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Legislative Changes

Life Under the Amended Condo Act

Tips to Help Owners Make the Most Out of Some of the Legislative Changes



As consumer protection legislation, the Condominium Act, 1998 (the “Act”) is geared towards protecting condominium owners. The recently enacted Protecting Condominium Owner’s Act, 2015, which amends the Act, aims to further this objective through increased disclosure, notice and communication requirements, to name a few examples. While it remains to be seen whether the amendments to the Act, the first batch of which came into effect on November 1, 2017, will benefit owners as the government intended, we should remain optimistic. The following are tips to help owners make the most out of some of the legislative changes.

Owner Submissions

Towards the end of the typical owners’ meeting, such as an AGM, owners are given the opportunity to discuss “Other Business” not necessarily reflected in the meeting agenda. Owners often use this time for Q&A and to vent. However, no substantive vote may be conducted on such Other Business (only procedural votes are permitted). Under the amended Act, owners

may make formal “Owner Submissions” prior to the meeting so that the submitted topic(s) can form the subject matter of a substantive vote at the meeting. Owners will be notified of the opportunity to make Owner Submissions via the new Preliminary Notice required by the amended Act. The Preliminary Notice, which the corporation must send to owners at least 20 days before the Notice of Meeting, which is at least 35 days before the meeting, specifies that owners wishing to include material in the upcoming Notice of Meeting must submit the material by the date set out by the corporation in the Preliminary Notice. The earliest possible deadline for Owner Submissions must be at least 15 days after the Preliminary Notice has been sent. The latest possible deadline for Owner Submissions must be at least 1 day before the Notice of Meeting is sent. To constitute a submission that can form the basis of a substantive vote, the Owner Submission must be in the prescribed form (entitled “Submission to Include Material in the Notice of Meeting of Owners”) on the Ministry of Government and Consumer

Services’ website, must include the names and signatures of the owners of at least 15% of the units in the corporation (and such individuals must appear as owners in the record of the corporation), must be made by the stated deadline and must not be contrary to the Act or Ontario Regulation 48/01 (the “Regulation”). If an owner fails to fulfill the foregoing requirements, the Owner Submission may still be discussed at the meeting; however, no substantive vote may be conducted thereon. An owner wishing to make an Owner Submission should verify that the Owner Submission deadline established by the corporation is correct, obtain the support of other owners early to meet the 15% threshold requirement and, if appropriate, seek legal counsel to ensure that the Owner Submission is not contrary to the Act or Regulation.

Electronic Notices

Technologically savvy owners who wish to receive electronic notices from the corporation can sign a prescribed form of agreement (entitled “Agreement to Re-

ceive Notices Electronically”) with the corporation for that purpose. To enter into the agreement, the corporation must have passed a resolution to determine the methods of electronic communication it will use for serving notices on owners or mortgagees. An owner would be wise to obtain a copy of that board resolution to confirm the approved electronic communication methods and should confirm with the board that the corporation’s record reflects the agreed upon form of electronic communication.

Disclosure Obligations

Under the amended Act, candidate directors must make the following required disclosures (the “Disclosures”), failing which such individuals are automatically disqualified from being directors:

1. If the candidate; or the candidate’s spouse, child or parent; or the child or parent of the spouse; or the occupier of the unit owned by the candidate or his/her spouse; or the occupier of a unit which the candidate also occupies is a party to any legal action to which the corporation is a party.
2. If, within the past 10 years, the candi-

date has been convicted of an offence under the Act or its regulations.

3. If the candidate has, directly or indirectly, a material interest in a material contract or transaction to which the corporation, the declarant, or the declarant affiliate is a party, other than in the candidate’s capacity as a purchaser, mortgagee, owner or occupier of a unit.
4. If the candidate is an owner in the corporation and if the contributions to the common expenses payable for the candidate’s unit are in arrears for 60 days or more.
5. If the candidate is not an owner or not an occupier of a unit in the corporation.
6. Any other information required by a by-law of the corporation.

Similar to Owner Submissions, the corporation must provide a deadline in the Preliminary Notice by when candidate directors are to submit their notice of candidacy, which includes the Disclosures. Although candidates who miss this deadline may still declare their candidacy from the floor of the meeting, they will need to make their Disclosures on the spot at the meeting. This is likely to cause delay to what already may be

a lengthier owners’ meeting due to the new requirements under the amended Act. Candidates would be wise to submit their notice of candidacy and Disclosures in advance so owners have sufficient opportunity to assess a candidate’s qualifications. Being proactive in this respect also reflects better on a candidate; declaring one’s candidacy from the floor may be regarded as impetuous. Unfortunately, there is no prescribed form for the Disclosures, so candidates should inquire with the board whether the board or the corporation’s legal counsel can provide a sample form.

Moving Forward

While the amendments to the Act have added a layer of complexity to condo governance, the hope is that once we become accustomed to the changes, the benefits will emerge. Owners who wish to understand how their rights and obligations under the Act have changed should pursue condo education opportunities (owners can even take the online director training course on the Condominium Authority of Ontario’s website), engage with their board and manager and, where appropriate, seek legal counsel. **CV**

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