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The Right to Access Records

Anyone who works in condominiums has heard it said before, “access to records is the single largest cause for disputes in condominiums...”.

It is clear that the government heard these concerns as well when they sat down to put pen to paper on revising the *Condominium Act*, and they left us a very clear trail of what they felt were concerns based on the changes that were made.

The first and biggest change, and any of you that know my point of view on this issue will know that I support it, is that they took the opportunity to abolish the use of the word ‘reasonable’ in this section of the Act.

One of the most important ways to resolve these disputes is to ensure that there is clear direction to condominiums regarding what information owners

have access to and clear unambiguous timelines regarding compliance with records requests.

Whether or not the timelines that have been set are appropriate is something that we as an industry will go back and forth on for the next several years, but there is no doubt that the timelines that have been set are clear. For the first-time board members and condominium managers know exactly how long they have to comply with the request for records, and unit owners who have made requests know exactly how long they can expect to wait to receive the information they have requested.

Another key improvement in this section of the Act is that condominium managers and corporations have received a key protection from unit owners who

used section 55 as an excuse to steal valuable management time from other owners. The revisions to the *Condominium Act* set out clear processes and costs for owners who wish to review records which are not readily available and may require time to locate and provide. This protection works both ways as it also makes clear to managers and board members that some records are so basic in nature that owners are clearly entitled to receive them in a short period of time and at no cost. In effect, the Ministry has defined this is reasonable.

The first step in addressing this issue was to determine what records should be readily available and produced at little or no cost. To this end the regulations have divided the records of a corporation into two categories – Core and Non-Core.

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Core and Non-Core Records

Core Records can be looked upon as records that are so fundamental to the ongoing daily operation of the property that they should be readily available and easy to provide in the event of a request. Here is a comprehensive list of these types of records:

- current versions of the declaration
- bylaws
- rules
- shared facilities or mutual use agreements
- the current fiscal year budget and any amendments
- the most recent financial statements approved by the corporation's board and the most recent auditor's report presented to the board (or to the audit committee, if any)
- the record of owners and mortgages (under the new section 46.1(3) of the *Condominium Act*)
- the record of notices relating to units that are leased (under section 83 of the *Condominium Act*)
- information certificates (under section 26.3 of the *Condominium Act*) that were sent or required to be sent to

owners within the 12-month period preceding the records request

- minutes from any owner or board meeting held after the proposed new regulations come into force and within the 12-month period preceding the records request
- the most recent Reserve Fund Study (under section 94 (8) of the *Condominium Act*)
- any other record that a bylaw specifies as a core record

Non-Core Records are other records that the corporation is responsible to maintain. Due to the nature of these records, and in some cases the age of these records, the Act treats these records differently both in terms of the amount of time in which corporations must produce them, and in terms of sharing the costs associated with accessing these records with the owner who has asked to review them.

Here are some examples of non-core records:

- previous reserve fund studies
- minutes (other than from the 12 months preceding the date of the request)
- information certificates (other than

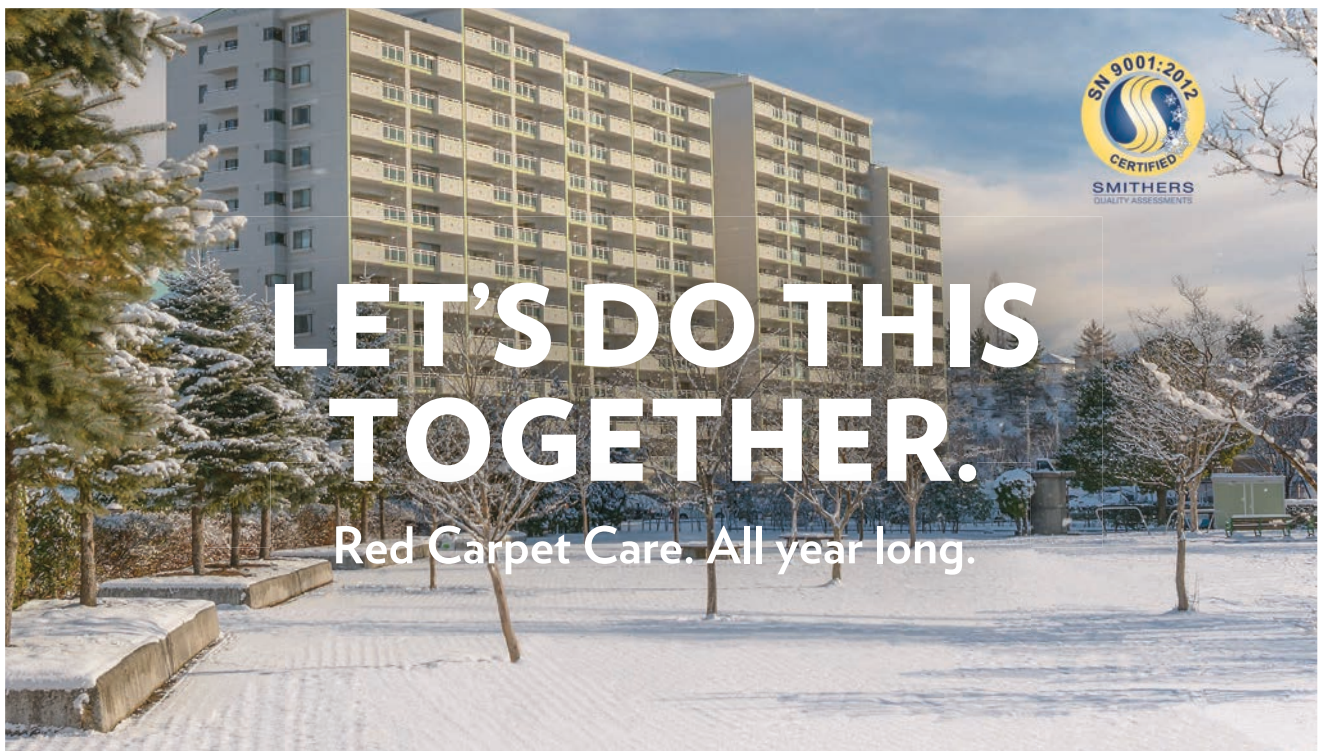
from the 12 months preceding the date of the request)

- financial information from previous years
- expired contracts
- any record not captured in the definition of a core record

You will find many articles on accessing records in the coming months and years, but it is clear from the steps taken in revising the Act that the government sought a balance and, in my opinion, they have achieved it.

There is certainly room for improvement in areas such as forms, but let's give the government credit for something they have done very well... They sought and found a balance between the owner's rights to access information regarding their condominium corporation and the rights of the board and condo owners to be protected from owners who abused their rights under the old section 55. ■

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