

# **Reforms to Condo Act, CAO and Licensing of Managers,**

**Armand Conant**

B. Eng., LL.B., D.E.S.S. (Sorbonne)

**Shibley Righton LLP**

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# Condominium Community

- Today in Ontario
  - 10,000 residential condo corporations
  - 700,000 residential units
  - over 1.5 million people
  - approximately 2,000 managers
  - at least 40,000 directors



# Bill 106



- ***Protecting Condominium Owners Act, 2015***
  - Reforms to the *Condominium Act, 1998*
    - Not a new Act – but significantly reformed
  - *Condominium Management Services Act, 2015* (“CMSA”)
  - Tarion warranty to cover conversions

# Status & Next Steps

- Royal Assent – December 3, 2015
- Not law until proclaimed
- Will be proclaimed in phases as regulations approved
- Key Dates: September 1<sup>st</sup> and November 1<sup>st</sup>
- Government Websites
  - [www.condoauthorityontario.ca](http://www.condoauthorityontario.ca)
  - [www.cmrao.ca](http://www.cmrao.ca)

# Administrative Authorities

- Incorporated July 2016
  - Condominium Management Regulatory Authority of Ontario (“CMRAO”)
  - Condominium Authority of Ontario (“CAO”)
- What are they?
  - Not-for-Profit organizations
  - Independent - arm’s length from government
  - TICO, VQA, Tarion, etc.
  - Self funded
    - all funds used to operate – none goes to government

# Administrative Authorities

## First Boards

- CMRAO

- ∴ Aubrey LeBlanc, Chair

- ∴ Joan Andrew, Vice-Chair

- ∴ John Oakes, Secretary & Treasurer

- ∴ Gail Beggs, Director

- CAO

- ∴ Tom Wright, Chair

- ∴ Frank D'Onofrio, Vice-Chair

- ∴ Armand Conant, Secretary & Treasurer

- ∴ Genevieve Chornenki, Director



# Status & Next Steps

## Licensing of Managers

- First set of Regulations approved
- To take effect November 1, 2017
  - Licensing, Regulation of Licenses
- Next Phase **|**
  - Code of Ethics, Complaints and Discipline

## Reforms to Condo Act

- CAO opened September 1<sup>st</sup> - for limited services)
- Regulations - Phase I to start November 1<sup>st</sup>



# Regulations

**Relating to the reforms to the *Condominium Act, 1998***



# Not Entirely New Regulations



Amendments to the existing regulation, O.Reg. 48/01.

# Four Areas of Amendment

- Communications from corporations to owners and mortgagees
- Mandatory disclosure and training for directors
- Meetings and Voting
- Record retention and access



# Information Certificates



- To enhance Consumer Protection, new requirement to provide information certificates to owners and mortgagees
- 3 types
  - Periodic Information Certificate – PIC
  - Information Certificate Update – ICU
  - New Owner Information Certificate - NOIC

# Periodic Information Certificates ("PIC")

- Contains information related to the corporation, such as address for service, insurance, finances, Board of Directors, reserve fund, budget, directors disclosures (if any), failure to file annual return, etc...
- To be sent twice per fiscal year (within 60 days of the end of the first fiscal quarter and 60 days of the end of the third fiscal quarter).
- A lot of the content doesn't change
- Standard form will help guide everyone



# Information Certificate Update (“ICU”)

- To be sent within 30 days of certain “trigger” events.
- “Trigger” events include changes to the address for service of the Corporation, changes to insurance, board vacancies
- Condo corporations would be able to pass bylaws to require that a PIC or ICU be sent on a more frequent basis.
- A copy of the most recent PIC and any ICU would also need to be made available at the AGM.
- Send within 5 days if loss of quorum



# New Owner Information Certificate (“NOIC”)

- To be sent only to new owner of a unit within 30 days of notice from owner to the corporation
- The most recent PIC and ICU must be sent with the NOIC



# Exceptions to Information Certificates

- Corporations are not obligated to send out the information certificates for any fiscal year if:
  - a turnover meeting has been held; and
  - each year the owners of at least 80 per cent of the units consent in writing to dispense with the requirements to distribute the information certificates.

# Mandatory Disclosure by Directors and Candidates

- Section 29 of the new *Act* generally provides that no individual can be a condominium director if he or she has not complied with the “prescribed disclosure obligations”.
- Once a person is elected to the board, they are subject to ongoing disclosure requirements for the duration of their term. Failure to meet the disclosure requirements would immediately disqualify the person from being a director.



# Mandatory Disclosure by Directors and Candidates

- The following must be disclosed by candidates (when they submit their candidacy in the Notice of Meeting package or at a meeting, if nominated from the floor) and/or existing directors:
  - whether they are 60 days or more **in arrears** of their common expenses contributions
  - whether they have been **convicted of an offence** under the *Act* or Regulations in the past 10 years
  - whether they (or their immediate family) is involved in **legal proceedings** with the corporation
  - whether they (or their immediate), is a party to or has a **material interest in a contract or transactions with the corporation or the developer**

# Director Training

- Required to complete the required training within 6 months of being elected, re-elected or appointed to a board (if elected or appointed after the new training provisions come into force – November 1, 2017).
- Free, online, in modules, about 3 hours, with no exam
- Must be renewed every 7 years
- Four of the modules are being piloted as of September 1<sup>st</sup> – but these won't count.
- Recommend take CCI Education courses



# Meetings and Voting

- Condos now required to send out a preliminary notice to owners at least 20 days in advance of sending out a notice of meeting.
- There will be a standard form



# Preliminary Notice

- A statement providing basic information to owners respecting an upcoming meeting (prescribed form)
- For example, the purpose and projected date of the meeting, and the deadline for submitting candidacy, disclosure, information or material to be included in the notice of meeting
- Must include agenda item and material if more than 15% of owners sign requisition

# New Quorum Threshold

- Quorum for the third attempt to hold the following meetings will be reduced to 15%:
  - AGMs
  - turnover meetings
  - any meeting to appoint a new auditor
  - any meeting to elect directors<sup>2</sup>

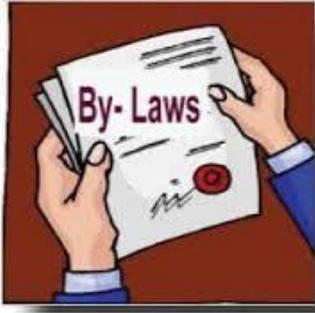
QUORUM

# Voting

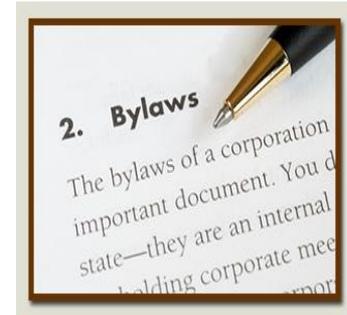
- Condos will be deemed to have a standard by-law provision stating that owners voting (by ballot, by proxy or by telephonic or electronic means) must always be allowed to vote secretly (i.e., without revealing their names or unit numbers).
- A “Recorded Vote” is defined as a vote recorded in writing (by ballot, by proxy or by telephonic or electronic means).

# Proxies

- There will be a mandatory standardized proxy form
- Designed to curtail and reduce abuse and uncertainty over proxies
- May allow for electronic proxies



# Bylaw Voting



- The required vote to confirm certain new types of bylaws will be reduced to an ordinary vote – i.e., a majority of the votes cast **at the meeting**.
- This will apply to bylaws to add information to the PIC, UIC or NOIC, to allow for voting by telephonic or electronic means, etc...
- Will not apply to many of the types of by-laws listed in sec. 56 of the Act. e.g. standard unit by-law

# Records Retention and Access

- Section 55 disputes the most common
- Two retention periods:
  - a default 7 year minimum period for financial records and other operating records; and
  - an unlimited period for fundamental documents (i.e. declaration, by-laws and rules, current agreements and insurance policies).

# Records Retention

- Maintain records in paper or electronic format so long as certain requirements are met.
- Paper records must be kept on the property (if appropriate) or if not on the property, at a location that enables the condominium to perform its duties and that is also “reasonably close” to the property.
- Electronic records must be capable of being reproduced within a reasonable time, and they must include a method to protect against unauthorized access. Steps must also be taken to protect against loss, damage or inaccessibility (such as automatic back up).



# Access to Records

- There will be 4 steps for access:
  - Requester's request (standard form)
    - Solely related to that person's interests as an owner, purchaser or mortgagee – having regard to the purposes of the Act (not have to state reason)
  - The board's response (standard form)
    - If reject request, must state reason.
  - The requester's response (standard form); and
  - Access, together with an accounting for any charges.

# Access Clarification

- Records:
  - related to persons in their role as directors can be reviewed (even though they relate to an owner or unit)
  - email addresses of owners will not be eligible for access
  - opinions from lawyers or paralegals with respect to specific units, owners, or purchasers are exempt from access
  - ballots and proxies that identify specific units would be exempt, unless a by-law provides otherwise

# Charges for Access to Records

- Core documents vs. non-core. Core documents are the condo docs, recent financial statements, most recent auditor's report, recent minutes of meetings of owners or the board, etc...
- Owners will be entitled to core records at no cost for copies provided in electronic format, or paper copies if they requested electronic format and were provided paper. If they received paper and did not request electronic, a maximum of 20 cents per page can be charged for copying/printing costs of core records; no labour charges can be charged for core records.



# Charges for Access to Records

- Labour and copying charges must be “reasonable”, and only reimburse the corporation for actual costs incurred.
- For printing or photocopying, the maximum charge is 20 cents per page.
- If the estimated cost is lower than the actual cost, the condo corporation is entitled to payment up to a maximum of 10% above the estimated cost.
- If the estimated cost is higher than the actual cost, the corporation must reimburse the requester.



# Fine for Non-Compliance

- Possible fine of up to \$5,000 for non-compliance with access request (if very unreasonable conduct) and payable to the person requesting the access.



# CONDOMINIUM AUTHORITY of ONTARIO



(CAO)

# Functions

- Online, fast, accessible and lower cost dispute resolution, primarily between corporations and unit owners
  - Online through the Condominium Authority Tribunal (CAT)
- Resource centre for education of unit owners, purchasers and others, including self-help tools
- Mandatory Education for directors
  - 3 hour course free, no exam, online, in modules
  - Open to public to take, but no certificate
- Registry of all condominium corporations in Ontario
  - Annual return to be filed plus if changes
- Publish a condominium guide for prospective buyers

# CAO Mandate

- CAO was officially “Designated” and went live on September 1, 2017, providing new services and protection for condo owners



# Guided Pathways to Solve Common Issues

- CAO provides free online resources to assist individuals to identify and help resolve common issues before escalating into disputes
- Guided pathways offer online self-help tools, templates and how-to guides on a number of topics
- 10 topics/issues to start including pets, neighbours, records, short term rentals, issues with managers, odours, etc.

# Funding

- Fee/Assessment
  - Public engagement – 2,400 responses
  - Calculated as equivalent to \$1.00 per month per voting unit (e.g. not parking units or lockers)
  - Payable through corporation – part of operating budget and treated as common expense
  - Letters going out now – to request your corporation file/register with the CAO
  - Invoices to go out later this year for period September 1, 2017 – March 31, 2018



# DISPUTE RESOLUTION



# Tribunal

- Resolve disputes through **online**, accessible, expeditious, and fair processes
- Accessible, lower cost, and easy to use ODR with convenient access and self-help tools
- Final & Binding decisions
- Existing mediation, arbitration and court mechanisms still apply for disputes outside tribunal's jurisdiction.
- Appeals to Divisional Court on questions of law

# Tribunal (CAT)

- Government regulations will specify which disputes can be filed for resolution
  - **Initially, only Sec. 55 - records and access**
  - Possible disputes that may be prescribed in future:
    - Procurement processes
    - Procedures for requisitioning meeting of owners
    - Proxies
- Jurisdiction not include liens, amalgamation, termination, and title to real property

# CAT

## Three Stages of Dispute Resolution Process

1. User discussion (Negotiations)
  2. Assisted Resolution (Mediation)
  3. Tribunal Decision (Adjudication)
- User/Complainant fee for each stage
  - No fee for Guided Pathway (pre-CAT)

# Orders

- Order a party to act or refrain from action (injunction)
- Damages up to \$25,000 or as prescribed
- Costs to another party or to the Tribunal
  - Can be added to, or set off from, common expenses
- Anything else CAT considers fair in the circumstances
- Penalty max. \$5,000 against corporation for failure to allow examination of records

# CAO To Grow

- To grow organically
  - Flexibility to be responsive to user feedback and to make improvements
  - Tribunal to start November 1, 2017
- Manage expectations of users / public
  - More importantly – what it will not be doing



# Licensing Of Managers



# Who Needs a License

- Any one managing a condominium will require a license under the CMSA
- Requirement to start November 1, 2017



What is Managing a Condominium?

# Who Needs a License

- Meaning of condo management services (from CMSA):
  1. Collecting or holding contributions to the common expenses or other amounts levied by, or payable to, the corporation.
  2. Exercising delegated powers and duties of the corporation or its board of directors, including,
    - i. making payments to third parties on behalf of the corporation,
    - ii. Negotiating or entering into contracts on behalf of the corporation, or
    - iii. Supervising employees or contractors hired or engaged by the corporation,

but does not include an activity excluded by the regulations



# Who Needs a License

- Any one managing a condominium will require a license under the CMSA:
  - Exemptions: A lawyer, architect, accountant, engineer, security guard, director or officer of a condo (unless they receive compensation), administrator or employee of a condominium management company who receives and passes funds to a licensed condo manager

# Types of Licenses

- Limited License
- General License
- Transitional General License (90 days unless an extension is requested)
- Condominium Management Providers

# Types of Licenses

## Limited License

1. The applicant must be at least 18 years of age.
2. The application must apply online and pay the prescribed fee.
3. Provide management services only if supervised by a supervising licensee
4. Less than 2 years experience

## Restrictions:

- Not enter into contracts, make expenditures, deliver notices required by the Condominium Act unless authorized by the supervising licensee.
- Not sign a status certificate
- Not make expenditures from the reserve fund or authorize the investment of reserve fund monies.



# Types of Licenses

## General License

1. The applicant must have a Limited License;
2. Have Successfully completed the four ACMO RCM courses;
3. Have at least two years management experience; or
4. Have a transitional general license

Can do everything



# QUESTIONS?

Armand Conant

[aconant@shibleyrighton.com](mailto:aconant@shibleyrighton.com)

