

January 14th, 2022

The Ministry of Government and Consumer Services
56 Wellesley Street West, 6th Floor
Toronto, ON, M7A 1C1

Re: Community Associations Institute (CAI) Comments on the Proposed Permanent Changes to Enable Digital and Virtual Processes under the Condominium Act, 1998

To Whom It May Concern:

The Community Associations Institute (CAI) submits the following comments in support of the Ontario Ministry's proposed permanent changes under the Condominium Act, 1998.

CAI applauds the Ministry for working quickly to implement permanent changes to the Condominium Act to allow condominium corporations to conduct its meetings safely and efficiently in the interest of condominium owners throughout Ontario and is fully supportive of making virtual and hybrid meetings, virtual voting (e-voting), electronic delivery of notices and storage of records through electronic means. CAI offers these comments in the spirit of cooperation and continued recognition that, above all, condo owners need to have their interests protected and represented. The appropriate protection, through legislative changes, should be put into place that protects the privacy and rights of individual owners.

Our comments are focused primarily on owner accessibility, privacy of the vote and non-interference with a condo owner's right to vote.

ACCESSIBILITY

1. Removing the requirement for owner agreement (consent) to receiving electronic notices: We note that these proposed changes do not include the removal of the requirement for agreements from owners to e-notices in Section 47(c)(i). As we know, as a result of the pandemic, this requirement was removed and for close to two years, has resulted in an overwhelmingly positive response from condo managers, condo directors and unit owners who have saved considerable costs and have been able to hold meetings more efficiently. Owners wishing to get a paper notice are still able to. This would ease the burden that managers have had to bear in trying to obtain owners' consents to e-notices. Recommendation: All notices can be sent by email to unit owners or mortgagees on the records unless a unit owner has specifically requested an alternative method.

2. Advance Voting: The proposed amendment to Section 45(7) is "A person who, through telephonic or electronic means, votes at or attends a meeting of the owners is deemed for the purposes of this Act to be present at the meeting." Recommendation: add the words "during or in advance" after the words "votes at". In many e-voting bylaws, this wording has been used to clarify that advance votes count towards quorum by deeming the advance vote as being "present" and that owners who may not be present virtually but vote during the meeting by telephone or electronically will also

be deemed present. If this wording is not modified, then an added provision can set this out similar to the by-law wording as follows:

“Presence at meeting and quorum

21. An Owner who attends a Virtual Meeting or casts an e-ballot (whether cast in advance of the meeting, or at the meeting) and who is not otherwise present at the meeting of owners shall be deemed to be present and shall be counted towards quorum as if such Owner were present at the meeting.”

PRIVACY AND VOTE DISCLOSURE

1. Secret Ballots: With managers and board members now gaining access to certain service providers’ voting portals, and the lack of regulation around accessing unit owner voting, it is important that the Condominium Act amendments clarify that not any “voting by ballots” as opposed to a “show of hands” be by “secret” ballot. Recommendation: This would merely be a change to the wording in the amendments to include the word “recorded secret ballot” rather than the words “recorded vote”. Even telephone voting converts the vote to a secret electronic ballot vote, so changing the wording will cover all voting other than votes by a show of hands.

2. Election Vote Disclosure: Over the past two years, many board members and managers are gaining access to voting portals that provide voting results prior to the close of the vote to anyone who has been authorized to gain access (usually the manager). This has been used, and could be used in the future, to alter the results of an election. Recommendation: Add a provision in the amendments that prohibits anyone from gaining access to voting results prior to the close of the vote.

OTHER

Requisitions: Where directors are the subject of a requisition to remove directors, there should be the requirement to hold the meeting virtually with e-voting if the requisitionists request this form of meeting. In the past year, we have seen directors who refuse to call a virtual meeting and/or refuse to do e-voting to make the process of their removal difficult.

Proxies: This is a big issue and one that may not be able to be dealt with on this go around. The bottom line is that proxies do not work with a virtual meeting and have caused concern by many condo lawyers, managers, and service providers who have adopted inconsistent procedures around proxies. Some by-laws provide that if a meeting is virtual, no proxies are allowed. The key here is accessibility. If an owner has an email address, they can vote in advance or during a meeting. They can also change their vote at any time throughout the process. Any owners without emails can vote by phone.

Concerns re Proxies: Having different forms of paper proxies that are directed or undirected or partially directed without reference to emails in a proxy for the proxyholder to vote electronically has left service providers wondering what to do when they receive a paper proxy that is undirected in whole or in part.

Registering proxies which have not been submitted in advance: service providers often require registration 48 hours in advance. This has caused issues with legal counsel since proxies need to be accepted yet cannot be accommodated. This has resulted in questionable election results.

Determining Validity: Service providers do not normally review proxies to determine their validity but rely on management to send proxy information only in Excel spreadsheets. Managers should not be reviewing or handling proxies for the purpose of determining validity.

We look forward to further discussions. Please contact us with any questions.

Very truly yours,
Shawn Pulver, President

Denise Lash,
Director CAI Canada Chapter and Advocacy and Legislative Committee Member

About Community Associations Institute

Established in 1973, Community Associations Institute (CAI) is an international membership organisation dedicated to building better communities. With more than 34,000 members, CAI works in partnership with 62 chapters, including chapters in Canada and South Africa, as well as with housing leaders in a number of other countries, including Australia, Canada, the United Arab Emirates and the United Kingdom. CAI provides advocacy, information, education, and resources to the homeowner volunteers who govern communities and the professionals who support them. CAI members include board members and other homeowner leaders, condominium managers, management firms and other professionals who provide products and services to condominium corporations.

CAI Canada (the Canadian chapter of CAI) was formed to represent the Canadian interests of the broader industry, and to ensure that Canada is part of the conversations related to setting standards and sharing industry-wide best practices. Additionally, CAI Canada will follow in CAI's footsteps by advocating at the federal, provincial and municipal level across Canada.