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Ministry of Public and Business Service Delivery
6th Floor, 56 Wellesley St. W.
Toronto, ON
M7A 1C1
Sent by email to: mike.mcrae@ontario.ca

Attn: Mike McRae, Director, Policy and Governance Branch
Re: Amendments to the Condominium Act

Dear Mike,

The Ministry indicated in the update to the "Follow-up on 2020 Value-for-Money Audit: Condominium Oversight in Ontario" that many regulations will be developed in 2023/2024 and implemented by the end of 2024.

The Community Association Institute (CAI) Canada Chapter would be happy to be of assistance to the Ministry in development of the regulations.

We have attached a document identifying certain amendments that we think are higher priority than others, for your consideration.

Established in 1973, Community Associations Institute (CAI) is an international membership organization dedicated to building better communities. With more than 40,000 members worldwide, CAI works in partnership with 63 chapters, including chapters in Canada and South Africa. CAI provides advocacy, information, education, and resources to the boards of directors of condominiums and the professionals who support them.

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.

Let us know if we can be of any assistance.

Yours truly,

Sally Thompson M.Sc. P.Eng.
Chair, CAI Canada Advocacy Committee

Darla Ahmeti, RCM. OLCM
President, CAI Canada

Attachment: Key Amendments Supported by CAI

Key Condominium Act and Regulation Amendments Supported by CAI

The COVID-inspired temporary Regulations concerning virtual, or hybrid meetings and e-voting proved highly effective and are far better and more convenient ways to communicate with owners and obtain their input. A long-standing problem in condominiums has been a lack of owner involvement and most corporations report much greater owner participation when there is a choice of attending owner meetings in person or participating virtually. We suggest that these changes should become permanent.

Section 12.2 related to requisition meetings to remove and elect directors. Section 12.2 of the regulations require that the deadline for candidate submissions be made at least 15 days after the preliminary notice is sent but one day before the notice of meeting is sent. That timeframe does not work for a requisition meeting since the 15 day period after the preliminary notice is exactly 15 days and the date the notice of meeting has to be sent. 12.2 needs to be amended to extend the time frames.

Section 26(3) of the Act and Section 11 of Regulation 48/01 require an Information Certificate to be sent to owners within 60 days after the first and third quarters of the Corporation's fiscal year. It is suggested that, unless there have been material changes - which would generate an Update Certificate - it would be sufficient to issue only one Information Certificate per year. This should be issued within 60 days of the end of the first half of the Corporation's fiscal year.

In this Section of the Act the requirement is to provide an "Information Certificate"; in the associated Regulations (Reg 48/01 11.) the terminology is changed to a "Periodic Information Certificate" and, if necessary, an "Information Certificate Update". It would be clearer for owners if the terms "Information Certificate" and "Information Certificate Update" were used in the Regulations. (i.e., The word "Periodic" should be eliminated.)

Section 29(1) of the Act and s. 11.6 of Ontario Regulation 48/01. Under this Section and associated Regulations, the disclosure obligations and qualifications for Directors must be included with a Preliminary Notice of Meeting Form if the meeting will include an election and must also be sent with the Notice of Meeting Form itself. This seems like overkill; we suggest that these documents should only need to be sent with the Preliminary Notice.

Section 45.1 has been in effect for almost a decade and makes it mandatory for corporations to send out a Preliminary Notice of Meeting. Prior to this, corporations could 'spring' meetings on owners and thus discourage director nominations. Having to issue a Preliminary Notice has worked very well, and provides ample time for owners to nominate candidates between the issuance of a Preliminary Notice of Meeting and the Notice itself. We thus strongly recommend that the regulations (O.Reg 48/01, section 11 (7) should be amended so that director nominations would only be allowed from the floor at owner meetings if there are not enough valid advance nominations to fill the vacant positions. (i.e., if there are two vacant positions and there are only two valid advance nominations, these two candidates would be declared elected; if there were three valid advance nominations there would be an election and if there was only one valid advance nomination that person would be declared elected, and the owners who are present at the meeting would then be able to nominate and vote to fill the remaining vacancy.)

As it is useful for owners to be able to put nominations into context and know who the continuing directors are when contemplating nominations and elections, we suggest that the names and terms of the current Directors should always be sent with the Preliminary Notice of Meeting where nominations are being solicited and the Notice of Meeting if an election is planned. We would suggest formalizing a requirement to list candidates in alphabetical order in notices and on proxies.

Though we suggest that e-voting be encouraged, and the use of proxies reduced (if not eliminated), we suggest that, at least for a proxy given for quorum purposes only, it may be appropriate to allow for an Officer of the corporation to be suggested as a default proxy (e.g., 'the Secretary of the corporation, with power of substitution') as many owners will not know of another owner who will be present at the meeting.

Section 46. Under this Section of the Act a corporation must maintain a record of owners and mortgagees. It should be clarified exactly what evidence of ownership is required. Ownership changes should possibly be reported on a (new) mandatory Form. It is suggested a copy of the Land Registry Office Parcel Register showing the current owner would be best evidence of an ownership change.

Section 51. As all matters that will be voted on at owner meetings are known in advance, we suggest that owners who are not planning to attend the meeting be encouraged to vote in advance (electronically or in person). This would greatly reduce the use of proxies which are open to misuse. We also suggest that it should be clarified that an owner who casts an advance or online vote should be counted for purposes of quorum; Owners who are at the meeting would, of course, continue to be able to vote in person (on paper or electronically).

Section 60. At an AGM the appointment of an auditor is mandatory; we suggest that there are three possible scenarios that arise with the appointment of an auditor:

- An owner meeting is called to remove the auditor before their 1-year appointment ends and to appoint a new auditor.

- An owner (or the board) thinks that it is 'time for a change' of the auditor (because they are 'not satisfactory' or because they want to get a fresh opinion) and there is an intention to propose a new auditor at the next AGM.

- The board thinks the current auditor is doing a good job and, at the AGM, they intend to propose that the current auditor be reappointed.

These three possibilities vary in their significance; the removal of an auditor in mid-term clearly shows that there are problems, and the re-appointment of the current auditor probably shows that things are working well. We suggest that the type of appointment that will be proposed should be clearly stated in all Notices. If a new auditor is going to be proposed, it is suggested that owners need to have this flagged in the Preliminary Notice; this is far more significant than the re-appointment of the current Auditor.

Section 83 and Section 11 of Regulations 48/01 and 180/17. In Information Certificates it is necessary to inform owners of "… the number of units for which the corporation has received notice under section 83 of the Act that the unit was leased during the current fiscal year." It is suggested this would be an easier figure to obtain and probably at least as meaningful to owners if the requirement was to report the number of units leased on dd/mm/yyyy (the same date as the financial information in the Information Certificate.) For Corporations which have multiple classes of units (residential, commercial, parking etc.) the figures should be for each class and should state the total number of units in that class. (e.g. As of dd/mm/yyyy the Corporation has received notice under section 83 of the Act that 4 of the 75 residential units and 15 of the 100 parking units are currently leased.)

This Section of the Act also requires owners who are leasing their Unit to provide their tenants with "a copy of the declaration, by-laws and rules of the corporation". It is suggested that it should be permissible for leasing owners to provide their tenants with electronic versions or refer them to online versions.

Regulation 48/01. Requires that copies of the annual budget, insurance certificate and director disclosure statements to be sent to owners with each Information Certificate. It is suggested that if there are no changes it should be sufficient to note that a copy of each was sent on dd/mm/yyyy and that duplicate copies may be obtained from a website or from the Corporation.

EV Charging Corporations are signing up for deals with providers which can save significant upfront cost but typically require the owners to use that system exclusively. If a unit owner subsequently seeks approval for an alternate solution, the corporation is restricted from refusing on the basis of that agreement. The regulations should create clarity if the corporation is allowed to enter into these agreements and bind the owners or not. If the unit owners are required to purchase their charger from that provider, there should be restrictions that prevent unfair pricing.

Section 93 and 94 The unproclaimed amendments are expected to provide greater clarity about what expenses can be charged to the reserve fund. With the planned decarbonization of the building stock, significant energy-saving projects will be completed, and clarity will be required to help determine when these can be funded from the reserve fund.

Section 93 and 94 The unproclaimed amendments are expected to provide greater clarity about what constitutes “adequate” funding. This is becoming of critical importance, particularly with high cost inflation making “adequate” funding more challenging. Users require clarifications about special assessments and loans. Can these be reflected in the reserve fund study itself or is their use limited to the “funding plan” proposed by the board? Further, how far in the future can a special assessment or loan be planned and the funding plan still be deemed to provide sufficient funding? We also recommend provisions that prohibit annual contribution increases that exceed the assumed cost inflation rate in the study for more than two or three years, as this has the effect of deferring excessive contributions onto future owners. This has resulted in serious financial struggles in the third decade of operation and beyond.

Section 93 still suggests that the first year contribution to the reserve fund can be set as low as 10% of the operating budget. This has been known to be far too low since soon after the current act was implemented. With further sub-metering of utilities, 10% of the operating budget is now effectively less than it was in 2001, making matters even worse. This is setting all first year condominiums up in a very poor financial position. Their reluctance to immediately increase the reserve fund contribution at the time of their first study means that many, if not most, condominiums remain inadequately funded for decades. It is important to dramatically increase this minimum contribution. Possible options for consideration are: 35% of operating, a percentage of the original construction cost or perhaps the amount determined by a reserve fund study prepared from the plans (with a backstop minimum of 35% of the operating budget).

Regulation 48/01 section 27 allows a reserve fund study to look forward a minimum of 30 years. For new condominiums in particular, 30 years is too short. There is very little spending in the first twenty years. These early "empty" years put a significant downward pressure on the calculated reserve contribution (effectively ten years of expenditures are shared over a thirty year term). Many large expenditures (generator replacement, electrical switchgear replacement, garage roof deck waterproofing etc.) do not fall in the first thirty years. A longer term of 45 or even 60 years is needed to capture the first occurrence of all key projects and provide a more representative funding level.

Regulation 48/01 section 27 suggests that the component inventory included in the study cover all items costing more than $500. This is far too low a threshold for many condominiums. We suggest a formulaic minimum based on the number of units (for example: the greater of $20/voting unit or POTL and $1,500).

Sections 11(6)(7)and (8), 26.1, 26.2, 78 (1.1) (1.2)(1.3) and 177 (1)(8.2) must be proclaimed. These prevent the sale or leaseback of components to the purchasers of the units. Currently their absence allows builders to understate the first year budget. This entraps purchasers and results in banks lending more than they would if the true maintenance fees were reflected in the first year budget.

Regulation 48/01 section 32 lists who can complete reserve fund studies. Some classes are obsolete (such as those attending a particular program at Ryerson). Further, this section should align with the guideline for engineers preparing Reserve Fund Studies and Performance Audits, published by Professional Engineers Ontario. That Guideline indicates that certain higher risk buildings require a professional engineer to be involved with the reserve fund study.

Section 93 and 94. Consideration could be given to prohibiting the owners from requisitioning a meeting to remove the board if the sole basis for their removal is the implementation of reserve fund contribution increases as recommended in a reserve fund study obtained by the board. Quite often a board attempts to properly fund a building and their efforts are thwarted by a requisition meeting. This delays the condominium from getting on the right financial track.

Section 93 and 94. The condominium building stock is getting older. End of life conditions need to be considered. For example, it may not be reasonable to project forward even thirty years in an eighty year old building. There could be a practical limit, such as 100 years of age (unless the board and reserve fund provider jointly agree that the building can continue to be maintained and operated for longer).

Section 93 and 94. The large new condominiums being constructed today will accumulate significant reserve fund budgets (perhaps over $50 or $100 million). Improved fraud protection may be needed.