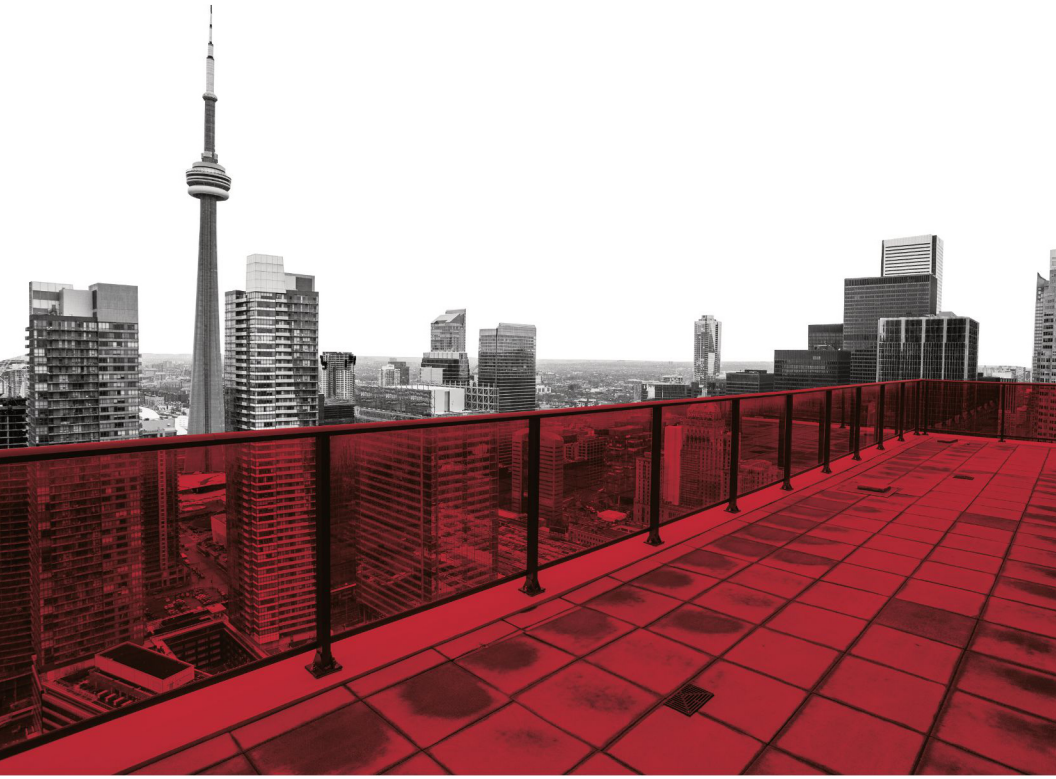
SHIBLEY RIGHTON LLP
Barristers and Solicitors

Condominium Law Group

2022/2023 Guide to Legislation Affecting Condominiums



www.srcondolaw.com

SHIBLEY RIGHTON LLP
Barristers and Solicitors

We're good at what we do

Our Group

Shibley Righton's Condominium Group has 15 lawyers including Armand Conant and Audrey Loeb, two of the leaders in the condominium industry. We have years of experience assisting board members and property managers in resolving issues that are unique to condominiums. We have expertise in all matters relating to condominiums including governance, shared facilities, enforcements, collection of common expenses, employment, human rights, harassment, construction deficiencies, insurance claims and more.

Our Philosophy

We deliver advice and services that are tailored to the needs of your condominium corporation. We resolve issues quickly and effectively. We focus on problem solving. Condominiums are communities and our goal is to help our clients avoid confrontational situations that create discord.

Try us and find out why hundreds of condominium corporations rely on us as their trusted advisors.

Our Website

Visit our website (www.srcondolaw.com) for more information or to download any of the forms described in this booklet.

This booklet is available to download for free at
https://www.shibleyrighton.com/srcondolawguide2023.pdf

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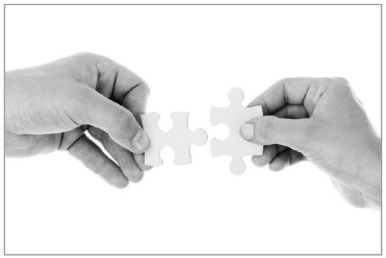
Phase 1 of the Condominium Act Reforms

On November 1, 2017, phase 1 of the reforms to the legislation governing condominiums in Ontario became law. These include changes to the ***Condominium Act, 1998*** and the implementation of the ***Condominium Management Services Act, 2015***.

These reforms were designed to implement minimum education standards for managers and directors, increase communication between boards and unit owners, and encourage condominium corporations to keep records electronically.



They directly impact owners, directors, and managers and include the following:

1. Condominium property managers must be licensed;

2. Directors are required to complete mandatory training;

3. Condominium corporations must now deliver Preliminary Notices of Meetings and various types of information certificates;

4. Owners and condominium corporations must comply with specific procedures on records requests;

5. Disputes over access to records, parking, pets and nuisance are resolved by the Condominium Authority Tribunal; and

6. Condominium corporations are required to pay fees towards the cost of operating the Condominium Authority of Ontario. The Authority maintains a registry of condominium corporations, their directors and managers.

Legislative Changes to Come

Protecting Condominium Owners Act, 2015

Only a small number of the condominium act reforms are in force. Below are some of the reforms that were announced but not yet implemented:

- formal tendering requirements for certain contracts;
- new mandatory notification to owners in advance of new budgets and budget overages;
- additional requirements regarding reserve fund studies and the creation of annual reserve fund budgets;
- changes to a corporation's ability to recover an insurance deductible from an owner;
- changes to a corporation's ability to apply chargebacks and an owner's ability to challenge them;
- a specific legislative prohibition against unreasonable noise;

The Condominium Authority of Ontario

The Condominium Authority of Ontario (CAO) is a delegated administrative authority. It is an independent, not-for-profit corporation created by the Government of Ontario. It is funded by condominium owners through the payment of annual fees. The CAO maintains a registry of all condominium corporations in Ontario. The CAO is responsible for educational resources and provides training for condominium directors. It also provides information and services to the public and administers the Condominium Authority Tribunal.

All condominium corporations in Ontario are required to be registered with the CAO. Corporations can register on the CAO's website. There are repercussions for corporations who have not registered and paid their fees.

Condominium Returns

Condominium corporations are required to file returns with the CAO. Corporations must disclose the names and addresses for service of the directors and the property manager, the date of the last AGM, and whether an inspector or administrator has been appointed. Returns are available on the CAO website.

- **Annual Return:** Must be filed by each corporation between January 1 and March 31 each year.

- **Notice of Change:** Must be filed when information filed in any return has changed. The Notice of Change must be filed within 30 days of the change(s).

List of Prescribed Forms

The following are some of the forms under the ***Condominium Act, 1998*** which are available on the CAO's website.

Information Certificates & Notices of Online Posting

1. Periodic Information Certificate
2. Information Certificate Update
3. New Owner Information Certificate
4. Notice of Online Posting of Information

Meeting of Owners

1. Preliminary Notice of Meeting of Owners
2. Notice of Meeting of Owners under s. 34(5) of the ***Condominium Act, 1998*** (Owner calling meeting due to no quorum on the board of directors)
3. Submission to Include Material in the Notice of Meeting of Owners
4. Notice of Meeting of Owners
5. Proxy Form

Access to Records

1. Request for Records
2. Board's Response to Request for Records
3. Waiver by Requester of Records

Records of the Corporation (Optional)

1. Notice Relating to Record of Owners
2. Notice Relating to Record of Mortgagees
3. Agreement to Receive Notices Electronically

Information Certificates

Boards are required to provide ongoing communication to unit owners and mortgagees.

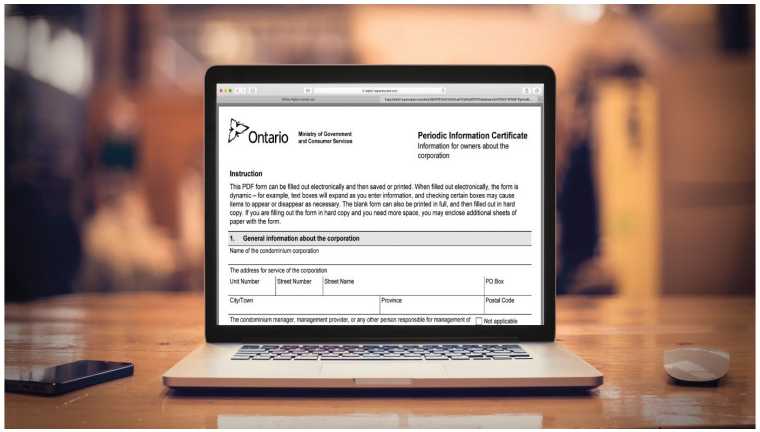
The ***Condominium Act, 1998*** requires that "information certificates" be delivered to owners at specific times during the year and updated upon the occurrence of certain events. The government has created prescribed forms for the certificates, which will reduce some of the workload for corporations.

Corporations must now produce three types of information certificates:

1. Periodic Information Certificates (PIC);
2. Information Certificate Updates (ICU); and
3. New Owner Information Certificates (NOIC).

Periodic Information Certificate (PIC)

The information contained in a PIC is similar, but not identical to what is found in a status certificate. The PIC will include the names of the board members, information about insurance, reserve funds, budgets, director disclosures and more. The PIC must be delivered to owners twice during the corporation's fiscal year, being within 60 days of the end of the first and third fiscal quarters. A copy of the most recent PIC (and ICU, if any), must be available at the corporation's AGM.



Information Certificate Update (ICU)

An ICU must be delivered to owners upon the occurrence of a "trigger" event. Trigger events include a change of the corporation's address for service, a change to insurance deductibles, director and officer changes, and loss of quorum on the board. The timeline to deliver an ICU depends on the nature of the "triggering" event.

A corporation may also pass a bylaw to require that ICUs be sent out on a more frequent basis or upon the occurrence of additional trigger events.

New Owner Information Certificate (NOIC)

The NOIC must be issued to new owners and includes up to date information concerning the corporation. A NOIC must be delivered to new unit owners within 30 days after an owner has advised the corporation of his/her purchase of a unit. The NOIC must include a copy of the most recent PIC and ICU sent to owners.

Avoiding PICs, ICUs, or NOICs

Corporations are exempt from having to provide information certificates in any fiscal year if:

- a developer turnover meeting has been held; and
- each year the owners of at least 80% of the units (who have not been in arrears of common expenses for 30 days or more) consent in writing to dispense with the requirements to distribute the certificates.

A Tip to Reduce the Cost of Providing Information Certificates

Depending on timing, corporations may be able to reduce the cost of providing information certificates by including the PIC and any ICU with the AGM package.

Corporations can reduce these costs further by having owners consent to receive documents electronically (as discussed later in this booklet).

Electronic Attendance and Voting

The ***Condominium Act, 1998*** permits unit owners to attend and vote at meetings by telephonic or electronic means, as long as the condominium corporation's by-laws permit it. By permitting electronic attendance and voting at a meeting, condominium corporations stand to greatly increase participation amongst unit owners.

What Does "Electronic" Mean?

The ***Condominium Act, 1998*** contemplates several ways in which electronic attendance and voting can be implemented in a condominium corporation. It defines "telephonic or electronic means" to include any means that uses the telephone or any other electronic or other technological means to transmit information or data, including telephone calls, fax, e-mail, automated touch-tone telephone system, computer or computer networks. With new technologies and companies emerging every day, corporations may soon have many different options available to them.

Temporary Amendments Permitting Electronic Meetings and Voting Without a By-Law until September 30, 2023

Due to the outbreak of COVID-19, we have seen the true value of electronic meetings. While physical gathering sizes are limited, electronic meetings provide condominium corporations with a viable way to conduct necessary business. Temporary amendments to the ***Condominium Act, 1998*** were implemented during the pandemic permitting condominium corporations to hold electronic meetings without a specific by-law. At present, these have been extended to September 30, 2023.

Passing the Electronic Meeting and Voting By-law

As of October 1, 2023, to permit attendance and voting by telephonic or electronic means, a condominium corporation must first pass an "electronic presence and voting by-law". Unlike other by-laws, which must be approved by the owners who own a majority of the units in the condominium corporation, passing an electronic meeting and voting by-law requires a lower threshold of a majority vote of the units present at the meeting either in person or by proxy.

We can help condominium corporations evaluate whether implementing electronic voting is right for their communities and prepare the necessary by-law.

Serving Notices Electronically

Condominium corporations have always been able to deliver notices and documents electronically, usually by email, to those owners who have consented to same. This practice is welcome because it reduces printing, mailing, and administrative costs.

The amendments to the ***Condominium Act, 1998*** have added new, mandatory procedures about how this must be done. Condominium corporations that wish to deliver notices electronically are required to take the following step, even if corporations were communicating electronically with owners before the amendments came into force.

The Board of Directors must pass a resolution stating what methods of electronic communication it will use for serving notices on owners or mortgagees. This will often be via email but could include other methods like posting the notices on a portal. An owner or mortgagee must then provide the following to the corporation, in writing:

1. his/her name and unit number;

2. his/her preferred method of electronic communication, selected from the list of methods approved by the Board; and

3. a statement that the owner or mortgagee agrees that, if this electronic method is used, service as described in section 54 of the ***Condominium Act, 1998*** is sufficient.

The Ministry has released an optional form entitled "Agreement to Receive Notices Electronically". However, any series of correspondence providing the above three required items will suffice.

A common question from condominium corporations that have already been delivering notices electronically is whether they need to collect new consents from owners in order to continue doing so. Unfortunately, unless those corporations' prior form of consent contained all of the language required, including reference to section 54 of the ***Condominium Act, 1998***, they will need to update their consents.

Voting

Secret Votes will Stay Secret

The new regulations specify that any portion of a ballot or proxy that identifies specific units does not have to be disclosed.

Proxies

Proxies must be in the prescribed form. This is not optional.

If the by-laws so provide, a condominium can establish procedures governing the time by which proxies must be delivered and the place for delivery. Some condominiums already have by-laws addressing this.

Ballots and proxies are records of the corporation. Both must be kept for at least 90 days. However, if the condominium receives written notice of actual or contemplated litigation relating to them, during the 90 day retention period or at any point before it has destroyed them, the condominium is required to retain them until the itigation has been resolved. If no litigation is commenced within six months after the corporation received the notice that litigation was contemplated, they can be destroyed.

By-laws with Lower Voting Requirements

Prior to 2017, passing a by-law required the support of a majority vote of all the units in the condominium. Some by-laws may now be passed by a majority vote of owners present at the meeting. By-laws that can be passed with this reduced voting threshold may include provisions to:

- increase disclosure obligations for prospective directors and governing the manner in which individuals notify the board of their candidacies for the board;
- permit and govern electronic voting and electronic communication with owners;
- increase the frequency of and/or require additional information to be included in information certificates;
- govern information to be presented at owners' meetings; and
- govern the manner in which individuals may include material within a Notice of Meeting of owners.

For example, if a meeting of owners has quorum, which is typically 25% of the units in a corporation, an electronic voting by-law can be passed by a majority vote of the units present at the meeting. So if quorum is present at the meeting either in person and by proxy, the by-law could be passed if a majority of the votes cast vote in favour of the by-law.

Quorum

There is now an ability to have a reduced quorum for owners' meetings if the 25% threshold is not achieved at the first two attempts to hold the meeting. On the third and subsequent attempt to hold an owners' meeting, the quorum would be 15% of the units entitled to vote. The ***Condominium Act, 1998*** allows corporations to impose a higher quorum by by-law.

Notices of Owners' Meetings

The calling of meetings is a two step procedure. The first step is to deliver a Preliminary Notice of Meeting to owners informing them that a meeting is going to be held and the second is to deliver the Notice of Meeting itself. Calling a meeting requires a minimum of 35 days' notice.

The ***Condominium Act, 1998*** places the obligation on owners and mortgagees to provide the corporation with information on changes to ownership. Condominiums are not required to verify the ownership of the units or lenders when sending notices.

The Preliminary Notice of Meeting

A Preliminary Notice of Meeting must be delivered in a form prescribed by the regulations.

The Preliminary Notice must be sent at least 20 days before the Notice of Meeting is given. If the meeting has been requisitioned by owners, then the Preliminary Notice must be given at least 15 days beforehand. The notice must state the nature of the business to be dealt with at the meeting. For example, if the meeting is to elect board members, the notice must state the number of board members, the number of vacancies, the term of each vacant position, and if any positions are reserved for voting by owner-occupied units.

The Preliminary Notice of Meeting must ask owners if any of them wishes to stand for election to the board and indicate how and when candidacy and disclosure information is to be delivered to the condominium. If a candidate provides notice of his/her intention to run for the board, the candidate must also provide the mandatory disclosure in writing to the board.

The condominium must also comply with any additional meeting notice requirements, if any, in the corporation's by-laws.

The Preliminary Notice of Meeting must also indicate how owners may add any materials to the Notice of Meeting. The board is required to add materials provided by owners in response to the Preliminary Notice of Meeting to the Notice of Meeting if the request has been signed by owners of 15% of the units, and is otherwise compliant with the ***Condominium Act, 1998*** and the regulations.

However, if an owner asks to add materials to the Notice of Meeting and the request is not accompanied by signatures of 15% of owners, the board has the discretion to decide if it should be included in the Notice of Meeting.

Notice of Meeting

The Notice of Meeting cannot be delivered until at least 20 days have passed after the Preliminary Notice of Meeting was given. This notice must also be in a prescribed form. We recommend that condominium corporations allow additional time between the date that candidates provide their names and additional materials are to be submitted, and the date the Notice of Meeting is to be sent.

Section 12.8 of O. Reg 48/01 lists the additional information that must be included in the Notice of Meeting. The condominium must also comply with any additional requirements, if any, in the condominium's by-laws.

The Preliminary Notice and Notice of Meeting are deliverable in the same way as all notices under section 47. Owners and mortgagees can be served electronically if they have provided the required consent.

Disclosure Requirements for Directors

Candidates for the board of directors must comply with mandatory disclosure obligations. These obligations are imposed so that owners are better informed about the candidates running for the board.

Candidates who advise the condominium of their intention to run for the board are required to submit a disclosure form to be included in the Notice of Meeting package. Anyone who is or becomes a director, even if appointed, is subject to ongoing disclosure requirements for the duration of his or her term.

It should be noted that the disclsoure requirement is only that the candidate or director disclose the required information. The disclosure will not disqualify a person from being a director, even if, for example, the person is a party to a contract with the developer or is involved in litigation against the corporation. The corporation would have to pass a by-law if it wanted to prevent persons from serving on the board on the basis of their responses to the disclosure. Failure to disclose, however, does prevent a person from acting as a director.

The requirement to disclose "offences" relates only to offences of which the person has been convicted (not just charged) under the ***Condominium Act, 1998***. There is no obligation to disclose criminal charges or convictions unless the condominium's by-laws so require.

Shibley Righton has prepared candidate and director disclosure forms, shown on the following page, which are available for download on our website.

SAMPLE OF A CANDIDATE DISCLOSURE FORM
(the complete form is available for download on our website)

CANDIDATE INFORMATION			
Name:			

To: _____ **(Condominium Corporation)**

OWNERSHIP/OCCUPANCY STATUS			
1	I am a registered owner of a unit in the Corporation.	Yes	No
	[If you answered "Yes" to the above]		
	The contributions to the common expenses payable for my unit(s) are in arrears for 60 days or more.	Yes	No
2	I am an occupant of a unit in the Corporation.	Yes	No
LEGAL PROCEEDINGS			
3	I, my spouse, my child, my parent, my spouse's child, my spouse's parent, an occupier of a unit I own, an occupier of a unit my spouse owns, and/or someone with whom I occupy a unit is/are a party to a legal action to which the Corporation is a party.	Yes	No
Insert description if applicable			
***CONDOMINIUM ACT* CONVICTIONS**			
4	Within the past 10 years, I have been convicted of an offence under the *Condominium Act, 1998*, as amended or under the regulations to the *Condominium Act, 1998*, as amended.	Yes	No
Insert description if applicable			
CONFLICTS OF INTEREST			
5	I have a material interest, either directly or indirectly, in a material contract or transaction to which the Corporation is a party (other than in my capacity as a purchaser, mortgagee, owner, or occupier of a unit).	Yes	No
6	I have a material interest, either directly or indirectly, in a material contract or transaction to which the declarant or an affiliate of the declarant is a party (other than in my capacity as a purchaser, mortgagee, owner, or occupier of a unit).	Yes	No
Insert description if applicable			
CONFIRMATION			
	The declarations that I have made above, and in any additional pages, are true as of the date I have signed this form. I will notify the Corporation in writing immediately if any of the information I have provided on this form changes prior to the election.	Yes	No
Date	**Signature**		

Mandatory Training for Directors

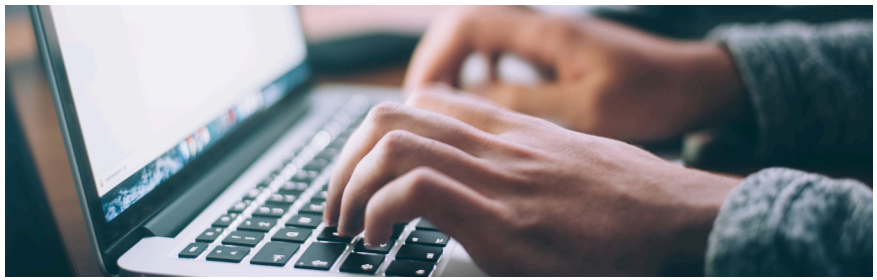
Board members elected or appointed to a board are required to complete mandatory training within six months of their election or appointment. Once a director has completed the training, it must be renewed every seven years.

The training requirement was implemented to ensure that board members have a minimum level of condominium knowledge. This was done in response to submissions to the government that some board members are not well enough informed to make good decisions on behalf of their condominium corporations.

The director training is run by the CAO. It is free and is delivered online in a series of "modules". Director training takes approximately 3 to 5 hours to complete. There is no test at the end. There are periodic multiple choice questions but, if they are answered incorrectly, the viewer is given further opportunities to answer until the correct selection is made.

Within 15 days of receiving evidence that he or she has completed the training, an individual must: (1) notify his/her condominium that the training has been completed, (2) provide the evidence of completion to the condominium, and (3) provide written evidence of any costs the individual incurred for the training. Condominium corporations are required to reimburse directors for those costs within 30 days.

The Act provides that failure to complete the training results in automatic disqualification from the board. A director who has not completed the training within six months of being elected or appointed will automatically be disqualified as a director. The CAO does not have the authority to extend the 6-month deadline. The director can be reappointed to the board once the training is completed. However, that re-appointed director does not complete his or her original term and the director's position will be up for re-election at the next Annual General Meeting of Owners.



Electric Vehicle Charging Systems

Since May, 2018, the ***Condominium Act, 1998*** has prescribed procedures that must be followed when installing Electric Vehicle ("EV") chargers or infrastructure. EV chargers can be installed by a condominium corporation in the common elements for use by any resident or visitors, or they can be installed by a unit owner in the owner's parking space to be used exclusively by that owner.

Installation by the Condominium Corporation

A condominium corporation's decision to install EV chargers or infrastructure is not contingent on or triggered by a unit owner's request. If a condominium wishes to install EV equipment, it can proceed even without requests. Many condominium corporations want to install an EV charging "backbone" to which EV chargers can connect, and which will enable power sharing and automated electricity billing.

A condominium must provide at least 60 days' advance notice to owners. Approval of the owners is not required if, in the reasonable opinion of the board, owners would not regard the proposed installation as affecting their use or enjoyment of the units or common elements and the estimated installation cost does not exceed 10% of the annual budgeted common expenses for the current fiscal year. If it does, then the owners have the right to requisition a meeting to vote on the proposed installation within 60 days.

Installation by a Unit Owner

If unit owners wish to install an EV charger in their own parking spaces, the owners must apply to the condominium corporation in writing and provide details of their installation plans. The corporation has up to 60 days to accept or reject the application. The application can only be rejected by the condominium in limited circumstances, and be supported by a professional opinion. The condominium may in certain circumstances, require that the proposed installation be carried out in an alternative manner or location, provided it will not cause the owner to incur unreasonable additional costs. For example, a corporation may require an owner to use a specific type of charger, or to connect the charger to the condominium's EV charging infrastructure.

A unit owner installing an EV charger must enter into an agreement with the condominium corporation which sets out the responsibilities in connection with the charger. The agreement must be registered on title to the owner's unit to be effective.

Employment Law Changes:

Working for Workers Act, 2021 and Working for Workers Act, 2022

The Right to Disconnect

On June 2, 2022, the so-called "right to disconnect" law came into effect in Ontario. It was introduced as part of the Working for Workers Act, 2021, legislation which focused on improving working conditions for workers. The provisions relating to the "right to disconnect" were aimed at enhancing work-life balance. The legislation is the first of its kind in Canada.

The Ontario law requires employers with 25 or more employees to develop policies that address disconnecting from work outside of regular work hours. Because of this threshold, the law will only practically apply to larger property management companies and to very few, if any, condominium corporations. For those employers with 25 or more employees, those policies had to be implemented by June 2, 2022. In addition, any employer with 25 or more employees on January 1st of any subsequent year must have a written policy on disconnecting from work before March 1st of that year. All employees must be provided with a copy of the disconnection policy, as well as any updated versions.

It is important to note that the legislation does not actually provide a right to disengage from work-related communications in any workplace environment, including in condominium corporations.

No More Non-Competition Agreements

As per the ***Working for Workers Act, 2021***, no employer shall enter into an employment contract or other agreement with an employee that is or that includes a non-competition agreement. The two exceptions are:

1. If the employee holds the office of a Chief Executive position (e.g., Chief Administrative Officer); or

2. If there is a sale of a business, or a part of a business, and the purchaser and seller enter into an agreement that prohibits the seller from engaging in any activity that is in competition with the purchaser's business after the sale and, immediately following the sale, the seller becomes an employee of the purchaser.

Delivery Workers Using the Condominium's Washroom on the Job

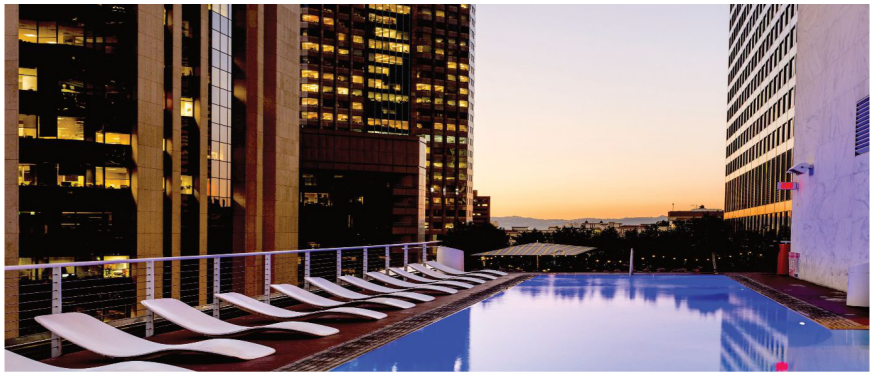
Under the legislation, persons making deliveries to or from the workplace must be granted washroom access. Exceptions include:

- if providing access is not reasonable for health and safety reasons.
- If providing access is not reasonable for reasons related to security, location, condition or nature of the workplace.
- If the washroom is in or can only be accessed through a dwelling.

Higher Penalties for Occupational Health and Safety Act Breaches

Effective July 1, 2022, the ***Occupational Health and Safety Act*** was amended to increase the maximum fine for individuals found in breach of the legislation. Directors and officers are now subject to a maximum fine of $1,500,000 (up from $100,000). This amount is the same as the maximum penalty that can be imposed on a condominium. The changes to the legislation also prescribed aggravating factors that must be taken into account for the purposes of determining a penalty.

Swimming Pool Regulations



Swimming pool regulations were updated in 2018 under the Health Protection and Promotion Act. Any condominium corporation that has six or more units and a swimming pool must comply with the new regulations. Condominium corporation must:

- Designate an operator who will oversee the operation of the pool and who is required to have specific training;
- Keep the swimming pool and accompanying areas clean, disinfected, free from slipperiness, free of hazardous obstructions and ventilated;
- Ensure adequate water quality;
- Keep and sign daily records that include all test results, the estimated number of users per day, and whether any emergencies or rescues occurred;
- Ensure that a telephone for emergency use is located no more than 30 metres from the pool;
- Ensure that there are written emergency and operational procedures and instructions at the pool;
- Display specific notices and markings in the appropriate places; and
- Provide a trained lifeguard in certain circumstances.

A condominium corporation should retain a qualified service provider to operate its swimming pool to ensure its compliance with the new regulations.

The *Electricity Act*

***Electricity Act, 1998*: Energy Consumption and Water Use Reporting Requirements**

Although most condominium buildings with a gross floor area of more than 100,000 sq. ft. have had an obligation to report annual energy consumption and water use since at least 2019, beginning in 2023, most condominium buildings with more than 10 units and a gross floor area of at least 50,000 sq. ft. will be required to report annual energy consumption and water use during the calendar year by no later than July 1 of the following year, in accordance with the regulations to the Electricity Act, 1998.

Specifically, the condominium corporation will be required to submit a report including:

1. Identifying property information;
2. The gross floor area of the property; and
3. Information respecting energy consumption, water use, and energy consumption and water use performance metrics as set out in the Government of Ontario's Guide to Energy and Water Reporting.

Elevators – *Reliable Elevators Act, 2017*

Condominiums across Ontario can anticipate changes in the legislation concerning elevators once Bill 109 (also known as the Reliable Elevators Act or REA) is enacted. The REA was proposed by the previous provincial government in 2017 and it is unclear whether the current government will move forward with making it law. If enacted, the REA would affect condominiums in the following ways.

First, the REA modifies Building Code requirements by requiring an elevator traffic analysis to be completed for buildings of seven or more stories (which includes most condominiums) before a building permit can be issued for new construction. The analysis must be conducted in accordance with industry standards and must demonstrate that the building has reasonable elevator traffic capacity. This will help to alleviate issues in new condominium corporations.

Second, the REA expands the definition of "consumer" under the Consumer Protection Act, 2002 to include a person "who is the customer of an agreement with a contractor for the maintenance of an elevator, including a person who is acting for business purposes". This amendment would protect condominium corporations by requiring elevator maintenance contractors to ensure their services are of an acceptable quality. It would also mean that elevator contractors who breach consumer protection standards could be held liable under the CPA.

Lastly, the REA imposes shorter timelines for elevator repairs by requiring contractors responsible for maintaining an elevator to ensure it is repaired within 14 days after first learning about the problem. This timeline is reduced to 7 days when the elevator is located in a retirement home or long-term care home.

If enacted, the REA could possibly be the first legislation of its kind in Canada and would undoubtedly result in greater protection for condominiums.

Elevator Outage Reporting Requirements

As of July 1, 2022, the Technical Standards and Safety Act requires condominium corporations to report any elevator 'outage' of more than 48 hours or face administrative penalties such as a $3,000 fine. Reports must contain prescribed information. They can be filed through the TSSA's online Residential Elevator Availability Portal reporting tool. A further report must be filed within 30 days after the elevator is brought back into service.

Insurance Deductibles

Condominium corporations are experiencing major increases in both the cost of insurance for the units and common elements and the amounts of the deductibles. For a few condominiums, the deductibles have reached $50,000 to $250,000 for water damage. These increased costs can have significant financial consequences for condominium corporations. There are things condominiums can and should do to limit their exposure.

One approach that is gaining some traction in the condominium industry is the "bare bones" Standard Unit By-law. It provides that only the walls, ceilings and utility lines are included in the unit definition for insurance purposes. Everything else is the responsibility of the unit owner to insure. This means that the any damage to the interior, other than what is mentioned above, will be paid by the unit owner's insurer and not the Corporation's.

The bare bones approach to the standard unit definition does come with some risk. If condominium owners do not carry insurance, it is possible that owners may not be able to restore their units to a habitable condition in the event that a catastrophic damage event occurs. If a condominium wishes to proceed with this approach, it should encourage all unit owners to carry insurance.

Alternatively, condominium corporations can mitigate the risks of having to pay for large deductibles by extending rights to recover deductibles from unit owners. Unit owners can purchase "deductible insurance" as part of their condominium unit owner insurance package. The owner's insurer will cover them to pay the condominium's insurance deductible. By extending rights to recover insurance deductibles against unit owners, condominium corporations can shift the risk of having to pay large deductibles to unit owners or their insurers.

The common thread in both approaches described above is that unit owners must carry insurance. We recommend that owners purchase insurance from the same company that insures their condominium corporation. Doing this will reduce or eliminate the chance of a dispute arising between insurers as to who is responsible to repair the damage.

Short-Term Leasing

Over the last four years, many municipalities introduced by-laws to restrict residential properties, including condominium units, from being turned into hotels. Many municipalities have banned short-term leasing, unless it is within an individual's principal residence - the location where the individual lives for the majority of the year.

Each municipality's by-law lists its own set of requirements for lawfully operating a short-term rental. Typically, licensing requirements include, among other things: (i) a licencing fee, (ii) evidence of principal residence, (iii) proof that the rental space complies with applicable laws, including the Building Code, the Fire Code, and the local property standards and zoning by-laws, and (iv) proof of insurance.

A snapshot of the current status of short-term leasing in the Greater Toronto Area ("GTA") is as follows:

- Toronto: A short-term lease is defined as less than 28 consecutive days. Operators can lease the entire unit or part of the unit. An entire residence can only be leased for a maximum of 180 nights per year. Owners must be registered and licensed. If a company is facilitating short-term rental reservations on behalf of the host, the company needs its own separate licence. The operator registration number assigned by the city of Toronto must be included on all listings and advertisements. A Municipal Accommodation Tax ("MAT") applies.

- Mississauga: A short-term lease is defined as 30 consecutive days or less. Condominium owners must prove that short-term leasing is permitted in their condominium as part of the licensing application. A second unit within the same principal residence, such as a basement apartment, can also be registered for short-term leasing.

- Brampton: Effective September 30, 2022, an individual's principal residence can be leased short-term, which means less than 28 consecutive days. Short-term rentals are permitted in the principal residence only for a maximum of 180 days per calendar year. No more than three bedrooms can be rented individually.

- Newmarket: An operator can lease all or part of a dwelling unit for 28 consecutive days or less. The operator cannot rent more than three bedrooms, nor permit more than six overnight guests at a time. The business licence number must be included on any marketing, advertising or promotions. The operator must also ensure a "permanent resident" (i.e., someone whose principal residence is the rented unit) is present and available within the Town of Newmarket to respond to guests or neighbours. Short Term Rental companies (such as Airbnb) must also be licenced with the Town of Newmarket.

- Vaughan: Short-term leasing is defined as not more than 29 consecutive nights. Operators are allowed to rent the entire principal residence or up to two bedrooms. Brokerages which advertise and book short-term rentals must also obtain a licence from the City of Vaughan. A MAT applies.

- Oakville: A short-term lease is defined as a period of less than 28 consecutive days. Operators must include their business licence number on all advertisements. Companies must also be licensed with the Town of Oakville.

There are similar by-laws in Oshawa, Huntsville, and Georgina. London's short-term leasing by-law will be coming into force on October 1, 2022. Hamilton councilors are also considering regulating such rentals. On the other hand, Collingwood has kept its stance that Bed and Breakfasts, hotels, and motels are the only short-term accommodations allowed within its town.

Each municipality has its own enforcement procedure, described in its short-term leasing by-law. If there are concerns related to short-term rentals, such as noise, waste, or unlawful leasing, complaints can be made directly to the municipality. Some municipalities also have complaint forms online.

Smoking in Condominiums

Canada's ***Cannabis Act*** came into force on October 17, 2018. Now, anyone 19 years or older can possess, use and grow recreational cannabis. Cannabis can be smoked anywhere tobacco smoking is allowed. Individuals are also allowed to grow up to four (4) plants per residence.

Smoking - whether of tobacco or cannabis – is a concern for many condominium corporations who are especially anxious about how the legalization of recreational cannabis impacts their communities. Condominium corporations have addressed their concerns in two ways:

- Traditional enforcement routes; and/or
- Passing a rule that specifically deals with smoking

As of January 1, 2022, subsection 117(2) of the ***Condominium Act, 1998*** prohibits the creation of a list of specific nuisances, including odour and smoke. In addition, most condominium corporations have a rule prohibiting residents from causing a nuisance, allowing smells/odours to escape from their units, or interfering with the quiet enjoyment of other residents. These provisions are usually effective in enforcing against someone whose smoke drifts into other units. Disputes regarding odour and smoke migration are submitted to the Condominium Authority Tribunal (CAT).

There can be great value in passing a rule that deals directly with smoking. This enables the condominium to set expectations of what is permitted and what it expects from its residents. Explicit rules allow condominium corporations to "fine tune" what will be allowed in their communities. In doing so, it is important to keep in mind that rules have to be reasonable and cannot be oppressive by treating one group preferentially, without any good reason to do so. Just as many individuals find cannabis smoke disturbing, many think the same of tobacco smoke. Most condominium corporations that implement no-smoking rules have done so for both cannabis and tobacco. Many condominiums have also opted to extend the right to smoke to individuals who already smoke at the time the rule comes into force, though recent case law has found that this is not mandatory and that it can be revoked if the smoking causes a nuisance to others.

Condominiums must also balance cannabis enforcement efforts with the rights of those residents who consume cannabis to manage a disability. Under the Ontario Human Rights Code, condominium corporations have a legal duty to accommodate the needs of people with disabilities who are adversely affected by a requirement, rule or standard. Requests for accommodation must be dealt with on a case-by-case basis and with due sensitivity.

Procedure for Passing Rules

Condominium rules are passed to protect the safety and security of residents. They are an important aspect of condominium governance. However, as condominiums age, additional rules are often needed to address new issues that arise.

The manner in which rules are passed changed in 2017. In order to pass a new rule, the condominium's board must provide notice of the proposed rule to all owners. The notice must include

a. a copy of the rule as made, amended or repealed, as the case may be;

b. a statement of the date that the rule will become effective;

c. a statement that the owners have the right to requisition a meeting under Section 46; and

d. a copy of Sections 46 and 58 of the ***Condominium Act, 1998***.

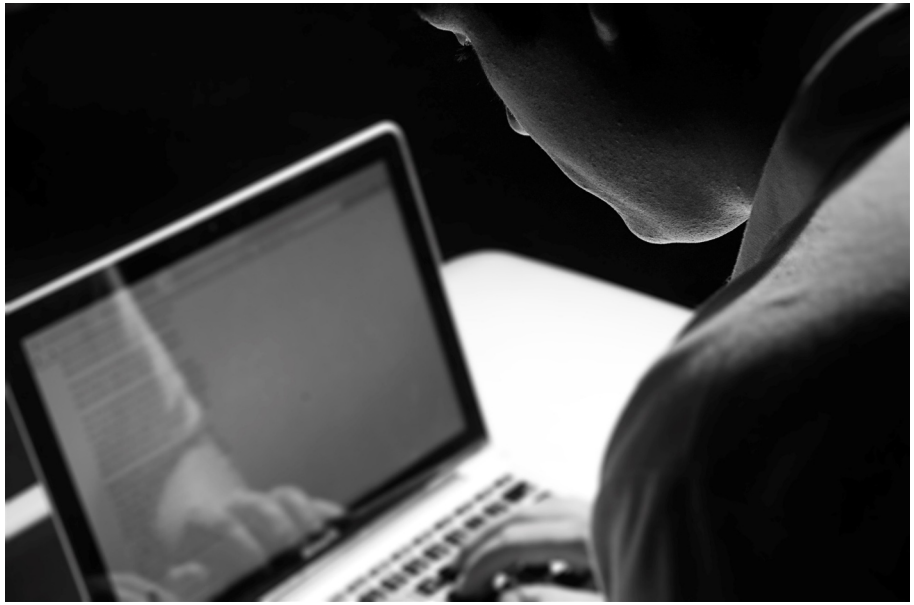
When a board proposes a new rule, owners still have the right to requisition a meeting within 30 days. However, the new rule will only be defeated if a majority of owners present at the meeting in person and by proxy vote against it at the meeting. If quorum is not achieved at the meeting, the rule will automatically come into force on the date set out in the notice. This new procedure has been a welcome change and has helped many condominium corporations update their rules.

Dealing with Resident Behaviour

Condominium corporations receive many complaints about the behaviour of residents. Condominiums have a statutory duty to ensure owners and residents comply with the ***Condominium Act, 1998***, the corporation's governing documents (the declaration, bylaws and rules). Condominiums are required to take steps to address offensive behaviour that comes to its attention where possible. This can be challenging but the following steps can be taken:

1. Take prompt steps to investigate and, if possible, independently confirm the complaint or complaints

For example, if a corporation is a smoke-free building and receives a complaint about smoke odours, the condominium should require residents to report the complaints in real time. This will allow someone, preferably an employee, to enter the complainant's unit and confirm the complaint. The individual can then walk around to see where the smoke is strongest and from which unit it might be coming. This ensures that the complaint is independently verified and the condominium is not just relying on the word of one complainant. The complainant and results of the "investigation" should be documented in writing.



2. Send a warning letter

If the complaint and source of the problem are verified, the condominium should send a letter to the owner, and the resident if the unit is tenanted, describing the objectionable behaviour, citing the provisions of the condominium's governing documents or the Act that are being breached, and direct the resident to stop the prohibited conduct. It may be appropriate to state the consequences of failing to comply. In some cases a second warning letter may be appropriate.

3. Refer the matter to legal counsel

If a resident does not comply, legal counsel should be instructed to send a formal letter of compliance. The letter can include a chargeback if the condominium's documents so permit.

4. Legal proceedings

If the behaviour continues, the condominium can commence proceedings to achieve compliance. Some disputes must proceed to mediation and arbitration, some to the Condominium Authority Tribunal, and some to court. Condominiums should seek legal advice before commencing legal proceedings.

Although a condominium's board is obligated to enforce its governing documents, it is also required to act fairly and reasonably. In some cases, doing so should involve consulting suitable experts or demonstrating a willingness to work with the owner/resident and consider alternative solutions.

Condominium Authority Tribunal (CAT)

The Condominium Authority Tribunal (CAT) is a decision-making body set up to resolve condominium disputes in an easier, faster, and less expensive manner as compared to the courts. Most of the dispute resolution process takes place online. The CAT has jurisdiction to hear disputes relating to:

a. Records

b. Nuisances, including matters relating to noise, odour, smoke, vapor, light, and vibration; and

c. The declaration, by-laws or rules of a condominium in respect of the prohibition, restriction or governance of:

(i) pets and other animals;
(ii) motor vehicles and other modes of transport;
(iii) parking
(iv) storage
(v) nuisances
(vi) indemnification or compensation in respect of a dispute set out in this section (c).

The jurisdiction of the CAT has significantly expanded since its inception, and is expected to continue to expand over time.

To initiate a dispute, an applicant must create an account on the Condominium Authority of Ontario's website, provide the information requested, and pay a non-refundable $25 fee. An application to the CAT goes through three stages:

1. **Negotiation** – In the negotiation stage, the parties exchange documents, communicate with each other, and try to settle the dispute. No CAT staff or adjudicators are involved. There is an automated system for exchanging binding settlement offers. If the parties agree to a settlement, the online tools generate a settlement agreement.

2. **Mediation** – If the dispute is not settled at the negotiation stage, the CAT appoints a mediator to assist the settlement negotiations. The fee for mediation is $50. If no settlement is reached, the Applicant may apply for a tribunal decision.

3. **Tribunal Decision** – At this final stage the CAT assigns an adjudicator who controls the process and decides how the hearing will proceed. The adjudicator decides the outcome based on the parties' written arguments and evidence. The adjudicator can schedule a teleconference, video conference, or live proceedings before making a decision. The fee for the tribunal decision process is $125.

A CAT decision is binding and carries the same legal effect as a court order.

Like a court, CAT can also award costs to the parties and can levy a penalty in limited circumstances. That said, many CAT decisions did not allow condominium condominium to recover much, if any of the legal costs they incurred. This is true even when the condominium corporation was entirely successful in bringing or defending an application, although there is some indication this may be changing.

Record Keeping and Access

The ability of unit owners to access records has improved significantly in recent years. The process by which owners requested and obtained or were denied access to records was less regulated previously. The 2017 legislative changes introduced the following concepts and procedures:

1. **The procedure for requesting records.**
A records request must be in a prescribed form that is available electronically and be submitted to the board. The board must issue a response within 30 days indicating what it will and will not provide, and the estimated cost of production. The requester must then send a response identifying which records he/she would like and pay the estimated cost.

2. **Records are defined as either "core" or "non-core" records.**
Core records include the Declaration, By-laws, Rules, Financial Statements, Minutes of Meetings, and Notices. If owners request electronic copies of core records, they must be provided free of charge. Corporations can charge $0.20 per page for core records that are requested in paper format but cannot charge for labour. Condominiums are required to produce records within certain timelines, depending on the type of document requested and the method of delivery. Many condominiums keep these records posted online so owners can be directed to a portal for access.

3. **Condominiums can charge for the cost of producing non-core records and for making copies of core records.**
Condominiums can only charge for the actual costs incurred by the condominium. Labour costs can be charged for non-core records and must be reasonable. Copying/ printing costs cannot exceed $0.20 per page. If records are delivered electronically, printing costs cannot be charged. Redacting charges can be $60/ hour, or possibly more, depending on what information needs to be redacted.

4. **Disputes regarding access to records must be brought before the CAT.**
The maximum penalty the CAT can award for failing to produce records is now $5,000, payable to a unit owner who is found to have been improperly denied access to records.

A records request is deemed abandoned by an owner if the owner does not respond to the board‘s response within 60 days, or if no application is brought to the CAT within 6 months of the initial request.

5. **There are now minimum retention periods for all records.**
Most operating and financial records must be retained for 7 years after the year they were produced, while others, such as Declarations, By-laws and Rules, agreements to which the condominium is a party, including insurance policies, must be retained indefinitely. Retention periods are extended if the records are part of a litigation matter or a records request.

6. **Records can now be stored either electronically or in hard copy.**
Electronic records are acceptable as long as they can be reproduced and there is protection against their loss. Safeguards, such as passwords, should be in place to protect against unauthorized access. Hard copy records must be kept in a location "reasonably close" to the condominium, or at the manager‘s offices.

7. **Records that a corporation does not have to provide.**
Owners do not have a right of access to all records. There are exclusions. Consult your legal advisor if you are unsure about teh rquested document.

Now is a good time for condominiums to update the manner in which they store records. We recommend that all core records be posted on a condominium‘s website or portal, if one exists, or stored electronically so that they can be quickly and easily provided to unit owners.

Procedure to Access Records

1

The Request

The requester must deliver the prescribed form indicating the records being sought and whether hard or electronic copies are requested.

2

Deliver Core Records

If core records are requested electronically, the Board must provide the records within 30 days at no cost, even if the Board is required to make redactions or photocopies.

or

Board's Response on Prescribed Form

If non-core records are requested, or if core records are requested in hard copy, the Board must respond on the prescribed form within 30 days identifying records to be produced and the estimated cost.

Corporations can charge up to $0.20 per page for copies, plus labour if a labour cost was paid by the condominium, including labour for redacting.

3

The Requester's Response

The requester must respond on the prescribed form confirming which record she/she wants and paying any applicable estimated fee. This does not apply if the requester asked only for only core records delivered electronically.

4

Delivering Records

Once the requestor pays the fee, the Board must provide core records requested in paper format within 7 days and noncore records within 30 days of receiving payment.

If the actual cost of providing the record is more than the estimate, the requester is obligated to pay the difference up to 10% more than the estimate. If the cost was less than the estimate, the Condominium must refund the difference.

Abandonment

A request is deemed to be abandoned if the requester does not respond within 60 days or applies to the Tribunal within 6 months.

The *Condominium Management Services Act, 2015*

As of 2017, anyone providing "condominium management services" must be licensed, insured, and compliant with other requirements set out in the Condominium Management Services Act, 2015 (CMSA). "Condominium management services" are defined broadly to include services performed under the delegated authority of the condominium such as collecting common expenses, making payments or negotiating contracts on behalf of a condominium. However, certain professionals such as lawyers, engineers and accountants are excluded from the licensing requirement.

There are 3 different types of licences

1. **Limited Licence**

Applicants for a Limited Licence must use the prescribed forms and provide the information required by the Regulations to the CMSA, which includes a police records check. As part of the application process, applicants must successfully complete Excellence in Condominium Management, a mandatory course offered by the Condominium Management Regulatory Authority (CMRAO). The course provides foundational knowledge about the condominium industry and the role of a condominium manager.

The Regulations set out certain limitations on what limited licensees can do. In particular, Limited Licencees must be supervised by other licensees when performing key tasks such as entering into, extending, or terminating contracts, spending more than $500 of operating funds or delivering notices to owners and mortgagees. Limited Licensees cannot spend reserve funds or sign status certificates.

2. **General Licence: A General Licensee can perform any management task.**

Obtaining a General License requires completing educational and examination requirements, and at least two years of work experience performing certain required tasks under the supervision of a supervising licensee. These must have been completed within the five years before making the application.

3. **Transitional General Licence**

The last day to apply for a Transitional General Licence was March 30, 2018. All holders of a Transitional License were required to apply for a General Licence by

May 31, 2022 and all Transitional Licenses expired as of June 30, 2022. A Transitional Licensee who was unable to meet the deadline to apply for a General Licence may apply for a Limited Licence.

So how do you get licensed?

The application documents for a Limited and General Licence are available on the CMRAO website: https://cmrao.ca/condo-managers/licensing/licences.

What about new property managers?

New property managers must first apply for a Limited License. They may then apply for a General License after completing the prescribed educational and examination requirements and 2 years of supervised work experience.

What does this mean for condominium directors?

Directors must ensure that their condominium management service provider is licensed. As of February 1, 2018 a corporation cannot enter into a management agreement with an unlicensed condominium manager. Directors should also ask the manager for certificates of insurance for fidelity coverage and errors and omissions insurance.

Code of Ethics for Property Managers

Property managers are now required to comply with a Code of Ethics. Failure to do so can result in disciplinary action. The Code of Ethics requires, among other things, that property managers:

- provide services fairly, honestly and with integrity and not engage in disgraceful, dishonourable, or unprofessional behaviour
- be financially responsible in providing management services;
- endeavour to treat all persons equally, without harassment;
- prevent error, misrepresentation, fraud or any unethical practice;
- keep the condominium informed;
- promote the best interests of the condominium; and
- not arrange or provide services if the services cannot be provided with reasonable knowledge, skill, judgement and competence.

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