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**GROWING UP:  
ONTARIO'S CONDOMINIUM COMMUNITIES  
ENTER A NEW ERA**

Condominium Act Review  
Stage Two Solutions Report

**EXECUTIVE SUMMARY**

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SEPTEMBER 2013



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# EXECUTIVE SUMMARY

This report marks the second stage in a far-reaching review of Ontario's 12 year-old Condominium Act. With condos now making up half of all new homes built in the province, there is a pressing need to overhaul the rules governing condo communities, provide better information to owners, and devise new tools for resolving disputes.

## THE REVIEW PROCESS:

The first stage of the review, completed in early 2013, identified numerous shortcomings in the existing law. Participants, drawn from across the condo sector, proposed options for improvement and highlighted areas of agreement and differences of opinion.

Under stage two, we set up five working groups representing a broad cross-section of interests. These groups have sought to achieve the widest possible agreement and formulate recommendations for action. Each group has focussed on one of five areas:

- Consumer protection
- Financial management
- Dispute resolution
- Governance
- Condominium management

In addition, a 12-member panel of experts has provided a forum for "sober second thought". Panel members were selected for their expertise in key areas, such as consumer protection, engineering, condo development, finance and condo management, and to provide a balance of perspectives across the sector. Each panel member has also sat on at least one of the working groups.

The panel of experts has reviewed all the working groups' proposals in the context of four questions:

- Are the recommendations fair and balanced, given the various interests at stake?
- Are they consistent across the five areas so that they form a coherent whole?

- Do obstacles to implementation make them impractical?
- Do the recommendations offer effective solutions to the issues?

The proposals that have emerged from the working groups and the expert panel are not necessarily clear-cut recommendations. Some are qualified by dissenting voices, conjecture and questions.

In others, the working groups have left their recommendations open-ended, taking the view that new rules or practices need to evolve over time. In these cases, the report aims to capture the spirit of the group's discussion, rather than map out a precise course of action.

**We have sought throughout the review to promote a collaborative process, where parties try to find shared interests and build on them.**

This outcome is neither a criticism nor a weakness of the working group reports. The purpose of stage two of the review is to provide legal drafters and policy experts with some clear guidance on how the issues raised in the stage one findings report can best be resolved. In this respect, the working groups and expert panel have succeeded admirably.

We have sought throughout the review to promote a collaborative process, where parties try to find shared interests and build on them, rather than a competitive one where different interests seek to score points off one another. In the few cases where one or more members of a working group or the expert panel have differed strongly from the majority view, the report notes their dissent, with reasons to help readers grasp the full context.

The report also records a few issues where it has not been possible to reach agreement. In these cases, the government will need to decide how to move forward.

In the end, it will be up to the government to make final decisions on all the recommendations.

**Our assumption has been that the stronger the consensus among participants, the greater the likelihood that government will act on a recommendation.**

## **COMMON THEMES:**

Several common themes have emerged during the first two stages of the review process. These themes crop up in many, if not all, the different topic areas, thus cutting across the mandates of the five working groups. They are important because they link the recommendations from different areas together, helping to make the report a cohesive whole rather than just a collection of disparate ideas.

The common themes include:

- **Education:** A central challenge of the Condominium Act review is to find ways of encouraging condo owners to look on their homes as part of self-governing communities or neighbourhoods and to understand and accept some responsibility to make those communities work. Education is thus central to the reform process
- **Information:** If owners and other participants are to make their communities work better, they need reliable, timely and relevant information. This information falls into two categories: first, how key parts of the system work, such as the board of directors or the reserve fund; second, specific issues, such as the state of the reserve fund, the reasons why specific items are on the agenda for official meetings (such as board meetings), or up-to-date information on a renovation project.
- **Condo board transparency and accountability:** The review process has provided ample evidence that many condo owners feel detached from their boards and building managers. Owners have said that they know too little about how or why decisions are made and executed, and they have called for improved transparency and accountability.
- **The power imbalance between boards and owners:** The basic tools for solving disputes under the existing Condominium Act are mediation, arbitration and the courts. These processes usually take a long time and legal costs mount quickly. This reality can be very frustrating for an owner

who has a grievance with a board. While the owner may not be able to afford legal counsel, the board often has access to a corporate lawyer and may feel less pressed to resolve a case quickly. In addition, a board can prevent owners from reviewing important documents and information. The result can be a very uneven playing field where owners who challenge their boards may be seriously disadvantaged. Owners and boards alike want this power imbalance redressed by giving the law more teeth to ensure that disputes can be resolved quickly and fairly. This report proposes a new organization that will offer quick, effective, inexpensive and fair dispute resolution processes to condo communities.

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- **The role of condo by-laws:** The working groups have found that once they settle on a solution to a particular issue, they have often had to move on to a second question: Should the solution be prescribed by law, enabled through condo by-laws, or simply encouraged as a best practice?

This report proposes that a significant number of recommendations be implemented through changes to condo by-laws. Because it is often difficult to pass new by-laws or amend existing ones, the expert panel has agreed in principle that voting requirements for by-laws need to be relaxed.

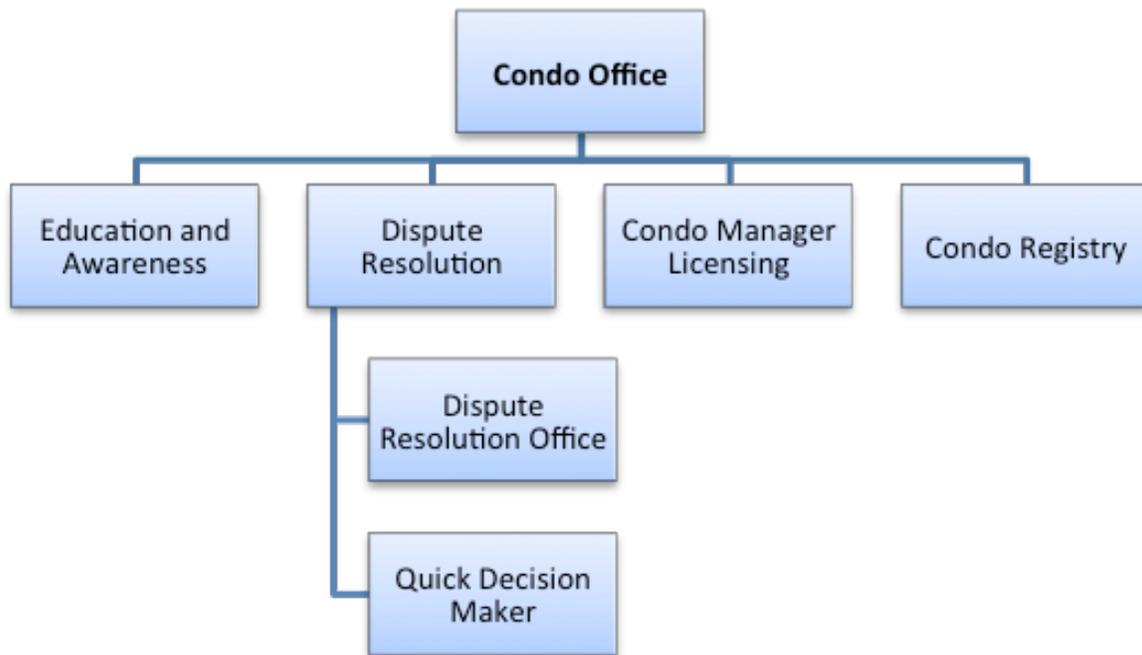
- **Engagement:** Many condo community members, especially owners, feel that they have no real power over the decisions and actions of boards, managers and developers. As a result, many of the reforms set out in this report aim to create the conditions for more meaningful owner engagement and participation. The recommendations are not exhaustive, but they make real and meaningful progress on some key issues, and have exceeded expectations.

- **Basic values:** In line with a call by condo residents consulted during the first stage of the review, the panel of experts has urged that the review process be based on seven basic values: **well-being, fairness, informed community members and stakeholders, responsiveness, strong communities, financial sustainability and effective communication.** These values are an integral part of the recommendations contained in this report.

## KEY RECOMMENDATIONS:

The five working groups and the panel of experts have made over 200 recommendations. **Appendix 1 contains a list of all recommendations in this report. The other recommendations can be found in the working group discussion summaries.** Following are some of the most far-reaching recommendations:

### What Will the Condo Office do ?



#### Condo Office:

- A new umbrella organization, to be known as the **Condo Office**, should be set up with four main functions: education and awareness; dispute settlement; licensing condo managers; and maintaining a condo registry. The Condo Office would operate at arm’s length from government, but with authority delegated by government. It would be funded by a combination of user fees and a modest levy (estimated at \$1 to \$3 a month) on each condo unit in the province.

#### Consumer Protection:

- Several reforms are proposed to ensure “smarter disclosure” (as opposed to just more disclosure). These include an easy-to-read **Condominium Guide** with essential facts about condo living, and measures that will cut through the complexity and make it easier to find important and relevant information.
- A prohibition on selling or leasing back assets that are normally regarded as part of the common elements, to the condo corporation, as this can inflate the cost of the

units. An exception is made for specifically-disclosed, energy-efficient equipment intended to benefit residents.

- A prohibition on deferring (and thus excluding from the first-year budget) operating expenses -- such as elevator maintenance -- which can leave consumers with the mistaken impression that their monthly fees will remain at a certain level when they are actually scheduled to rise.
- Greater certainty over who is responsible for repairing and maintaining certain components of the condo property, such as a balcony that is used by only one condo owner but is part of the common elements.

#### Financial Management:

- Boards should in future compile two budgets: an **operating budget** and a **reserve fund budget**. The reserve fund budget would be based on a more rigorously defined reserve fund study and would have to account for deviations from that study. Boards would have to notify owners of significant off-budget spending from the operating fund or reserve fund.

**Boards should in future compile two budgets: an operating budget and a reserve fund budget.**

- The trigger for notice to unit owners regarding changes a board intends to make to the common elements, etc. would be revised from 1% (or \$1,000) of the annual budgeted common expenses in any given month, to 3% (or \$30,000) of the annual budgeted common expenses in any given 12 month period.
- Improved communication and disclosure of condo corporations' financial data. A new online course would give owners a better understanding of financial documents.
- Greater flexibility for boards to use the reserve fund for alterations or improvements required by law, such as accessibility requirements; and for green energy improvements.

#### Dispute Resolution:

- The dispute-resolution arm of the Condo Office would help owners, directors and managers obtain quick, reliable, impartial, trusted and inexpensive (or free) information about the Condominium Act, the meanings of by-laws, and other important condo-related matters.

**Clear requirements should be put in place to ensure that corporate records are easily accessible.**

- The Condo Office would also house a **Quick Decision Maker** empowered to resolve disagreements by making quick, summary decisions on records, charge-backs, proxies, requisitions, and owners' entitlement to vote.
- More complex disputes would be referred to a new **Dispute Resolution Office**, also under the Condo Office umbrella. The office would have the expertise and authority to provide a quick, neutral, inexpensive and informed assessment of each case.

#### Governance:

- Minimum periods should be set for retention of condo corporation records.
- Clear requirements should be put in place to ensure that corporate records are easily accessible.
- The use of proxies should be clarified, and the rules for petitioning meetings should be reviewed.<sup>1</sup>
- The threshold for quorums at condo meetings should be adjusted as follows: Up to two meetings could be called subject to a normal 25% threshold. If the quorum is not met at those two meetings, the Act's requirements would be deemed to be met and the third meeting would proceed with those present.

<sup>1</sup> Also known as a requisition for a meeting of owners.

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- Qualifications for condo board directors should be raised by:
    - Mandatory training for first-time members;
    - A requirement that no more than one person from a unit may be a director;
    - Allowing for by-laws that require a criminal record check;
    - Disclosure of legal proceedings between an individual and the corporation.
  - A code of ethics should be drawn up for board members, and a charter of rights and responsibilities for both unit owners and directors.

**A two-stage licensing program should be put in place to ensure that condo managers across the province are properly trained and qualified.**

#### **Condo Management:**

- A two-stage licensing program should be put in place to ensure that condo managers across the province are properly trained and qualified. The first stage of this program would set basic criteria for entry into the profession. The second stage would build on this foundation, advancing knowledge of the field and developing appropriate skills through course work and experience.
- A new **Licensing Authority**, with powers delegated by government, would oversee licensing of condo managers. The licensing authority would fall under the Condo Office.

#### **NEXT STEPS**

We plan to launch the third and final stage of the review process in the fall of 2013:

- A residents' panel will review the stage-two recommendations.
- Government officials will draft an action plan for implementing the recommendations.
- Condo residents and other stakeholders will have an opportunity to review the action plan.

