# Legislative Brief

*Recommendations for Changes to the Draft Regulations of the Protecting Condominium Owners of Ontario Act*

Submitted March 30, 2017

**Submitted By the Legislative Committee of:**

Canadian Condominium Institute
Ontario Chapters

# Key Issues as Noted by the CCI Legislative Committee Relating to the Draft Regulations for Changes to Ontario Regulation 48/01

1) The Committee feels that it is unclear whether the deductible by-laws are going to be enforceable or not. Said by-laws need to be clear. The committee would also like to confirm whether insurance deductible by-laws will be grandfathered in.
2) With regard to records (section 13.1(1) and (2) of the Ontario Regulation 48/01), presenting the information contained in these sections in a chart format would be a more user-friendly format as the current format is fraught with cross-references (see e.g. comment #42 of our submissions).
3) The definitions of legal action, actual litigation, and contemplated litigation are convoluted. The language should be simplified and the definition of legal action should be broadened to include other proceedings and should be applied consistently throughout the Regulation (i.e. applications).
4) The penalty for non-compliance with s.55 of the *Condominium Act* should be payable to the Condominium Authority Tribunal, not directly to the owner (see e.g. comment #57). If this is not possible, then the Committee suggests that the Regulations provide that the Tribunal have authority to levy what shall be paid to an owner or mortgagee and what shall be paid to the COA. We feel that this would be an acceptable compromise.
5) The committee found the reference to proportion of units in section 2(1) of the Regulation to be quite difficult to understand. We suggest that the language be simplified and that said language apply to all parts of the *Condominium Act* or Regulations (see e.g. comment #3).
6) Where the *Condominium Act* or Regulations indicate that the address for service of an owner is to be accessible to a requisitionist in the event the board does not call a meeting, such accessibility should be clear.
7) With regard to the general language of the Regulations, in sections where there is a significant deviation from the current version of the *Condominium Act*, the Regulations should be very clear to help managers and directors avoid going down a costly path by relying on current experience.

8) Improve general readability i.e. consolidate, reduce cross-referencing, use charts, fewer sub-clauses/subparagraphs where possible etc.
9) A reason/purpose should be required with regard to records requests.
10) Disclosures by director candidates should be in writing.
11) The committee feels that prescribed forms where possible would save time and promote consistency.

**CCI Legislative Committee Submissions**
**re: Draft Ontario Regulation to be Made Under the *Condominium Act, 1998***
**Amending O. Reg. 48/01**

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| N/A | General Comments | | 1. Insert a Table of Contents to aid in navigation of Regulations.<br>2. Readability could be improved by consolidating repetitive provisions where possible and introducing defined terms rather than using section references. As an example, it is far easier for readers to understand the phrase 'Record of Addresses for Service' than "The records that the corporation is required to maintain under subsection 46.1 (3)".<br>3. PIC, ICU, NOIC and candidate's disclosure should each be in a prescribed form to aid corporations in completing them and to ensure uniformity and ease of use for owners.<br>4. The record to be created by section 6.1(1)(1) of this Regulation (noting date of sale of first unit) should be included as part of the records that must be provided on turnover to the new Board.<br>5. Where a prescribed form may be used or implemented, it would be beneficial to corporations to have the same available in the regulations.<br>6. It would be helpful to understand where the consequences of non-compliance with the regulation information requirements will be delineated. |

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| 1 | 1(1) – definition of “core record” sub (1) | The use of the words "A copy of" in reference to the declaration, by-laws and rules could suggest that other documents which are core records must be originals. | Delete words "a copy of". |
| 2 | 1(1) – definition of “core record” sub (7) | It is not clear whether the record of addresses for service includes an owner's email address and whether an owners is entitled to be provided with the email address for other owners. | Clarify the Regulation to provide that the record of addresses for service does not include owners' email addresses. |
| 3 | 1(4)(2) – definition of "actual litigation" | What should be considered a 'legal action' is uncertain. Technically a legal action refers only to a proceeding started by a statement of claim. Applications, arbitrations and mediation are not started by statements of claim and therefore could arguably be excluded from the term 'legal action'. We understand that it is the government's intent that any type of legal proceeding be captured by this phrase. | Either:<br>1. Define 'legal action' to be a legal proceeding including an action, application, arbitration, mediation, tribunal hearing and a Tarion warranty claim following the conciliation process; or<br>2. Include such language in the definition of 'actual litigation'. |
| 3 | 1(4)(2) definition of “actual or contemplated litigation” | This definition seems self-explanatory and unnecessary. | Delete this definition. |

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| 3 | 2(1), adding section 1.1 to Regulation 48/01 | The Committee found this section to be very difficult to understand.<br><br>This appears to impose a new meaning to thirty other sections of the Act and the regulations. It requires that whenever there is a reference to a portion of the units in any of those sections – which might mean a majority, or any other number of units – the meaning is determined in accordance with this section of the Regulation. This will be difficult for many readers to follow. | To the extent possible, state this section in plain language and have it apply to all parts of the Act or Regulations which address voting or the consent of owners. This section could state in simpler terms that for any section which refers to a portion of the units in the context of voting or the consent of owners:<br><br>1. Where the issue that the section deals with applies to owners of what are currently called "owner-occupied" units, but under Bill 106 will be known as "non-leased voting" units, then the reference to a portion of the units applies only to those units.<br><br>2. Where the condominium has the types of unit that section 49(3) of the Act states cannot vote unless they are the only types of unit in the condominium (that is, parking units, storage units, or units used to house services, facilities or mechanical installations) in addition to other types of units (e.g., residential or commercial units), the reference to a portion of the units applies only to those other types of unit.<br><br>3. Where neither of those restrictions apply, then any reference to a portion of the units actually means "all of the units". |

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| 7 | 11.1 | We are concerned by the prospect of corporations being liable for inadvertent misstatements or inaccuracies in the PIC. | Add a section to the Regulations addressing the effect of the PIC, clarifying that the PIC, unlike a status certificate, does not bind the corporation with respect to the information that it contains, and that owners, purchasers and mortgagees of a unit are not entitled to rely on the PIC. |
| 7 | 11.1(1)(d) | There is no requirement to identify a director who has been convicted of a criminal offense related to money/finances (e.g., theft over $5,000, fraud, etc.), nor is there a requirement to identify a director who was a party to a legal action that resulted in a judgment against the director themselves.<br><br>With respect to 11.1(1)(d)(iii), the Committee was unsure why a period of 60 days was selected, given that a lien must be registered within 90 days. | 1. Amend section 11(1)(d)(ii) to read "was a party to any legal action to which the corporation is a party that resulted in a judgement that is against the corporation or the director that is outstanding"<br>2. Amend section 11.1(1)(d)(iii) to change "60 days" to "90 days"<br>3. Add section 11(1)(d)(iv) to require disclosure of a conviction for a criminal offense involving money or finances, including theft over $5,000 and fraud. |
| 8 and 9 | 11.1(1)(f)<br>11.1(2)<br>11.1(2)(1) | It is not only judgments which may have significant financial implications for a corporation. Orders and settlements may also create significant financial implications (e.g., an order to complete certain work). | Amend "judgment" to read "judgment, settlement or order". |

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| 8 | 11.1(1)(g)(i) | The words in s. 11.1(1)(g)(i) “including the portion of a loss that would be excluded from coverage” are too broad and could require the corporation to explain the entire policy exclusions which would be impractical in this document.<br><br>It is unclear from the drafting whether 11.1(1)(g) is meant to be applied generally or applies only if there has been an insurable event. We believe that the intent is that it is to be applied generally (i.e., every PIC will give details of the corporation's current insurance deductibles). | Amend section 11.1(1)(g)(i) to read<br><br>"if an insurance policy obtained and maintained by the corporation in accordance with the Act contains a deductible clause that limits the amount payable by the insurer, a statement that:<br><br>(i) states the deductibles as per the corporation’s certificate of insurance; and<br><br>(ii) clearly identifies that unit owners may be liable for amounts up to the insurance deductibles in subclause (i) above and these amounts may be added to the common expenses payable for an owner’s unit under section 105 of the Act or as a result of a by-law passed under clause 56 (1) (i) of the Act before the repeal of that clause came into force." |
| 8 | 11.1(1)(h) | This subsection requires disclosure only of insurance which the corporation is required to maintain and has failed to do so, but doesn't require the corporation to disclose the insurance that it actually maintains. | Amend subsection (h) to provide that the corporation must list any insurance that it is required to have pursuant to existing subclauses (i) or (ii), and to disclose if it has or has not obtained or maintained such insurance at any time during the current fiscal year, along with an explanation for why it has failed to obtain or maintain such insurance. |
| 9 | 11.1(1)(m)(iii) | It will be difficult or impossible for many corporations to estimate the amount of the anticipated expenditures from the reserve fund. Projects may only be in a preliminary stage of planning when the PIC is to be sent out. | Amend subclause (iii) to require disclosure of the reserve fund projects which are anticipated for the remainder of the current fiscal year, i.e., a disclosure of the type of reserve fund projects which are anticipated, rather than the expenditures expected for those projects. |

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| 9 | 11.1(1) (n) | The phrase "status of any outstanding claims" is vague. It is unclear whether this means only claims made after conciliation, default by the Declarant, etc., or whether it would deem the deficiencies noted in the performance audit as a claim under Tarion. | Amend to read " a statement of the status of any outstanding claims following the conciliation process that have been made by the corporation for payment out of the guarantee fund under section 14 of the *Ontario New Home Warranties Plan Act*;". |
| 9 | 11.1(1)(o) | We agree that corporation should be required to tell the owners if (a) it hasn't paid the CAO fees or (b) it has failed to file the annual return.<br>However, the government will need to ensure that the CAO is given appropriate enforcement powers to collect its annual fee (the $1.00 per unit per month). | The CAO, in its enabling legislation or regulations should be granted the ability to register a lien or other security interest against a corporation which has failed to pay its fees, and corporations should be required to note this in their status certificates. |
| 9-10 | 11.1(3) | It will be difficult or impossible in many cases for a corporation to know the financial implications of litigation completely as decisions and cost awards can be made separately. A corporation may require a legal opinion on this subject each time it issues a PIC. | 1. Limit the application of this subsection to material financial implications and material judgments, where any amount in excess of the lesser of 3% of the corporation's annual budget or $30,000 is deemed to be material.<br>2. Amend the regulation or issue guidance to corporations that their obligation to disclose financial implications is limited to a description of the amounts claimed, and the corporation is not required to estimate potential damages or costs. |
| 10 | 11.1(4)(1) | | Amend 11.1(4)(1) from 30 days to 60 days to align the sending of the PIC with the usual timelines for the sending of the AGM package. |

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| 11 | 11.2(2)(a)(ii) and (iii) | It is odd that the address of the directors and officers would be provided before their names. | Reverse the ordering of (ii) and (iii). |
| 11 | 11.2(2)(b) | This portion of the ICU should address any change in the corporation's insurance, and not only insurance that has been terminated. For example, the corporation may have obtained insurance which it was required to have but failed to obtain or maintain previously. | Amend to provide that the corporation must give a statement if there has been a change in the insurance described by 11.1(1)(h)(i) and (ii), and if so to include an updated insurance certificate. |
| 11-12 | 11.2(2)(c) | It is unclear whether the ICU supplant the other preliminary notice of a meeting to elect directors to achieve quorum. We are unsure whether the procedure to be followed is that a corporation sends an ICU and a preliminary notice of meeting, then sends the official notice of meeting 15 days later, or it merely sends the ICU and then 15 days later sends the official notice.<br><br>This section also does not provide a deadline for calling a meeting of owners to fill the vacancies.<br><br>With respect to 11.2(2)(c)(ii) Five days for a candidate to give notice of their intention to run is very short. Potential candidates could be away on vacation, or otherwise unavailable. | 1. Clarify whether a preliminary notice of meeting must be sent where the ICU has been sent and notified owners that quorum has been lost.<br>2. In 11.2(2)(c)(ii), Change five days to ten days.<br>3. Add 11.2(2)(c)(iii) to provide that a Corporation has 35 days from the date a vacancy arises to hold the meeting. |

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| 12 | 11.2(3) | The time periods for sending out an ICU are extremely short and corporations may struggle to send ICUs within the prescribed periods.<br><br>Additionally, the short time periods could potentially lead to several ICUs being delivered within the same month.<br><br>Owners should be able to read the most current ICU in conjunction with the PIC to obtain an accurate picture of the current state of the corporation. They should not need to refer to prior ICUs. | 1. Prescribe that all ICUs must be sent within 30 days of the applicable change.<br><br>2. Prescribe that each ICU should cumulatively note the changes since the last PIC. This would 'reset' the ICU each time a new PIC is sent.<br><br>For example, the first ICU sent after a PIC would note a certain change. The second ICU would provide that since the date of the PIC two changes have occurred, noting the newest change and the previous change in the first ICU. |
| 15 | 11.6(1) | Directors are not currently required to confirm that they meet any applicable qualifications that the corporation's by-laws may require. | Add to 11.6(1) a requirement that directors affirm that they comply with any director qualifications in their corporation's by-laws and in the Act. |
| 15 | 11.6(1)(1) | There is no requirement for a director to disclose contemplated litigation. Owners should be informed if the candidate has threatened litigation against the corporation. | After "party to any legal action" add "or contemplated litigation". |
| 15 | 11.6(1)(2) | Non-familial relationships may also be relevant if that person is a party to a legal action involving the corporation, particularly if someone resides with the owner or in the owner's unit. | After "or parent of the spouse of the person," add "or a tenant or resident of the person's unit". |

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| 15 | 11.6(1)(3) | There is no requirement for a director to disclose that they have been convicted of a criminal offense related to money or finances (e.g., theft over $5,000, fraud, etc.). This is a very significant factor which owners should be aware of. | Add a requirement to disclose conviction for a criminal offense involving money or finances, including theft over $5,000 and fraud. |
| 15 | 11.6(1)(5) | The Committee members have never seen this situation in practice and believe that it is exceptionally rare if it exists at all. | Delete this subsection. |
| 15 | 11.6(1)(6) | It should be clarified that this section also applies to those who are employees or otherwise in business with the declarant. | After "in a capacity other than as a purchaser, mortgagee, owner or occupier of a unit," add "or is in an employment, business or agency relationship with the declarant or declarant affiliate". |
| 15 | 11.6(1)(7) | The Committee was unsure why a period of 60 days was selected, given that a lien must be registered within 90 days. | Change "60 days" to "90 days". |
| 16 | 11.6(7) | There is a typo in this section. | Change "provides"  to "provide". |

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| 16 and 17 | 11.6(8)<br>11.6(10) | Providing disclosure orally at a meeting may leave a corporation without an accurate written record of the disclosures (or lack thereof). This record will be necessary if a director is to be disqualified for failing to make a required disclosure.<br>Additionally, it is not clear to whom the statement must be made if it is made orally- the Chair or recording secretary of the meeting- or to all present at the meeting? If it is provided in writing, what mechanism is there to ensure that all owners who are present at the meeting are able to access it? The owners would have had advanced copies of the information provided by candidates who gave their notice in advance of the meeting, but presumably no opportunity to review the information provided by new candidates. | Provide that all disclosure must be in writing, even if at a meeting. The meeting can be delayed for a few minutes if necessary for the disclosure form to be completed, or candidates can be given the disclosure form at registration and asked to complete it and submit it before the meeting.<br>The Chair of a meeting should be obligated to announce to the meeting if there are any disclosures made by any candidates, or to confirm that there have been no disclosures made. |
| 17 | 11.7 | | Though it may not be necessary to express this in the regulation, it should be clear, or left to the discretion of the CAO that the course should be free, available online and require no tests or exam. It should also be available in modules. |

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| 18 | 11.7(4) | 6 months may be too long to complete the training. That is 1/6$^{th}$ of a typical 3 year term, or a greater proportion of a shorter term.<br><br>For example, if a director is elected to a 1 year term on turnover or to fill a vacancy, their term could be half over before they complete the training, and in the interim the director could have made many important decisions.<br><br>A shorter time period to complete the training should not be an obstacle since we now know the course is free, online, in modules and requires no test. | Revise "six months" to "60 days". |
| 17-18 | 11.7(4)(b) | Seven years is too long given that most directors' terms are three years. There should be a refresher course required earlier. | Revise "seven years" to "four years". |
| 18 | 11.8(4) | There is no requirement to have the board approve the costs nor a limit on the amount of costs the corporation could be responsible for. There should be few costs given that the course is free and online. | Revise "all costs" to “all reasonable costs”. |
| 19 | 11.9(2) | Declarant controlled boards should not be exempted from the mandatory training requirements given that they are making important decisions that can significantly impact corporation for the duration of its existence. | Delete subsection 11.9(2) and require directors on declarant controlled boards to be subject to educational requirements. |

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| 26 | 11.11(3)(b)<br>11.11(4) | It may not be clear to owners from the Act and Regulations that the record of addresses for service must be provided to owners who request it.<br>Presently you have to refer to sections 55(4), 55(5)(c), and 46.1 of the Act to determine this. | Revise "which the owner obtains a copy" to “which the owner is entitled to obtain a copy". |
| 26 | 11.11(4) | We are concerned that owners calling meetings may not be able to understand the process to be followed pursuant to these sections. Additionally, a time period of 15 days may be too short a period to mobilize owners, particularly for larger corporations, though we understand that the intention is to have the meeting called as quickly as possible. | Revise "15 days" to "30 days" to mirror the 30-day period mentioned at s.34 (4) of the Act. |
| 27 | 12.1 (1) (c) and 12.1(2) | Directors and managers may have difficulty understanding how oral submissions can constitute materials to be presented for a meeting.<br>As discussed above with respect to subsections 11.6(8) and 11.6(10), we believe that all disclosure to be provided by directors should be given in writing. | Provide that all disclosure must be in writing, even if at a meeting. The meeting can be delayed for a few minutes if necessary for the disclosure form to be completed, or candidates can be given the disclosure form at registration and asked to complete it and submit it before the meeting.<br>The Chair of a meeting should be obligated to announce to the meeting if there are any disclosures made by any candidates, or to confirm that there have been no disclosures made. |

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| 29 | 12.2(2)(h) | We are concerned that owners will suggest a new auditor for improper reasons or without good reason. The Committee is further concerned that owners may propose a new auditor without having taken further steps to obtain a proposal or confirm that the auditor would accept such an engagement. | Amend subsection (h) to read:<br><br>"if the nature of the business to be presented at the meeting includes the removal or appointment of an auditor, a statement that each owner who intends to propose a further candidate for the appointment of an auditor at the meeting, may notify the board in writing, by a date that is specified in the notice, of the name and address of the person the owner intends to so propose and the reasons for the replacement of the incumbent auditor;" |
| 29 | 12.3 | Subsection 12.2(3) suggests that a prescribed form will be used for the preliminary notice. The Committee supports the use of prescribed forms where possible as this will assist managers and directors in ensuring that the Act and Regulations are complied with. | Provide prescribed forms wherever reasonable. |
| 31 and 32 | 12.3(3) and (6) | The committee finds the reference to “first owner” confusing. It is our understanding that what is meant by “first owner” is “declarant” given that the declarant becomes the first owner of all of the units upon registration of the Declaration. | Replace “first owner of each unit in a corporation” and "first owner of each common interest in a common elements condominium corporation" with “declarant”. |
| 35 | 12.6 | There is a typo in this section. | Change “an unit” to “a unit”. |

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| 37 | 12.8(1) | This section prescribes certain material that must be included in a notice to owners regarding a meeting of owners. The regulation as worded makes it mandatory to include the information if it is submitted by at least 15% of owners and is in the prescribed form.<br><br>In some instances, however, the material which the requisitionists submit for inclusion may be defamatory, abusive, discriminatory, contrary to the *Human Rights Code* or otherwise objectionable. The Regulation as drafted would not permit the Board to refuse to provide such material. | We recommend amending this section to grant corporations the right to refuse to include submissions made by owners if they are defamatory, abusive, discriminatory, contrary to the *Human Rights Code* or otherwise objectionable. |

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| 38 | 12.8(1)(a)(iv) | The Act and the Regulations do not expressly provide that certain business *is not* within the jurisdiction of the owners.<br><br>As an example, most decisions relating to the corporation are within the sole discretion of the Board. The Act and Regulations, however, do not expressly state that such decisions being made by owners would be contrary to the Act or Regulations. Rather, such prohibition is a necessary consequence of section 27 of the Act.<br><br>It would be simpler to provide that such business to be added must be authorized by the Act or the Regulations. This will help to avoid disputes with owners asking the corporation to identify where in the Act or the Regulations it is stated that the business they propose to add is prohibited. | Revise "is not contrary to the Act or this Regulation" to “is authorized by the Act or this Regulation”. |
| 40, 42 | 13.1(1)(8) and (18) | It should not be necessary to preserve records of expired warranties and guarantees if there is no claim in connection with those warranties and guarantees. | We recommend amending 13.1(1)(8) to only apply to expired warranties and guarantees if there is a claim or potential claim in connection with them. We further recommend that insurance policies should never be destroyed in the event that a claim is made years after expiry of same. |
| 42 | 13.1(2)(2) | This section requires the Corporation to keep certain records relating to director disclosure, training completion, employees of the Corporation and warranties indefinitely. | Amend subsection (2) to require that the corporation retain said records for 15 years, which is the ultimate limitation period pursuant to the *Limitations Act, 2002*. |

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| 42 | 13.1(1) and (2) | The Committee finds these sections difficult to follow. To interpret this sections requires the reader to flip back and forth between subsections (1) and (2). These sections could be presented in a more user-friendly format. | Present subsections (1) and (2) as a chart. |
| 43, 44, 45, 46, 47 | 13.1(2)(4)(vi)<br>13.1(2)(16)(vi)<br>13.1(2)(18)(vi)<br>13.1(3)(b)<br>13.1(4)(2) | A request for records is deemed abandoned after 6 months if no litigation is commenced. We feel this is too long. | We suggest a shorter time period, i.e. 90 days. |
| 43 | 13.1(2)(5) | Status certificates are kept for 7 years. For any claims regarding the property, the limitation period is 10 years. Getting rid of status certificates after 7 years may prevent the condominium from defending a claim or an owner from bringing one. | Change "seven years" to "ten years" |
| 43 | 13.1(2)8. | If after seven years the interests or modifications contemplated in paragraphs 12 and 13 of subsection 1 continue to affect the land, the corporation should continue to keep the record. This is particularly important with respect to unregistered renovation agreements which may continue to be relevant (i.e., the renovation and the obligations associated with it continue to exist) for longer than seven years. . | Amend subsection 8 to require that the corporation retain keep the records in paragraph 12 or 13 of subsection (1) the longer of seven years or such time as the records are no longer relevant. |

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| 43 | 13.1(2)(9) | Where a proceeding is initiated immediately after a loss is sustained, and such proceeding ends 10 years later, a litigant can still obtain evidence from the condominium corporation for another 5 years with respect to newly discovered issues relating to the loss, where such newly discovered issues are not barred by res judicata or issue estoppel. | This subsection could require corporations to keep litigation records past the ultimate 15 year limitation period . |
| 44 | 13.1(2)(4), 13.1(2)(16) and 13.1(2)(18) | Subclauses (i) through (vi) are the same in each of 13.1(2)(4), 13.1(2)(16) and 13.1(2)(18) . These sections could be consolidated to improve readability | Amend subsection 13.1(2)(4) from "for a record described in paragraph 3" to "for a record described in paragraph 3, 15 or 17" and delete subsections 13.1(2)(16) and 13.1(2)(18). |

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| 45 | 13.1(2)19 | This section appears to conflict with 13.1(2)2 of the Regulation which requires that a record described in paragraph 8 of subsection 55(1) of the Act be preserved indefinitely. Subsection 13.1(2)(19), however, provides that such agreements must only be kept for seven years.<br><br>There were differing opinions on the interpretation of the interaction of 13.1(2)(2) of the draft regulations, paragraph 8 of subsection 55(1) of the Act and 13.1(1)(16) of the draft regulations.<br><br>One interpretation is that paragraph 8 of subsection 55(1) includes "all agreements entered into by or on behalf of the corporation." This appears to include expired agreements since such agreements were still "entered into." Based on 13.1(2)(2), a corporation would be required to retain all agreements (including expired agreements) at all times, which would contradict 13.1(1)(16).<br><br>Another interpretation is that 13.1(2)(2) refers to a record in paragraph 8 of subsection 55(1), whereas 13.1(1)(16) applies only to those agreements which have expired and therefore there may be a contradiction | Clarification is required as it is not clear if there is a contradiction.<br><br>Depending on the interpretation, one recommendation is that reference to paragraph 8 of subsection 55(1) of the Act be removed from 13.1(2)2 of this Regulation. If is is clarified that there is no contradiction then no change is required. |

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| 48 | 13.3(2) | It is not necessary to provide a reason for the purpose of a records request. This is potentially open to abuse (e.g., commercial use of unit owner info). | The committee strongly recommends that a reason should be given as to why a record should be viewed. The jurisprudence regarding section 55 has recognized that owners are not entitled to go on 'fishing expeditions' looking for evidence that the Board has acted improperly. Expressly stating that owners are not required to provide a reason for a records request may make such fishing expeditions possible, and remove the corporation's ability to refuse requests for such reason. |
| 49 | 13.3(6) | Based on ss. 32(1) of the Act, a board shall not transact any business of the corporation except at a duly called meeting or directors. Accordingly, the 15 day deadline will be difficult to meet. | We recommend that “within 15 days” be replaced with “within the earlier of 15 days after the next board meeting or 30 days from the date of the request”. |
| 49, 50 | 13.3(7) | 1. Boards and Managers may have difficulty complying with the requirements of this section and presenting their determinations to owners in a clear format.<br>2. The committee is concerned that some requests may be vague or broad (e.g., a request for all records related to a renovation project). It is unclear whether there will be an opportunity for the corporation to insist that the owner provide a narrower or better defined request. | 1. We recommend that this section be amended to allow for the board’s response regarding records requested, to be set out in a chart format that is to be prescribed.<br>2. Amend the Regulation to allow the corporation to ask for clarification if the scope of the request is unclear. |

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| 54 | 13.8(1)(a) | Along with each copy of a record made available for examination, the board must provide a separate written document that identifies the record being delivered. Our concern is that each record requested will require a separate written document, which is not practical in situations where requests for numerous documents are made. | There should be one document responding to the entire request, rather than a document for each record being provided. Amend the section to allow one form to be provided in response to all of the requests of an owner. A prescribed form would be helpful to corporations. |
| 54 | 13.8(1)(b) | The language should be consistent with 13.3(7) 5. | Replace “on which provision of section 55 of the Act…” to “on which provision, if any, of section 55 of the Act…” |
| 55 | 13.9(1) | The Committee is unclear when this subsection would apply. We do not understand the circumstances in which a requester would agree to sign this waiver. Is this intended to waive technical breaches of the Act or the Regulations by a corporation where they deliver the requested records but do not follow the prescribed steps or timing? | A unit owner will likely not sign such a waiver. The committee is unsure as to the practicality of this provision and recommend that it be clarified when this might apply |
| 56 | 13.10(1)(c) and 13.10(2)(b) | Disputes with regard to records requests are within the jurisdiction of the Small Claims Court branch of the Superior Court of Justice. | We recommend that the references to "Superior Court of Justice" be changed to "Small Claims Court". |

| Page | Section | Comments | Recommendations |
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| 56 | 13.11(2)(2) | Legal opinions are a prescribed record which does not need to be provided. Likewise, reports by other professionals (namely, accountants and engineers) prepared in contemplation of potential or actual litigation should also not need to be provided, | We recommend expanding the scope of reports to include any reports prepared by professionals obtained in contemplation of potential or actual litigation. |
| 57 | 13.11(5) | The maximum penalty for non-compliance with s. 55 has been set at $5,000, and such fee is to be paid to the owner on receiving a written request for payment. The Committee is concerned that such a high penalty may encourage litigiousness by owners with respect to records requests. | We recommend that s.55(8) the Act be amended to require that the $5,000 penalty be paid into the Condominium Authority Tribunal, rather than directly to the owner. |
| 62 | 19(2)(0.1)(a), (b), and (g) | Section 19 (0.1) contains inconsistent language in that the reference to 'of this regulation' is made in all but subsections (a), (b) and (g). | For consistency purposes, add "of this regulation" to subsections (a), (b) and (g), e.g. "in section 1 *of this Regulation*" . |
| 67 | 66 | There is a typo in this section. | Revise "on or after that" to "on or after the day that" |