard to enforce. Even so, the expert panel agrees that some action is appropriate.

- **RECOMMENDATION:** The Act should be amended to recognize the right to quiet enjoyment and the board's responsibility to take reasonable steps to enforce it.

Panel members are confident that the above recommendation would strengthen the hand of boards to deal with noisy residents or equipment, giving them more leeway to enforce their own by-laws on noise. Such a provision in the Act would also be an important step toward making by-laws more effective governance tools.



DETAILED ANALYSIS AND RECOMMENDATIONS

2. FINANCIAL MANAGEMENT

Because condo owners share the benefits of the common elements of their condo properties, they also share the costs of maintaining and repairing these facilities. Sound management of the corporation's finances is thus everyone's concern because it is critical to safeguarding the value of the property. However, it is also the source of much friction. One expert ventured during stage one of the review process that half of the conflicts in condo communities begin with disagreements over financial matters. Everyone agrees that better financial management is a high priority for promoting condo communities' well-being. The principal task assigned to the financial management working group was to find ways to make condo finances more transparent, accountable, fair and effective.

The group's recommendations fall into five categories:

- Communication and education
- Reserve funds
- Operating budgets
- Reserve fund investments
- Fraud

COMMUNICATION AND EDUCATION

EDUCATE AND INFORM OWNERS ON FINANCES: The stage one findings report raised the idea of a "welcome package" for new owners that would contain important background information in clear language on a range of financial topics. The working group was asked to consider this proposal as a way to help make owners more aware of the importance of sound financial management.

The group has concluded that much of the information that would likely go into such a package will be part of the Condominium Guide and/or the enhanced status certificate, both recommended by the consumer protection working group. A welcome package would thus be redundant. Even so, the group takes the view that the new guide and status certificate would still leave two big gaps.

One involves owners' *understanding* of the basic practices of financial management and, in particular, of their insurance needs.

- **RECOMMENDATION:** An **introductory online course** should be offered to owners on the basics of condo corporations' financial statements, common expenses (including special assessments), and owners' rights to access financial records.

A second gap lies in owners' *access* to specific forms of financial information, such as the limits of protection provided by the corporation's insurance, and owners' liability for deductibles under the condo corporation's comprehensive insurance policy.

RECOMMENDATION: The Condominium Guide should inform owners that they can petition for an information meeting at any time.

- **RECOMMENDATION:** Auditors should be required to confirm that the board has formally approved the corporation's investment plan. This would help assure owners that the plan has been properly reviewed and carefully considered.
- **RECOMMENDATION:** Along with the operating budget, boards should have to produce a *reserve fund budget* setting out the fund's planned expenditures for each fiscal year. Deviations from the reserve fund study should be clearly explained. The budget should be included in the corporation's annual general meeting package.
- **RECOMMENDATION:** When significant expenditures are required beyond those set out in the budget, the board should notify owners that off-budget spending will be needed for the work. Such outlays may include an unforeseen repair or an unexpected cost overrun on a scheduled repair.

The expert panel has further discussed this last recommendation, and proposes further stipulations for off-budget outlays.

- **RECOMMENDATION:** The off-budget spending notice should state that such expenditures do not require owner approval (although owners may still have a right to call a meeting to vote on the issue as addressed below under the "Operating Budgets" heading). The new requirement to provide notice would in itself be sufficient to improve transparency, thereby helping to prevent misunderstandings.

- **RECOMMENDATION:** The notice requirement should be triggered only when the off-budget spending exceeds a certain threshold. Some expert panel members have suggested a threshold of 10% of the operating budget. Others worry that vast differences in the size of condo properties mean that this trigger would be a very large sum in some cases. They suggest that a sliding scale be used, starting at 10% and then declining slowly as the operating budget grows. The panel has agreed that such a threshold should be a “relative” measure, such as a percentage of the operating budget, rather than a fixed-dollar amount.

The working group has made one other recommendation relating to financial communication.

- **RECOMMENDATION:** The annual general meeting package should advise owners to insure themselves against the risk of having to pay a deductible under the corporation’s policy.

Owners should be promptly notified:

- Of any increases in the corporation’s insurance deductible;
- If the board cannot obtain directors and officers liability, errors and omissions insurance.

Such notices should also explain why the board is unable to obtain directors and officers coverage. In general, the board should recognize and use the annual meeting package as a valuable educational tool to highlight important information, such as the corporation’s deductible.

RESERVE FUNDS

Every condo corporation is required to set up a reserve fund to ensure it can pay for major repairs and replacement of the common elements and assets of the corporation as they age. These items typically include the roof, the exterior of the building, roads, sidewalks, sewers, heating, electrical, plumbing, elevators and recreational facilities.

Reserve funds have been mandatory in Ontario since 1978. A requirement was added in 1998 that boards must undertake a reserve fund study as a way of ensuring that the fund is adequate. This step has made an important contribution towards improving the management of condo communities. Even so, many reserve funds are too small to meet their corporations’ needs, especially in older condo

properties. As these properties age, owners are being called on to make significant extra contributions for repairs that many neither planned for nor expected—and often cannot afford.

The financial management working group was asked to propose changes to ensure that reserve funds can meet each community’s needs, while also ensuring transparent management and fair contributions. At the same time, owners should be encouraged to understand how their reserve fund operates. The working group has made a series of recommendations designed to meet these goals.

SET A TRIGGER FOR UPDATES: Suppose a condo corporation commissions a reserve fund study. No sooner has the study been completed than a major piece of equipment fails unexpectedly and the corporation is forced into emergency repairs. Suppose further that the corporation draws money from the reserve fund to pay for these repairs. As the law now stands, the board is not required to update the study for another three years. In the meantime, contribution levels will be too low to make up for the unexpected expense, leaving the fund with a shortfall, possibly a large one. In such cases, the corporation may need to ask the reserve fund provider for a review of the study to see if it needs to be updated. The working group recommends setting a threshold that would automatically trigger such a review.

- **RECOMMENDATION:** If the reserve fund balance reflected in the corporation’s audited financial statements is less than 50% of the balance shown in the fund’s notice of future funding, the corporation should be required to ask the study’s author whether the study needs to be updated ahead of the normal three-year period. The author’s response should be given in writing and considered part of the corporation’s official records.

STANDARDIZE RESERVE FUND STUDIES: According to the stage one findings report, the requirements of a reserve fund study are not specific enough. The working group proposes a number of changes to address this concern.

- **CLARIFY THE MEANING OF AN “ADEQUATE” RESERVE FUND:** The Act requires boards to ensure that owners’ contributions are adequate to meet major repairs and replacement of the common elements and corporation’s assets. Unfortunately, the term “adequate” is not defined, leaving room for disagreement and heightening the risk of underfunding.
- **RECOMMENDATION:** At the outset, it should

be noted that the following recommendation applies to those who prepare reserve fund studies *as well as* condo boards who prepare the plan for future funding of the reserve fund. This will therefore require some further analysis and consideration. With the above in mind, the recommendation is that the year-over-year percentage change in total contributions to the reserve fund should be no greater than the assumed inflation rate used in the reserve fund study, except for the first three years when total contributions may be greater than the assumed rate.

- **RAISE THE 10% MINIMUM CONTRIBUTION IN YEAR ONE:** At present, developers tend not to conduct a reserve fund study before setting the reserve fund contribution in the corporation's first year budget prepared by the developer. Instead, a minimum contribution to the reserve fund in the first year budget is set at 10% of the operating budget. However, owners and experts agree that this figure is far too low. The working group recommends that the mandatory contribution in year one be raised beyond 10%, but it cannot agree on a new minimum.⁴

The expert panel has discussed this recommendation and concluded that linking a minimum contribution to the operating budget is misleading, as different considerations apply to the operating budget and the reserve fund.

- **RECOMMENDATION:** The minimum budgeted contribution to the reserve fund in year one should be the greater of:
 - (i) The amount set out in the reserve fund study that the developer must undertake; or
 - (ii) An amount based on a formula that remains to be determined, but could be based on construction costs, etc.

The expert panel has suggested that such a formula could be based on construction cost per square foot, etc. Further research and analysis, such as obtaining information from quantity surveyors, would be needed to settle on a precise formula. However, the panel is clear that the formula should be based on objective measures and that the rationale should be clearly spelt out. The minimum should not be a simple percentage of the operating budget.

- **PROVIDE FLEXIBILITY IN THE RIGHT PLACES:** While the stage one findings report was clear that the use of reserve funds should be tightly controlled, it also recognized that the rules are sometimes too rigid. For example, boards should be free to use the reserve fund to pay for alterations required by law, such as a wheelchair ramp. The stage one report also suggested that boards should be allowed to use the reserve fund to invest in green energy technology if it meets clearly set standards.
- **RECOMMENDATION:** Reserve funds should be available without unit owner approval for additions, alterations or improvements required by law, such as a wheelchair ramp.

The expert panel also proposes that reserve funds should be accessible without unit owner approval for green energy projects.

- **RECOMMENDATION:** The reserve fund may be used for improvements involving energy-efficient equipment or facilities without unit owner approval, provided they meet a threshold energy-savings test based on a formula (yet to be determined), and are verified by a credible and independent third party, such as a professional engineer.
- **RECOMMENDATION:** The green energy project would need to be reflected in the study before it proceeds. This means that the condo corporation would not be able to proceed with the project unless the fund can afford it in conjunction with all other required projects.
- **RECOMMENDATION:** The higher cost of the green energy project must be reflected in the reserve fund study and the notice of future funding. This ensures that the fund can afford the project in addition to other commitments.

The expert panel has suggested an energy-savings threshold formula that would apply to purchases of green-energy equipment.

- **RECOMMENDATION:** The number of years that a condo corporation takes to recover the additional cost of a green-energy project through predicted energy savings should be less than a yet-to-be determined percentage of the project's life expectancy. (This is known as the "simple payback" period.)

⁴ It should be noted that, under the current Act, while developers are not explicitly required to conduct a reserve fund study for year one, they are required to determine the amount that is reasonably expected to provide sufficient funds for the major repair and replacement of the common elements and assets. This is calculated on the basis of the expected repair and replacement costs and the life expectancy of the common elements and assets. If this calculation is greater than 10% of the operating budget, then that calculation (and not the 10%) is in fact the minimum budgeted first year reserve fund contribution, under the current Act. If that calculation is less than 10% of the operating budget, then that 10% is the minimum contribution.

Example: One expert has provided the following example, based on the assumption that the designated percentage of life expectancy would be 66%:

A boiler in a condo building needs to be replaced. The cost of a regular new boiler is \$150K. The cost of a new boiler with an energy savings upgrade (ie. a “green energy project”) is \$200K. The additional cost of this green energy project is thus \$50K. The life expectancy of a new boiler with an energy savings upgrade is 20 years.

The upgraded boiler is expected to save \$10K in energy costs per year. The simple payback period is calculated as follows: \$50K (the additional cost of the upgraded boiler) divided by \$10K (the predicted annual energy savings) equals 5. The simple payback period is thus five years.

Meanwhile, 66% of 20 years (the life expectancy of the upgraded boiler) is 13 years. Because five years is less than 13 years, the simple payback is less than 66% of the life expectancy of the upgraded boiler. The new equipment therefore passes the threshold energy-savings formula, so the reserve fund may be used to buy the upgraded boiler without owner approval.

Some members of the panel have suggested that the prescribed percentage of life expectancy should be lower than 66% and closer to 50%, implying a higher threshold energy-savings test. The panel has not recommended a specific percentage and will need to consider this matter further.

OPERATING BUDGETS

What can be done to improve condo boards’ management of “common” or operating expenses? According to the stage one findings report, this question raises a difficult and divisive issue. Some take the view that the rules are often too restrictive, making it difficult—often impossible—for boards to go ahead with work that needs to be done. Others believe that boards already have too much discretion over the use of operating funds. Giving them wider leeway would encourage mismanagement, ranging from indulging in “pet projects” to corrupt practices. Both the working group and the expert panel have much to say on the issue of operating budgets. They propose a number of changes, but disagree on the best way of making these changes.

ADJUST THRESHOLD FOR CHANGES “WITHOUT NOTICE”: Changes “without notice” allow a board to make an addition, alteration or improvement to the common elements, a change in the assets, or a change in the service the corporation provides without consulting the owners or obtaining their approval by way of a vote of owners. The law allows such changes if the estimated cost *in any given month* is not more than \$1,000 or 1% of the annual budget, whichever is higher.

Working group members agree that this limit is subject to manipulation by some boards and that the authorization should be based on the total cost for the current fiscal year, rather than any given month which is currently the case.

- **RECOMMENDATION:** If the total estimated spending change is not more than \$30,000 or 3% of the annual budget *in any given 12-month period (as opposed to “any given month”)*, whichever is lower, the change can proceed without notice to owners.
- **RECOMMENDATION:** In addition to the above recommendation, a condo corporation must notify owners if that change results in a material reduction or elimination of services.

Under this recommendation if a change is less than 3% or \$30,000 no notice is required. If a change is more than 3% or \$30,000 and less than 10%, notice to owners is required.

CHANGE PROCEDURE FOR SUBSTANTIAL CHANGE: A substantial change occurs when the cost of additions, alterations or improvements to the common elements, a change in the assets, or a change in a service the corporation provides, exceeds 10% of the budgeted common expenses for a fiscal year. At least two-thirds of owners must approve such a change at a formal meeting, either in person or by proxy.

According to the working group, many condo communities struggle to persuade owners to attend the required meeting, whether in person or by proxy. This means such approvals are rare. Indeed, the high threshold often prevents boards from carrying out work that needs to be done. The group proposes to rectify this shortcoming as follows:

- First, the spending threshold should be set at 10% of common expenses or \$150k, whichever is lower.
- Second, the approval process should be changed so that only one-third of owners must be present, in person or by proxy, for the vote to proceed. The project would then require approval from 66 2/3% of those present, in person or by proxy.

The expert panel has debated these proposals at length. It agrees that the threshold for seeking approval for substantial changes should remain at 10% of annual operating expenses. However, the panel rejects the proposed \$150k cap on the grounds that no objectively clear basis or rationale for that number was provided, and panel members were unable to come up with one themselves. Further, while the panel agrees that the approval threshold should be two-thirds of those present at the meeting, it proposes reducing the quorum to 25% of owners, in person or by proxy. Almost every panel member supports these amendments, though some worry that they could make it too easy to push through substantial changes.

- **RECOMMENDATION:**

- The spending threshold should be set at 10% of the budgeted common expenses for a fiscal year.
- The approval process should be changed so that only 25% of owners must be present, in person or by proxy, for the vote to proceed. The initiative would require approval by at least 66 2/3% of those present, in person or by proxy.

One panel member strongly opposes the basic direction of this recommendation and proposes either a cap on spending or a sliding scale so that the 10% threshold declines as the operating budget grows.

DEFINE “REPAIR” AND “MAINTENANCE”: The working group’s discussion on the definition of “repair” and “maintenance” can be divided into two parts. One centres on finding better ways to distinguish between different kinds of operating expenses. The other seeks to clarify who is responsible for paying the costs of certain repair and maintenance projects.

On the first point, the group was asked to consider ways to clarify the definition of “repair” and “maintenance.” In its discussions, it has considered distinguishing between different categories of tasks. In particular, it has suggested a distinction between essential tasks, such as patching deteriorating asphalt, and non-essential or “cosmetic” projects, such as putting marble pillars in the foyer.

The group notes that, if this distinction is carefully worked out, it may be possible to give boards more flexibility to decide on necessary repairs and maintenance. The requirements for notification or approval in section 97 of the Act would be triggered only for more aesthetic improvements. Such a distinction may reduce tensions between boards and owners over spending decisions.

However, the group also notes that a clearer definition of terms such as “repair” and “maintenance” is a complex undertaking that impacts a wide range of items, from insurance to improvements.

- **RECOMMENDATION:** The Ministry of Consumer Services should consider a more focused initiative to clarify the definition of “repair” and “maintenance”. Such an initiative should involve a group with the right mix of expertise and adequate time to conduct a more thorough analysis.

The second aspect of the working group’s discussions focuses on costs. Members agree that the Act is not clear enough about responsibility for some repair and maintenance costs, creating the potential for disputes between owners and boards.

- **RECOMMENDATION:** The Act’s definition of “maintenance” should be amended to eliminate owners’ obligation to repair, after normal wear and tear, any common elements over which they have exclusive use, such as balconies. The reserve fund should pay for these repairs.
- **RECOMMENDATION:** Corporations should be required to repair all common elements, whether or not an owner has exclusive use.

PROVIDE A “STANDARD UNIT” DEFINITION: The definition of a “standard unit” distinguishes between the following components of a condo unit⁵: (1) components or fixtures that a corporation decides should be covered by its insurance policy, for example kitchen cabinets; and (2) items regarded as “improvements,” such as a hardwood floor or carpeting. This distinction is important for insurance purposes because the corporation’s insurance covers only “standard unit” items.

The Act currently requires developers to include in the transfer documents a schedule setting out what constitutes a standard unit for each class of unit in a condo property. But such definitions can fall short in various ways, creating uncertainty and tension over insurance coverage.

Moreover, no such requirement existed prior to May 5, 2001. Many corporations set up before then have no standard unit definition, unless they have passed their own standard unit by-law.

The stage one findings report suggested that the Act should be amended to include a basic, default definition of a standard unit. The working group agrees.

⁵ A “standard unit” sets out the components within a unit, not the boundaries between a unit and the common elements.

- **RECOMMENDATION:** A “standard unit” definition should be put in place that applies to all condo units in the province. The definition would cover a liveable unit with finished walls, ceilings, fixtures, cabinetry, etc. The description needs to be adequately detailed to obtain an insurance valuation for a unit.

Such a standardized declaration is not meant to apply to declarations of vacant land, common elements, or industrial and commercial condo properties.

- **RECOMMENDATION:** Corporations will remain at liberty to amend the “standard unit” definition through a by-law. Where a definition is provided in the transfer documents or has already been created through a by-law, that definition will prevail.

The expert panel agrees with these recommendations and has made a further proposal.

- **RECOMMENDATION:** This definition should apply both to new and existing condo properties; and there should be a default standard unit definition for each class of unit.

ASSIGN RESPONSIBILITY FOR DAMAGE: Suppose an owner’s carelessness or negligence results in damage to the common elements or to another unit. The existing Act is unclear about who pays the corporation’s deductible for the damaged property, although corporations do have the option to pass a by-law outlining this responsibility. The stage one findings report called for greater clarity on this point. The working group agrees that responsibility lies with the owner of the unit where the person, who caused the damage, resides.

- **RECOMMENDATION:** The Act should provide that an owner is responsible for repair costs or the deductible under the corporation’s insurance policy, whichever is lower, as a result of damage to other units or the common elements caused by an act or omission by the unit’s owner or resident.

The expert panel has made one addition to this recommendation.

- **RECOMMENDATION:** Corporations should be forbidden from passing a by-law that alters the substance of the above recommendation.

In addition, the expert panel agrees in principle that unit owners should be required to hold enough insurance to pay the corporation’s deductible if they are found responsible for damage to their own unit, other units or the common elements. However, panel members question whether

insurers would be willing to provide such coverage. They agree that a final decision should await further research.

USE LIENS FAIRLY: If an owner owes money to the corporation, the board can register a lien on the owner’s unit. This is often done, for example, when an owner fails to pay monthly condo fees on time. A letter can be sent on the first day of arrears warning that a lien may be registered on the owner’s unit.

Liens are an important tool for prudent financial management. However, some boards appear to be abusing this power. For example, the corporation may ask its lawyer to write a letter relating to a dispute between the corporation and the owner. Such a letter normally costs several hundred dollars. Some corporations are automatically passing this cost onto the owner, threatening to place a lien on the owner’s unit if the cost of the lawyer’s letter is not paid by the owner.

Working group members take the view that this process is fair and appropriate when the dispute involves only arrears of monthly payments. However, members feel it is inappropriate to send a warning letter when there is genuine uncertainty and disagreement over, say, who should pay the corporation’s deductible on an insurance claim, or whether or not an owner was making excessive noise that disturbed others.

In the latter case, the working group agrees that passing on the costs of a warning letter to the owner is unfair and heavy-handed. No costs should be imposed on an owner until the case has been decided by an impartial third party.

- **RECOMMENDATION:** At present, a notice from the corporation warning of an impending lien can be sent on the first day that the owner is in arrears of common expenses. That process should remain as it is. However, where there is a genuine dispute between the owner and the board, the owner has a right to submit the dispute to the new Dispute Resolution Office (see section on Dispute Resolution). Until a decision is reached, the corporation should carry the costs of the lawyer’s letter and the lien process will be frozen. If the corporation is vindicated, the costs can be passed onto the owner and the lien rights will be re-activated. If the owner is vindicated, the corporation will absorb the costs of the letter.

One expert panel member disagrees with the existing law and argues that a grace period of, say, 15 days should apply before a notice of lien is sent. The member notes that there are many reasons a person may fail to meet a common expense payment deadline, including ones for which they

should not be blamed. Delivery of the payment cheque may have been delayed or the manager may have misplaced the cheque.

The rest of the expert panel takes the view that the process is fair and appropriate when the dispute involves only arrears of monthly common expenses. Unit owners should not be entitled to a no-charge notification from the condo corporation when they are in arrears on payments for common expenses (condo fees). However, the panel has concluded that one free notice of arrears from the corporation should be recommended as a best practice, but not legislated as a requirement. The dissenting member takes the view that it should be a legislated requirement.

CHARGE-BACKS: A “charge-back” is a sum of money added to a unit’s common expenses to cover a special cost incurred by the corporation because of some action or inaction by the unit owner or as may otherwise be allowed under the Act. The expert panel takes the view that more clarity on charge-backs is needed.

- **RECOMMENDATION:** The Act should define “charge-backs” as well as the related term, “exceptional services.” It would also be useful to codify the *Italiano v. Toronto Standard Condominium Corp. No. 1507*, [2008] O.J. No. 2642 (Ont. S.C.J.) court decision, in this regard.

The governance working group has also discussed charge-backs (see section below on the legitimate use of charge-backs).

ALLOW SURPLUSES: At present, boards are permitted to run operating surpluses, with no limit on the size. According to the stage one findings report, some participants felt that running big surpluses was not a sound management practice. It encourages boards to inflate budgets and create a “slush fund,” which they can then use for pet projects or worse. It was suggested that surpluses be capped to discourage such practices.

However, the working group feels that capping surpluses would prevent corporations from developing a savings plan for an addition, alteration or improvement that the owners had approved, or from creating a buffer against big price swings in utility costs.

- **RECOMMENDATION:** The status quo should be maintained and no cap or other restriction should be placed on surpluses.

Most members of the expert panel agreed with the working group’s conclusions. They noted that, at present, the Act provides that surpluses either must be applied against future common expenses or paid into the reserve fund.

In addition, other changes being recommended would provide even tighter protection against abuse. For example, new requirements (above) to report and notify owners regarding the corporation’s finances and intended changes to common elements, assets or services, as well as new rules on access to documents (see Governance) will make the use of surpluses far more transparent.

One member of the panel strongly disagrees, arguing that not capping surpluses allows boards to make major expenditures or changes without seeking the input of owners. The member argued for capping surpluses to prevent such behaviour and voted against the above recommendation.

RESERVE FUND INVESTMENTS

The working group has noted that boards have very little flexibility to decide how to invest a corporation’s funds. The group has discussed whether more flexibility is desirable and, if so, in what way and how much. These discussions have yet to reach a conclusion. Even so, the group feels that further study of at least two options would be worthwhile.

- **RECOMMENDATION:** The current list of financial institutions where corporations are allowed to deposit their money is highly restricted. Consideration should be given to including other options, such as insurance companies and financial institutions in other Canadian provinces.

The group has discussed at some length allowing condo corporations to pool their reserve funds to create a special investment fund similar to one in the social housing sector. That model has produced significantly higher returns for investors, with minimal risk. The condo sector has an estimated \$2.5 billion in reserve funds, and the amount is growing. Given the size of the sector’s capital assets, the working group feels the creation of a pooled fund is a promising option that merits further study.

- **RECOMMENDATION:** Consideration should be given to allowing two or more corporations to pool their reserve and operating funds to obtain a better rate of return.

FRAUD

A major concern for condo owners is the possibility of fraud and theft of the corporation’s funds. What action, if any, should be taken to prevent such abuse? On one hand, criminal acts are covered by other statutes and the law enforcement system. Nevertheless, the working group has considered whether further steps are needed to discourage

fraud. It has divided the issues into three main categories:

- Theft and embezzlement
- Kickbacks
- Frivolous spending

THEFT AND EMBEZZLEMENT: Ontario's strong reserve fund requirements mean large sums of money are now accumulating in these funds, increasing the risk of theft and embezzlement by dishonest managers or directors. The working group reports that fidelity insurance appears to be the principal protection against such abuse. However, industry representatives report that while insurance for the first \$1 to \$2 million in losses is easy to obtain and relatively inexpensive, larger amounts are generally too expensive to insure. Therefore, the working group is also considering other ways to tighten controls on access to reserve funds, but has so far been unable to identify any obvious course of action. It has noted that pooled investments (see section on reserve fund investments above) could potentially be used as a way of implementing new controls on how and when funds are withdrawn, mitigating the risk of theft and embezzlement.

KICKBACKS: Kickbacks on contracts are a serious concern for many condo owners. Unfortunately, it is often difficult to prove that a kickback has taken place. The working group takes the view that the best protection is a well-executed, sealed-bid contract process, where tenders are opened in front of witnesses and immediately signed.

- **RECOMMENDATION:** Whenever a corporation contemplates a service contract valued at, for example, over \$50,000, a sealed-bid process should apply with all the standard safeguards.

The expert panel endorses this recommendation.

FRIVOLOUS SPENDING: Many owners worry about the temptation for boards to spend the corporation's money on unnecessary or frivolous projects. The working group feels that many of the measures it has proposed will strengthen transparency, accountability and owner involvement in the corporation's financial affairs, thereby limiting opportunities for such abuses

DETAILED ANALYSIS AND RECOMMENDATIONS

3. DISPUTE RESOLUTION

Disputes are not uncommon in condo communities. They range from relatively minor disagreements over parking or pets, to more serious ones over the board's right to collect and spend money.

One of the most common complaints heard during stage one of the review was that condo communities do not have an effective way of resolving disputes. While the Act identifies mediation, arbitration and legal action as options, these processes are often slow and costly. The existing system clearly does not work well and the stage one findings report recognized that improvements were a high priority. The dispute resolution working group was charged with seeking improvements.

IDENTIFY THE TYPES OF DISPUTES: Although the stage one findings report noted that dispute resolution is complex, it did not distinguish between various types of disputes. The working group has compiled a list of the seven most common types of condo dispute:

- Disputes arising from misunderstanding or missing information
- Condo vs. developer
- Shared facilities (often condo vs. condo)
- Condo vs. manager⁶
- Condo vs. owner
- Condo vs. tenant
- Cost recovery

The working group's discussion summary considers each of these categories. **Its proposals have far-reaching consequences for condo communities.**

The stage one findings report called for the creation of a quick, reliable, impartial, trusted and inexpensive (or free) resource to which owners, directors and managers could turn for information on the Act, interpretation of by-laws, and other important matters.

- **RECOMMENDATION:** A new body, called the **Condo Office**, should be set up to provide -- among other functions -- information and advice to condo stakeholders online, by telephone or in person.

ESTABLISH A CONDO OFFICE: In proposing a new dispute-settlement mechanism, the working group has considered several models, including a government organization staffed by public servants and an office run by one or more non-governmental organizations, such as the Canadian Condominium Institute or the Association of Condominium Managers of Ontario. The group has ultimately taken the view that the new organization needs some independence from government, but that government should provide oversight to ensure that the body is impartial, transparent and accountable.

- **RECOMMENDATION:** The Condominium Act should set up an organization, to be known as the Condo Office, with authority delegated by government. The new organization would report through a board of directors, and operate at arm's-length from government.
- **RECOMMENDATION:** The Condo Office would, among other functions:
 - Provide information and advice on relevant issues to members of the community;
 - House and administer the new dispute resolution service;
 - Promote improved education for condo owners, directors and managers;
 - Collect and provide statistical data on condo disputes;
 - Create and administer an authoritative registry of Ontario condo corporations;
 - Be funded by a modest levy on each condo unit in the province, to be collected and remitted by each condo corporation.

⁶ Disputes arising between an owner and manager are in most cases captured by condo vs. owner disputes because managers provide services on behalf of the board of directors.

DISPUTES ARISING FROM MISSING INFORMATION

Many condo disputes begin with a misunderstanding over roles, rights or responsibilities. Such misunderstandings are not confined to owners, but often extend to board members, managers and outsiders. The most effective way of dealing with them is to prevent them happening in the first place. The first step is improved education and information.

CONDO VS. DEVELOPER DISPUTES

Although the working group is well aware of the shortcomings of the existing approach to dispute resolution, it does not regard the system as a complete failure. In particular, for disputes between corporations and developers, the group agrees that the present model works reasonably well and requires only minor changes. The main issue is timeliness.

- **RECOMMENDATION:** Retain the current approach of dealing with condo vs. developer disputes through mediation and arbitration, but improve the process through a new default procedure to ensure that cases are handled quickly and efficiently.

This procedure would apply only to disputes arising from agreements between the condo corporation and the developer, the budget statement or any first-year deficit claim. All other disputes, such as those involving a construction defect, would still be referred to the courts.

The working group discussion summary offers some important guidelines on the form this new procedure might take.

SHARED FACILITIES DISPUTES

The working group draws similar conclusions on disputes over shared facilities (eg. recreation center).

- **RECOMMENDATION:** The Act should retain mediation and arbitration as the primary dispute resolution processes for disputes over shared facilities. But these processes should be improved by adding the new default procedure (see previous recommendation). Where at least one condo corporation is involved but no agreement governs the relationship, the Act should impose mediation and arbitration as the mandatory dispute resolution mechanisms. An application for an oppression remedy (a type of court order) should be allowed

only after mediation and arbitration.

CONDO VS. MANAGER DISPUTES

The working group would give the Condo Office much of the responsibility for resolving disputes between corporations and managers.

- **RECOMMENDATION:** The Act should remove condo vs. manager disputes from the mediation and arbitration process. For example, it should set up a fast, effective process within the Condo Office or the courts—or both—to ensure corporations can easily gain access to records that are wrongly withheld. Other disputes, such as disagreements over contracts or charges of negligence, should proceed through the courts.

CONDO VS. OWNER DISPUTES

Although information and education are central to the working group's dispute resolution model, not all disputes stem from misunderstandings. Real disagreements are a fact of life and, while mediation and arbitration may be appropriate in some cases, they are poorly suited to others. Disputes between owners and their corporation are a case in point.

The Condo Office would provide a whole new approach to such disputes through two dispute resolution processes: The **Quick Decision Maker** and the **Dispute Resolution Office**.

The working group divides disputes between owners and boards into two categories: "small items" and "enforcement issues".

THE QUICK DECISION MAKER: The small items category includes disagreements on access to records, the validity and reasonableness of charge-backs, validity of proxies, entitlement to vote and similar matters.

While the first stage in resolving a disagreement is to ensure that the parties are well informed on their roles, rights and responsibilities, this may not be enough. There may be no clear answer how their rights apply to the issue in question. In such a case, the parties may need an authoritative third-party ruling to settle the matter.

Ideally, such a process should be quick, reliable, impartial, trustworthy, inexpensive (or free), and authoritative—much like the Condo Office's proposed information service.

No such process currently exists for relatively simple and frequent disputes. Condo boards and owners have little choice but to turn either to mediation/arbitration or start litigation.

- **RECOMMENDATION:** A special office, known as the Quick Decision Maker, should be set up and housed in the Condo Office. The Quick Decision Maker would have the authority to make quick, summary decisions on records, charge-backs, proxies, requisitions and owners' entitlement to vote.
- **RECOMMENDATION:** The Quick Decision Maker would rely on a simple, user-friendly process with limited appeal rights. It would have the authority to order the delivery of records, rule on redactions, impose limited penalties, determine the validity and reasonableness of charge-backs, rule on the validity of requisitions, proxies, and owner's entitlement to vote, and order costs of the proceedings on a prescribed scale.
 - Disputes that are assigned to the Quick Decision Maker would only be addressed at this level.
 - Where the Quick Decision Maker rules that owners are responsible for some costs, this ruling could be enforced by adding the cost to the unit's common expenses. Where costs are applied to condo corporations, enforcement would take the form of a small claims court filing.
 - Non-monetary orders would be enforced in the same way as a court order.
 - Appeal rights would be limited to issues about jurisdiction, issues of law, or where the amount involved is \$1,500 or more. Appeals would be heard or read by an appeal officer or a panel of Quick Decision Makers, excluding the decision maker who made the original decision. Higher fees would apply to unsuccessful appeals.
 - Primary funding for the Quick Decision Maker office would come from user fees and the modest levy on condo corporations proposed to fund the Condo Office. The Ministry of Consumer Services could possibly provide seed and transition funding.

Working group members are concerned about giving the Quick Decision Maker responsibility to adjudicate disputes on board elections, fearing that such cases could become

highly contentious. Questions have been raised whether the Quick Decision Maker would be sufficiently well-equipped to make such judgments. In the end, working group members have come to the conclusion that this office should not have authority to decide elections. But the expert panel has not endorsed this recommendation. Panel members wonder why the decision maker's authority needs to be limited in this way.

Nevertheless, panel members are concerned that allowing the Quick Decision Maker to rule on proxies and entitlement to vote could encroach on the role of the meeting chairperson, who may already be authorized to decide such matters. The question of whether proxies and entitlement to vote should be dropped from the Quick Decision Maker's jurisdiction remains unresolved. The group has also discussed -- without coming to a conclusion -- whether the decision maker should have the power to levy modest fines or other penalties.

THE DISPUTE RESOLUTION OFFICE: The Quick Decision Maker is designed for disputes that the working group describes as "small items." It also proposes a second new mechanism, known as the Dispute Resolution Office, to deal with more weighty "enforcement cases".

- **RECOMMENDATION:** The Dispute Resolution Office would be the third form of dispute resolution provided by the Condo Office, in addition to information delivery and quick decision making. The process would involve a mandatory 1 to 2 hour session—possibly through an online forum—aimed at providing:
 - Early neutral evaluation of a dispute;
 - Help in reaching a settlement;
 - Additional information on the issues;
 - Guidance on the next step in the dispute resolution process.

The staff of the Dispute Resolution Office would not be mediators, but more analysts with the skills and expertise to provide a quick, neutral, inexpensive and informed assessment of the case. This assessment would be neither binding nor definitive, but would take the form of expert advice. Cases that remain unresolved would move on to mediation and possibly arbitration.

Participation in the Dispute Resolution Office process would be mandatory. Should a party fail to appear, the office could declare the person in default. This would mean that the party had, in effect, conceded the case, bringing the process

to a close.

While parties would be free to bring lawyers to these proceedings, they would do so at their own cost, with no prospect of reimbursement. This is an important principle. In these types of dispute, owners usually cannot afford legal advice or representation, which can put them at a major disadvantage to boards, which usually do hire lawyers. The working group sees early neutral evaluation as a big step toward redressing the power imbalance between condo owners and corporations.

Once established, the Dispute Resolution Office would be funded by the levy on condo units and a user-pay system. Its staff would be drawn from a pool of professionals who have appropriate knowledge and experience of the condo sector. These could include people with a range of professional backgrounds, from mediators to social workers. The same person could and likely would fill roles in both the Quick Decision Maker and Dispute Resolution Office processes.

ALLOW THE NEW ORGANIZATION TO EVOLVE: One member of the expert panel has raised a question about the separation of the Quick Decision Maker and the Dispute Resolution Office. So-called “small items” (eg. access to records) are supposed to be resolved by the Quick Decision Maker, while “enforcement issues” (eg. infraction of a corporation’s rules) would fall under the Dispute Resolution Office. How reliable is this distinction, asked the member? Are there cases where enforcement issues might overlap with small ones and, if so, who would hear the case? Would it be broken up into two parts? How would that work?

The expert panel has spent some time considering these questions. It agrees that issues may not always fit easily into one category or the other. That does not mean that the model is faulty, but rather that setting up the system will be a complex task that will take time to shape and mature. Experience and learning will be critical to success.

- **RECOMMENDATION:** The Quick Decision Maker and Dispute Resolution Office should begin by focusing on a limited number of priority issues. They and the Condo Office as a whole should remain flexible so that all can evolve over time as managers and clients become more familiar with their respective roles.

MEDIATION: As the previous section makes clear, the working group recommends that mediation should remain part of the dispute resolution model in condo vs. owner disputes, though the Dispute Resolution Office could authorize the parties to bypass mediation.

- **RECOMMENDATION:** As with condo vs. developer or shared facility disputes, mediation in condo vs. owner cases should be improved through a default procedure that ensures quick and easy selection of mediators, scheduling, and conduct of mediation sessions. The working group also proposes that corporations be allowed to pay the entire cost of the initial mediation session upfront so that the session can proceed, but that it could recover the owner’s share later.

ADJUDICATION BY SIMPLE, EXPEDITED ARBITRATION:

- **RECOMMENDATION:** Adjudication should be left to the private market, but the Act should create a default procedure for cases to be handled more quickly and economically. The default procedure would outline how an arbitrator is selected, the way in which the arbitrator is paid, and how the case is conducted.

DISPUTES WITH TENANTS

The stage one findings report did not address the issue of tenants but noted that the number of rented units is rising rapidly. The working group observed that, while most tenants occupy their units peacefully and abide by the rules of the community, some do not, and cause significant problems by disturbing residents’ quality of life and creating conflicts. The working group reported that enforcing declarations and rules against tenants is procedurally more difficult, lengthy and costly compared to the process for dealing with disputes against unit owners. Unfortunately, tenants who occupy their units peacefully often suffer most from the difficulty in dealing effectively with bad tenants.

To address this imbalance, the working group took a close look at these issues and proposed that the Act be amended to:

- Create stronger incentives for landlords and tenants to file the required leasing notice with the condo corporation and ensure that tenants receive the condo’s declaration, by-laws and rules;
- Facilitate the early resolution of disputes between condo corporations and tenants by permitting mediation of disagreements with tenants regarding the declaration, by-laws or rules;
- Simplify and streamline the processes by which condo corporations can seek remedies for serious breaches by tenants of the Act, declaration, by-laws and rules, where landlords fail to take corrective action themselves; and

- Clarify the relationship between the *Condominium Act* and the *Residential Tenancies Act* by codifying the extent to which one statute prevails over the other in areas where uncertainty or confusion is common.

While these proposals were tentatively endorsed by the expert panel, no landlord or tenant representatives participated directly in Stage Two of the review. The working group and expert panel therefore were not able to test these proposals with the people who would be affected by them—which is a key goal of the engagement process. The experts have recommended that the ministry conduct further analysis of these proposals and consult with stakeholders on the key principles set out in the following recommendation:

- **RECOMMENDATION:** Consider ways to provide greater clarity and certainty on how to address condo disputes involving tenants. This work should be guided by the following basic principles:
 - The laws governing condo communities apply equally to all residents, whether they are owners, tenants or guests of an owner.
 - Unit owners have an obligation to ensure that anyone who occupies their unit, whether a tenant or a guest, complies with the Act and the declaration, by-laws and rules of the

corporation.

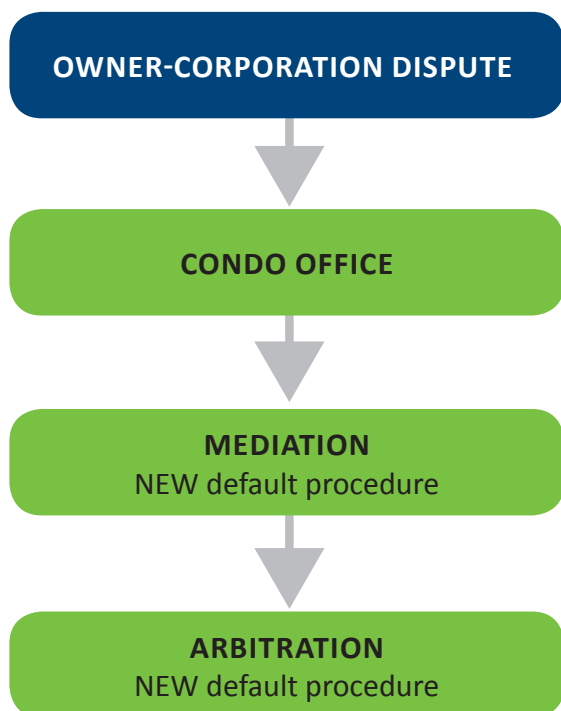
- A clearer and more effective method is needed to resolve disputes where a tenant has violated the Act or the rules governing the condo community.

COST RECOVERY FOR PROCEEDINGS

The working group takes the view that, when necessary, owners should be able to gain access to arbitration and legal action more easily and at less cost.

- **RECOMMENDATION:** The Act should clearly state that condo corporations and unit owners are *both* entitled to complete indemnity for reasonable costs incurred in a successful claim using the dispute resolution processes. At present, only corporations are entitled to complete indemnity. This provision would not apply to proceedings involving the Quick Decision Maker and Dispute Resolution Office, where a successful party can only recover a small cost award by the decision-maker.
- **RECOMMENDATION:** Mediators should no longer be allowed to allocate costs.

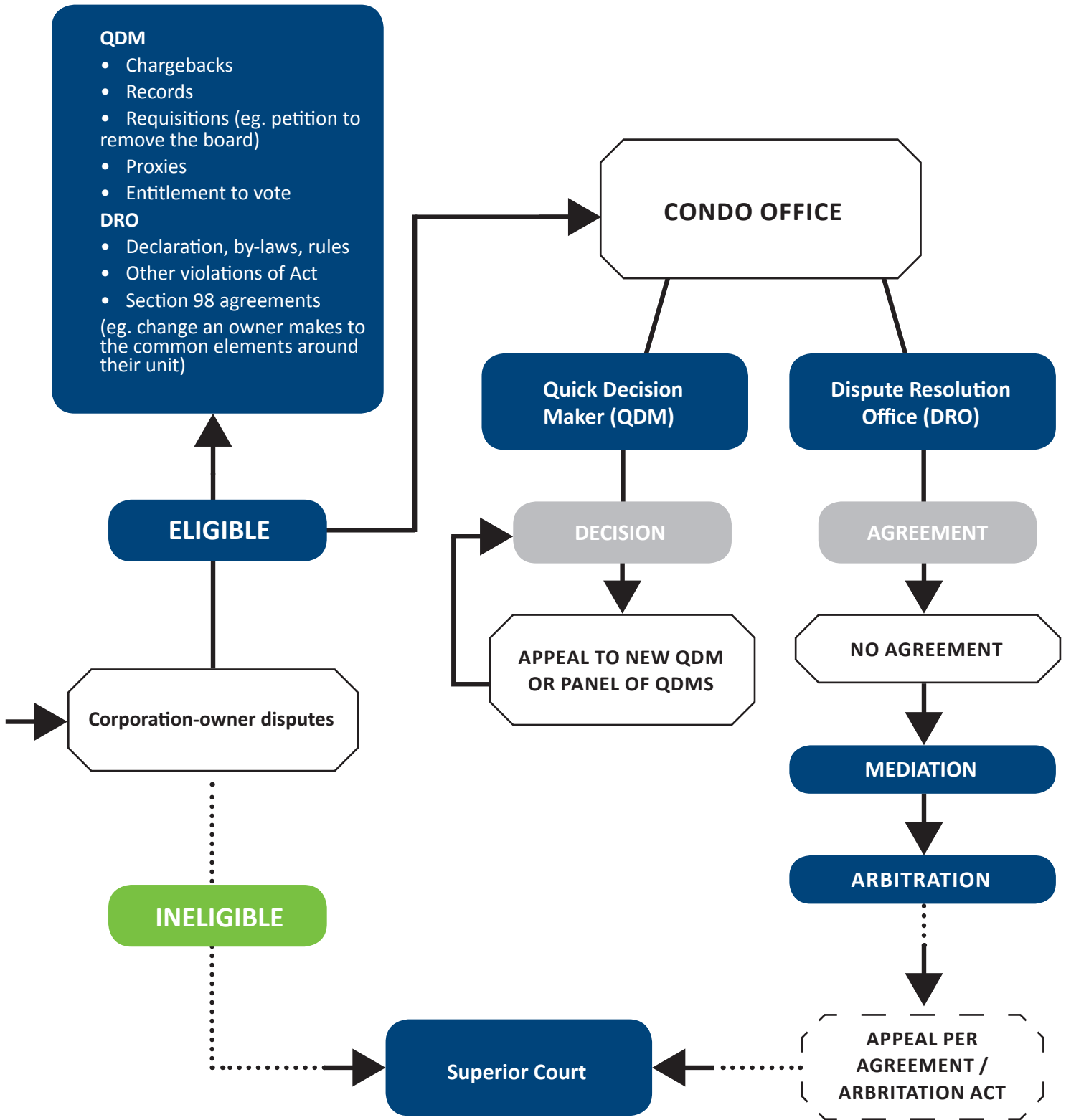
NEW DISPUTE RESOLUTION PROCESS



ISSUES EXCLUDED FROM THE PROCESS WOULD PROCEED TO:

- a) Superior Court
 - Lien enforcement
 - Oppression
 - Dangerous conditions and activities
 - Conflict of Interest
 - Breach of directors duty
 - Breach of standard of care
 - Directors' negligence
 - Fraud
 - Validity of owners' and requisition meetings
- b) Landlord and Tenant Board or Court
 - Tenant issues

DISPUTE RESOLUTION PROCESS IN DETAIL



DETAILED ANALYSIS AND RECOMMENDATIONS

4. GOVERNANCE

As already noted, condo corporations are akin to self-governing communities. Unit owners elect their own “government”—the board of directors—to run the affairs of their community, such as maintaining the building, rules on pets and monthly fees. As with any democracy, the board’s role is to act in the interest of the community as a whole. To work well, the system must be transparent and accountable.

The stage one findings report noted that many owners feel their boards fail to meet appropriate standards for transparency and accountability. Their complaints cover a wide range of shortcomings, from failing to ensure timely access to basic documents to manipulating votes. The report identified five main areas for improvement in governance rules and practices:

- Access to records and information;
- Meetings;
- Directors and officers;
- Fines to enhance accountability;
- Rights and responsibilities of owners and directors.

The governance working group has formulated recommendations in all five areas.

ACCESS TO RECORDS AND INFORMATION

The working group and the expert panel have sought to achieve three main goals:

- Set clear requirements for how long records must be kept;
- Ensure that corporate records are easily accessible; and
- Ensure that personal privacy is protected and records are not used for inappropriate purposes.

SET REQUIREMENTS FOR RETENTION OF RECORDS:

- **RECOMMENDATION:** The Act should authorize condo boards to pass by-laws expanding the records that corporations are required to keep and setting retention periods for those records
- **RECOMMENDATION:** Minimum periods should be set for retention of corporation documents as detailed in the following table. The table should be kept on file and be easily accessible to owners.
- **RECOMMENDATION:** Where possible, corporations should seek to convert documents to electronic format as a best practice.

Minimum Retention Periods for Condo Corporation Records

Administrative	
Duration (Years)	Type of Record ⁷
7	Inspection and administration reports Insurance policies Appraisals Employee records Non-unit liens
15	Reserve fund studies Engineering reports
Infinite	Warranties Performance audits Contracts Turnover documents Drawings Minutes, declaration, by-laws and rules Owners list (mortgagees)
Legal	
Duration (Years)	Type of Record
7	Lawsuits Human rights complaints
Financial	
Duration (Years)	Type of Record
7	Audited financial statements Unaudited financial statements Resolved insurance claims Investments Loans Mortgages Taxes Expired or cancelled contracts Expired warranties
Condo Unit	
Duration (Years)	Records
7	Status certificates Maintenance records Correspondence Form 5 summaries of lease or renewal Pending issues Unit liens Owner information
Infinite	Section 98 changes to common elements

⁷ Under the section titled "Administrative," the "records" referred to in the table are current records, such as current contracts and current warranties. By contrast, under "Financial" the records refer to expired records, such as expired contracts and expired warranties.

The expert panel agrees on the need for clear time limits on retention of records and has accepted those proposed in the above table, with one exception.

- **RECOMMENDATION:** The panel disagrees that records relating to “changes to common elements” need to be kept indefinitely.

Some panel members have raised other concerns. For example, would accidental destruction or loss of these documents create legal liabilities for directors? In any case, they contend that there is little reason for keeping any documents forever. Such an open-ended requirement is unnecessary.

The panel of experts also augmented the working group’s recommendations as follows:

- **RECOMMENDATION:** As a best practice, corporations should keep records longer than any legislated minimum retention period.

PROVIDE EASY ACCESS TO CORPORATE RECORDS: The working group and expert panel agree that easy access to documents is essential to transparency and accountability. At the same time, they recognize that demands for documents can be frivolous or used as a tactic to annoy management and the board or consume their time. The working group has thus sought a balance between facilitating access and guarding against abuse.

- **RECOMMENDATION:**
 - The Act should set out standardized request and response forms for documents.
 - In cases where access to documents is denied, the corporation should be required to provide the reason (eg. privacy) in written form and in language that makes the reason clearly understandable.
 - Access to some documents is a basic right and these documents should be provided free of charge. For others, a fee would be appropriate.
 - The fee should be reasonable, designed only to recover the costs of providing the service.
 - An estimate of the cost should be provided beforehand.
 - The Act should establish significant fines for

corporations that fail to comply with these regulations, possibly in the range of \$1,000 to \$5,000. A sliding scale could be used to link the severity of the fine to the size of the corporation and/or the gravity of the offence.⁸

- The Act should permit and encourage the corporation to keep electronic records which should be provided free or for a modest charge.

The expert panel has accepted these recommendations and added the following:

- **RECOMMENDATION:** A fee should be charged for retrieval and redaction of documents.
- **RECOMMENDATION:** A request for documents must be fulfilled within 10 days for current documents and 30 days for all other documents.

PROTECT PRIVACY AND ENSURE APPROPRIATE USE OF RECORDS: The working group recommends (1) that the proposed request form for documents include the reason for the request; and (2) that the person making the request sign an affidavit that the information will be used for purposes “reasonably related to the purposes of the Act”. These requirements would be designed to help prevent abuse, as well as protect personal privacy and the corporation’s confidentiality.

Most members of the expert panel disagree with both parts of the working group’s recommendation. The panel maintains that it would be inappropriate to require owners or others to provide reasons for their request. Panel members take the view that if someone has a right to a document, there is no further need to explain the request.

- **RECOMMENDATION:** As a best practice, contracts between a condo corporation and a third party should clearly address when and how owners, buyers or mortgagees should be given access to relevant documents related to the contract. These terms are especially important for documents that define the relationship between the condo corporation and the other party to the contract.

MEETINGS

According to the stage one findings report, owners and other stakeholders alike are deeply concerned how condo meetings are convened and conducted. The lack of clarity surrounding this process creates confusion and permits abuse, which, in turn, creates the potential for poor governance, owner

⁸ A member of the expert panel notes that there is currently a remedy (Section 55 (9&10)) that allows an owner to go to Small Claims Court to obtain an order for the corporation to pay up to \$500.

apathy and even corruption. The governance working group has made a series of recommendations aimed at improving six key facets of meeting procedures:

- The use of proxies;
- Quorum rules;
- Requisitioned meetings;
- Communication with owners;
- Notice of meetings and agendas;
- Use of online technologies.

STANDARDIZE PROXIES: Any owner who cannot attend a condo corporation meeting may fill out a form naming a proxy to represent him or her at the meeting. Proxies can be designated: (1) to achieve the quorum for the meeting; and (2) to cast an owner’s vote on an issue or for a candidate in an election.

Proxy abuse was a topic of much discussion during stage one of the review process. Participants called for improvements to the system, including a mandatory, standardized proxy form that would minimize opportunities for abuse by clearly identifying the proxy-holder’s role.

The working group recognizes that proxies are a valid expression of an owner’s voting rights. Proxies can allow those unable to attend a meeting to take a meaningful part in it, or those who feel unqualified to make a judgment on the issues to nominate someone more qualified to act in their interest.

The group feels that these benefits of the proxy system can be protected while reducing the scope for abuse. To this end, it recommends the creation of a standardized, pre-printed proxy form and various ways to tighten up the process.

- **RECOMMENDATION:**
 - As a best practice, proxies should be submitted at least a day ahead of the meeting.
 - To avoid tampering and misinformation, anyone wishing to vote by proxy must sign their name on the proxy form next to each candidate or by-law they are endorsing.
 - The person giving a proxy can write in a name instead of voting for one of the pre-printed names on the proxy form.

- Proxies and ballots should be kept for 90 days, after which they may be destroyed, unless a dispute is registered within this period (see section on Dispute Resolution). In that case, the proxies and ballots must be retained until the dispute is resolved.
- Proxies should be available, if desired, in electronic or automated form.

The expert panel agrees with these recommendations, and suggests adding that the ballot should be kept confidential and secure—perhaps in a strongbox—prior to the designated time when proxies are verified and votes counted.

A NEW QUORUM THRESHOLD: The stage one findings report noted that low participation rates at meetings were evidence of owner apathy. It appears that fewer and fewer owners are showing up for annual general meetings and other condo-related gatherings—a situation made worse by the large number of owner-investors, many of whom live outside Canada. As a result, corporations often have a serious problem reaching the minimum quorum for meetings. If the meetings cannot be held—as often happens—important, often time-sensitive decisions cannot be made. In short, the failure of owners to take part can be paralyzing for the corporation, and for the community as a whole.

While the long-term solution is more active owner participation, the working group has spent considerable time debating changes in quorum rules to provide a more immediate fix. The most attractive option is to relax the quorum rules.

- **RECOMMENDATION:** The quorum requirement should be relaxed as follows: The normal 25% quorum requirement would apply to the first two meetings called to discuss a specific issue. Should attendance fall below that level at the two meetings, the quorum requirements would be deemed to be met and the third meeting could proceed with those present either in person or by proxy.

CLARIFY THE RULES FOR REQUISITIONED MEETINGS: Requisitioned meetings are central to the accountability process. If 15% of owners sign a petition calling for a meeting to address issues of concern—including dismissal of board members—the board must comply. These provisions force boards to account for their actions when owners believe board members are abusing their position, evading questions or not acting in the best interests of the corporation.

Some participants in stage one argued that the threshold for requisitioned meetings should be lowered, given the high number of renters in some condo buildings, the degree of owner apathy, and the large number of investor-owners. Others countered that boards deserve some protection when making difficult decisions. They worried that lowering the bar below 15% would encourage inaction by boards and abuse by disgruntled owners.

The governance working group has recommended keeping the current 15% threshold for requisitioned meetings. However, it has also proposed that the process for convening meetings and assessing the validity of a requisition be revised in the interests of speed and fairness.

- **RECOMMENDATION:**

- Boards should accept or refuse a request for a requisitioned meeting within 10 days.
- Boards need to provide valid reasons if they refuse to convene a meeting.
- When a request for a meeting is rejected, the complainants should be able to remedy any deficiencies in their requisition in a relatively short period of time. The deadline for the board to respond and act on the requisition is frozen during this period.
- Boards should be barred by law from refusing a valid requisition.
- The Act should include a new requisition form that clearly spells out these new conditions.

MAKE BY-LAWS EASIER TO PASS: The expert panel recommends that the threshold for passing a by-law should be lowered, but it has not reached agreement on a new threshold. It has considered three options:

- A majority of owners of all units in a building voting in favour, either at a meeting or giving their consent within 30 days after the meeting.
- Two-thirds of the owners present at a meeting, in person or by proxy, voting in favour.
- A majority of those present at a meeting, in person or by proxy, voting in favour.
- **RECOMMENDATION:** The threshold for passing by-laws should be lowered, but the appropriate formula requires further study.

COMMUNICATE WITH OWNERS ABOUT MEETINGS: At present, the Act does not require boards to communicate with owners beyond the annual meeting. In particular, there is no prior notice requirement for a special assessment. The working group feels that this omission falls far short of an appropriate level of disclosure. It takes the view that owners have a right to be advised promptly of decisions or issues that involve:

- Costs;
- Time-sensitive matters;
- Health and safety;
- Legal disputes.

The working group has proposed a number of steps to promote greater transparency and accountability, and a culture of owner engagement.

- **RECOMMENDATION:** The Act should require corporations to communicate with owners in the following circumstances:
 - Certain status certificate information relevant to the corporation, such as financial, reserve fund and legal proceedings, should be provided on a quarterly basis.
 - Information, such as deviance from the reserve fund, should be provided promptly (see also Financial Management).
- **RECOMMENDATION:** As a best practice, corporations should take steps to:
 - Improve transparency by creating a corporate website.
 - Disseminate information to build community spirit by means of:
 - Periodic notices to owners of community events;
 - Newsletters;
 - Email;
 - A bulletin board;
 - Chat lines and forums;
 - Owners' information meetings;

- Social media;
- The corporation website;
- Create opportunities for owners to use these platforms to communicate with each other and the board;
- Incorporate best communication practices in board and owner training.

NOTICE OF MEETINGS: The working group feels that owners should have more opportunity to raise their concerns on meeting agendas. It has discussed various ways to give owners a more meaningful voice at meetings.

- **RECOMMENDATION:** The Act should provide for a directors' call notice requesting candidates for the directors' election. The notice must be issued at least 35 days before annual general meetings and special meetings of members. The official meeting notice must be sent out at least 15 days in advance. Both notices must conform to a checklist of items related to timing, place, purpose, and so on.
- **RECOMMENDATION:** The directors' call notice must also include a call for agenda items from owners, along with a statement of the purpose of the meeting. The process for responding to the notice, including a deadline, should be clearly stated. The Act should recognize that an electronic response is acceptable and encouraged.

PROMOTE THE USE OF INTERNET TECHNOLOGY FOR BOARD MEETINGS: The expert panel recommends that the Act allow use of online tools such as Skype for board members to take part in board meetings. But it has also raised numerous questions and concerns. Panel members recognize that the issues raised by new technology are unfamiliar and will require time and experience to identify and resolve. As a result, the Act should avoid specific requirements, so that best practices are allowed to emerge and evolve.

- **RECOMMENDATION:** The Act should be amended to allow the use of online tools such as Skype for participation at board meetings

DIRECTORS AND OFFICERS

Because condo owners come from all walks of life, many have little or no experience serving on a board of directors or dealing with the issues that a board must address. Board

inexperience creates risks for condo communities. It can lead to poor decisions on repairs, investments or insurance coverage. It can also make directors vulnerable to more savvy managers, lawyers, contractors or even other directors who may try to take advantage of their inexperience.

The stage one findings report noted that participants were concerned about directors' lack of experience and training, particularly first-time directors. It urged measures to ensure that condo board directors are better prepared for their role. The governance working group was asked to consider such measures. In doing so, it has recognized that there is also a risk of making the role of a director so demanding that owners are discouraged from standing for office.

In trying to strike the right balance between these concerns, the group has proposed actions in four areas:

- Training for new board members;
- Term limits and the owner-occupied rule;
- Enhancing director professionalism;
- Enhancing director accountability.

TRAIN NEW BOARD MEMBERS:

- **RECOMMENDATION:** A minimum mandatory training course should be required for first-time directors, with the following conditions:
 - The course should be short—about three hours in length—and focused on fundamentals.
 - The Ministry of Consumer Services should set the course's goals and, ideally, define the curriculum.
 - The course should be available both online and in a classroom.
 - Accredited agents outside government should be free to deliver the course. Successful completion of the course should be verifiable.
 - New directors should be required to complete the course within six months of being elected or face possible disqualification.

The working group also encourages the ministry to consider and propose guidelines for continuing education. But additional courses should be seen as part of the broader effort to educate the condo community, and should not be mandatory.

Self-managed condo corporations raise questions of their own. The working group recognizes that self-management puts an extra burden on directors.

- **RECOMMENDATION:** Directors in self-managed corporations should have more than the proposed three hours of training to ensure they are able to meet their additional responsibilities as managers.

TERM LIMITS: The working group has considered whether the Act should include mandatory term limits for directors. Members agree that such pre-set limits could force an undesirable turnover of well-run boards. In any event, most members feel that the problem is not serious enough to warrant a change in the law.

- **RECOMMENDATION:** Term limits should be left to individual corporations to decide as they see fit by means of a by-law.

One expert panel member is of the opinion that allowing term limits to be governed by by-laws would create rifts on condo boards. This member suggests that the Act set a limit of 15 years for directors.

THE OWNER-OCCUPIED ELECTED POSITION: After a vigorous discussion, the group has agreed unanimously to scrap the existing requirement that if 15% or more of the units are occupied by owners, then voting for one board position is limited to owner-occupiers. The group feels that this arrangement is too complex and onerous. Corporations that favour it should be free to include it in their by-laws.

- **RECOMMENDATION:** The current statutory owner-occupied elected position requirement for board representation should be scrapped.

CREATE A CODE OF ETHICS FOR DIRECTORS: The working group has considered ways to enhance directors' performance—as well as possible reasons for disqualification.

The Act currently offers no guidance for dealing with matters such as breach of privacy, confidentiality, civility, honesty, professionalism or attendance at meetings. The stage one findings report urged that this gap be addressed.

- **RECOMMENDATION:** A code of ethics for directors should be put in place that:
 - Is clear, simple and unequivocal in its language;
 - Is enshrined in law, not created by the industry;

- Is added to the standard-of-care provision for directors and officers, not enshrined as a stand-alone requirement or obligation or a ground for disqualification;
- Cannot be altered by a corporation by-law.

DIRECTOR QUALIFICATIONS AND DISQUALIFICATION: The stage one findings report called for clearer minimum qualifications for condo board directors, and clearer criteria for disqualification as directors.

- **RECOMMENDATION:** The working group recommended the following qualifications and disqualifications for directors:
 - Completion of director training requirements;
 - The requirement that no more than one person from a unit may be a director;
 - Allowing for by-laws that require a criminal record check;
 - Disclosure of legal proceedings between an individual and the corporation.

Members of the expert panel agree that grounds for disqualification should include fraud, sex crimes, assault and harassment. However, they feel that such criteria should not be included in the Act, but rather may be stipulated by boards as a best practice. One member suggested that directors should be obliged to disclose conflicts of interest involving, for instance, a management company and service providers.

USE OF FINES TO ENHANCE ACCOUNTABILITY

The stage one findings report raised the possibility of the Condominium Act allowing fines to encourage accountability. Fines could be levied either by a board against owners in default or breach of their obligations; or against directors who breach their duties.

The working group has considered whether the Act should authorize boards to levy fines against owners or tenants. It has concluded that such powers could open deep rifts in condo communities, and could be open to abuse. It therefore rejects giving boards this power.

The expert panel not only agrees with the working group, but has suggested that it might be appropriate to outlaw such fines. Such penalties are likely to be divisive and, as the working group has concluded, open to abuse.

- **RECOMMENDATION:** The government should consider barring condo corporations from levying fines on owners and tenants. Consideration should be given to whether a disciplinary function of the Condo Office could impose fines (eg. through the Quick Decision Maker).

RECOGNIZE CHARGE-BACKS AS LEGITIMATE: The working group explicitly recognizes the difference between fines, charge-backs and user-fees imposed for exceptional services, such as picking up extra garbage. In principle, the expert panel is inclined to include a board’s right to levy charge-backs in the Act, although it would be important to define “exceptional services”.

- **RECOMMENDATION:** The Act should recognize charge-backs, subject to a clear definition of “exceptional services”.

OWNERS’ AND DIRECTORS’ RIGHTS AND RESPONSIBILITIES

The stage one findings report noted that many owners and directors were unclear about their rights and responsibilities. This uncertainty contributed to misunderstandings, tensions and apathy. The working group was charged with addressing this issue.

- **RECOMMENDATION:** A basic statement of owners’ and directors’ rights and responsibilities should be drawn up.

This declaration (or charter) of rights and responsibilities would serve as an educational document, helping owners and directors understand their roles in making the community work. It would be incorporated in the Act and its contents would be shared by various means.

- **RECOMMENDATION:** The contents of the statement of owners’ and directors’ rights and responsibilities should not conflict with or be inconsistent with the Condominium Act or regulations.

In other words, the declaration or charter would be intended as a statement of *existing* rights and responsibilities. It would not break new ground or add extra rights and responsibilities.

- **RECOMMENDATION:** The proposed declaration of rights and responsibilities should meet the following conditions:

- It should be limited to a one-page document that defines a condo corporation as a community based on a “contract” that gives owners both rights and responsibilities.
- It should contain a clear statement of the overarching principles, rights and responsibilities of owners, without reference to specific projects.
- The document may include references to the Act and corporation documents, but in a way that encourages individuals to explore how these documents relate to their rights and responsibilities, such as maintaining and repairing the building.
- The statement of rights and responsibilities should be enshrined in law, rather than merely recommended as a best practice.
- Condo corporations would be required to publicize the charter in various ways, such as:
 - Posting a copy in condo foyers;
 - Including it in status certificates;
 - Including it in the annual general meeting package;
 - Posting it on the corporation website;
 - Posting in on the ministry website.
- The Minister of Consumer Services should consider officially signing the charter.



DETAILED ANALYSIS AND RECOMMENDATIONS

5. CONDOMINIUM MANAGEMENT

Condo management firms come in many shapes and sizes, from small one- or two-person operations to large businesses with many staff. Some condo buildings are even self-managed or managed by a self-employed individual, rather than by a company. While most managers are competent people whose integrity is not in question, this is unfortunately not always the case. According to the stage one findings report, participants in all four dialogue streams complained about managers and firms that were incompetent, disrespectful, unresponsive or dishonest. What can be done?

At present, Ontario has no minimum requirements for setting up a condo management firm or taking work as a condo manager. Anyone can do it. Stage one participants thought this was wrong and urged the government to set clear standards to ensure a reasonable level of competence and integrity. The condo management working group was charged with formulating recommendations.

LICENSE MANAGERS: The working group proposed a broad-based and preliminary definition of “management,” as follows:

Management is the act of handling or overseeing the collection or distribution of funds on behalf of a condominium corporation and/or performance of any of the administrative duties assigned to the condominium corporation or the board of directors by the Act.

It has responded to the concerns raised in the stage one findings report by recommending a new two-stage licensing program to ensure Ontario managers are properly trained and qualified.

Stage one of this program would set basic criteria for entry into the profession.

- **RECOMMENDATION:** To qualify as a condo manager, an individual must:
 - Be 18 or older;
 - Be a high school graduate or equivalent;
 - Not be an undischarged bankrupt;
 - Pay the required fee;
 - Meet minimum requirements for insurance;⁹
 - Agree to a police check for a criminal record; and

- Pass a test on the Condominium Act.

While some of these requirements are designed to instil basic skills, such as literacy and familiarity with condominium law, others aim at ensuring that candidates are trustworthy and of good character.

In the second stage of the program, managers would build on this foundation, broadening their knowledge of the field and developing appropriate skills through course work and experience.

- **RECOMMENDATION:** During the stage-two training period, condo management candidates would:
 - Complete designated courses in condominium law, physical asset management, administration and human resources, financial management for condos, and customer service;
 - Gain a minimum of two years experience as a condo manager;
 - Comply with the code of ethics and professionalism (see below);
 - Fulfil any additional continuing education requirements;
 - Continue to comply with the stage-one criteria.
- **RECOMMENDATION:** Following completion of the training, candidates would be required to demonstrate their competence in a final exam, to be taken within four years of receiving their stage-one licence.

The working group does not regard these minimum standards as a barrier to entry, but rather as a way of making condo management a sought-after career option.

Does such a licensing regime have to be mandatory, or could it remain voluntary? The working group has discussed this question at some length before concluding that mandatory criteria and codes for the profession are essential. If the risks to condo owners are to be minimized, boards must be able to draw on a pool of competent, trustworthy professionals.

The expert panel agrees. It endorses the proposed training program, though it cautions that four years may not be enough time to complete all the steps. Would this timetable be manageable for women who are starting families, asked

9. Although the working group and expert panels agreed in principle on the need for insurance, more analysis is needed before the details of this requirement can be set.

one panel member? The panel agrees that further study is needed on such issues.

CERTIFICATE FOR MANAGEMENT FIRMS:

RECOMMENDATION: Management firms should be required to obtain a certificate of authorization prior to signing a management agreement with a condo corporation. The certificate should contain the following information:

- Particulars of the firm’s legal status;
- The company’s address for service and the names of its senior executives;
- Names of company officials who will ensure that the firm’s candidate for the position has complied with applicable laws and by-laws, eg. is a full licensee, has no history of discipline problems and has the minimum required experience;
- The name of the person responsible for the services provided by the firm; and
- The name of the person who will supervise delivery of management services and oversee the firm’s personnel delivering those services.

RECOMMENDATION: The certificate should state that management firms are required to have sufficient insurance coverage and confirm that the holder of the certificate has sufficient coverage.

The certificate would lay vital groundwork for oversight of management firms, and provide boards with critical information to help select the right management firm for their needs. It would also help bolster unit owners’ confidence in their building’s management firm.

THE NEW CONDO MANAGER LICENSING AUTHORITY: Setting up a new licensing regime will take time, leadership, resources and the appropriate authority.

RECOMMENDATION: Government should put in place a new two-stage licensing regime and set up a new organization—a **delegated administrative authority**—to oversee implementation of the regime.

A delegated administrative authority is a not-for-profit corporation that administers legislation on behalf of government. The government retains responsibility for legislation and regulations. The administrative authority is responsible for ensuring that the legislation and regulations are implemented and enforced.

Common administrative authority functions include licensing, inspections, enforcement, public education, discipline and handling complaints. Most authorities fund their operations through service fees levied on the sector they serve. The authority’s board of directors reports to and is accountable to the minister through the chair. The government may appoint some board members.

The working group feels that the organization responsible for licensing condo managers should operate at arm’s length from government. But government should provide oversight, and the body’s authority and mandate should come from government.

THE CONDO OFFICE’S ROLE: The expert panel recommends that the new delegated administrative authority be part of the Condo Office. It would be funded through a combination of membership and licensing fees, fines and penalties. The group estimates that there are about 3,000 condo managers in Ontario—all of whom, as licensees, would be required to be members of the new organization.

Although the expert panel supports the administrative authority concept, it questions the working group’s financial plan. It agrees that the revenue streams identified by the group are significant, but doubts they are sufficient to sustain such an organization.

As the panel members considered the options, they were mindful of the dispute resolution working group’s proposal that the Condo Office be funded by a monthly levy on condo corporations.

One panel member noted that this levy would be passed on to individual unit owners in the form of a modest monthly fee. The member went on to sketch the following scenario:

Suppose the fee is set at between \$1 and \$3 per unit. By the time the new regime is in place, there will likely be about 750,000 condo units in Ontario, implying a revenue stream of between \$750,000 and \$3 million a month, or \$9 million–\$27 million a year. The member noted that if this amount is combined with membership and licensing fees, dispute resolution fees, fines and penalties, the total would be sufficient to fund the education and dispute resolution functions as well as the licensing authority. Why not house these tasks and services within a single organization, funded in this way?

Other panel members approve of this idea. Some wonder about owners’ reaction to a new levy, but others are confident that owners will accept a levy if it is set at a modest amount. Indeed, owners and other stakeholders repeatedly called during stage one of the review for a new “condo office” that would take on the tasks under discussion. They repeatedly insisted that condo owners would be more than

willing to pay such a fee, if the new organization provided these services.

Members of the expert panel agree. Owners want access to quality information, effective dispute resolution and higher management standards. If a new multi-purpose organization was able to provide all these services, most owners would see the monthly fee as a small price to pay.

- **RECOMMENDATION:** The Condo Office should be an umbrella body, incorporating the new licensing authority for condominium managers and the proposed machinery for education and dispute resolution. It should be funded through some combination of membership and licensing fees, fines and penalties, as well as a modest monthly fee levied on unit owners.

An expert panel member recalled that the dispute resolution working group had argued in favour of the organization devoted to dispute resolution being kept separate from the body that licenses and regulates condo managers. Working group members felt that a single umbrella body administering both functions might be viewed with suspicion.

While panel members agree that the dispute resolution machinery and the licensing authority should be kept separate, they see benefits in the functions being housed under one umbrella organization, namely, the Condo Office.

The expert panel recognizes that such an arrangement would raise sensitive issues, but members are confident that they can be worked out. As with the relationship between the Quick Decision Maker and the Dispute Resolution Office in dispute resolution, the Condo Office would be an ambitious and complex initiative that would need time to mature. The expert panel feels that the Condo Office should start off by focusing on a limited number of priority issues and that its structure should be kept flexible to allow it to evolve.

RECOMMENDATION: The condo-management and dispute-resolution sides of the Condo Office should be treated as separate functions. The rollout of the new organization should be seen as an evolutionary project, allowing for change and adjustment as it matures.

THE LICENSING OFFICE: We can refer to the section of the Condo Office responsible for licensing managers as the **Licensing Office**. According to the working group, the Licensing Office should direct stage-two training, rather than deliver it. Many organizations across the province are already well positioned to provide training services.

- **RECOMMENDATION:** The Licensing Office should focus on setting educational requirements and accrediting educational service providers and instructors. This would likely include developing the course curricula and associated evaluation instruments, such as tests, exams, assessing course exemptions, developing challenge criteria and exams. However, the Licensing Office should encourage and enable the private and not-for-profit sectors to become certified trainers for condo managers, and ensure that education opportunities are accessible, affordable and of high quality.

The expert panel has added one other recommendation.

- **RECOMMENDATION:** Where possible, training courses should be offered both in the classroom and online.

The working group feels that continuing professional development for condo managers should be mandatory to ensure knowledge and skills are updated, and that continuous learning becomes part of the condo management culture.

- **RECOMMENDATION:** The Licensing Office should establish continuing education requirements for management companies, managers and the organizations that train them. Standards for continuing education should be set. Managers, firms or trainers that fail to meet them should risk losing their license.

As in stage-two licensing, the expert panel has added one other recommendation.

- **RECOMMENDATION:** Where possible, continuing education courses should be offered both in the classroom and online.

GRANDPARENT EXPERIENCED MANAGERS: If substantive qualification requirements are put in place, what happens to condo managers who are already practising?

- **RECOMMENDATION:** Anyone with 10 years' or more of verifiable experience as a condo manager should be exempt from the education requirements for stage-two licensing. They should still be required to meet the stage-one criteria, including passing the Condominium Act competency test, as well as completing the stage-two examination.

DRAW UP A CODE OF ETHICS: The working group believes that a code of ethics would help reassure communities that condo management is an occupation that requires a high level of personal integrity and professionalism, and that

people who choose this career are committed to serving the community's best interests.

- **RECOMMENDATION:** The Licensing Office should draw up a code of ethics for condo managers and firms. The code should be based on standards of conduct that clearly reflect the position of trust that condo managers occupy.

INSURANCE AND BONDING: The condo management working group unanimously recommends that any company managing a condo in Ontario should be insured, as should any individual employed as a condo manager, or should be disqualified from working in the field.

- **RECOMMENDATION:** All companies managing condos should be insured for fidelity, professional liability, errors and omissions. The Licensing Office of the proposed the Condo Office administrative authority should require proof of coverage as part of the licensing requirements for condo managers and for certificates of authorization. The Licensing Office, in consultation with insurers, would determine, the amount of coverage required.

The expert panel generally agrees with this recommendation. It feels that mandatory insurance would also help raise the standard of managers, as those who are uninsurable would be unable to find work in the field.

SELF-MANAGED CONDOS: Some boards opt to manage their building without the assistance of a professional manager. Typically, this happens in very small buildings where a full-time manager is not required. Although the working group has some concerns about self-management, it accepts that it may be the best option for some condo corporations.

- **RECOMMENDATION:** Directors of self-managed condos should be exempt from the condo-management licensing requirement provided they do not receive any financial compensation for management services.
- **RECOMMENDATION:** Any individual or company remunerated for management services must be licensed.

Board members could still be paid under a by-law authorizing honorarium payments to directors (up to about \$2,000 a year), but this must be clearly distinguished from any payment for management services.

The expert panel had a vigorous exchange of views on self-managed condos. In the end, it has recommended as follows:

- **RECOMMENDATION:** Condo corporations should have the right to self-manage, but where directors are paid for managing, they should be subject to licensing.

The panel recognizes that self-managed condos may not be able to obtain fidelity insurance. This raises the concern that directors of self-managed condos may be exposed to personal liability.

Panel members disagree whether a self-managed condo should be allowed to operate in that way if it cannot obtain insurance coverage. Some suggest that board members need to tell owners if they cannot obtain insurance.

CLARIFY CONTRACTS: The working group notes that a lack of clarity in condo management contracts may result in misunderstandings or disputes between the manager and corporation on roles, responsibilities or termination.

- **RECOMMENDATION:** Management contracts should be required to include the following:
 - The term of the agreement ;
 - Fees to be paid;
 - Tasks to be performed, including who collects common expenses (condo fees);
 - Whether the manager is required to carry fidelity insurance and if so, the level of insurance required;
 - The maximum dollar amount the manager may spend without board authorization;
 - The manager's signing authority;
 - The transfer method for corporate records and property on termination of the contract;
 - The manager's acknowledgement of compliance with relevant professional regulations;
 - Termination of any service contract with at least 60 days notice.

These terms should also be included in the code of ethics for management firms.

⁷ Although the working group and expert panels agreed in principle on the need for insurance, more analysis is needed before the details of this requirement can be set.

APPENDIX 1: LIST OF RECOMMENDATIONS

CONSUMER PROTECTION

SMARTER DISCLOSURE

EDUCATE BUYERS:

1. **RECOMMENDATION:** The ministry should prepare and publish an easy-to-read **Condominium Guide** containing essential facts about condo living, such as how corporations are governed, the rights and responsibilities of owners, and the care and maintenance of common elements. The guide would serve as a basic primer that developers would be required to give buyers at the time of sale. The 10-day “cooling off” period would give buyers time to read the guide before making a final decision on their purchase.

POST DOCUMENTS ONLINE:

2. **RECOMMENDATION:** Developers should be required to create project-specific websites where they would post the disclosure statement and other relevant documents. The website should enable word-searches for key terms

STANDARDIZE THE DECLARATION:

3. **RECOMMENDATION:** The ministry should create a standard declaration with provisions governing unit boundaries, maintenance and repair obligations, and insurance requirements. The developer would be allowed to add one or more schedules imposing additional duties or obligations on the condo corporation or on specific unit owners.

CLARIFY “MATERIAL CHANGE”:

4. **RECOMMENDATION:** The Act’s definition of “material change” should be expanded as follows: Any change that results in an increase in a unit’s common expenses equal to less than 10% of the common expenses disclosed to the buyer shall not constitute a material change.
5. **RECOMMENDATION:** The “material change” calculation should exclude any new taxes, levies or charges that are imposed on the developer or on the condo project, and ultimately passed onto the buyer.
6. **RECOMMENDATION:** Any inflation factor for the first-year budget statement portion of the disclosure statement should be the lesser of a standard formula and a cap. This inflation factor should be excluded from the 10% threshold in the definition of “material change.”

IMPROVE STATUS CERTIFICATES:

7. **RECOMMENDATION:** The certificate should include a range of new information, such as a warning that the unit has not been inspected for alterations (unless otherwise stated), insurance coverage on outstanding litigation and the corporation’s policy on pets.
8. **RECOMMENDATION:** The status certificate should include a copy of the original turnover disclosure statement and a summary of the most current reserve fund study.
9. **RECOMMENDATION:** Increase the status certificate fee from \$100 to \$125 (including HST), to cover the costs of inflation since the Act was last revised.
10. **RECOMMENDATION:** Set a time-limit on how long the disclosure statement should have to be attached to a status certificate. It was suggested that this period should not exceed 10 years.

PROHIBIT SELLING OR LEASING ASSETS THAT COULD BE COMMON ELEMENTS

11. **RECOMMENDATION:** The Act should prohibit developers from selling or leasing back to the corporation assets that would normally be deemed common elements, including:
 - Recreational amenities;
 - Guest suites, a superintendent’s suite, manager’s office or any recreation administrator’s office;
 - Any lobby, stairwell, service room/area or storage room/area; and
 - Any heating, cooling, plumbing, drainage, mechanical, ventilation and/or servicing equipment or other facilities needed for the proper functioning and day-to-day operations of the condo property.
12. **RECOMMENDATION:** An exception to the prohibition should be made for any specifically-disclosed energy-efficient “green energy” equipment intended to benefit residents, subject to the following conditions: The equipment must exceed the minimum energy efficiency standards

set by the Ontario Building Code and the Green Energy Act, 2009, as applicable.

- The equipment must exceed the minimum standards set by the Ontario Building Code and the Green Energy Act, 2009, as applicable.
- The cost of all green energy equipment to be sold or leased to a condo corporation, and expected to be incurred in its first year of operation, must be fully disclosed.
- The full replacement cost of the equipment must be disclosed for proper reserve fund accounting.
- Annual payments on loans used to buy green energy equipment may not exceed the value of the energy savings, as calculated by a third-party engineer. In any case, the term of such loans may not exceed a certain period of time, perhaps 10 years; however, this requires further analysis and consideration.

where physically possible and feasible. An engineer or architect should certify the installation of separate metering or sub-metering of all shared facilities at the time the condo property is registered.

MINIMUM CONTRIBUTION TO RESERVE FUND

16. **RECOMMENDATION:** The minimum budgeted contribution to the reserve fund in year one should be the greater of:

- The amount set out in the reserve fund study that the developer must undertake; or
- An amount based on a formula that remains to be determined, but would likely be based on construction costs.

DEFERRED COSTS

13. **RECOMMENDATION:** Developers should be barred from deferring (and thus excluding from the first-year budget) any reasonably foreseeable operating cost or expense that would ordinarily arise in the first year of operation of a condo property.

SUBSIDIZATION

14. **RECOMMENDATION:** If a corporation has one or more commercial/retail shared-facilities or live-work units, each of these units should have its own utility meter.

15. **RECOMMENDATION:** Where facilities such as a swimming pool or party-room are shared between more than one condo corporation or between a corporation and other parties, an agreement (i.e. a shared facilities agreement) must be drawn up clearly defining the rationale and methodology for distributing costs among the different entities. Separate meters or sub-metering arrangements should be put in place for all such shared facilities,

APPENDIX 1: LIST OF RECOMMENDATIONS

FINANCIAL MANAGEMENT

NOISE

17. **RECOMMENDATION:** The Act should be amended to recognize the right to quiet enjoyment and the board's responsibility to take reasonable steps to enforce it.

COMMUNICATION AND EDUCATION

EDUCATE AND INFORM OWNERS ON FINANCES:

18. **RECOMMENDATION:** An **introductory online course** should be offered to owners on the basics of condo corporations' financial statements, common expenses (including special assessments), and owners' rights to access financial records.
19. **RECOMMENDATION:** The Condominium Guide should inform owners that they can petition for an information meeting at any time.
20. **RECOMMENDATION:** Auditors should be required to confirm that the board has formally approved the corporation's investment plan. This would help assure owners that the plan has been properly reviewed and carefully considered.
21. **RECOMMENDATION:** Along with the operating budget, boards should have to produce a *reserve fund budget* setting out the fund's planned expenditures for each fiscal year. Deviations from the reserve fund study should be clearly explained. The budget should be included in the corporation's annual general meeting package.
22. **RECOMMENDATION:** When significant expenditures are required beyond those set out in the budget, the board should notify owners that off-budget spending will be needed for the work. Such outlays may include an unforeseen repair or an unexpected cost overrun on a scheduled repair.
23. **RECOMMENDATION:** The off-budget spending notice should state that such expenditures do not require owner *approval* (although owners may still have a right to call a meet to vote on the issue as addressed below under the "Operating Budgets" heading). The new requirement to provide *notice* would in itself be sufficient to improve transparency, thereby helping to prevent misunderstandings.

24. **RECOMMENDATION:** The notice requirement should be triggered only when the off-budget spending exceeds a certain threshold. Some expert panel members have suggested a threshold of 10% of the operating budget. Others worry that vast differences in the size of condo properties mean that this trigger would be a very large sum in some cases. They suggest that a sliding scale be used, starting at 10% and then declining slowly as the operating budget grows. The threshold issue has not been resolved. However, the panel has agreed that such a threshold should be a "relative" measure, such as a percentage of the operating budget, rather than a fixed-dollar amount.

25. **RECOMMENDATION:** The annual general meeting package should advise owners to insure themselves against the risk of having to pay a deductible under the corporation's policy.

Owners should be promptly notified:

- Of any increases in the corporation's insurance deductible;
- If the board cannot obtain directors and officers liability, errors and omissions insurance.

Such notices should also explain why the board is unable to obtain directors and officers coverage. In general, the board should recognize and use the annual meeting package as a valuable educational tool to highlight important information, such as the corporation's deductible.

RESERVE FUNDS

SET A TRIGGER FOR UPDATES:

26. **RECOMMENDATION:** If the reserve fund balance reflected in the corporation's audited financial statements is less than 50% of the balance shown in the fund's notice of future funding, the corporation should be required to ask the study's author whether the study needs to be updated ahead of the normal three-year period. The author's response should be given in writing and considered part of the corporation's official records.

STANDARDIZE RESERVE FUND STUDIES:

27. **RECOMMENDATION:** At the outset, it should be noted that the following recommendation applies to those who prepare reserve fund studies *as well as* condo boards who prepare the plan for future funding of the reserve fund. This will therefore require some further analysis and consideration. With the above in mind, the recommendation is that the year-over-year percentage change in total contributions to the reserve fund should be no greater than the assumed inflation rate used in the reserve fund study, except for the first three years when total contributions may be greater than the assumed rate.
28. **RECOMMENDATION:** The minimum budgeted contribution to the reserve fund in year one should be the greater of:
- (i) The amount set out in the reserve fund study that the developer must undertake; or
 - (ii) An amount based on a formula that remains to be determined, but could be based on construction costs, etc.
29. **RECOMMENDATION:** Reserve funds should be available without unit owner approval for additions, alterations or improvements required by law, such as a wheelchair ramp.
30. **RECOMMENDATION:** The reserve fund may be used for improvements involving energy-efficient equipment or facilities without unit owner approval, provided they meet a threshold energy-savings test based on a formula (yet to be determined), and are verified by a credible and independent third party, such as a professional engineer.
31. **RECOMMENDATION:** The green energy project would need to be reflected in the study before it proceeds. This means that the condo corporation would not be able to proceed with the project unless the fund can afford it in conjunction with all other required projects.
32. **RECOMMENDATION:** The higher cost of the green energy project must be reflected in the reserve fund study and the notice of future funding. This ensures

that the fund can afford the project in addition to other commitments.

33. **RECOMMENDATION:** The number of years that a condo corporation takes to recover the additional cost of a green-energy project through predicted energy savings should be less than a yet-to-be determined percentage of the project's life expectancy. (This is known as the "simple payback" period.)

OPERATING BUDGETS

ADJUST THRESHOLD FOR SPENDING ON CHANGES "WITHOUT NOTICE":

34. **RECOMMENDATION:** If the total estimated spending change is not more than \$30,000 or 3% of the annual budget *in any given 12-month period (as opposed to "any given month")*, whichever is lower, the change can proceed without notice to owners.
35. **RECOMMENDATION:** In addition to the above recommendation, a condo corporation may make a change without notice only if that change does not result in a material reduction or elimination of services.

CHANGE PROCEDURE FOR SUBSTANTIAL CHANGE:

36. **RECOMMENDATION:**

- The spending threshold should be set at 10% of common expenses.
- The approval process should be changed so that only 25% of owners must be present, in person or by proxy, for the vote to proceed. The initiative would require approval by at least 66 2/3% of those present, in person or by proxy.

DEFINE "REPAIR" AND "MAINTENANCE":

37. **RECOMMENDATION:** The Ministry of Consumer Services should consider a more focused initiative to clarify the definition of "repair" and "maintenance". Such an initiative should involve a group with the right mix of expertise and adequate time to conduct a more thorough analysis.

38. **RECOMMENDATION:** The Act’s definition of “maintenance” should be amended to eliminate owners’ obligation to repair, after normal wear and tear, any common elements over which they have exclusive use, such as balconies. The reserve fund should pay for these repairs.
39. **RECOMMENDATION:** Corporations should be required to repair all common elements, whether or not an owner has exclusive use.

PROVIDE A “STANDARD UNIT” DEFINITION:

40. **RECOMMENDATION:** A “standard unit” definition should be put in place that applies to all condo units in the province. The definition would cover a liveable unit with finished walls and ceiling, fixtures and cabinetry. The description needs to be adequately detailed to obtain a valuation for a unit.
41. **RECOMMENDATION:** Corporations will remain at liberty to amend the “standard unit” definition through a by-law. Where a definition is provided in the transfer documents or has already been created through a by-law, that definition will prevail.
42. **RECOMMENDATION:** This definition should apply both to new and existing condo properties; and there should be a default standard unit definition for each class of unit.

ASSIGN RESPONSIBILITY FOR DAMAGE:

43. **RECOMMENDATION:** The Act should provide that an owner is responsible for repair costs or the deductible under the corporation’s insurance policy, whichever is lower, as a result of damage to other units or the common elements caused by an act or omission by the unit’s owner or resident.
44. **RECOMMENDATION:** Corporations should be forbidden from passing a by-law that alters the substance of the above recommendation.

USE LIENS FAIRLY:

45. **RECOMMENDATION:** At present, a notice from the corporation warning of an impending lien can be sent on the first day that the owner is in arrears of common expenses. That process should remain as it is. However, where there is a genuine dispute between the owner and the board, the

owner has a right to submit the dispute to the new Dispute Resolution Office (see section on Dispute Resolution). Until a decision is reached, the corporation should carry the costs of the lawyer’s letter and the lien process will be frozen. If the corporation is vindicated, the costs can be passed onto the owner and the lien rights will be re-activated. If the owner is vindicated, the corporation will absorb the costs of the letter.

CHARGE-BACKS:

46. **RECOMMENDATION:** The Act should define “charge-backs” as well as the related term, “exceptional services.” It would also be useful to codify the *Italiano v. Toronto Standard Condominium Corp. No. 1507*, [2008] O.J. No. 2642 (Ont. S.C.J.) court decision, in this regard.

ALLOW SURPLUSES:

47. **RECOMMENDATION:** The status quo should be maintained and no cap or other restriction should be placed on surpluses.

RESERVE FUND INVESTMENTS

48. **RECOMMENDATION:** The current list of financial institutions where corporations are allowed to deposit their money is highly restricted. Consideration should be given to including other options, such as insurance companies and financial institutions in other Canadian provinces.
49. **RECOMMENDATION:** Consideration should be given to allowing two or more corporations to pool their reserve and operating funds to obtain a better rate of return.

FRAUD

KICKBACKS:

50. **RECOMMENDATION:** Whenever a corporation contemplates a service contract valued at, for example, over \$50,000, a sealed-bid process should apply with all the standard safeguards

APPENDIX 1: LIST OF RECOMMENDATIONS

DISPUTE RESOLUTION

IDENTIFY THE TYPES OF DISPUTES:

51. **RECOMMENDATION:** A new body, called the **Condo Office**, should be set up to provide -- among other functions -- information and advice to condo stakeholders online, by telephone or in person.

ESTABLISH A CONDO OFFICE:

52. **RECOMMENDATION:** The Condominium Act should set up an organization, to be known as the Condo Office, with authority delegated by government. The new organization would report through a board of directors, and operate at arm's-length from government.
53. **RECOMMENDATION:** The Condo Office would, among other functions:
- Provide information and advice on relevant issues to members of the community;
 - House and administer the new dispute resolution service;
 - Promote improved education for condo owners, directors and managers;
 - Collect and provide statistical data on condo disputes;
 - Create and administer an authoritative registry of Ontario condo corporations;
 - Be funded by a modest levy on each condo unit in the province, to be collected and remitted by each condo corporation.

CONDO VS. DEVELOPER DISPUTES

54. **RECOMMENDATION:** Retain the current approach of dealing with condo vs. developer disputes through mediation and arbitration, but improve the process through a new default procedure to ensure that cases are handled quickly and efficiently.

This procedure would apply only to disputes arising from agreements between the condo corporation and the developer, the budget statement or any first-year deficit claim. All other disputes, such as those involving a construction defect, would still be referred to the courts.

SHARED FACILITIES DISPUTES

55. **RECOMMENDATION:** The Act should retain mediation and arbitration as the primary dispute resolution processes for disputes over shared facilities. But these processes should be improved by adding the new default procedure (see previous recommendation). Where at least one condo corporation is involved but no agreement governs the relationship, the Act should impose mediation and arbitration as the mandatory dispute resolution mechanisms. An application for an oppression remedy (a type of court order) should be allowed only after mediation and arbitration.

CONDO VS. MANAGER DISPUTES

56. **RECOMMENDATION:** The Act should remove condo vs. manager disputes from the mediation and arbitration process. For example, it should set up a fast, effective process within the Condo Office to ensure corporations can easily gain access to records that are wrongly withheld. Other disputes, such as disagreements over contracts or charges of negligence, should proceed through the courts.

CONDO VS. OWNER DISPUTES

THE QUICK DECISION MAKER:

57. **RECOMMENDATION:** A special office, known as the Quick Decision Maker, should be set up and housed in the Condo Office. The Quick Decision Maker would have the authority to make quick, summary decisions on records, charge-backs, proxies, requisitions and owners' entitlement to vote.
58. **RECOMMENDATION:** The Quick Decision Maker would rely on a simple, user-friendly process with limited appeal rights. It would have the authority to order the delivery of records, rule on redactions, impose limited penalties, determine the validity and reasonableness of charge-backs, rule on the validity of requisitions, proxies, and owner's entitlement to vote, and order costs of the proceedings on a prescribed scale.

- Disputes that are assigned to the Quick Decision Maker would only be addressed at this level.
- Where the Quick Decision Maker rules that owners are responsible for some costs, this ruling could be enforced by adding the cost to the unit's common expenses. Where costs are applied to condo corporations, enforcement would take the form of a small claims court filing.
- Non-monetary orders would be enforced in the same way as a court order.
- Appeal rights would be limited to issues about jurisdiction, issues of law, or where the amount involved is \$1,500 or more. Appeals would be heard or read by an appeal officer or a panel of Quick Decision Makers, excluding the decision maker who made the original decision. Higher fees would apply to unsuccessful appeals.
- Primary funding for the Quick Decision Maker office would come from user fees and the modest levy on condo corporations proposed to fund the Condo Office. The Ministry of Consumer Services could possibly provide seed and transition funding.

THE DISPUTE RESOLUTION OFFICE:

59. **RECOMMENDATION:** The Dispute Resolution Office would be the third form of dispute resolution provided by the Condo Office, in addition to information delivery and quick decision making. The process would involve a mandatory 1 to 2 hour session—possibly through an online forum—aimed at providing:
- Early neutral evaluation of a dispute;
 - Help in reaching a settlement;
 - Additional information on the issues;
 - Guidance on the next step in the dispute resolution process.

ALLOW THE NEW ORGANIZATION TO EVOLVE:

60. **RECOMMENDATION:** The Quick Decision Maker and Dispute Resolution Office should begin by focusing on a limited number of priority issues. They and the Condo Office as a whole should remain flexible so that all can evolve over time as managers and clients become more familiar with their respective roles.

MEDIATION:

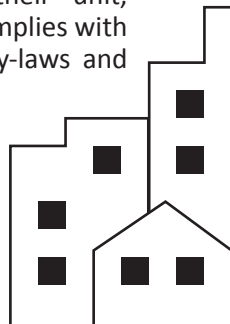
61. **RECOMMENDATION:** As with condo vs. developer or shared facility disputes, mediation in condo vs. owner cases should be improved through a default procedure that ensures quick and easy selection of mediators, scheduling, and conduct of mediation sessions. The working group also proposes that corporations be allowed to pay the entire cost of the initial mediation session upfront so that the session can proceed, but that it could recover the owner's share later.

ADJUDICATION BY SIMPLE, EXPEDITED ARBITRATION:

62. **RECOMMENDATION:** Adjudication should be left to the private market, but the Act should create a default procedure for cases to be handled more quickly and economically. The default procedure would outline how an arbitrator is selected, the way in which the arbitrator is paid, and how the case is conducted.

DISPUTES WITH TENANTS

63. **RECOMMENDATION:** Consider ways to provide greater clarity and certainty on how to address condo disputes involving tenants. This work should be guided by the following basic principles:
- The laws governing condo communities apply equally to all residents, whether they are owners, tenants or guests of an owner.
 - Unit owners have an obligation to ensure that anyone who occupies their unit, whether a tenant or a guest, complies with the Act and the declaration, by-laws and rules of the corporation.



- A clearer and more effective method is needed to resolve disputes where a tenant has violated the Act or the rules governing the condo community.

COST RECOVERY FOR PROCEEDINGS

64. **RECOMMENDATION:** The Act should clearly state that condo corporations and unit owners are *both* entitled to complete indemnity for reasonable costs incurred in a successful claim using the dispute resolution processes. At present, only corporations are entitled to complete indemnity. This provision would not apply to proceedings involving the Quick Decision Maker and Dispute Resolution Office, where a successful party can only recover a small cost award by the decision-maker.
65. **RECOMMENDATION:** Mediators should no longer be allowed to allocate costs.



APPENDIX 1: LIST OF RECOMMENDATIONS

GOVERNANCE

SET REQUIREMENTS FOR RETENTION OF RECORDS:

66. **RECOMMENDATION:** The Act should authorize condo boards to pass by-laws expanding the records that corporations are required to keep and setting retention periods for those records.
67. **RECOMMENDATION:** Minimum periods should be set for retention of corporation documents as detailed in the following table. The table should be kept on file and be easily accessible to owners.
68. **RECOMMENDATION:** Where possible, corporations should seek to convert documents to electronic format as a best practice.

MINIMUM RETENTION PERIODS FOR CONDO CORPORATION RECORDS:

Administrative	
Duration (Years)	Type of Record ¹⁰
7	Inspection and administration reports Insurance policies Appraisals Employee records Non-unit liens
15	Reserve fund studies Engineering reports
Infinite	Warranties Performance audits Contracts Turnover documents Drawings Minutes, declaration, by-laws and rules Owners list (mortgagees)
Legal	
Duration (Years)	Type of Record
7	Lawsuits Human rights complaints
Financial	
Duration (Years)	Type of Record
7	Audited financial statements Unaudited financial statements Resolved insurance claims Investments Loans Mortgages Taxes Expired or cancelled contracts Expired warranties
Condo Unit	
Duration (Years)	Records
7	Status certificates Maintenance records Correspondence Form 5 summaries of lease or renewal Pending issues Unit liens Owner information
Infinite	Section 98 changes to common elements

¹⁰ Under the section titled "Administrative," the "records" referred to in the table are current records, such as current contracts and current warranties. By contrast, under "Financial" the records refer to expired records, such as expired contracts and expired warranties.

69. **RECOMMENDATION:** The panel disagrees that records relating to “changes to common elements” need to be kept indefinitely.

70. **RECOMMENDATION:** As a best practice, corporations should keep records longer than any legislated minimum retention period.

PROVIDE EASY ACCESS TO CORPORATE RECORDS:

71. **RECOMMENDATION:**

- The Act should set out standardized request and response forms for documents.
- In cases where access to documents is denied, the corporation should be required to provide the reason (eg. privacy) in written form and in language that makes the reason clearly understandable.
- Access to some documents is a basic right and these documents should be provided free of charge. For others, a fee would be appropriate.
- The fee should be reasonable, designed only to recover the costs of providing the service.
- An estimate of the cost should be provided beforehand.
- The Act should establish significant fines for corporations that fail to comply with these regulations, possibly in the range of \$1,000 to \$5,000. A sliding scale could be used to link the severity of the fine to the size of the corporation and/or the gravity of the offence.¹¹
- The Act should permit and encourage the corporation to keep electronic records which should be provided free or for a modest charge.

72. **RECOMMENDATION:** A fee should be charged for retrieval and redaction of documents.

73. **RECOMMENDATION:** A request for documents must be fulfilled within 10 days for current documents and 30 days for all other documents.

PROTECT PRIVACY AND ENSURE APPROPRIATE USE OF RECORDS:

74. **RECOMMENDATION:** As a best practice, contracts between a condo corporation and a third party should clearly address when and how owners, buyers or mortgagees should be given access to relevant documents related to the contract. These terms are especially important for documents that define the relationship between the condo corporation and the other party to the contract.

MEETINGS

STANDARDIZE PROXIES:

75. **RECOMMENDATION:**

- As a best practice, proxies should be submitted at least a day ahead of the meeting.
- To avoid tampering and misinformation, anyone wishing to vote by proxy must sign their name on the proxy form next to each candidate or by-law they are endorsing.
- The person giving a proxy can write in a name instead of voting for one of the pre-printed names on the proxy form.
- Proxies and ballots should be kept for 90 days, after which they may be destroyed, unless a dispute is registered within this period (see section on Dispute Resolution). In that case, the proxies and ballots must be retained until the dispute is resolved.
- Proxies should be available, if desired, in electronic or automated form.

A NEW QUORUM THRESHOLD:

76. **RECOMMENDATION:** The quorum requirement should be relaxed as follows: The normal 25% quorum requirement would apply to the first two meetings called to discuss a specific issue. Should attendance fall below that level at the two meetings, the quorum requirements would be deemed to

11 A member of the expert panel notes that there is currently a remedy (Section 55 (9&10)) that allows an owner to go to Small Claims Court to obtain an order for the corporation to pay up to \$500.

be met and the third meeting could proceed with those present either in person or by proxy.

CLARIFY THE RULES FOR REQUISITIONED

MEETINGS:

77. **RECOMMENDATION:**

- Boards should accept or refuse a request for a requisitioned meeting within 10 days.
- Boards need to provide valid reasons if they refuse to convene a meeting.
- When a request for a meeting is rejected, the complainants should be able to remedy any deficiencies in their requisition in a relatively short period of time. The deadline for the board to respond and act on the requisition is frozen during this period.
- Boards should be barred by law from refusing a valid requisition.
- The Act should include a new requisition form that clearly spells out these new conditions.

MAKE BY-LAWS EASIER TO PASS:

78. **RECOMMENDATION:** The threshold for passing by-laws should be lowered, but the appropriate formula requires further study.

COMMUNICATE WITH OWNERS ABOUT MEETINGS:

79. **RECOMMENDATION:** The Act should require corporations to communicate with owners in the following circumstances:

- Certain status certificate information relevant to the corporation, such as financial, reserve fund and legal proceedings, should be provided on a quarterly basis.
- Information, such as deviance from the reserve fund, should be provided promptly (see also Financial Management).

80. **RECOMMENDATION:** As a best practice, corporations should take steps to:

- Improve transparency by creating a corporate website.
- Disseminate information to build community spirit by means of:
 - Periodic notices to owners of community events;
 - Newsletters;
 - Email;
 - A bulletin board;
 - Chat lines and forums;
 - Owners' information meetings;
 - Social media;
 - The corporation website;
 - Create opportunities for owners to use these platforms to communicate with each other and the board;
 - Incorporate best communication practices in board and owner training.

NOTICE OF MEETINGS:

81. **RECOMMENDATION:** The Act should provide for a directors' call notice requesting candidates for the directors' election. The notice must be issued at least 35 days before annual general meetings and special meetings of members. The official meeting notice must be sent out at least 15 days in advance. Both notices must conform to a checklist of items related to timing, place, purpose, and so on.

82. **RECOMMENDATION:** The directors' call notice must also include a call for agenda items from owners, along with a statement of the purpose of the meeting. The process for responding to the notice, including a deadline, should be clearly stated. The Act should recognize that an electronic response is acceptable and encouraged.

PROMOTE THE USE OF INTERNET TECHNOLOGY FOR BOARD MEETINGS:

83. **RECOMMENDATION:** The Act should be amended to allow the use of online tools such as Skype for participation at board meetings

DIRECTORS AND OFFICERS

TRAIN NEW BOARD MEMBERS:

84. **RECOMMENDATION:** A minimum mandatory training course should be required for first-time directors, with the following conditions:
- The course should be short—about three hours in length—and focused on fundamentals.
 - The Ministry of Consumer Services should set the course’s goals and, ideally, define the curriculum.
 - The course should be available both online and in a classroom.
 - Accredited agents outside government should be free to deliver the course. Successful completion of the course should be verifiable.
 - New directors should be required to complete the course within six months of being elected or face possible disqualification.
85. **RECOMMENDATION:** Directors in self-managed corporations should have more than the proposed three hours of training to ensure they are able to meet their additional responsibilities as managers.

TERM LIMITS:

86. **RECOMMENDATION:** Term limits should be left to individual corporations to decide as they see fit by means of a by-law.

THE OWNER-OCCUPIED ELECTED POSITION:

87. **RECOMMENDATION:** The current statutory owner-occupied elected position requirement for board representation should be scrapped.

CREATE A CODE OF ETHICS FOR DIRECTORS:

88. **RECOMMENDATION:** A code of ethics for directors should be put in place that:
- Is clear, simple and unequivocal in its language;
 - Is enshrined in law, not created by the industry;
 - Is added to the standard-of-care provision for directors and officers, not enshrined as a stand-alone requirement or obligation or a ground for disqualification;
 - Cannot be altered by a corporation by-law.

DIRECTOR QUALIFICATIONS AND DISQUALIFICATION:

89. **RECOMMENDATION:** The working group recommended the following qualifications and disqualifications for directors:
- Completion of director training requirements;
 - The requirement that no more than one person from a unit may be a director;
 - Allowing for by-laws that require a criminal record check;
 - Disclosure of legal proceedings between an individual and the corporation.

USE OF FINES TO ENHANCE ACCOUNTABILITY

90. **RECOMMENDATION:** The government should consider barring condo corporations from levying fines on owners and tenants. Consideration should be given to whether a disciplinary function of the Condo Office could impose fines (eg. through the Quick Decision Maker).

RECOGNIZE CHARGE-BACKS AS LEGITIMATE:

91. **RECOMMENDATION:** The Act should recognize charge-backs, subject to a clear definition of “exceptional services”.

OWNERS' AND DIRECTORS' RIGHTS AND RESPONSIBILITIES

92. **RECOMMENDATION:** A basic statement of owners' and directors' rights and responsibilities should be drawn up.
93. **RECOMMENDATION:** The contents of the statement of owners' and directors' rights and responsibilities should not conflict with or be inconsistent with the Condominium Act or regulations.
94. **RECOMMENDATION:** The proposed declaration of rights and responsibilities should meet the following conditions:
- It should be limited to a one-page document that defines a condo corporation as a community based on a "contract" that gives owners both rights and responsibilities.
 - It should contain a clear statement of the overarching principles, rights and responsibilities of owners, without reference to specific projects.
 - The document may include references to the Act and corporation documents, but in a way that encourages individuals to explore how these documents relate to their rights and responsibilities, such as maintaining and repairing the building.
 - The statement of rights and responsibilities should be enshrined in law, rather than merely recommended as a best practice.
- Condo corporations would be required to publicize the charter in various ways, such as:
 - Posting a copy in condo foyers;
 - Including it in status certificates;
 - Including it in the annual general meeting package;
 - Posting it on the corporation website;
 - Posting in on the ministry website.
 - The Minister of Consumer Services should consider officially signing the charter.

APPENDIX 1: LIST OF RECOMMENDATIONS

CONDOMINIUM MANAGEMENT

LICENSE MANAGERS:

95. **RECOMMENDATION:** To qualify as a condo manager, an individual must:

- Be 18 or older;
- Be a high school graduate or equivalent;
- Not be an undischarged bankrupt;
- Pay the required fee;
- Meet minimum requirements for insurance;¹²
- Agree to a police check for a criminal record; and
- Pass a test on the Condominium Act.

96. **RECOMMENDATION:** During the stage-two training period, condo management candidates would:

- Complete designated courses in condominium law, physical asset management, administration and human resources, financial management for condos, and customer service;
- Gain a minimum of two years experience as a condo manager;
- Comply with the code of ethics and professionalism (see below);
- Fulfil any additional continuing education requirements;
- Continue to comply with the stage-one criteria.

97. **RECOMMENDATION:** Following completion of the training, candidates would be required to demonstrate their competence in a final exam, to be taken within four years of receiving their stage-one licence.

CERTIFICATE FOR MANAGEMENT FIRMS:

98. **RECOMMENDATION:** Management firms should be required to obtain a certificate of authorization prior to signing a management agreement with a condo corporation. The certificate should contain the following information:

- Particulars of the firm's legal status;
- The company's address for service and the names of its senior executives;
- Names of company officials who will ensure that the firm's candidate for the position has complied with applicable laws and by-laws, eg. is a full licensee, has no history of discipline problems and has the minimum required experience;
- The name of the person responsible for the services provided by the firm; and
- The name of the person who will supervise delivery of management services and oversee the firm's personnel delivering those services.

99. **RECOMMENDATION:** The certificate should state that management firms are required to have sufficient insurance coverage and confirm that the holder of the certificate has sufficient coverage.

THE NEW CONDO MANAGER LICENSING AUTHORITY:

100. **RECOMMENDATION:** Government should put in place a new two-stage licensing regime and set up a new organization—a **delegated administrative authority**—to oversee implementation of the regime.

THE CONDO OFFICE'S ROLE:

101. **RECOMMENDATION:** The Condo Office should be an umbrella body, incorporating the new licensing authority for condominium managers and the proposed machinery for education and dispute resolution. It should be funded through some combination of membership and licensing fees, fines and penalties, as well as a modest monthly fee levied on unit owners.

¹² Although the working group and expert panels agreed in principle on the need for insurance, more analysis is needed before the details of this requirement can be set.

102. **RECOMMENDATION:** The condo-management and dispute-resolution sides of the Condo Office should be treated as separate functions. The rollout of the new organization should be seen as an evolutionary project, allowing for change and adjustment as it matures.

THE LICENSING OFFICE:

103. **RECOMMENDATION:** The Licensing Office should focus on setting educational requirements and accrediting educational service providers and instructors. This would likely include developing the course curricula and associated evaluation instruments, such as tests, exams, assessing course exemptions, developing challenge criteria and exams. However, the Licensing Office should encourage and enable the private and not-for-profit sectors to become certified trainers for condo managers, and ensure that education opportunities are accessible, affordable and of high quality.

104. **RECOMMENDATION:** Where possible, training courses should be offered both in the classroom and online.

105. **RECOMMENDATION:** The Licensing Office should establish continuing education requirements for management companies, managers and the organizations that train them. Standards for continuing education should be set. Managers, firms or trainers that fail to meet them should risk losing their license.

106. **RECOMMENDATION:** Where possible, continuing education courses should be offered both in the classroom and online.

GRANDPARENT EXPERIENCED MANAGERS:

107. **RECOMMENDATION:** Anyone with 10 years' or more of verifiable experience as a condo manager should be exempt from the education requirements for stage-two licensing. They should still be required to meet the stage-one criteria, including passing the Condominium Act competency test, as well as completing the stage-two examination.

DRAW UP A CODE OF ETHICS:

108. **RECOMMENDATION:** The Licensing Office should draw up a code of ethics for condo managers and firms. The code should be based on standards of conduct that clearly reflect the position of trust that condo managers occupy.

INSURANCE AND BONDING:

109. **RECOMMENDATION:** All companies managing condos should be insured for fidelity, professional liability, errors and omissions. The Licensing Office of the proposed Condo Office administrative authority should require proof of coverage as part of the licensing requirements for condo managers and for certificates of authorization. The Licensing Office, in consultation with insurers, would determine, the amount of coverage required.

SELF-MANAGED CONDOS:

110. **RECOMMENDATION:** Directors of self-managed condos should be exempt from the condo-management licensing requirement provided they do not receive any financial compensation for management services.

111. **RECOMMENDATION:** Any individual or company remunerated for management services must be licensed.

112. **RECOMMENDATION:** Condo corporations should have the right to self-manage, but where directors are paid for managing, they should be subject to licensing.

CLARIFY CONTRACTS:

113. **RECOMMENDATION:** Management contracts should be required to include the following:

- The term of the agreement ;
- Fees to be paid;
- Tasks to be performed, including who collects common expenses (condo fees);
- Whether the manager is required to carry fidelity insurance and if so, the level of insurance required;
- The maximum dollar amount the manager may spend without board authorization;
- The manager's signing authority;
- The transfer method for corporate records and property on termination of the contract;
- The manager's acknowledgement of compliance with relevant professional regulations;
- Termination of any service contract with at least 60 days notice.

These terms should also be included in the code of ethics for management firms.



APPENDIX 2: ONTARIO'S CONDOMINIUM ACT REVIEW

STAGE TWO PARTICIPANTS

Please note: The list of expert panel and working group members is followed by participant bios.

Expert Panel

Anne-Marie Ambert, condominium information website founder
Colm Brannigan, mediator/arbitrator
Robert Buckler, realtor/court-appointed condominium administrator
Harold Cipin, condominium management representative
Armand Conant, lawyer/court-appointed condominium administrator
Stephen Deveaux, developer
Harry Herskowitz, lawyer
Christopher J. Jaglowitz, lawyer
Aubrey LeBlanc, consumer representative
Audrey Loeb, lawyer
Sally Thompson, engineer
John Warren, chartered accountant

Governance Working Group

Colm Brannigan, mediator/arbitrator
Robert Buckler, realtor/court-appointed condominium administrator
Armand Conant, lawyer/court-appointed condominium administrator (*Team Lead*)
Anne Gottlieb, lawyer/mediator/condominium owner
Aubrey LeBlanc, consumer representative (*Team Lead*)
Marilyn Lincoln, condominium writer/columnist
Dean McCabe, condominium management representative
Allan Rosenberg, condominium management representative
Adam Wroblewski, owner association representative

Dispute Resolution Working Group

Anne-Marie Ambert, condominium information website founder
Colm Brannigan, mediator/arbitrator (*Team Lead*)
Harold Cipin, condominium management representative
Armand Conant, lawyer/court-appointed condominium administrator
Shervin Erfani, condominium resident
Anne Gottlieb, lawyer/mediator/condominium owner
Christopher J. Jaglowitz, lawyer (*Team Lead*)
Steven Leistner, real estate representative

Finance Working Group

Carole Booth, condominium board member
Stephen Chesney, chartered accountant
Stephen Deveaux, developer
Michael Kalisperas, condominium management representative
Stephen Karr, lawyer
Cesar Kupfer Jarmain, condominium resident
Chris Rol, insurance representative
Mark A. Salerno, housing specialist
Mark Shedden, insurance representative
Sally Thompson, engineer (*Team Lead*)
John Warren, chartered accountant (*Team Lead*)

Consumer Protection Working Group

Stephen Hamilton, developer representative
Harry Herskowitz, lawyer (*Team Lead*)
Aubrey LeBlanc, consumer representative
Michael Lio, consumer representative
Audrey Loeb, lawyer (*Team Lead*)
Vince Molinaro, developer
Linda Pinizzotto, realtor/owner association representative
Maurizio Romanin, lawyer
Mark A. Salerno, housing specialist
Sally Thompson, engineer

Condominium Management Working Group

Carole Booth, condominium board member
Robert Buckler, realtor/court-appointed condominium administrator (*Team Lead*)
Harold Cipin, condominium management representative (*Team Lead*)
Tammy Evans, lawyer
Sandra Gibney, regulatory representative
Christopher J. Jaglowitz, lawyer
Michael Kalisperas, condominium management representative
Dean McCabe, condominium management representative
Kathleen Stephenson, condominium resident
John Wannamaker, condominium management representative

Participant Bios

Anne-Marie Ambert, Founder, Condo Information Centre

Areas of Expertise: Anne-Marie provides the condominium owner, resident, and board member perspective. She has extensive knowledge of problems encountered by owners, residents, board members, and managers based on letters received since the launch of www.condoinformation.ca in 2009. Anne-Marie was also president of her condo from 2002 to 2008.

Carole Booth, Board president of a self-managed condominium

Areas of Expertise: Carole provides the condominium resident and board member perspective.

Relevant Affiliations: Condominium board president, HCC #166; board member, Canadian Condominium Institute - Golden Horseshoe Chapter

Colm Brannigan, Chartered Mediator and Arbitrator, Mediate.ca Dispute Resolution Services

Areas of Expertise: Colm has expertise in condominium, real estate, and commercial alternative dispute resolution.

Relevant Affiliations: ADR Institutes of Ontario and Canada

Robert Buckler, Condominium Consultant, Beredan Management & Consulting Inc. and Realtor, Century 21 Heritage Group

Areas of Expertise: Robert is a condominium consultant providing specialized services to condominium corporations, developers, and owners. He serves as a court-appointed administrator for troubled condominium corporations, and using a multi-faceted rehabilitation model, slowly restores these communities back to health. Robert is also a realtor, an instructor for the property management course offered by the Ontario Real Estate Association (OREA) Real Estate College, as well as a condominium law instructor for the Association of Condominium Managers of Ontario (ACMO).

Relevant Affiliations: OREA, ACMO, Real Estate Council of Ontario, Toronto Real Estate Board, Canadian Real Estate Association, Canadian Condominium Institute - Toronto Chapter, Institute of Corporate Directors

Stephen Chesney (FCA), Partner, Parker Garber & Chesney, LLP

Areas of Expertise: Stephen is a Chartered Accountant specializing in the auditing of Ontario condominium corporations.

Relevant Affiliations: Fellow Member, Institute of Chartered Accountants of Ontario

Harold Cipin, President, Times Property Management Inc.

Areas of Expertise: Harold has been involved in condominium management for close to 20 years. He was the former president of the Association of Condominium Managers of Ontario (ACMO) and current president of the National Association of Condominium Managers (NACM). In 2009, he was presented with ACMO's Registered Condominium Manager of the Year Award and remains actively involved in ongoing projects that impact the condominium management industry.

Relevant Affiliations: ACMO, NACM

Armand Conant, Partner, Head of Condo Law Group, Shibley Righton LLP

Areas of Expertise: Armand practices condominium law, acting for condominium corporations and owner groups across Ontario. He is a court-appointed administrator for troubled condo corporations and an author of numerous articles, papers, briefs, and presentations on condominium law, including a guide comparing condominium legislation across Canada. Armand is also an instructor for condo director courses and teaches real estate law.

Relevant Affiliations: Board member and past President, Canadian Condominium Institute (Toronto); Associate member, Association of Condominium Managers of Ontario

Stephen Deveaux, Vice President of Land Development, Tribute Communities

Areas of Expertise: Stephen has held senior positions in the building and development industry for more than 10 years, both in the public and private sectors. He holds an undergraduate degree in urban studies and urban and economic geography from the University of Toronto, as well as a master's degree from Dalhousie University in urban and rural planning.

Relevant Affiliations: First Vice-Chair, Building Industry and Land Development Association (BILD); Co-Chair, BILD - Toronto Chapter; Co-Chair, Ontario Home Builders' Association's Condo Act Committee

Shervin Erfani, Residents' Panel member (Windsor)

Areas of Expertise: Shervin provides the condominium owner and resident perspective.

Tammy Evans, Partner, Blaney McMurtry LLP

Areas of Expertise: Tammy's practice is focused on all aspects of mixed use and condominium development and construction matters. She serves a broad range of clients, from land owners, developers, landlords, and sureties to institutional and private lenders. Tammy also played an integral role in soliciting and reviewing stakeholder comments, drafting legislation and briefing the Minister's office on the previous consultation for the 1998 Condominium Act and its Regulations.

Relevant Affiliations: Law Society of Upper Canada; Canadian Bar Association (Ontario); Women's Law Association of Ontario; President, Canadian Association of Women in Construction; Building Industry and Land Development Association; Ontario Home Builders' Association; Canadian Home Builders' Association

Sandra Gibney, Principal Advisor, Strategic Management & Planning, Real Estate Council of Ontario (RECO)

Areas of Expertise: Sandra provides expertise in professional regulation, policy development and implementation, strategic and operational planning, and corporate communications.

Anne Gottlieb, Mediator/facilitator, Mediation At Work Ltd.

Areas of Expertise: Anne obtained a Master of Laws (LL.M.) in Alternative Dispute Resolution (ADR) at Osgoode Hall Law School. She was trained as a negotiator and mediator at the Program on Negotiation, Harvard Law School, and at CDR Associates in Boulder, Colorado. A much sought after public speaker and trainer in mediation and conflict resolution, Anne has expertise in resolving business disputes and commercial matters and has a growing practice resolving conflicts arising within condominiums.

Relevant Affiliations: Council member, Ontario Bar Association; Executive Board Member, ADR Institute of Ontario; Former Chair, Canadian Bar Association (ADR Section) and Ontario Bar Association (ADR Section)

APPENDIX 2: ONTARIO'S CONDOMINIUM ACT REVIEW

STAGE TWO PARTICIPANTS

Stephen Hamilton, Manager of Government Relations, Ontario Home Builders' Association (OHBA)

Areas of Expertise: At OHBA, Stephen oversees three committees: Renovators' Council, Training and Education Committee, and the Health and Safety Committee. He is also responsible for policy development and advocacy on a diverse number of files.

Harry Herskowitz, Managing Partner, DelZotto, Zorzi LLP and Board Chairman, Tarion Warranty Corporation

Areas of Expertise: Harry's practice is devoted to real estate, mortgage lending and commercial transactions, with particular emphasis on land development and condominium law. His practice also includes the arbitration of disputes involving commercial real estate transactions and condominium issues, and the provision of legal opinions on various aspects of real property law.

Relevant Affiliations: Ontario Bar Association (Real Property Section), ADR Institute of Ontario, Fellow of the Canadian Condominium Institute

Christopher J. Jaglowitz, Lawyer, Gardiner, Miller Arnold LLP

Areas of Expertise: Christopher is a condominium lawyer and arbitrator, as well as the publisher of Ontario Condo Law Blog.

Relevant Affiliations: Ontario Bar Association, Canadian Condominium Institute, Association of Condominium Managers of Ontario

Michael Kalisperas, Owner & President, Royale Grande Property Management Ltd.

Areas of Expertise: Michael Kalisperas is Owner & President of Royale Grande Property Management Ltd., an Association of Condominium Managers of Ontario (ACMO) 2000 Certified Company. He has been successfully managing condominium corporations for over 22 years. His company is also certified to the ISO 9001:2008 Quality Management System.

Relevant Affiliations: Registered Condominium Manager (ACMO)

Stephen Karr, Partner, Harris, Sheaffer LLP

Areas of Expertise: Stephen provides expertise in condominium law and development.

Relevant Affiliations: Law Society of Upper Canada, Canadian Bar Association, Fellow of the Canadian Condominium Institute

Cesar Kupfer Jarman, Residents' Panel member (Toronto) and President, CJ Real Estate Investments

Areas of Expertise: Cesar provides the condominium owner and resident perspective, as well as expertise in real estate development financing.

Aubrey LeBlanc, President, Consumers Council of Canada

Areas of Expertise: Aubrey has expertise in home warranties, codes and standards, consumer protection, housing, risk management, and professional qualification systems.

Relevant Affiliations: Consumers Council of Canada, Ontario Association of Home Inspectors, Ontario Building Officials Association

Steven Leistner, Representative, Real Estate Institute of Canada (REIC)

Areas of Expertise: Steven has expertise in property management, reserve fund studies, appraisal, and finance. He is also an instructor in all the aforementioned areas.

Relevant Affiliations: Professional Appraiser (Appraisal Institute of Canada); Fellow of the Real Estate Institute (REIC); Certified Manager of Condominiums (REIC); Certified Residential Underwriter (REIC); Certified Reserve Planner (REIC); Certified Forensic Investigator (Association of Certified Forensic Investigators of Canada); Certified Property Manager (REIC)

Marilyn Lincoln, Condo Columnist, National Post, London Free Press, Kitchener Record, Hi-Rise Community Newspaper, Kitchener

Areas of Expertise: Marilyn provides the condominium owner and board member perspective. As the author of “The Condominium Self Management Guide,” 2nd edition, she has extensive knowledge in condominium management.

Relevant Affiliations: Consultant, Waterloo North Condominium Corporation #76

Michael Lio, Executive Director, Homeowner Protection Centre

Areas of Expertise: Michael is a consumer advocate and has represented consumers for almost 25 years on numerous boards, councils and committees. He is also a professional engineer specializing in building science and has worked as a consultant for over three decades on housing related projects and studies.

Relevant Affiliations: Board member, Tarion Warranty Corporation; Ontario and National Building Code Committees (Part 9)

Audrey Loeb, Associate Counsel, Miller Thomson LLP

Areas of Expertise: Audrey advises buyers and sellers on conveyancing matters, developers on condominium development, and condominium corporations on issues of corporate governance and operations. She is also the author of “The Condominium Act: A User’s Manual” and “Condominium Law and Administration”.

Relevant Affiliations: Canadian Condominium Institute

Dean McCabe, Past President, Association of Condominium Managers of Ontario (ACMO) and Vice President of Operations, Wilson-Blanchard Management

Areas of Expertise: Dean is an expert in condominium management, providing education and training as an instructor for Registered Condominium Manager courses for ACMO and at the college level. He has gained extensive knowledge in condominium governance and operations through 20 years of condominium management experience and leadership.

Relevant Affiliations: Registered Condominium Manager (ACMO); Associate of the Canadian Condominium Institute

Vince Molinaro, President, Molinaro Group

Areas of Expertise: Starting from general labour to his current position as President, Vince has over 20 years of industry experience with The Molinaro Group, a condominium and corporate building company.

Relevant Affiliations: 2nd Vice-President, Ontario Home Builders’ Association

APPENDIX 2: ONTARIO'S CONDOMINIUM ACT REVIEW

STAGE TWO PARTICIPANTS

Linda Pinizzotto, Realtor and Founder, President & Chair, Condominium Owners Association Ontario

Areas of Expertise: Linda is a successful Realtor® who has received awards of distinction in the Top 1% of Sutton Group over the past 33 years, and she is currently writing the condominium course for the Ontario Real Estate Association College for Realtors. She is the Founder of the Condo Owners Association (COA), a non-profit Association to represent and advocate for condo owners' rights. In addition to media appearances and hosting a radio show called the "Condo Xpert", Linda is a columnist and speaker who proactively participates on several municipal and provincial stakeholder groups, including the Advisory Committee for Homeowners Protection Centre and serving as the President of two prestigious condo boards for over 17 years.

Relevant Affiliations: Government Relations Chair and Director, Mississauga Real Estate Board (MREB); Delegated MREB Chair working with (CREA) Canadian Real Estate Association and (OREA) Ontario Real Estate Associations; Government Relations Committee Member, (TREB) Toronto Real Estate Board; Member, Real Estate Council of Ontario (RECO)

Chris Rol, Senior Policy Advisor, Insurance Bureau of Canada

Areas of Expertise: Chris has expertise in property and casualty insurance.

Maurizio Romanin, Lawyer, Maurizio Romanin Law Office

Areas of Expertise: Maurizio is currently a practicing lawyer, President and CEO of LawyerDoneDeal Corp and Chairman of Attorneys Title Guaranty Fund. He has practiced extensively in the fields of commercial real estate, condominium and freehold land development, and bank financing.

Relevant Affiliations: Executive member, Ontario Bar Association (Real Property Section)

Allan Rosenberg, Vice President, Del Property Management Inc.

Areas of Expertise: Allan has 35 years of experience in residential property management, rental and condominium.

Relevant Affiliations: Board Secretary, Association of Condominium Managers of Ontario (ACMO), Chair, ACMO Ethics Committee, Registered Condominium Manager (ACMO); Associate of the Canadian Condominium Institute

Mark A. Salerno, Ontario Manager, Communications and Marketing, Canada Mortgage & Housing Corporation (CMHC)

Areas of Expertise: Mark is a housing expert with substantive expertise in sustainable housing and community design. He possesses a Master of Architecture degree and a Bachelor of Technology degree, and is a Member of the Royal Architectural Institute of Canada.

Relevant Affiliations: Board member, Human Services Planning Board; board member, Green Light on a Better Environment (GLOBE); board member, Sustainable Housing Foundation (SHF); board member, EcoSmart Foundation

Mark Shedden, President & CEO, Atrens-Counsel Insurance Brokers Inc.

Areas of Expertise: Mark has expertise in residential and commercial condominiums, personal lines – auto and personal property, and general insurance.

Relevant Affiliations: Insurance Institute of Ontario, Insurance Brokers Association of Ontario, Association of Condominium Managers of Ontario, Canadian Condominium Institute

Kathleen Stephenson, Residents' Panel member (Ottawa)

Areas of Expertise: Kathleen provides the condominium owner and resident perspective. She also has expertise in organizational development in voluntary sector institutions and associations, including national and international experience; strategic planning and evaluation; policy development; communications; facilitation of participatory decision-making in processes; and consumer advocacy in public policy development and regulatory change processes.

Sally Thompson, Executive Vice President, Halsall Associates

Areas of Expertise: Sally has expertise in reserve fund studies, performance audits, the Tarion warranty process, as well as engineering oversight of major repairs, maintenance and replacements.

Relevant Affiliations: Professional Engineers Ontario, Canadian Condominium Institute

John Wannamaker, Area Manager, Berkley Property Management Inc.

Areas of Expertise: With 24 years of experience in real estate and property management, John has expertise in condominium and residential management, as well as in asset management for nonprofit, commercial, and industrial real estate. His professional designations include Certified Property Manager (Recognized Internationally), Certified Manager of Condominiums (Provincial), and Associate Reserve Fund Planner (Provincial).

Relevant Affiliations: Real Estate Institute of Canada, Institute of Real Estate Management (IREM United States)

John Warren, Partner, Adams & Miles LLP, Chartered Accountants

Areas of Expertise: John is the founder of the firm's condominium group, which provides audit, accounting and related services to over 300 condominiums, with a particular focus on governance and management issues in condominiums. He also supervises the firm's professional standards committee.

Relevant Affiliations: Chair, Institute of Chartered Accountants of Ontario committee responsible for the Accounting and Auditing Guidelines for Ontario Condominium Corporations; Canadian Condominium Institute; Association of Condominium Managers of Ontario

Adam Wroblewski, President and Co-Founder, Canadian Alliance for Condominium Owners' Rights (CAF COR)

Areas of Expertise: Adam has been the President/Board Member of a high-rise condominium corporation in Toronto for the past 6 years. Working with Toronto Hydro and Ryerson University, he is also actively involved in the development of programs aimed at energy savings for condominiums.

