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# Things to Watch for in 2019

2018 has been an exceptionally busy year for condominium managers and directors in Ontario. The first phase of the amendments to the *Condominium Act* brought widespread change to condominium management and administration. Here's a quick list of some of the key changes:

- Creation of the Condominium Authority of Ontario (CAO), and the requirement that all condominiums pay \$1 per month per voting unit (per POTL in common elements condominiums) to the Authority.

- Creation of the Condominium Authority Tribunal (CAT) which is handling only records disputes so far ... but CAT's jurisdiction is expected to be broadened in the coming years.

- Mandatory director training.
- Provincial returns required for all condominium corporations.

- A public registry of Ontario condominiums.

- New Information Certificates from condominium corporations to Owners and Purchasers.

- New Disclosure Obligations for Director Candidates.

- Preliminary Notices required for most meetings of Owners.

- Changes to the Procedures for Passing Rules.

- Many new prescribed forms, including prescribed Information Certificates, Preliminary Notices of Meeting, Notices of Meeting and Proxy Forms (and many others).

- New types of Bylaws.

- Sweeping new provisions respecting record-keeping and owners' access to records.

- New regulations respecting Electric Vehicle Charging Stations (increasing

the possibilities for EV charging stations on the common elements).

- And much more.

And of course, 2018 also saw the arrival of mandatory licensing for Ontario condominium managers.

Will condominium managers and directors have an opportunity to catch their breath? Probably not. It looks like 2019 could see almost as much change as 2018 – particularly if the second phase of the amendments to the *Condominium Act* arrive in late 2018 or in 2019. Before I turn to the second phase of the amendments, I must add a cautionary note: Ontario's new government has not yet confirmed that it intends to carry through with the second phase. So, there is considerable doubt and uncertainty about the future for Ontario condominiums. However, assuming the province stays the course, here's what is expected in the "second phase":

A crystal ball sits on a dark, polished wooden stand with a tiered base. The crystal ball is highly reflective, showing distorted images of the surrounding environment, including what appears to be a person in a blue shirt. Two hands are visible in the background, one on the left and one on the right, with fingers slightly spread. The entire scene is set against a dark background. The year '2019' is overlaid in the center in a large, white, outlined font.

2019



## The second phase of the amendments to the Act

Here's my list of some of the key amendments that are expected in the second phase:

**1. Shared Facilities Agreements will be mandatory** If a condominium corporation shares property with another party, a registered shared facilities agreement (in compliance with anticipated new regulations) will be mandatory. For condominiums with shared property (and their managers), this may mean a considerable amount of work to negotiate, finalize and register such agreements.

**2. Mandatory Procurement Process for many contracts** For many types of contracts, there will be a mandatory procurement process (i.e., tendering). This may mean added work for condominiums and their managers (depending upon their current practices in terms of contract procurement).

**3. New Procedures for Requisitioned Meetings** The procedures applying to requisitioned meetings will become much more detailed—involving considerable additional correspondence between the corporation and the requisitionists.

**4. Directors elected by the owners of “non-leased voting units”** Some good news: For many condominiums, the need for a “resident-elected director” (which will now be known as the director elected by the owners of the non-leased voting units) will no longer apply. This requirement will only apply if (a) a minority of the units are non-leased voting units, and (b) one of those owners asks for such an election.

**5. Changes related to reserve fund planning** There will be some important changes in the area of reserve fund planning. In particular, we expect to see a specific definition of “adequate” (in relation to reserve funds). Also, the applicable timeframes (to plan for “adequacy”), will likely be adjusted. Furthermore, the current 30-year study period is expected to be extended (perhaps to 45 years or more). This change to the study period could have a serious impact upon required reserve fund contributions—particularly in cases where large anticipated future repairs or replacements currently fall outside the 30-year study period. This, in turn, can have implications for the current status certificates.

One of our standard recommendations is that all condominium corporations consider adding wording, along the following lines, to their current status certificates:

*The corporation's reserve fund study covers a 30-year “study period” (or period of analysis) required by the Condominium Act and Regulations. There are some features of our building that won't require repair or replacement until after the 30-year study period. In other words, those features fall outside of this mandated study period. Therefore, contributions to the reserve fund will need to increase in future, as those features fall within the reserve fund study's period of analysis.*

ALSO: If and when the mandated study period is extended, revised status certificate wording may be required.

**6. New notices to owners in relation to financial matters** Condominium corporations will have to give notice to owners about certain budget overages (to be detailed by regulation) and when the reserve fund falls off track a certain amount (also to be detailed by regulation).

**7. New rights for owners in relation to chargebacks to their common**

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**expenses** For chargebacks to owners, the corporation will be required to provide specific notice to the owner, whereupon the owner will have an opportunity to challenge the chargeback (likely by way of application to CAT). In many cases, a key concern may be: *Is there a provision in the Declaration that authorizes the condominium corporation to add the chargeback to the owner's common expenses?*

**8. Modifications to common elements** There will be new regulations to help define the estimated “cost” of a proposed modification. My hope is that the new regulations will confirm that the “cost” takes into account both short- and long-term expenses (as well as short- and long-term savings); and also that the cost of a modification is the difference in cost between (a) the cost of making the modification and (b) the cost of not making the modification.

There will also be some important changes in the law respecting “minor modifications” that can be authorized by the board (without owner involvement).

**9. New definitions of repair and maintenance** The definitions of “repair” and “maintenance” will change—and (depending upon the wording of the Declaration) could in some cases have a dramatic impact upon the repair and maintenance obligations of condominium corporations and owners. This is something that condominium managers and directors will need to carefully scrutinize in each case. In some cases, an amendment to the Declaration might be wise.

**10. Insurance deductibles bylaws** It appears that insurance deductibles bylaws (dealing with the responsibility of owners to pay the deductible under the condominium corporation's insurance policy) will no longer be effective. Instead, an amendment to the Declaration will be necessary. However: The province might decide to grandfather existing insurance deductibles bylaws. This is still uncertain.

At the same time, Section 105 of the *Condominium Act* will be amended so that an owner will be responsible for the corporation's deductible in the case of insured damage to **any part of the property** resulting from an act or omission of the owner or an occupant of the unit.

**11. Standard unit descriptions** There will be a new statutory standard unit

description that will apply in cases where the corporation has no standard unit description. But will the statutory description make sense for a given condominium?

**12. Investments** Amendments to Section 115 of the *Condominium Act* will make it clear that condominium corporation investments must be either (a) issued or guaranteed by the Government of Canada or the government of a province, or (b) covered by CDIC or DICO.

**13. Declarants** There will be enhanced disclosure obligations for

Declarants, more detail in relation to the obligations of Declarants for first-year budget deficits, and limits placed on the legal rights of Declarants.

**14. First year performance audits** There will be various amendments in relation to first-year performance audits.

**15. Noise** Section 117 of the *Condominium Act* will prohibit “any unreasonable noise that is a nuisance, annoyance or disruption”. Other nuisances, annoyances or disruptions may also be prohibited by regulation.

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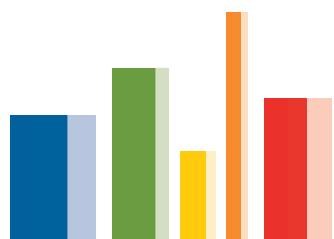
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## Other matters that condominium managers and directors will be dealing with in 2019

### *Declarations, Bylaws and Rules*

Many condominium corporations have been considering and/or implementing amendments to their governing documents. Some key reasons are as follows:

#### **Declarations:**

- To amend or add provisions allowing chargebacks to be added to an owner's common expenses (i.e., strong "indemnification" provisions).

- To correct or clarify repair and maintenance obligations – particularly in light of coming amendments to the Act.

- To correct problematic insurance provisions, including problematic waivers of subrogation.

- To confirm rights of the corporation to access the units – particularly in an emergency.

#### **Bylaws:**

- To bring bylaws into conformity with the *Condominium Act* and Regulations.

- To delete unnecessary and/or confusing provisions.

- To add provisions respecting electronic voting and electronic attendance at meetings.

- To add helpful provisions: Like applying all common expense payments to the earliest arrears.

- To delete bad provisions: Like "Protection of Directors" provisions (which sound good but are in fact bad for the corporation).

#### **Rules:**

- Smoking and Cannabis – particularly with the legalization of Cannabis. From what I've seen, the trend in Ontario is continuing towards more and more smoke-free living in multi-unit residential buildings.

stations in condominiums in Ontario. However, with the change in provincial government, I think this may slow down a little ... at least for the time being.

#### **Energy and Water Consumption**

Under changes to the *Green Energy Act*, many condominiums were to track

*Ontario's new government has not yet confirmed that it intends to carry through with the second phase. So, there is considerable doubt and uncertainty about the future for Ontario condominiums.*

- Regulation of Short-term tenancies.
- A definition of "family".
- In some cases, a general overhaul of Rules that are old or out of date.

#### **Electronic Notices to Owners**

More and more condominiums are obtaining the necessary agreements from owners (see the new prescribed form) in order to send notices to owners electronically.

#### **Websites**

More and more condominiums are establishing websites for enhanced communication with their owners and occupants.

#### **Record Keeping**

More and more condominiums are making arrangements for electronic storage and retrieval of their records.

#### **Electric Vehicles**

I think we will continue to see a growing number of electric vehicle charging

(beginning in 2018 or 2019) and report (beginning in 2019 or 2020) energy and water consumption. However, Ontario's new provincial government is promising to repeal the *Green Energy Act*, so this may not become a reality.

It certainly doesn't look like things will get any less busy for condominium managers and directors. The good news is as managers and directors adapt to all of these changes, they are becoming more and more efficient at handling them! ■

**James Davidson**, LLB, FCCI is a partner at Davidson Houle Allen LLP, and has been practicing condominium law for more than 34 years. He represents condominium corporations, their directors, owners and insurers throughout eastern Ontario.

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