

## THE CONDOMINIUM ACT – SUGGESTIONS FOR IMPROVEMENT

When we refer to the Manitoba Condo Act we often use the term "the New Condo Act" but it isn't really that new anymore - it came into effect in 2015. Many other Provinces have amended their respective Acts in the past few years. Perhaps it is time for us to get ours updated and more importantly get it improved. Toward this end, CCI Manitoba has a section on its website for you to submit suggestions for improving the Provincial Condo Act - here is a link <https://cci-manitoba.ca/resources/the-condominium-act-suggestions-for-improvement>

For reference, the Province has a website with a guide to The Act along with links to the Act itself, and the associated regulation and various related forms. The website link is <https://www.gov.mb.ca/condo/>. If you are a current director of your condo corporation, it would be useful to have the link as one of your favorites. Questions from other directors or unit owners come up in relation to governance, by-laws, AGMs, etc and I find I often have to refer to the Condo Act to answer these types of questions.

With the ongoing Covid pandemic, there are many questions about AGMs and the use of proxies. This spawned a few suggestions for improving the Act. Review what has been submitted so far and consider making your own submission, and we will include your ideas in our deliberations.

### SUGGESTIONS FOR IMPROVEMENT & QUESTIONS

1. Raising the threshold from 10 to 25 unit condominium projects for audited financial statements.
  - a. This seems to pertain to sections 73 and 156 of the Act in relation to appointment of the auditor at the AGM.
  - b. Section 159 of the Act explicitly requires an auditor report regardless.
  - c. Could also be pertinent in relation to clause 25(3) of the Regulation in terms of the requirements for the person doing the reserve fund study
2. Have some requirements for a reserve fund study to apply to new condo projects. I've walked into a few show suites and asked about estimates for monthly condo fees and hear amounts of \$150 per month for townhouse style condos for the common expense and reserve fund combined. It seems that the developer keeps the projected fees low, to improve marketability with respect to resale units. Once the Condo Corporation is taken over by the unit owners, they're faced with reality and have to raise fees drastically to catch up on past low RFC rates. Projecting unrealistically low fees to induce sales is misleading to prospective owners. While 'buyer beware' is always appropriate, it is difficult for new owners to assess what fees are realistic.
3. Include some kind of requirement for Board members to pursue training/education, such as provided by CCI lunch and learns or CCI Condo 101/201/301. Don't necessarily require it upfront but at least Board members should commit to achieve some level of education or obtain some minimum number of hours of development per year. This can only help with the governance and consistency for Condo Corporations. Ontario has requirements for directors to complete online training modules within six months of being elected. Certificate of completion is good for seven years.
4. The Condo Act states that the reserve fund is to be used for "repairs and maintenance". This is too limiting as it does not allow for enhancements or improvements. For example, new lighting in front of a building or artificial plants in a lobby cannot be paid from this fund. These are not operating expenses so they can't be paid from the operating budget. Additional flexibility is required to allow for payment of improvements from the reserve fund.
5. A Few items coming to light during the pandemic in relation to AGM. Section 116 of the Act specifies a 30 day notice requirement, but only if the meeting seeks written consent of owners, which is generally not part of the AGM. Should the ACT specify a notice requirement for AGM's? Section 117 of the Act specifies a minimum quorum of 33% unless a greater percentage is specified in the Declaration. However, for my CC at least, the Declaration doesn't deal with governance whereas our by-laws do specify a minimum quorum, which appears to be useless given the wording in the Act. Should the Act be modified to state "...unless a greater percentage is specified in the Declaration or By-laws..."?
6. Currently, the Act does not allow for voting by Board members outside of a physical or virtual meeting, to vote via email. To do so, would be expedient and efficient. The motion would have to have enough information such as a quote for services. The motion could be read at the next meeting of the board and entered into the minutes including the votes in favour or against if allowed to do so.
7. MB Act 218(1) indicates fines can be imposed for by-law or rule contraventions, but not the Declaration. However, 13(1)(e) talks about common element use restrictions, 178(1) common element changes by owners, 211(1) imposition of leasing levees. How are transgressions against the Declaration to be handled?
8. Add some regulations relating to proxies, such as is the case for the Condo Authority of Ontario (CAO) <https://www.condoauthorityontario.ca/resources/proxy-overview-and-sample-forms/>
  - a. Prefilled proxy forms with assignee of current director running for re-election looks like the current Board is trying to stack the deck (CAO strongly recommends against pre-filled forms), while forms with nothing pre-filled often come back blank for assignee. Forms with written instructions embedded make sense.
  - b. Proxy forms in use by CCs often lack specific detail directing the assignee on how to vote and the owner filling out the proxy would not generally know how to fill it out properly anyway. Forms with written instructions embedded make sense. Establish standard proxy form(s) as Ontario has done
  - c. Establish retention periods for proxy forms in case of disputes as Ontario and a few other provinces have done 🍁