



June 10, 2025

Ministry of Public and Business Service Delivery

777 Bay Street, 5th floor
Toronto, Ontario
M7A 2J3

**Attn: The Honourable Stephen Crawford, Minister, and
Kate Krestow, Manager, Strategic and Condo Policy Unit**

Re: Key Condominium Act Amendments Requiring Proclamation in 2025

On behalf of the Canada Chapter of the Community Associations Institute (CAI Canada), we are writing for two purposes. Firstly, to introduce CAI to the new Minister and secondly, to highlight certain critical and outstanding amendments to the *Condominium Act, 1998* that we believe should be the Ministry's priority in 2025.

As you know, in 2015 many amendments to the *Condominium Act, 1998* received Royal Assent. While key provisions - such as the establishment of the Condominium Authority of Ontario and the licensing framework for condominium managers - have been successfully implemented, many critical amendments have not yet been proclaimed. Without action to enact these provisions, they will expire in December 2025, representing a significant missed opportunity for consumer protection and improved condominium governance.

These amendments were developed through extensive public consultation and thousands of volunteer hours, with the overarching goal of enhancing consumer protections for condominium communities. Allowing these amendments to expire would not only be contrary to the Ministry's consumer protection mandate but would also undermine the substantial efforts invested by stakeholders over the past decade.

CAI Canada has carefully reviewed the proposed amendments and identified several critical amendments that would strongly support the condominium industry if they could be proclaimed – collectively, referred to as “**CAI's Key Amendments**”. Failing to enact these amendments would result in continued inefficiencies in condominium governance and management, as well as the perpetuation of unfair cost allocations imposed by developers on new purchasers. By implementing CAI's Key Amendments, the Ministry has an opportunity to advance consumer protection and affordability in the condominium sector.

The table below outlines the CAI's Key Amendments that CAI strongly recommends for enactment in 2025. Detailed recommendations for each of CAI's Key Amendments are provided in Appendix A to this letter.

| Act Sections | Purpose |
|------------------------------------|--|
| Section 7(2)(d.1) | Determination of Schedule D |
| Section 17(4) | Prohibition on Condominium Imposed “fines” Against Owners in Breach of Governing Documents |
| Section 21.1(1) | Make Shared Facilities Agreements Mandatory |
| Sections 26.1 + 72(3)(q.1 and q.2) | No Sale or Leaseback and No Deferral of Costs to the Second Year |
| Section 26.2 | Prohibit Contracting out of Remedies |
| 37 (3) (a.1) and definitions | Liability of Director Relying on a Reserve Fund Study |
| Section 44(2) and (9) | Remove Redundant Restrictions on the Timing of a Performance Audit Report |
| Section 93(4)(5) and (6) | Right-size the First Year Reserve Fund Contribution |
| Section 84(4) and 84(8) | Notice of Chargeback |
| Section 112(1) | Termination of Developer Agreements within 12 Months of Turnover |

We appreciate the Ministry’s ongoing commitment to consumer protection and look forward to working collaboratively to advance these much-needed reforms. We would welcome the opportunity to meet with the Minister and/or discuss this further at the Ministry’s convenience.

CAI is an international membership organization dedicated to fostering and building better condominium communities. CAI Canada serves as a leading authority in Canada, offering education, resources and advocacy related to condominiums. Our mandate is to support and represent the interests of unit owners, boards of directors, and professionals engaged in the management, governance and legal aspects of shared condominium living.

Thank you for considering this important matter.

Sincerely,



Sally Thompson



Yulia Pesin

On behalf of the CAI Canada Advocacy Committee

APPENDIX “A” – CAI’S KEY AMENDMENTS

1. Section 7 (2)(d.1) How Schedule D is Determined

Significance of the Proposed Amendment

Currently, there are no legal requirements mandating developers to formulate Schedule “D” of a declaration—which sets out common expense fee percentages for each unit—based on any specific criteria. Developers have complete discretion in determining fee allocations, provided that Schedule “D” is fully disclosed in their disclosure package to prospective purchasers

Over the years, this lack of transparency has led to numerous disputes, often culminating in court applications by unit owners who believe their allocated common expense fee percentage is erroneous. This issue frequently arises when smaller units are assigned higher expense percentages than larger units, creating an inherently unfair financial burden.

Even in cases where the fee allocations appear unjustified, courts are often unable to intervene due to the absence of information on how the fee proportions were determined. This is because the applicant has to demonstrate an “error or inconsistency” in the declaration. As a result, courts frequently dismiss these owner applications based on the following grounds:

- Schedule “D” was properly disclosed to purchasers; and,
- There is no available methodology explaining how the developer calculated the fee splits, making it impossible for the court to verify whether an error exists.

This is precisely what transpired in the 2022 Ontario Superior Court Application in the case of *HCC 49 v. Kayla Marie Jung*, Court File No. CV-22-000000334-00. In this case, Muszynski J. dismissed the unit owner’s application, with costs order in favour of the Condominium, noting “*I do not have satisfactory evidence that the common expense fee allotment is based solely on the square footage of units, as Ms. Jung submits*”.

The proposed Subsection 7(2)(d.1) would require developers to provide a statement explaining how the common expense fee proportions in Schedule “D” were determined. This transparency measure is critical because:

- It enables owners to challenge errors in their fee allocations by referencing the developer’s methodology.
- It prevents arbitrary or unfair fee distributions, promoting financial equity in condominiums governance.
- It strengthens consumer protection, ensuring unit owners have the necessary information to assess whether their common expense fees were assigned fairly and accurately.

By enacting this amendment, the Ministry has an opportunity to increase transparency, prevent financial inequities, and reduce litigation arising from unclear fee allocations. This small but

impactful legislative change would provide unit owners with the means to verify and challenge unjust expense allocations, reinforcing the principles of accountability and fairness in condominium governance.

Commentary on the Regulations

Subsection 5(5) of the Regulations will have to be amended to include an added provision, under Subsection 5(5)(c) to state:

(5) *Schedule D shall contain,*

...

(c) *a statement of how the proportions mentioned in Subsections 7(2)(c) and (d) are determined.*

2. Section 17(4) - Prohibition on Condominium Imposed “fines” Against Owners in Breach of Governing Documents:

Significance of the Proposed Amendment:

Presently, the *Condominium Act*, 1998 is silent on the issue of fines; it neither explicitly permits nor prohibits them. The restriction against condominium corporations imposing penalty fines was established through common law rather than statutory authority. The leading common law precedent addressing this prohibition is the 2015 Ontario Superior Court decision in *Couture v. TSCC No. 2187*, 2015 ONSC 7596. In this case, the Court held that an administrative fine imposed by the corporation was ultra vires (beyond its legal authority) and, consequently, invalid.

The Court ruled that the corporation acted oppressively by imposing fines without proper legal authority. Importantly, the governing document authorizing these fines was a by-law, which included provisions granting the corporation broad powers to impose fines for any breach of its governing documents. The Court found this broad authorization unreasonable and expressed concern over its potential misuse, as such "fine rights" could be arbitrarily enforced against unit owners.

Since the *Couture* decision, in the past few years, a concerning trend has emerged in newly constructed condominiums. Developers are now including provisions in corporations' declarations explicitly authorizing the imposition of penalty fines. This practice is most commonly observed in declarations prohibiting transient use of units (e.g., Airbnb, VRBO etc.). Unlike by-laws, which are subject to statutory constraints - including the requirement of reasonableness - declarations are not subject to similar legal limitations. Their sole requirement under the *Act* is proper disclosure to prospective purchasers or owners.

As a result, the *Couture* decision, which prohibits fines imposed under unreasonable by-laws, does not clearly address the legality of fines authorized through declarations. This leaves the

question of whether penalty fines embedded in a declaration are lawful, unresolved. Consequently, this ambiguity has allowed developers to exploit a legal loophole by embedding penalty fines in declarations, exposing unit owners to potentially arbitrary, unreasonable, and oppressive fines imposed by condominium boards.

For these reasons, the proposed Section 17(4) is critically important. It will clarify the law and explicitly prohibit condominium corporations from imposing penalty fines that are not intended to indemnify or compensate the corporation for expenses incurred due to a breach. Failing to pass this amendment will likely result in costly litigation between condominium corporations and unit owners as the validity of declaration-imposed fines will likely be subject to challenge. Moreover, many unit owners will remain vulnerable to draconian and unreasonable penalty fines enforced by overzealous boards.

In summary, the proposed Section 17(4) is vital to protect condominium unit owners, establish clarity in the law, and ensure fair and reasonable governance practices. It represents a crucial step in safeguarding consumer rights and addressing systemic issues within condominium governance

Commentary on the Regulations

No additional regulations are required to implement this amendment.

3. Section 21.1(1) – Making Shared Facilities Agreements Mandatory

Significance of the Proposed Amendment

The proposed new Section 21.1 attempts to address the situation where condominiums share land and facilities with other parties, but there is no shared facilities agreement (“**SFA**”) in place that governs how costs will be shared and decisions made.

In particular, Section 21.1(2) will provide that positive covenants contained in a SFA will run with the land, which addresses the Court of Appeal’s commentary in the *Durham Condominium Corporation No. 123 v. Amberwood Investments Limited* decision.

Section 21.1 will avoid two main types of issues where a SFA is not in place. The first is where a condominium is unfairly paying for the costs associated with the shared land or facilities without contributions from the other party or parties that enjoy benefits from such shared lands or facilities. In this type of situation, condominiums have been forced to advance complex legal arguments in order to be compensated, such as the unjust enrichment claim in the recent case of *Carleton Condominium Corporation No. 519 v. Ottawa-Carleton Standard Condominium Corporation No. 656*.

The second type of issue is the lack of clarity on the responsibilities and obligations relating to the shared land or facilities when there is not a SFA in place. This too often results in lengthy and expensive litigation.

Requiring a SFA to be in place and creating a statutory exception to the common law rule that positive covenants do not run with the land, will help to avoid these types of situations and provide assurance as to how shared lands and facilities will be paid for and operated.

As part of proclaiming Section 21.1, Sections 12(1)(4), 56(1)(l.1), 76(1)(j), 84(3), 112(1), 132(1), (2) and (3) and 154(3) will also need to be proclaimed to ensure consistency throughout the Act. The new definitions for bylaws and rules would also need to be proclaimed. 97(5)(a) is also related but may be complex to proclaim unless the full section 97 amendments are made.

Commentary on Regulations

The requirements of Section 21.1 will be subject to the provisions of further regulations. In particular, the regulations will need to provide further guidance on the following issues:

- What provisions a SFA must contain;
- Whether the requirement to have a SFA in place will only apply to new developments, or whether they will also apply to existing properties where a SFA has not been put in place;
- What remedies are available against a Declarant who fails to put a SFA in place;
- If Section 21.1 will apply to existing properties, the mechanism by which a condominium can compel another party to draft and implement a SFA; and,
- The timeline for development of a SFA where one does not currently exist.

4. Sections 26.1 + 72(3)(q.1 and q.2) – No Sale or Leaseback and No Deferral of Costs to the Second Year

Significance of the Proposed Amendment

In the recent past, it has become common practice for declarants to defer the cost of certain maintenance contracts to the second year of condominium operations thereby creating an artificially low first year budget which purchasers rely upon. This results in an increase in the common expenses for year two when those known maintenance contracts are required to be paid directly by the condominium corporation. This has become a common marketing tactic giving an impression of unrealistically lower common expense fees. Declarants should ideally be prohibited from deferring costs until the second year of operation of the condominium corporation – all contracts should start in the first year so that the budget statement for the one-year period immediately following the registration of the corporation is representative of the real operating costs of the corporation. While lower first-year fees may help developers sell condominium units, they also create unforeseen financial strains on unit owner when actual operating costs take effect in the second year. This abrupt transition, coupled with mandatory reserve fund contribution increases, can lead to unexpected financial difficulties for unit owners.

To ensure transparency and financial stability, all contracts should commence in the first year, making the budget statement reflective of the condominium's true operating costs. As drafted, the amendments contemplate that some costs may start in the second year, provided they are

explicitly disclosed as per the regulations including a statement as to the specific amount of the potential increase.

The proposed amendments also prohibit any board - except the board elected after the declarant no longer owns a majority of units – from acquiring an interest in any unit, real property or personal property. This safeguard prevents developers from selling or leasing back assets that would rightfully be deemed common elements including recreational amenities, superintendent's suites, guest suites, heating and cooling equipment etc.

This principle aligns with consumer expectations – just as an automobile purchase automatically always includes the automobile's engine. Similarly, when buying a condominium, purchasers should not be forced to sift through complex disclosure documents to determine whether they will be burdened with long-term financial obligations for fundamental building components that they would have naturally assumed were included in their purchase price.

Sections 78(1.1, 1.2, 1.3) will also need to be proclaimed as they explicitly prevent the declarant from making an additional sale directly to the unit owners rather than the corporation.

Sections 26.1 and 72 (3)(q) are related to this issue and would also need to be proclaimed. They are discussed above.

Commentary on Regulations

To balance transparency and financial sustainability of the condominium, regulatory provisions may also allow limited exceptions to loan-back restrictions for high-efficiency energy equipment that significantly exceeds the requirements of the building code, provided that:

1. The loan payments begin in year one, ensuring alignment with operating costs.
2. Annual payments do not exceed anticipated operating savings, as certified by an independent engineer; and,
3. Loan terms are strictly capped- a reasonable maximum term of 10 years would prevent excessive financial strain on unit owners.

With respect to cost deferral to the second year, the required disclosure should be explicit and prominent and should be included as clear commentary on the first year budget, including line items for the items with a clear notation that no budgets have been included for the first year, and providing an estimate of the cost that is expected to be incurred in the second year. This will ensure that prospective purchasers understand future financial obligations.

Ultimately, these amendments serve to enhance financial transparency, protect unit owners from unexpected financial burdens, and close loopholes that allow declarants to offload costs unfairly. Implementing these amendments will foster stability, predictability and fairness within Ontario's condominium sector.

5. Section 26.2 – Contracting Out of Remedies

Significance of the Proposed Amendment

Under the current legal framework, newly constructed condominium corporations facing construction deficiencies in their common elements have two concurrent legal avenues through which they may pursue developers for damages:

- The Tarion conciliation process, pursuant to the *Ontario New Home Warranties Plan Act*, RSO 1990, c. O.31; and,
- A civil claim action based on common law rights.

Common law rights for defective construction exist in addition to, rather than in place of, Tarion warranties. Furthermore, the scope of remedies available under common law - including claims for negligence and negligent performance - is substantially broader than the limited statutory warranties provided under Tarion.

As a result, design issues, latent defects, and other deficiencies that may not be covered under Tarion may be recoverable through a civil claim.

Over the years, an alarming developer practice has emerged, where developers embed restrictive qualifications within condominium declarations or by way of enacting a by-law, limiting condominium corporations to Tarion warranty rights while barring them from pursuing civil proceedings for construction deficiencies. These contractual limitations significantly curtail a corporation's legal recourse, shielding developers from liability for construction deficiencies while placing the financial burden of repairs on innocent unit owners.

This practice was regrettably reinforced by the Ontario Court of Appeal decision in *Toronto Standard Condominium Corporation No. 2095 v. West Harbour City (I) Residences Corp.*, 2014 ONCA 724 ("**West Harbour City**") which upheld liability-limiting provisions in the condominium by-laws. In *West Harbour City*:

- A developer-appointed board enacted a by-law requiring the condominium to enter into a warranty agreement that limited the condominium's legal claims exclusively to Tarion statutory warranties.
- The agreement explicitly prohibited the condominium corporation from pursuing legal claims outside of Tarion's framework.
- When unit owners elected a new board, the corporation challenged the validity of the by-law and agreement, arguing that they unreasonably restricted the corporation's legal rights.
- However, both the Superior Court and Court of Appeal upheld the agreement, ruling that:
 - The by-law and agreement had been disclosed to unit purchasers and registered on title, meaning owners had notice of the liability limitation.
 - The developer was entitled to limit its liability for construction deficiencies, and the agreement was not inherently unreasonable.

The judge found that there is nothing in the Condominium Act or ONHWP Act that precludes a developer from limiting its liability in respect to the common elements and noted “whether developers should be prevented from limiting their liability to the statutory warranties provided in the ONHWP Act is a matter of policy for the legislature and not one for judicial determination”. This puts the responsibility to rectify this unfair practice squarely in the hands of the Ministry.

Since the *West Harbour City* decision, it has become increasingly commonplace for developers to embed liability-limiting provisions within condominium declarations. While these disclosure documents are provided to prospective purchasers, they are highly technical and nuanced, making them difficult for the average consumer to fully comprehend.

As a result, Ontario developers are able to evade, to an extent, liability for deficient construction, while unit owners are left to absorb the financial burden of repairs through increased common expense fees and special assessments.

The proposed Section 26.2 seeks to curtail developers’ ability to impose liability restrictions within condominium declarations.

This provision is critical to ensuring the protection of unit owners’ rights and preserving access to legal remedies. Not all construction deficiencies come to light within the warranty period or are adequately addressed by Tarion. By closing this legislative gap, the government can restore fairness and accountability in condominium construction, ensuring that innocent unit owners are not unjustly burdened with repair costs caused by developer negligence.

Commentary on Regulations

To ensure this amendment effectively protects condominium corporations, Section 23 of the Regulations should be amended to allow Section 26.2 to apply retroactively to:

- Any condominium corporations whose declarations contain restrictive qualifications preventing them from pursuing legal claims against developers for construction deficiencies.
- Provided that such corporations remain within their statutory limitation period to initiate legal proceedings.

6. Section 37(3)(a.1) and Definitions – Liability of Director Relying on a Reserve Fund Study

Significance of the Proposed Amendment:

This amendment provides clarification regarding the indemnification provisions under Section 27 of the *Act*. Currently, directors are indemnified against a breach of their duties to exercise their powers and responsibilities if they rely on certain professional -such as engineers or architects.

However, reserve fund study providers are not explicitly included in this indemnification unless they happen to be engineers or architects. The proposed Section 37(3)(a.1) extends director

protection to situations where they rely on a reserve fund study provider, ensuring that board decisions, based on professional reserve fund advice, are covered under the liability protections afforded to directors under the *Act*.

Additionally, to fully implement this revision, the definition of “Reserve Fund Study Provider” must be formally proclaimed to establish clear criteria for qualification under the *Act*.

In summary, this straightforward revision enhances clarity and legal protection for condominium boards, ensuring that directors are appropriately indemnified when relying on professional reserve fund advice. By incorporating reserve fund study providers into the existing indemnification framework, the amendment strengthens accountability while maintaining fair governance practices.

Commentary on Regulations

No additional regulations are required to implement this amendment.

7. Sections 44(2) and (9) – Removing Redundant Restrictions on the Timing of a Performance Audit Report

Significance of the Proposed Amendment

Under the current *Condominium Act*, every corporation that includes one or more residential units is required to obtain a performance audit. Currently, the *Act* calls for the performance audit to be conducted between 6 and 10 months after registration of the corporation. The *Act* also requires the performance audit reports to be submitted to Tarion “before the end of the 11th month” following the registration of the declaration. However, these timing restrictions are misaligned with Tarion’s first-year warranty period, which spans a full 12 months. This discrepancy has forced industry professionals to submit a preliminary report at the end of the 11th month and a final report at the end of the 12th month, creating unnecessary duplication and increased costs for condominium corporations.

The proposed amendments would simplify the process by requiring performance audits to be submitted before the first-year anniversary of the registration date. This change would:

- Eliminate redundant timing constraints, reducing administrative burdens.
- Ensure alignment with Tarion’s warranty period, allowing corporations to fully utilize their first-year warranty coverage.
- Reduce unnecessary costs, avoiding duplication while maintaining consumer protection standards.

Commentary on Regulations

No additional regulations are required to implement this amendment.

8. Sections 93(4)(5) and (6), 94(1) and related Sections, 72 (6) and (6) (e), 75(1.1) and 78(1.1) - Right-sizing the First Year Reserve Fund Contribution.

Significance of the Proposed Amendment

Currently, many first-year condominium budgets set the contribution to the reserve fund at 10% of the operating budget, despite first-year reserve fund studies consistently determining that the actual required contribution to the reserve fund is two to three times higher than this amount. As a result, condominiums begin their financial operations significantly underfunded, making it difficult for boards to correct the shortfall and financially burdensome for owners to absorb sudden increases in reserve fund contributions.

Additionally, unit purchasers provide their anticipated maintenance fees to their lenders when securing mortgages. Artificially low first-year reserve fund contributions distort these fees, leading lenders to approve mortgages that exceed what purchasers can realistically afford when their fees ultimately rise to reflect a realistic reserve contribution. As a result, new owners often face unexpected financial strain due to both higher mortgage payments than exceed their financial abilities and substantial condominium fee increases.

Recommended Legislative Action:

1. Proclaim Subsections 93(4)(5)(6)

Proclaiming 93 (4) (5) and (6) would remove the option to set the first-year contribution to reserve fund at 10% of the first-year operating budget from the *Act*, thus ensuring that reserve fund contributions are accurately calculated from the onset. Subsection 72(6) of the *Act* would require the builder to determine the contribution to the first-year reserve fund per the regulations.

Also note that the definition “Reserve Fund Study Provider” would also need to be proclaimed in order to implement Sections 93(4)(5) and (6).

While 93(5) is not necessary on its own face, the deletion of existing 93(5) is needed for the remaining amendments in 93(4) and 93(6) to operate. The new 93(5) requires the corporation to ask their reserve fund study provider if their balance is too low and if an update should be completed earlier than the regular three -year interval.

Thus, proclaiming Subsections 93(4)(5) and (6) would:

- Remove the 10% contribution option from the *Condominium Act*, hence ensuring that reserve fund contributions are accurately calculated from the outset.
- Require established condominium corporations to consult their reserve fund study provider early, helping identify potential fundings shortfalls before they create financial instability.

2. Proclaim Subsections 72(6) and (6)(e)

72(6) and (6)(e) will also need to be proclaimed, as these are the sections that set out how the builder is to determine the first-year reserve fund contribution. These sections of the *Act* will help

ensure that developers determine the condominium corporation's first-year reserve fund contribution according to regulations, ensuring realistic financial planning from the outset.

3. Proclaim Sections 75(1.1) and 78(1.1)

75(1.1) should also be proclaimed. This amendment makes the declarant responsible for the shortfall if the first-year reserve fund study completed for the corporation requires a larger contribution than was set out in the first-year budget. This will be needed to encourage builders to complete a proper calculation of the first-year reserve fund contribution. In other words, Section 75(1.1) is critical in that it holds declarants accountable for shortfalls in the first-year reserve fund contribution, thus incentivizing developers to make proper financial estimates.

75(1.1) can only be effective if 78(1.1) 2 is also proclaimed. 78(1.1) 2 prevents the declarant from requiring unit purchasers to make a contribution to the reserve fund over and above the contribution identified in the first-year budget based on the declarant reserve fund study. It has become common for declarants to require purchasers to contribute "two months fees" or similar into the reserve fund upon closing. This is presented as a way to "jump start" the reserve fund but may be being done to reduce the risk of a corporation seeking reparations when they discover that the contribution to the reserve fund set out in the first-year budget is far too low. Proclaiming 78(1.1) 2 is important, because preventing declarants from imposing additional reserve fund contributions will ensure that reserve funding is determined transparently and fairly. Should this section not be proclaimed, the builder's accountability for a shortfall in the first-year reserve fund contribution will be diminished.

Note that although proclaiming 93(2) would also be beneficial, it is not being recommended as it would require significant regulation development which is unlikely to be completed this year.

If possible, 94(1) and (1.1) should also be proclaimed. These provisions would allow regulations to be drafted defining what constitutes adequate reserve fund contributions, and, hence, further strengthening consumer protections.

Ultimately, these provisions jointly directly support the Ministry's protection mandate and will help ensure that new condominium owners are not financially burdened by artificially low first-year reserve contributions. Enacting these changes will enhance financial transparency and long-term sustainability in condominium governance.

Commentary on Regulations

The regulations under 72(6) should clearly outline the methodology for determining the first-year reserve fund contribution and the first-year budget. For the reserve contribution, Declarants should be required to complete a reserve fund study based on construction drawings, utilizing cost estimates reflective of replacements in an occupied building to establish an accurate initial contribution. Given that these calculations may need to be completed years before construction plans are finalized, the reserve fund study should be updated prior to registration if significant changes to the project arise.

To ensure long-term financial stability, the minimum period covered in a reserve fund study should be extended from 30 years to 45 or 60 years for both the initial study prepared by the declarant and subsequent studies prepared by the condominium corporation. This recommendation is consistent with the recommendations made by the Auditor General in their 2020 Value-for Money Audit “Condominium [Oversight in Ontario](#)”. Many building components – as such windows- have service lifespans exceeding 30 years and often represent a significant portion of reserve fund expenditures. The period covered by a reserve fund study should be long enough so that these significant components start to be funded starting as soon as a condominium is registered. This would also align with the requirements for a pre-existing elements fund study required by the Ontario New Home Warranties Plan Act (O. Reg. 522/17). Those regulations could also be referred to with respect to the requirements for updating of the drawing-based study prior to registration, as the pre-existing fund study is also subject to revision as the building design drawings are revised during construction.

If time permits, the term “adequate funding”, should be clearly defined within the regulations under Subsection 94(1). However, while beneficial, this definition could be developed at a later stage without undermining the effectiveness of the other proposed amendments.

Professional Engineers Ontario has previously attempted to define “adequate funding” and provide budgeting guidelines for its members in the absence of regulatory clarity in the *Condominium Act*. Their guidelines could serve as a valuable reference when drafting this regulation to ensure standardized best practices. A link to that file is below:

[GuidneEngCondPerformAuditsReserve.pdf](#)

To implement Subsection 93(5)- which addresses low balance triggers- two factors must be defined in the regulations:

- Prescribed timeline for assessment- the trigger should be set at the time of finalization of an audited financial statement during any year when a reserve fund study update is not already scheduled under normal regulatory cycles or any time sooner if the board has concerns that their fund balance is insufficient.
- Prescribed minimum balance threshold, which we would recommend to be the lesser of either:
 - \$1,000 per unit, or
 - 50% of the balance predicted for the year-end in the latest Notice of Future Funding of the Reserve Fund

To ensure clarity and usability, the Notice of Future Funding of the Reserve Fund form should be adjusted. The Contribution Table currently only indicates the projected contributions. It does not notify the reader about the resulting fund balances, and as such it does not demonstrate adequate funding. We recommend replacing the Contribution Table with a new cash flow table, “Funding Plan Cash Flow Table” which includes the calculated interest contributions and closing balances

in each year. The existing Cash Flow Table can be renamed “Reserve Fund Study Cash Flow Table” to clearly differentiate the two.

75(1.1), related to first year budget accountability and makes the declarant responsible if they fail to determine an appropriate reserve fund contribution and contains a regulatory link. Some regulation development will be needed under this section to identify the steps the corporation will need to take to determine the amount owing.

9. Sections 84(4) to 84(8) – Notice of Chargeback

Significance of the Proposed Amendment

The proposed new Sections 84(4) to 84(8) establish a standardized procedure for condominiums to chargeback additional costs to unit owners as common expenses and while providing a clear framework for owners to dispute chargebacks.

The ability to chargeback additional costs to unit owners is a powerful enforcement tool available to condominiums, and can ultimately lead to:

- The registration of a lien against the unit’s title; and,
- Power of sale proceedings, significantly affecting the financial interests of unit owners.

Given the serious consequence of chargebacks, it is critical to implement a transparent and standardized process that ensures unit owners receive adequate notice and have a fair opportunity to either:

- make payment, or
- dispute the chargeback through appropriate channels.

Currently, owners have limited options if they dispute a chargeback. For instance, they can make payment under protest and then commence a claim against the corporation. In other circumstances, they may refuse to pay and if there is a mortgage on their unit the mortgagee will step in to make payment and add that amount to the mortgage itself.

These limited remedies create uncertainty and potential financial hardship, making a clear dispute resolution mechanism necessary to protect unit owners from invalid and/or unlawful chargebacks.

Thus, by enacting Sections 84(4) to 84(8), the Ministry has an opportunity to strengthen consumer protections by ensuring unit owners receive proper chargeback notices and dispute options.

Commentary on Regulations

While implementing a set procedure for chargeback notices and disputes would enhance transparency and fairness, concerns remain regarding the threshold for dispute eligibility.

Some owners may exploit Section 84(5) by disputing all chargebacks, without any genuine intent to pursue a claim before the Condominium Authority Tribunal or Superior Court of Justice. This could lead to significant legal costs and administrative burdens for condominium corporations, forcing them to regularly defend against frivolous claims.

To ensure the process is effective and not misused, consideration should be given to amend the relevant regulations to:

- Establish a minimum threshold amount for initiating disputes under Section 85(5), ensuring only material chargebacks are contested.
- Implementing cost consequences for unit owners who initiate frivolous disputes, discouraging misuse of the dispute mechanism.

10. Section 112(1) – Termination of Developer Agreements within 12 Months of Turnover

Significance of the Proposed Amendment

Over the past decade, condominiums have become the most common type of housing constructed in Ontario. Many Ontarians purchase their condominium units during the preconstruction phase directly from developers. While certain laws and regulations are theoretically designed to safeguard purchasers from condominiums bound by disadvantageous contractual or financial commitments, these safeguards are often inadequate in practice.

Currently, the only requirement imposed on developers to safeguard purchasers' interests is for the developers to provide a disclosure package that fully details all pertinent aspects of the condominium to prospective purchasers. These disclosure packages typically range from 150 to 250 pages and are often dense, complex, and highly technical. As a result, they are not easily comprehensible to laypersons without legal expertise. Most purchasers rely on their transactional real estate lawyers—rather than condominium law specialists—to review these documents. However, transactional lawyers often lack the specialized knowledge needed to fully grasp the intricacies and implications of the disclosure package or exclude review of the disclosure statement from their mandate.

Consequently, many condominium buyers do not fully understand the nature of their condominium or the financial and contractual obligations it is bound by until after the turnover meeting, when the new owner-elected board assumes control.

This issue is further exacerbated as condominium corporations become increasingly sophisticated and complex, incorporating features such as shared facilities, specialized amenities, and intricate organizational structures. Developers are increasingly binding condominium corporations to “sweetheart deals” that serve the developers' interests at the expense of unit owners. Common examples of such agreements include submetering arrangements, geothermal heating and cooling contracts, shared facilities agreements, and agreements requiring

condominium corporations to purchase superintendent units, guest suites, lockers, or parking spaces from developers at significant cost after turnover or registration.

The situation has been compounded by the 2010 Ontario Court of Appeal decision in *Lexington on the Green Inc. v. Toronto Standard Condominium Corporation No. 1930*. In this case, the Court ruled that contractual obligations set out in a corporation's declaration are not subject to termination under Section 112 of the Condominium Act, 1998. This decision has incentivized developers to include such contractual obligations directly in the corporation's declaration, effectively circumventing the protections offered by Section 112.

This practice has rendered the consumer protections envisioned under Section 112 largely ineffective in many cases. As such, the proposed amendment to Section 112, which would allow corporations to terminate developers' "sweetheart deals" within 12 months of turnover regardless of whether these agreements are embedded in the declaration or bylaws, is crucial. This amendment is essential to providing condominium unit owners with the protection they need from exploitative practices by unscrupulous developers.

Commentary on Regulation

Consideration could be given to some limited carve-outs to address builders who want to install innovative systems that significantly exceed code requirements and reduce the carbon consumption of the building to support municipal net-zero initiatives – such as installing a geothermal system. In this case, the term of the contract covering recouping of excess capital costs should be limited to a maximum of ten years with uniform payments only (no buy-out or exceptional payment permitted).