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The Condo Act

Amended Condo Act: Two Years Later

Like it or Not, Here are Some
Helpful Tips for Condo
Corporations to Live By



It is now almost 2 years since the first wave of changes under the amended Condominium Act, 1998 (the “Act”) came into force on November 1, 2017. With the changes, the government promised a revamped condominium regime with increased communication and transparency to owners. Have the changes delivered? The jury is still out. While we continue to acclimate ourselves to the new legislative requirements, here are some helpful tips for condo corporations to live by.

Director Disclosures

Under the Act, directors must submit certain disclosure statements, failing which they are disqualified from the board. These disclosures provide increased transparency to owners. The disclosures address topics such as whether the individual is an owner, occupant or in arrears of common expenses over 60 days, among other prescribed items.

There is no statutorily prescribed form of director disclosure, so boards should ask their corporation’s lawyer for a precedent form. The new preliminary notice that corporations must send to owners before an owners’ meeting notifies candidate directors of the opportunity to submit their written disclosures for inclusion in the subsequent notice of meeting package. If a candidate director fails to provide their disclosures by the deadline, including where a candidate is nominated or nominates himself/herself from the meeting floor, the candidate may provide his/her disclosures orally at the meeting. However, since meetings run long as is, and to avoid the risk of the corporation’s minute taker missing any oral disclosures, it is wise to bring extra blank disclosure forms to the meeting to provide to such candidates to fill in while other candidates give their speeches. Once completed, the chair should read the disclosures aloud for the owners’ benefit.



Record Requests

Record requests have historically been an area rife with disputes for condos. Under the Act, there is a new meticulous process for addressing requests. The requester submits the request in the prescribed form, the board responds to the requester within the prescribed time using the prescribed form (which includes a statement of the fee), the requester responds to the board in the prescribed form (paying the fee) and the corporation (finally) provides access to the records (along with an accounting of the actual costs of preparing the records). The foregoing process is an overly complicated way of addressing a potentially simple re-

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quest. Since the formal steps are largely to the benefit of requesters, as they are the prelude to a requester bringing a record dispute before the new Condo Authority Tribunal, corporations would be wise to have requesters dispense with the formalities if the record request can be easily accommodated at no cost (such as by email).



Proxies

Proxies are a useful tool for allowing owners to count towards quorum and have a say in the affairs of the corporation while not being physically present at a meeting. However, filling out the new prescribed form of proxy has proven to be a complicated endeavour for some. Notably, the various proxyholder representation options have led to confusion. Although counterintuitive (since proxies are meant to be straightforward), corporations would be wise to provide separate instructions in their notice packages explaining how to complete the proxy form. In reviewing proxies, meeting chairs should exercise discretion when interpreting proxies containing technical deficiencies. Where the owner's intent can be reasonably inferred, the chair should not interfere with the democratic process by invalidating the proxy needlessly.

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Deadlines

Under the Act, there are many new deadlines for which corporations must keep track. For example, the new preliminary notice must be sent at least 20 days before the notice of meeting, which notice of meeting must be sent at least 15 days before the meeting. The preliminary notice itself specifies deadlines for owner submissions (such as the disclosure statements). As another example, the new periodic information certificate must be sent within 60 days following the end of the first and third quarters of the corporation's fiscal

year. To keep track of deadlines, corporations should use a date calculator spreadsheet. Ask your corporation's lawyer for a precedent.



Agreements to Communicate Electronically

Corporations that have not already done so should ask owners to complete and submit to the corporation the government's form of Agreement to Receive Notices Electronically, which, as the name indicates, permits the corporation to deliver notices (e.g. information certificates) to owners electronically (e.g. by email), thereby saving the corporation time, effort and money compared to paper notices. For the corporation to enter into the agreement, the board must pass a resolution setting out the methods of electronic communications it will use for serving notice.

Conclusions

Sometimes the practicalities of condo operations and management fly in the face of technical legislative requirements. Corporations should act judiciously to ensure they are meeting the requirements in the most effective and efficient way possible. **CV**





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