



MTCondoLaw

Ontario's Condominium
Law Experts

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Announcements

We are delighted to announce the creation of our practice group's Twitter page. For the latest developments on condominium law, follow us

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Past Issues

September 2013

- Mould: Handle with Care

Summer 2013

- Understanding the Standard Unit By-Law
- Tarion Bulks Up Its Builder Accountability Rules
- Dog Bites

Spring 2013

- Waiver of Subrogation Clauses in Unit Owner Insurance Policies
- Enforcement: Turning a Blind Eye Is Not an Option

THE NEW CONDO BUREAUCRACY

Condominium Act Review - Stage Two Report

by Jeffrey W. Lem and Odysseas Papadimitriou

Canada's Public Policy Forum released its much anticipated Condominium Act Stage II Solutions Report. The Stage Two Report and an executive summary can be accessed at: <http://www.ppforum.ca/publications/ontarios-condominium-act-review-stage-two>. A list of all 113 recommendations is appended to this article.

The Stage Two Report confirmed some of the major themes that the government will be pursuing in its "comprehensive approach to reform". To those who have been following the condominium law reform movement, there really isn't anything shockingly new about the Stage Two Report themes, but the release of the Stage Two Report has brought home the very real possibility of a whole new branch of government that will be dedicated, for better or worse, to all things condo. The proposed Condo Office will serve four main functions:

(1) Condominium education and awareness

The Condo Office, in addition to overseeing the other government condo regulatory functions, will have staff tasked with the general didactic duties to educate the public on all things condo, including, amongst other things, mandatory training of first-time condo directors.

Our Mission

Our mission is to provide comprehensive, competitively priced, value-added, community oriented solutions throughout Ontario utilizing the range of knowledge and depth of expertise of a larger firm, while providing professional, friendly and timely service to our clients.

With offices in Toronto, Markham, Guelph, London and Kitchener-Waterloo, our Condominium Practice Group is part of a full service law firm which provides us with significant strengths in matching your legal needs to our resources. Our office systems and technology assist us in providing quick turnaround on a cost efficient basis.

(2) Licensing of condominium managers

The Condo Office will regulate property managers. This comes as no real surprise precisely because this is one plank of the government's proposed overhaul of condominium law that had already been released to the electorate ahead of this summer's provincial by-elections. Somewhat surprisingly, regulation of property managers will not be overseen by an existing industry association, such as the Association of Condominium Managers of Ontario, but rather, a new Condo Licensing Agency will be created. This will keep the licensing function in government hands. The Stage Two Report further proposes that property manager licensing might be a two-staged process, with a preliminary "entry level" stage, followed by an "advance accreditation" stage some time later in a property manager's career.

(3) Create a new dispute resolution mechanism

The Stage Two Report calls for an overhaul of the mediation and arbitration protocols, together with two distinct but parallel tribunal-like bodies that will operate under the Condo Office: the "Dispute Resolution Office"; and the "Quick Decision Makers", both tasked with the eponymous tasks of dealing decisively with condominium disputes.

(4) Maintain a condominium registry

The Stage Two Report is also proposing the introduction of a new "Condo Registry". While a condominium's

governing documents (i.e. its declaration, description and by-laws) are already required to be registered on title, up-to-date information on the condominium corporation's current directors, property managers, and the corporation's rules and regulations are rarely made publically available. The Stage Two Report will see to the development of a new public Condo Registry and corresponding annual filing requirements, presumably not much different than the corporate registries maintained under the Ontario Business Corporations Act.

Of course, none of this proposed new condo administration juggernaut is going to be free. The Stage Two Report provides that the Condo Office will be funded by user fees for various services, together with a monthly surcharge (anticipated to be between \$1 to \$3) on each condominium unit in Ontario.

The Stage Two Report also advocates consumer protection reforms (e.g., banning developer sales of superintendent and guest suites back to the condominium corporation, and better developer disclosure up-front, etc.), corporate governance (e.g., lowering quorum requirements and raising proxy use guidelines, etc.), and financial management reforms (e.g. better budgeting and more flexibility to dip into reserve funds, etc.).

Questions on the Stage Two report can be sent to the Ministry via email at: oncondo@ontario.ca or by mail to: ONCONDO, Ministry of Consumer Services, 5th Floor, 777 Bay Street, Toronto ON M7A 2J3.

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RECOMMENDATIONS OF THE STAGE TWO SOLUTIONS REPORT

The following table contains the Stage Two Report recommendations and the relevant page numbers in the Report for further reference:

Stage Two Report Recommendations	Report Page No.
(A) SMARTER DISCLOSURE	18

EDUCATE BUYERS:

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:

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:

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”:

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.

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.

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:

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.

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.

(B) PROHIBIT SELLING OR LEASING ASSETS THAT COULD BE COMMON ELEMENTS

19

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.

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.

(C) DEFERRED COSTS

20

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.

(E) SUBSIDIZATION

20

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.

(F) MINIMUM CONTRIBUTION TO RESERVE FUND

21

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.

(G) NOISE

21

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.

(H) COMMUNICATION AND EDUCATION

22

EDUCATE AND INFORM OWNERS ON FINANCES:

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.

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.

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.

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.

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.

(I) RESERVE FUNDS

23 – 25

SET A TRIGGER FOR UPDATES:

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:

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.

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 could be based on construction costs, etc.

RECOMMENDATION: Reserve funds should be available without unit owner approval for additions, alterations or improvements required by law, such as a wheelchair ramp.

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.

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.)

(J) OPERATING BUDGETS

25 - 28

ADJUST THRESHOLD FOR SPENDING ON CHANGES "WITHOUT NOTICE":

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 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:

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.

4.

DEFINE “REPAIR” AND “MAINTENANCE”:

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.

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:

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.

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.

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:

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.

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

USE LIENS FAIRLY:

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:

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:

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

(K) RESERVE FUND INVESTMENTS

28

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.

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.

(L) FRAUD

28

KICKBACKS:

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

IDENTIFY THE TYPES OF DISPUTES:

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:

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.

(M) CONDO VS. DEVELOPER DISPUTES

31

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.

(N) SHARED FACILITIES DISPUTES

31

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.

(O) CONDO VS. MANAGER DISPUTES

31

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.

THE QUICK DECISION MAKER:

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.

THE DISPUTE RESOLUTION OFFICE:

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:

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:

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.

(Q) DISPUTES WITH TENANTS

33

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.

(R) COST RECOVERY FOR PROCEEDINGS

34

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.

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.

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

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

PROVIDE EASY ACCESS TO CORPORATE RECORDS:

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

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:

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.

STANDARDIZE PROXIES:***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:

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:***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:

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

COMMUNICATE WITH OWNERS ABOUT MEETINGS:

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:

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:

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

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.

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:

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:

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

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:

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.

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:

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

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

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.

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 over-arching 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.

LICENSE MANAGERS:

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.

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.

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 NEW CONDO MANAGER LICENSING 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.

THE CONDO OFFICE'S ROLE:

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.

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:

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.

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

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.

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

GRANDPARENT EXPERIENCED MANAGERS:

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:

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:

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:

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.

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:

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.