

# ONTARIO'S CONDOMINIUM ACT REVIEW

## *Stakeholder Roundtables*

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### Summary

## **INTRODUCTION**

As part of the first stage of the Condominium Act Review, the Public Policy Forum, in consultation with the Ministry of Consumer Services, organized and facilitated a series of four, full-day stakeholder roundtables in Toronto on October 31, November 7, 14, and 21, 2012 to identify key challenges and explore potential solutions. The roundtables assembled a cross-section of 25 stakeholders that, taken together, provide a balanced and informed view of the issues, opportunities, and ideas for solutions in the condominium community. Participants included representatives from owner associations, the building industry, the condominium management sector, consumer advocacy groups, and the Ministry of Consumer Services, as well as legal, financial, engineering, and mediation experts from the condominium sector. The full participant list and stakeholder bios can be found at the end of this document.

Given that there are many ways to participate in the condominium review process, the Forum selected a group of stakeholders that would provide a balanced sample of interests and perspectives in the condominium community rather than trying to ensure that all possible views were heard. Participants explored a range of issues related to consumer protection, financial management, condominium manager qualifications, as well as governance and dispute resolution. Working with the group of stakeholders through multiple sessions allowed for a meaningful engagement process that helped to foster common ground and determine where tensions exist.

### **The Process**

Prior to the four roundtables, the Forum conducted telephone interviews with 22 stakeholders to gain a better understanding of the various interests involved and their respective positions on key issues facing the condominium community. These interviews not only enabled the Forum to identify potential participants for the stakeholder roundtables, but also provided further insights that informed the design of each session. In addition, providing a safe space for stakeholders to voice their concerns helped to build trust in the review process and reinforce the focus on shared interests.

The first roundtable focused on identifying key issues and potential options for consideration, in addition to outlining the objectives and expectations for the engagement process. Following a presentation of interview findings, participants worked in small groups to clarify gaps in understanding and to share ideas on possible solutions. For roundtables 2 and 3, participants discussed specific themes and issues in greater detail to determine areas of early agreement and disagreement. The final roundtable gave participants a chance to review outcomes from previous roundtables and to prioritize issues, options, and any remaining tensions for further examination in stage 2 of the review process. In addition, stakeholders were also informed about key findings emerging from the Residents' Panel, which was a concurrent stream of engagement with 36 randomly selected condominium residents facilitated by MASS LBP.

## **DISPUTE RESOLUTION**

Discussions focused on addressing inefficiencies in the Act's current mediation and arbitration approach and improving oversight for the Condominium Act. Participants were concerned with the escalation of simple disputes into costly, time-consuming, and adversarial legal processes, as well as the lack of enforcement and accountability in cases of board and manager non-compliance, which tends to break down trust in condominium communities. The power imbalance between boards and owners was also noted as a key issue, especially in the case of financial capacity and personal stake. Agreeing that education and early interventions could help reduce conflicts, participants proposed a range of options, including online tools and information resources, early neutral evaluation of cases through a dispute

resolution officer (DRO), a user-pay tribunal as an alternative to courts, and possibly consolidating some or all these mechanisms in an independent condominium office. While not currently mandatory for all cases, mediation, if neutral and undertaken in good faith, can be an effective process for resolving disputes in condominium communities according to most participants.

Given the diversity of issues involved and the benefits of providing multiple access points for dispute resolution, participants suggested a range of options and clear guidelines to determine appropriate action. As disputes can arise from misunderstandings, misinformation, or misconduct, solutions should be based on the complexity of the issues involved. Regardless of the mechanisms employed, participants stressed the importance of access, timeliness, and public awareness, as well as considering differences in need and capacity across condominium communities. To develop a better understanding of what works and does not work in dispute resolution, a database of outcomes may also be worth exploring. While changes to the Act may lead to fewer disputes, the suite of tools available, whether housed in a condominium office or otherwise, will need to address power and resource imbalances between parties, respond efficiently to cases of non-compliance, and establish a clearer set of procedures for more complex disputes.

#### **Priority Issues**

- Some condominium owners, directors, and managers are uninformed about their rights and responsibilities, as well as specific rules and regulations.
- Mediation and arbitration, in their present form, can be slow and costly, with no assurance of compliance or cost-recovery.
- There is a power imbalance in disputes as boards have the resources to hire lawyers and the power to intimidate owners.

#### **Potential Solutions**

- Develop online tools and information resources to educate owners and boards about the Act, regulations, and by-laws.
- Establish a DRO selected by owners or as part of a condominium office to provide early impartial evaluation of merits of dispute prior to mediation.

#### **Areas for Further Discussion**

- Some believe in an internal DRO for each condominium corporation while others would prefer its inclusion in the range of tools and services provided by an independent condominium office.
- Although there is a need to enhance access to timely mediation and arbitration, a user-pay tribunal with the power to impose fines may provide another alternative to litigation.
- As public funding for any of the proposed solutions may not be realistic, self-financing options, such as taxation, insurance, and user-pay models, would need to be explored.
- While owners who ignore the rules are responsible for legal fees, further consideration of similar liability for board non-compliance is needed.

#### **CONDOMINIUM GOVERNANCE**

Owner apathy and absence, as well as board incompetence and misconduct were some of the key issues explored. A common barrier to effective condominium governance is the lack of owner engagement, which prevents quorum at owners' meetings, enables the abuse of proxies by boards, and presents a challenge for requisition meetings. Some participants also noted the importance of engaged ownership in preventing abuse from fellow owners. While there are many reasons for owner apathy, some

participants noted that condominium marketing may contribute to the perception of condominiums as hassle-free living, especially among those who lack an understanding of the rights and responsibilities of condominium ownership.

Directors with limited experience and knowledge overseeing significant sized budgets were another common concern. Recognizing that the needs of new condominiums and resale condominiums may be different, participants stressed the importance of customized education for new directors in addition to standardized courses in ethics, communication, financial management, as well as dispute prevention and resolution. Access and affordability were also emphasized, with some participants suggesting online education as an option. The idea of establishing a charter of rights and responsibilities for residents, owners, directors, and managers was proposed as another education tool for consideration.

To enhance board transparency, participants agreed with improving access to records, especially financial documents, although there were some divergent views on the roles of manager in carrying out this responsibility. The challenge lies in ensuring transparency while protecting boards and managers from unreasonable demands and protecting owners' private personal information. Other priorities include ensuring owner input in setting agendas for annual general meetings and addressing the governance challenges presented by mixed-use and phased developments.

#### **Priority Issues**

- Apathy among owners and the rise in absentee ownership prevents quorum, enables the abuse of proxies, and increases the difficulty of calling requisition meetings.
- Directors often lack the experience and knowledge required to support the range of duties and tasks overseen by boards.
- Restricted access to records, delayed circulation of meeting minutes, and limited opportunities to provide input on meeting agendas undermines board transparency.

#### **Potential Solutions**

- Establish higher standards for board eligibility, develop a plain-language document on roles and responsibilities, provide basic training for new boards, and encourage continuing education.
- Ensure access to publicly available records and meeting summaries by imposing penalties for non-compliance and posting public documents online.
- Require earlier notice for meetings to allow sufficient time for democratic input on agendas and candidacy submissions for board elections.
- Standardize the proxy form and include more stringent requirements and verification procedures to prevent manipulation.
- Develop a charter of rights and responsibilities for all stakeholders to increase awareness of shared ownership and community living.

#### **Areas for Further Discussion**

- Despite support for director education, views were less definitive on mandatory training given the voluntary nature of the position and the general disinterest in running for boards.
- While insurance savings could serve as a possible incentive for board education, the challenge of measuring risk may lead to overcharging and higher standards can lead to greater liability.
- Establishing standards for quality governance through something like ISO certification may promote best practices and add marketing value although distinctions would need to be made according to age, size, and type of condominium.

## **CONDOMINIUM MANAGEMENT**

Given the important role of condominium managers in daily financial, administrative and operational duties, participants agreed on the need for technical and ethical standards, accreditation, and potentially regulation, especially considering issues with accusations of corruption and conflicts of interest. With unanimous support for education, discussions explored potential models, online formats, and continuous training, as well as alternative options for those with extensive experience. To further professionalize condominium managers, ethical requirements would also ensure standards are maintained across the industry.

Although the lack of qualifications is a serious concern, some participants noted that owners and boards need to also recognize the constraints facing condominium managers. For instance, managers sometimes face conflicts of interest between their duty to developers, boards, and owners. As boards tend to replace management companies hired by developers, condominium managers may also be placed into pre-existing circumstances with ongoing challenges. To ensure a balanced approach, owner and board education is also needed to ensure that demands are reasonable and decisions are in the best interest of the condominium corporation.

### **Priority Issues**

- As training is not mandatory, condominium managers can lack the knowledge and skills required to run the day-to-day operations of corporations.
- Preventing conflicts of interest and unethical conduct among condominium managers is a challenge given the lack of oversight.

### **Potential Solutions**

- Establish qualifications for condominium managers that include knowledge of the Act, financial management, conflict resolution, as well as a code of ethics.
- Provide accreditation through third party institutions, such as colleges, universities, and other authorized bodies.
- Enforce a minimum threshold for practice through such regulatory mechanisms as examinations and licensing.

### **Areas for Further Discussion**

- Although issues pertain to condominium management overall, separate regulations for management companies and individual managers may be needed given distinctions in roles and expertise.
- Disagreements remain over the appropriate level of training as some recommend basic courses while others believe that more substantial education may be needed.
- While mandatory education may increase manager fees, the costs may be offset by resulting reductions in dispute resolution; however, the supply of qualified managers may not be able to keep up with demand in a growing condominium market.
- Fidelity bonds on management firms, individual managers, as well as boards could provide greater financial protection for condominium corporations.

## **FINANCIAL MANAGEMENT**

Most of the financial issues discussed were related to the management of reserve funds and common expenses although surpluses and contingency funds were also mentioned. Participants were largely

concerned with the current minimum contribution and the lack of accountability for first-year reserve funds, as well as the need to define adequate funding and the scope of reserve fund studies. Considering legislated changes and green technologies as eligible reserve fund expenditures was also discussed. Although pooling reserve funds would ensure professional allocation, reduce administrative costs, and provide a higher return on investments, exactly how such a financing strategy would be implemented remains unclear.

In the case of common expenses, participants noted the lack of clarity regarding the appropriate use of funds for changes other than repairs and maintenance, especially given premature upgrades in some condominiums. To define financial obligations, recommendations were made to establish a standard unit bylaw and to clarify liability for damages to common elements caused by an act or omission of an owner. Additional issues highlighted by participants include corruption and the abuse of liens. While there was much agreement on the key challenges in financial management, divergent perspectives emerged when potential solutions were explored. Given differences concerning the empowerment of owners versus boards, further dialogue is needed to find a balanced approach that prevents the abuse of power without constraining responsible boards.

### **Priority Issues**

- Setting the first-year reserve fund contribution minimum at 10 percent of the operating budget is not only arbitrary, but may also be insufficient for some condominiums.
- The lack of clarity regarding “adequate” funding and the phased-in option for older condominiums contribute to ongoing reserve fund deficits.
- Counterproductive restrictions on reserve fund uses such as not allowing them to be used to fund green technology improvements that have tangible long-term benefits for the corporation.
- Discretion on reserve fund usage, common expenditures, and the registration of liens can be abused by boards.
- Responsibility is not clearly defined in cases where damages to common elements and/or other units stem from inadequate unit maintenance or from an act of the occupant.

### **Potential Solutions**

- Require developers to conduct reserve fund studies and increase the current minimum for first-year contributions as an additional safeguard against deficits.
- Clarify the scope of reserve fund studies to ensure a standard approach among the range of professionals authorized to conduct them.
- Define adequate funding for reserve funds to prevent manipulation and the deferral of costs to future owners.
- Allow reserve funds to be used for changes required by new regulations or green technology with clearly established requirements for certification and payback.
- Consider pooling reserve funds to maximize the return on investment, ensure professional allocation, and reduce administrative costs.
- Set clear parameters for common element expenditures by defining and limiting changes that are neither repairs nor maintenance.
- Increase the threshold for changes without notice to owners in order to simplify the decision making process for minor expenditures.
- Ensure developers include a standard unit definition in the declaration or a by-law to clarify maintenance, repair, and insurance obligations.

- Clarify responsibility in cases where unit maintenance or an act of the occupant could have an impact on common elements and/or other units.

#### **Areas for Further Discussion**

- As a further safeguard against financial mismanagement, explore mechanisms to allow for owner notification or approval of expenses that vary significantly from the reserve fund study.
- Perspectives differ on the appropriate definition and approval threshold for substantial changes given concerns over board abuse versus unnecessary constraints on decision making.
- Easing the requirements for requisition meetings may empower owners; however, lower thresholds could also lead to unreasonable board turnover and dominance by a vocal minority.
- To avoid gaps in liability coverage, unit insurance may need to be mandatory if deductibles are made payable by the owner responsible for damages to common elements and/or other units.

#### **CONSUMER PROTECTION**

To ensure that buyers understand the terms and conditions of their purchase, further simplification and clarification of mandated disclosure documents is needed. Participants shared their concerns regarding the level of complexity in these documents, the cost of legal expertise, the lack of due diligence among buyers, and the language barriers facing all owners, especially those whose first language is not English. Most participants agreed with establishing clear guidelines on the types of items required in the disclosure summary; however, additional suggestions include the use of plain and good faith language, as well as requiring a signed certificate of acknowledgement. Mandating shared facility agreements or clear disclosure of the terms and conditions would also define responsibilities in increasingly complex condominium developments. While improving the timeliness of status certificates is more relevant to buyers of resale condominiums, participants were largely supportive of imposing a penalty on managers and boards in cases of non-compliance.

The deferral of costs into the second year has become more prevalent with the rise in condominium development and the increasing complexity of projects. Although the trend toward charging back or leasing features to condominium corporations allows for competitive pricing, owners face unexpected increases in condominium fees in the second year. According to some participants, mortgaging amenities or leasing equipment considered necessary or previously included in the purchase price is also unfair. An outright ban on these practices may be too extreme an option; however, there was general support for including all costs in the first-year budget and ensuring clear disclosure and reasonable payment mechanisms where deferred or phased-in costs are deemed necessary.

#### **Priority Issues**

- Some buyers do not even read their condominium purchase and sale documents, which are too complex to understand and too costly to review with lawyers.
- Owners often face unexpected increases in condominium fees due to deferred costs and the practice of mortgaging and leasing amenities reasonably assumed to be in the purchase price.
- Shared facility agreements are often not in place or not clearly disclosed in condominiums with such arrangements.
- While status certificates must be provided within 10 days, they are not always provided in a timely manner.

#### **Potential Solutions**

- Establish clearer guidelines for mandatory items that need to be included in a disclosure summary.
- Develop an online platform to allow buyers to search for specific information and to improve owner access to key documents.
- Require all costs to be included in the first-year budget and clear disclosure of features that require phased-in payment schemes.
- Mandate shared facility agreements or clear disclosure of the terms and conditions to define responsibilities.
- Impose a penalty on managers and boards to compel compliance when status certificates are not provided.

#### **Areas for Further Discussion**

- Further disclosure from sales agents may help clarify their role in the process and the important items for buyers to consider.
- Disagreements remain on the current timeframe for providing status certificates as some emphasize the need for greater urgency while others support more time for proper inspection and consultation.
- Consider including more comprehensive information in status certificates related to pending special assessments and the cost to date of pending legal proceedings.

#### **NEXT STEPS**

Rather than reaching consensus on the issues and recommendations at this early stage in the process, the candid discussions provided an opportunity to prioritize challenges, identify tensions, and propose possible solutions for further consideration. Focusing on high level issues and options, the roundtable discussions revealed where stakeholder views converged and diverged on dispute resolution, condominium governance, management qualifications, financial management, and consumer protection. The roundtable outcomes, combined with all the other components of the first phase, will feed into the next stage of the review process, which will involve bringing together relevant expertise to work through the priorities identified and determine the best options for improving the Act.



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