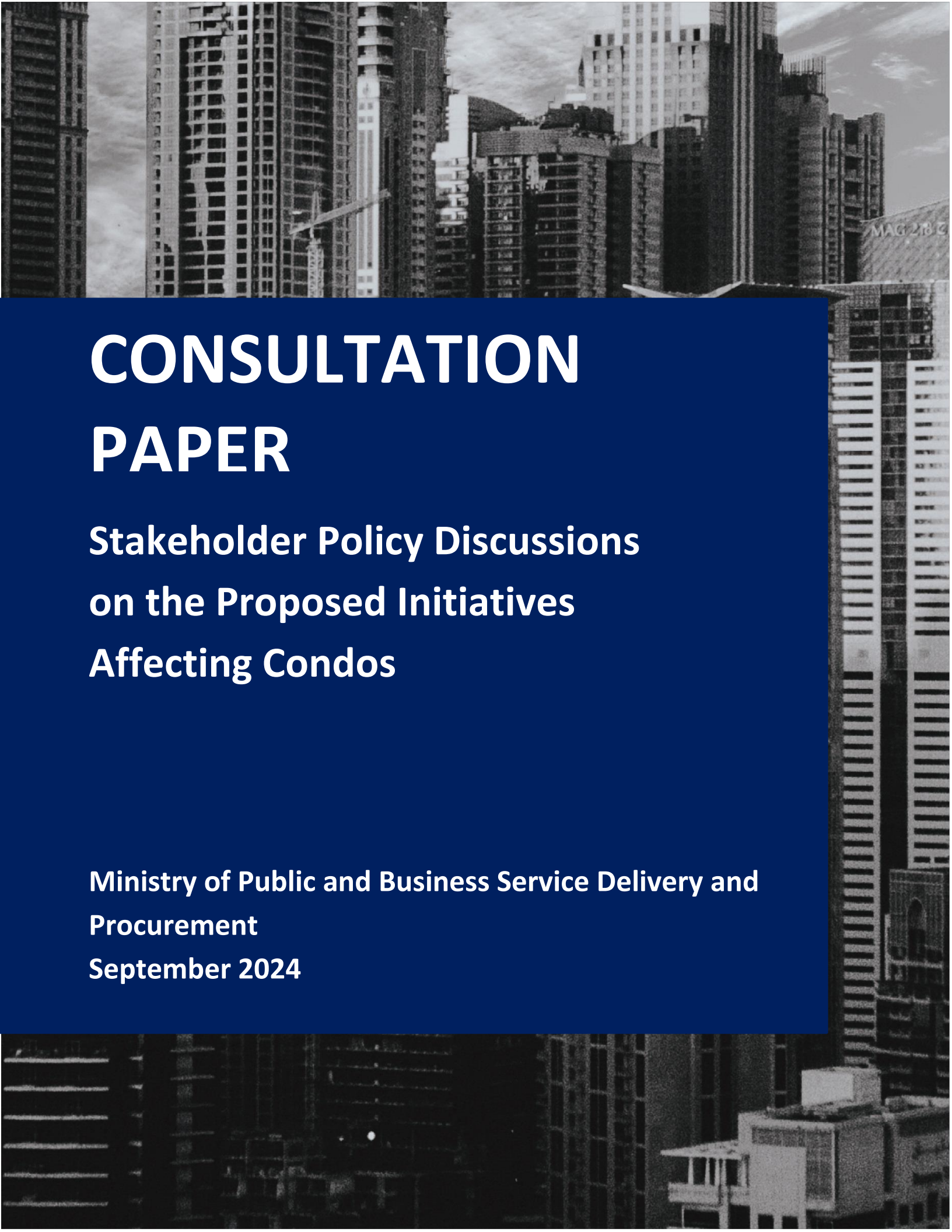

CONSULTATION PAPER

Stakeholder Policy Discussions on the Proposed Initiatives Affecting Condos

Ministry of Public and Business Service Delivery and Procurement

September 2024

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Introduction

The condominium sector is growing rapidly, and the Ministry of Public and Business Service Delivery and Procurement (ministry) wants to ensure that the *Condominium Act, 1998* (Condo Act) continues to be responsive to the needs of the condo sector. The ministry is looking to pursue a number of improvements aimed at strengthening protections for condo owners and purchasers by enhancing transparency and clarity while limiting burden.

To support this, the ministry is exploring bringing into force certain sections of the *Protecting Condominium Owners Act, 2015* (PCOA) that would amend sections in the Condo Act related to:

A. status certificates;
B. disclosure statements;
C. cancellation of purchase agreements (material changes);
D. developer turnover meetings;
E. condo performance audits; and
F. waiving remedies against developers.

The ministry is also exploring the development of regulations under the Condo Act that would support the proclamation of these PCOA provisions.

In addition, the ministry is considering potential changes related to:

G. proxy forms; and
H. records access (to increase condo safety).

The ministry is looking for feedback on these potential changes.

A. Status Certificates

Status certificates provide purchasers of resale condo units with detailed financial and other information on the unit and condo corporation. This helps purchasers assess the financial health of the condo corporation, among other things, when considering purchasing a unit. However, the ministry has heard from the sector that status certificates may not contain sufficient information about the financial health of the condo corporation.

Currently, status certificates are not required to include information such as amendments made to annual budgets and the financial implications of judgements against the condo corporation and legal actions to which the condo corporation is a party. The ministry is considering bringing into force unproclaimed clauses 76(1)(h.1) and (i) of the Condo Act, which would require this additional information to be added to status certificates. The ministry is also considering bringing into force unproclaimed clause 76(1)(q), for clarity and consistency.

Question 1. Under unproclaimed clause 76(1)(h.1), a regulation could prescribe the financial implications of all outstanding judgments against the corporation, as well as information about the status of all legal actions to which the corporation is a party would need to be included in a status certificate. What types of financial implications (e.g., impact to condo corporation insurance costs) should be included in a status certificate?

- We recommend against proclaiming 76(1)(h.1) regarding the financial implications, unless it is limited to the outstanding judgements against the corporation. Predicting financial implications of in-progress legal actions would be ill-advised because they are impossible to predict and because a purchaser might argue that they are exempted from contributing if the estimation was incorrect.
- This is not directly related to unproclaimed clause 76(1)(h.1), however, another "types of financial implication" that should be included in the Status Certificate could be the amount of the insurance deductible(s) which owners could be responsible for – as some deductibles can be as high as $250,000 or $500,000. While this is disclosed via the attached insurance certificates, the deductibles should be highlighted in the certificate.

Question 2. How would bringing these provisions into force impact condo corporations or condo managers (e.g., additional administrative burden)?

- If additional information is required by 76(1)(h.1), then the cost of a status certificate should increase significantly.

Question 3. Should condo corporations be provided a certain period of time to prepare for the coming into force of these provisions and if so, how long?

- The provisions would be proclaimed into force on a specific date, which could be after the date the proclamation is made (e.g., six months or one year after the proclamation date).

B. Disclosure Statements

Declarants (developers) selling pre-construction or new condos are required to provide a disclosure statement to potential purchasers. The disclosure statement contains detailed financial and other information a purchaser may use to make an informed buying decision (e.g., a description of the condo property, and potential condo fees). The ministry has heard from the sector that purchasers need a plain-language summary of this complex document to provide clarity and would find additional disclosure items helpful in their decision making.

Section 72 of the Condo Act and section 17 of O. Reg. 48/01 are the main provisions that set out what is required to be contained in the disclosure statement. This includes an estimated first-year budget statement; the proposed or existing condo declaration, by-laws and rules; and information about agreements into which the developer has entered. Sections 143, 147, 161 and 169 set out additional disclosure items required for common elements, phased, vacant land and leasehold condos.

The ministry is considering proclaiming into force amendments that would require the disclosure statement to contain a summary, as set out in regulation, of the complex documents to better support condo purchasers. The ministry is also considering proclaiming into force provisions for additional required disclosure items such as a statement of possible reasons for future condo fee increases (s.72 (3) (q.1)) and a copy of all amendments made to the first-year budget, in addition to

the first-year budget (s. 72(5)), as well as an amendment that would enable the government to specify in regulation the portion of the common expenses to be paid into a reserve fund in the first year by the declarant (s.72(6)(e)).

Question 1. How should a disclosure summary be prepared to make the disclosure statement more helpful to buyers?

For example, should there be a prescribed summary form with plain-language description of each requirement, fields and checkboxes for specific detail, and resource links?

- Yes, a prescribed form with standardized fields and checkboxes should work. However, in addition to the checkboxes, there should also be a plain-language description of each item being disclosed to help the user interpret the legal language of the declaration. The current disclosure, which contains a table of contents with links to related sections, does not appear to be sufficient.

Question 2. Please identify:

- Additional disclosure items, if any, that would be most helpful to potential purchasers of a condo;
- why these items are helpful, and
- what potential impacts on condo developers (declarants) and other condo community participants would result.

- The form will need to include a section that calls for disclosure of any other items not already caught by the standard form but which a reasonable person would deem a critical disclosure.
- The form should clearly separate information related to the unit from information regarding the corporation as a whole.
- The form should include the items identified in 72(3), items that were in the to-be-deleted 72(4) table of contents (and related 17(1) of O.Reg 48/01) and
    - The basis upon which the monthly common expenses are allocated and attributable to the voting units, parking units and locker units (per square footage, by value or other). This would not be required for service units and amenity units with a near-zero allocation. This would help the purchaser confirm that the allocation to their unit is fair and that no other units have unreasonably been under allocated.
    - If short-term transient rental is permitted. This is important because it changes the nature of the corporation from home-like to business-like.
    - If there are any shared facilities, and if so, confirm that they have been separately metered for utilities, that costs will be governed by a shared facility agreement and how that agreement will be structured. This is key because shared facilities are often confusing and create risks that purchasers may not be aware of.
    - A purchaser should know if the shared amenities they hope to enjoy will be in the control of their corporation or not.
    - The basis for cost sharing allocation percentages. This should provide assurance that the allocation of costs to their corporation has some reasonable and fair basis.

- We recommend convening a working group of lawyers representing developers and condominiums to identify other important disclosure items
- The general disclosure information should be posted to a website related to the condominium
- The format provided to purchasers should be electronic and searchable, ideally with organized bookmarks to assist the user in understanding the layout of the document.

C. Cancellation of Purchase Agreements (Material Changes)

A purchaser may cancel a new condo purchase from a developer if there is a "material change" to the information contained, or that should have been contained, in the disclosure statement. The Condo Act currently identifies certain circumstances in which changes are not considered material changes. The ministry has heard from the sector that there is a need to clarify what is not considered a material change.

The ministry is considering bringing into force unproclaimed clauses 74(2)(f-h) of the Condo Act which would identify additional circumstances that would not be considered a material change. Regulations would likely need to be developed in the future but would not be needed to bring these changes into force.

The ministry is also considering bringing into force unproclaimed subsections 74(3) and (4), which would require the revised disclosure statement to be prepared in accordance with the regulations (similar to preparation of the original disclosure statement under s. 72(3) if put into force) and delivered to the purchaser "as soon as reasonably possible."

In addition, the ministry is considering bringing into force unproclaimed subsections 74(11) and (12), and subsections 133(2) and (3), which would allow a current or former purchaser to make an application to court for certain reliefs, such as monetary compensation from the developer for losses, due to a developer not complying with certain requirements for disclosing material changes or for a refund to a purchaser who has rescinded a purchase agreement due to a material change. Please note that the ministry is not contemplating bringing subsection 74 (2)(b) into force at this time.

Question 1. Other than those circumstances set out under the unproclaimed clauses 74(2)(f-g), are there any other exceptions to "material change" that should be prescribed under clause 74(2)(h)?

- We do not agree that 74(2) (g) should be proclaimed. "Taxes, levies and charges' is too broad a term and may be used to conceal increases in the common expenses that would otherwise constitute a material change. Alternately, the prescribed taxes, levies and charges should be restricted to taxes instituted by a federal, provincial or municipal government which came into effect after the date of the previous disclosure statement and should exclude carbon tax increases where those have been forecasted by the government.

Question 2. If these provisions are brought into force, what potential impacts could be anticipated, and why, for:

- purchasers of pre-construction and new condo units; and
- condo developers?

- If a declarant decides that an increase in the common elements is less than 10%, then they will have no obligation to disclose how they made this determination, especially if taxes, levies and charges don't count towards the 10%. The purchaser would have to make an individual demand, which is onerous.

D. Developer Turnover Meetings

Currently, the Condo Act specifies the documents to be delivered by the developer to the newly elected board at the turnover meeting, and within 30 days following the meeting. The condo corporation's audited financial statements must be delivered within 60 days after the meeting.

The ministry is considering bringing into force unproclaimed subsections 43 (4) and (5) of the Condo Act, and developing regulations, to standardize the method for documents to be turned over at a turnover meeting, and within the 30 days following the meeting, including the format of those documents. The ministry is also considering prescribing additional documents to be delivered within 30 days after the turnover meeting, such as: original engineer-approved original plans in addition to engineer-approved as-built plans for comparison; copies of all legal and consultant opinions obtained since incorporation; ledger statements since incorporation; or contact information for all contractors who touched the build with notes on what they did.

Question 1. What delivery requirements, if any (e.g., both digital and print, with table of contents, etc.) should be prescribed in regulation for items listed in subsection 43 (4) or (5)?

- Requiring a developer to deliver the listed items in digital format including a table of contents listing the items in reference to the subsections they pertain to, would provide for an efficient and clear process. We recommend a form in a sign-back format that allows the recipient to initial next to each item in the form that was received.

Question 3. Please identify:

- additional items, if any, that should be prescribed in regulation to be turned over to owners under s. 43 (5) within 30 days of the meeting,
- why these items, and
- what impact such additions would have on condo developers (declarants), boards and managers.

- Civil drawings and reports including documents pertaining to storm, ground and sanitary discharge, storage and treatment.
- Geotechnical drawings and reports
- Shoring drawings including detailing of any blind-side waterproofing systems installed

- Shop drawings for all building systems
- Fire alarm verification reports
- Commissioning reports for heating, cooling, ventilation, smoke control systems, elevating devices
- Proof of model-based energy performance in compliance with code
- BAS login information, instructions and equipment schedules
- All test reports required by Tarion B19 (quality during construction)
- All reports required by Tarion B51 (conversions)
- Agreements related to public art and publicly-owned private spaces (POPS)

These documents are required to complete the performance audit and to maintain the building going forward. The builder should have them readily at hand. They are often reluctant to reveal these to the performance auditor because they may contain information that might give rise to a claim under the ONHWP Act, but they must be turned over regardless, because the future maintenance of the condominium is severely impeded without this information.

E. Condo Performance Audits

Currently, section 44 of the Condo Act requires certain condo corporations to complete a performance audit of common elements. The audit must be conducted by an engineer or architect within 6 to 10 months of registering the condo.

If proclaimed into force, subsection 44(1) would extend the audit to real property owned by the corporation, and subsection 44(2) of the Condo Act would enable the corporation to conduct its performance audit at any time during the first year following registration of the condo corporation or another prescribed period, and to file the performance audit report later than the first-year deadline if so prescribed. Additional amendments such as subsection 44 (5) may be contemplated to align language.

Question 1. How much time would be adequate for condo corporations to complete their performance audits from the time a condo corporation is registered? Please explain what time periods, if any, may be advisable and why.

- In the normal case, no other time limits need to be prescribed. The ONHWP Act defines time limits and grace periods. The Condominium Act does not need to interfere in this process.

Question 2. What potential impacts to condo boards, owners, management, condo developers (declarants) and others in the condo community do you anticipate if the time to conduct and report on performance audits is less restrictive?

- One concern would be a manager who fails to start the audit in time for it to be completed – but the same risk applies to everything they do (renewing insurance, paying contractors, developing budgets etc).
- If the declarant still controls the board after the turn-over meeting, there is a risk that they will not obtain a performance audit. It is not clear that any change in the Act could protect against this risk.
- The 44(1) revision should also be implemented to extend coverage to common elements corporations (recognizing that this would require complementary amendment to the ONHWP Act).

F. Waiving Remedies Against Developers

The ministry has heard that, before turnover, developers have included provisions in the condo declaration, a condo by-law, an agreement or another instrument that are intended to remove certain legal remedies that the condo corporation may otherwise have against the developer.

The ministry is considering bringing unproclaimed section 26.2 of the Condo Act into force, which would provide that, unless the regulations provide otherwise, nothing in a declaration, a by-law, an agreement or an instrument affects any legal remedy that the corporation may have at law against a developer or developer's affiliate until certain boards elected at or after turnover decide otherwise.

Question 1. Are there any considerations the ministry should take into account to prepare for the proposed proclamation of section 26.2?

- CAI supports bringing unproclaimed section 26.2 of the Condo Act into force without hesitation. This clause should be made retroactive so that older declarations, particularly those written since these unproclaimed edits have been in place, are also impacted. The two-year limitation period for claims may bar the older corporations from making a claim which would be unjust. Perhaps the limitation period could be waived with respect to claims made under this amendment (for condominiums that pre-date the amendment coming into force).

Question 2. What impact do you anticipate section 26.2 will have on the condo sector (e.g., developers, purchasers) if it is proclaimed?

- Provides much needed protection and stops developers using this loophole.

Question 3. Should the regulations set out certain exemptions to the authority granted to boards under section 26.2? If so, what circumstances should be prescribed?

G. Proxy Forms

Following the recent amendments related to permanent virtual meetings, the ministry is considering making certain updates focused on the use of online proxies. A condo owner may appoint a proxy to count toward quorum and/or to vote at an owners' meeting, whether the meeting is held in person, virtually or in hybrid form. The ministry has heard concerns from the sector that the proxy form required under the Condo Act is too complex and burdensome.

The ministry is now exploring specific changes the ministry and the Condominium Authority of Ontario (CAO) can make to the proxy form to make it easier to understand and use. The ministry is not considering making any legislative or regulatory changes related to the proxy form at this time. The current proxy form can be found here: proxy form.

Question 1. Considering the use of proxies for a virtual or hybrid meeting, what changes should be made to the proxy form?

- Historically, a proxy form allowed someone to give someone else the right to attend a meeting and obtain a paper ballot at that meeting. With the advent of virtual meetings, proxies have become a voting ballot in which unit owners cast their votes right on the form or give the proxy holder the right to attend and get a paper ballot. This is resulting in proxy fraud, where owners are gathering proxies to control the votes. Often owners do not know how their vote was cast.
- The proxy form is so complex that without training, many proxies are invalid, and owners' votes are not being considered.
- Now that proxies are used for voting, it is not a secret vote – others can see how a proxy was voted. This can result in harassment.
- With the advent of virtual meetings and electronic advanced voting, there is no longer a need to use proxies for voting. As a matter of fact, owners often accidentally vote twice – once through the proxy and once through the electronic voting system, which causes problems.
- Proxies are causing disputes at a high percentage of virtual meetings.
- Our recommendation is that proxies should not be able to be used for virtual/electronic meetings where electronic or telephone voting is available. Proxies could remain in use for in-person meetings. This can be handed via a simple change to the proxy form, including a note that they are to be used for in-person meetings only.
- With electronic voting at a virtual meeting, each owner is given a customized link that they can vote in advance or use their link to modify the vote during the meeting. They do not need a proxy.

    - **Question 2.** Is there any other information that should be added to the proxy form?

- We recommend eliminating the proxy form for virtual meetings.

Question 3. Are there any elements (e.g., sections) in the current proxy form that should be removed?

- We recommend eliminating the proxy form for virtual meetings

Question 4. Do you have any additional feedback about the proxy form template and how it is used?

- We recommend eliminating the proxy form for virtual meetings. Most meetings are online, and eliminating the proxy for virtual meetings would reduce the number of disputes.

H. Records Access

The ministry is considering changes to balance condo owners' rights to access records with their concerns related to safety and privacy.

The 2020 Auditor General's (AG) Report, Value-for-Money Audit of Condominium Oversight in Ontario, found that owners were not given access to information if it was not specifically required to be kept in the form of a record under the Condo Act. The AG noted that condo owners often did not receive part, or all, of the information which they were seeking and made recommendations to clarify the existing legislative and regulatory requirements with respect to records and expand the information owners may access. The AG recommended that the CAO clarify the existing legislative and regulatory requirements with respect to records and the information included in these records listed in the Condo Act and its regulations.

In December 2022, residents of the at condominium in Vaughan were tragically killed in a mass shooting. Following the shooting, the ministry heard from some members of the sector that there should be new limits on access to condo owners' and directors' information in an effort to increase the safety of condo owners and directors.

To address the more recent concerns from other stakeholders within the sector, the ministry is proposing changes related to access to records aimed at enhancing safety in condos. Currently, section 55 of the Condo Act and certain provisions of O. Reg. 48/01 set out certain recordkeeping and records request requirements, including requirements for condo corporations to keep "adequate" records and to allow owners, purchasers, and mortgagees to examine and obtain copies of certain records, including a record of addresses of owners. This right does not apply unless the request is solely related to the requester's interests as an owner, a purchaser or a mortgagee, having regard to the purposes of the Condo Act.

The ministry is considering section 55 of the Condo Act and how best to restrict the right to access condo records containing personal information, such as the address of condo owners and directors, unless directly related to the purposes of the Act, while maintaining necessary transparency to support condominium governance. The ministry is also exploring the option of amending O. Reg. 48/01 to require those requesting owners' information to provide a rationale which must directly relate to the purposes of the Act.

Question 1. Are there alternative methods of contacting owners, directors and officers which the ministry should consider instead of the home address?

- Please refer to the submission made by the joint ACMO/CCI/CAI Safety and Security committee for CAI's position on this issue.

Question 2. Should those requesting the list of owners described in subsection 46.1(3) of the Condo Act provide a rationale for their request? Should it be mandatory that the rationale relate to the purposes and objectives of the Act?

Question 3. The CAO Guide to Records for owners and condominium corporations was published to help requestors better understand what records they are entitled to and how long records are required to be kept. Is this enough information? What other types of education tools could help condo owners understand records access?