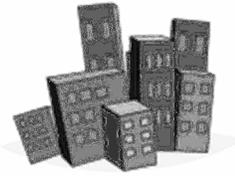


# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Aa) Communication/Access to Information Ensuring Boards inform and educate owners on the finances of the corporation (including reserve fund study and other financial documents). Issues? Considerations?

### Stage One Findings (summary):

Boards are responsible for providing all owners with access to financial information in a format that owners can understand especially as concerns the creation of reserve fund studies.  
Provide timely information.

Consider a welcome package provided to new owners within the first month of possession covering:

- current and upcoming projects (covered by budget recommendation)
- explaining the responsibilities of the board, the owners' rights to access information (particularly financial) including the process to access (covered by CP Condo Brochure)
- a general guide to special assessments and maintenance fees, and clear details about the maintenance fees and any upcoming special assessments (covered by CP Condo Brochure)
- information about who owners should contact about financial information. (covered in status certificate)

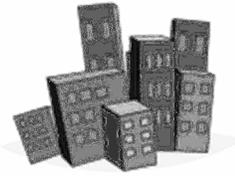
And:

- Ministry toolkit that helps condo owners understand the financial statements and assess the financial health and sustainability of the Corporation.

### Context for Discussion:

<b>Desired Outcome</b>	Informed owners who understand Condo living and the status of the Corporation they own.
<b>Current Status</b> How is this issue currently addressed (if at all)	Status certificate AGM Package Voluntary communication programs by boards.

# Condominium Act Review Working Group Issue Form

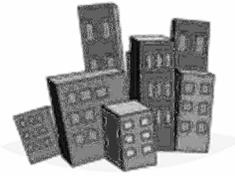


<b>Guiding Principles</b> Key objectives and values	Clear information. Informed owners.
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**Options and Recommendation:**

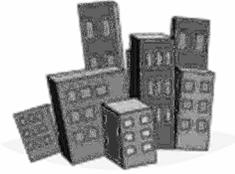
	Options:	Pros:	Cons:
1.	<p>Welcome package - or modify the status certificate to include more information including the general educational material?</p> <p>A mandatory welcome package is <b>NOT</b> recommended. This is because: The issues intended in the findings report to be covered in the welcome package will be covered by: the Consumer Protection recommended “Condo Brochure”; an improved AGM package which we have suggested includes a RFS budget and an Operating budget for the upcoming year; and improvements to the status certificate (recommended elsewhere)</p> <p>So a separate mandatory welcome package has not been seen as necessary, although the Condo Brochure could suggest the concept as a best practice.</p>	Good info for owners	Big obligation on Boards and Managers which represents a cost. Each package would have to be custom reviewed, like the Status Certificate.
2.	<p>In addition to Audited Financial reports, the Auditor could be required to provide a management summary to the unit owners included in the AGM package that discusses why deviations from budget happened. Clarifies costs included in “other” or “miscellaneous” categories for both operating budget and reserve plan. How do we ensure the “why” is included in the report, not just the</p>	Increased clarity	This represents an increased cost to each corporation.

## Condominium Act Review Working Group Issue Form



	<p>“what”?</p> <p>This item is <b>NOT</b> recommended by the committee as mandatory because it would represent a significant additional cost to each Corporation.</p> <p>Recommending that the Board should consider providing this analysis themselves could be included in the “Best Practices” section of the Condo Brochure.</p> <p>Existing mechanism is reasonable: owners ask the board, if not happy, ask for access to info.</p>		
3	<p>What about a monthly update from the board to unit owners? This is <b>NOT</b> recommended as a mandatory requirement. It is too costly and would consume too much of the volunteer board’s time. Suggest as a best practice in the “Condo Brochure.”</p>	Lots of information	Too onerous for volunteer board
4	<p>Should the specific investments that the RF is invested in be required to be listed in the audited financial statements?</p>	Information for owners	Not particularly valuable information given the limited investments available.
5	<p>Educate owners (Condo brochure? online info? Something the brokers are required to distribute? Status certificate?) about their condominium corporation’s insurance policy, including what it covers and what the deductible is, so they are aware of the insurance that they should obtain and so that they understand that the corporation’s deductible can be charged back to them.</p> <p>Educate about insurance available to unit owners to cover items not</p>	Information	Can’t make them read it/watch it.

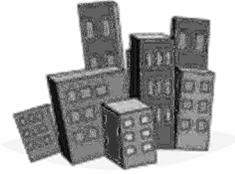
## Condominium Act Review Working Group Issue Form



	<p>covered by the Corporation's policy and the availability of insurance to cover risks related to the Corporation's deductible.</p> <p>They should know that the deductible can change and that when they are notified of a change they should confirm their personal coverage. [requirement to notify of changes to deductible is covered in item <b>AC</b>]</p>		
6	<p>There should be an online course available that educates Condo owners on how to read and understand financial statements. As part of the CP "Condo Brochure". So they can understand the basics - health of operating fund, health of reserve fund.</p> <p>Ensure that the general condo brochure/website:</p> <ul style="list-style-type: none"> <li>- explains the responsibilities of the board, the owners' rights to access information (particularly financial), including the process to access</li> <li>- provides a general guide to special assessments and maintenance fees</li> </ul>	Information	Can't make them read it/watch it.

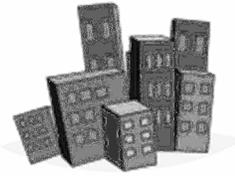
<b>Recommendation</b>	<p>Options 5 and 6 are recommended.</p> <p>Options 1 to 3 are NOT recommended due to excess cost relative to value. It should be noted that some owners would love to know if money has been well spent, but this sort of "value for money" audit process is very costly as it requires a far deeper probe into the corporation's affairs than a normal audit.</p> <p>Option 4 is thought to have limited value.</p>
<b>Recommendation Rationale:</b>	<p>Quick online video segments discussing not only general info, but also some best practice ideas might be a valuable companion to the "Condo Brochure" proposed by the Consumer Protection group.</p>

# Condominium Act Review Working Group Issue Form



<b>Notes:</b>	Should Realtors who sell Condos require a mandatory education component related to condo?
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# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Ab) Communication/Access to Information Ensuring owners have reasonable access to financial information. Issues? Considerations?

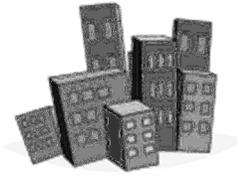
### Stage One Findings (summary):

	<p>Boards are responsible for providing all owners with access to financial information in a format that owners can understand, especially as concerns the creation of reserve fund studies.</p> <p>Provide timely information.</p> <p>Consider:</p> <ul style="list-style-type: none"> <li>- Having RFS provider present the AGM about findings</li> <li>- Boards update owners about changes to the RFS and costs</li> <li>- Board and managers should be encouraged to create a forum where owners can discuss concerns ask questions about the RFS (bulletin board, intranet)</li> </ul> <p>Info accessible and understandable:</p> <ul style="list-style-type: none"> <li>- Auditors notes to help people better understand statements</li> <li>- Auditor to present and explain the portion of the audit that compares current year activity with prior years.</li> </ul>
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### Context for Discussion:

<b>Desired Outcome</b>	More informed owners. Owners have some sense of why money is being spent, not just where - with a goal of reducing conflict between boards and owners.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>Financial statements</b></p> <p><a href="#">66. (1)</a> A corporation shall have its financial statements prepared in the prescribed manner and in accordance with generally accepted accounting principles as are prescribed. 1998, c. 19, s. 66 (1). Contents</p> <p><a href="#">(2)</a> The financial statements shall include,</p> <ul style="list-style-type: none"> <li>(a) a balance sheet;</li> <li>(b) a statement of general operations;</li> <li>(c) a statement of changes in financial position;</li> <li>(d) a statement of reserve fund operations;</li> </ul>

# Condominium Act Review Working Group Issue Form



(e) prescribed information relating to the reserve fund study and the operation of the reserve fund;  
(f) an indication of the aggregate remuneration paid to the directors in that capacity and the aggregate remuneration paid to the officers in that capacity; and  
(g) the additional statements or information that the regulations made under this Act require. 1998, c. 19, s. 66 (2).

## **AND**

### **Meeting at auditor's request**

(5) At the request of the auditor, the audit committee shall convene a meeting of the committee to consider all matters the auditor believes should be brought to the attention of the board or the committee members. 1998, c. 19, s. 68 (5).

### **Delivery of statements**

69. (1) The board shall place before each annual general meeting,

- (a) the financial statements as approved by the board;
- (b) the auditor's report; and
- (c) all further information respecting the financial position of the corporation that the by-laws of the corporation require. 1998, c. 19, s. 69 (1).

### **Copy with notice of meeting**

(2) The corporation shall attach to the notice of the annual general meeting a copy of the financial statements and the auditor's report. 1998, c. 19, s. 69 (2).

### **Right to attend meeting**

70. (1) The auditor is entitled to attend a meeting of owners and to be heard on any part of the business of the meeting that concerns the office of the auditor. 1998, c. 19, s. 70 (1).

### **Notice of meetings**

(2) The corporation shall give the auditor notice of all meetings of owners and all other communications relating to the meetings that the owners are entitled to receive. 1998, c. 19, s. 70 (2).

### **Attendance required**

(3) The corporation or an owner may require that an auditor or a former auditor attend a meeting of owners for the purpose of answering inquiries described in subsection (6) by giving written notice to the person whose attendance is required, at least five days before the meeting, that the person's presence is required. 1998, c. 19, s. 70 (3).

### **Notice to corporation**

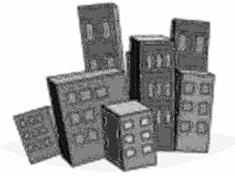
(4) An owner who gives written notice to an auditor or former auditor under subsection (3) shall give a copy of the notice to the corporation. 1998, c. 19, s. 70 (4).

### **Remuneration for attendance**

(5) If an auditor or a former auditor is required to attend a meeting of owners, the corporation shall compensate the auditor or former auditor, as the case may be, for expenses and pay the reasonable remuneration that it deems appropriate. 1998, c. 19, s. 70 (5).

### **Duty to answer questions**

## Condominium Act Review Working Group Issue Form

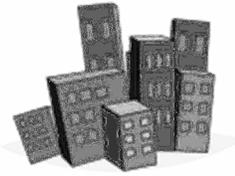


	(6) At a meeting of owners, the auditor or former auditor, as the case may be, if present, shall answer inquiries concerning the basis upon which the person formed the opinion stated in the person's reports. 1998, c. 19, s. 70 (6).
<b>Guiding Principles</b> Key objectives and values	Fairness Informed community members and stakeholders Effective communication
<b>Considerations</b>	Balance additional information with cost of providing.

### Options and Recommendation:

	Options:	Pros:	Cons:
1.	AGM presentations - RFS and Auditor presentations mandatory (perhaps allow live or video link or recorded video). This is <b>NOT</b> recommended because the cost is too high. Recommend RFS and Op budget be mandatory instead per option 5 below.	Access to the providers to ask questions and get answers directly rather than through the Board	Additional cost to each corporation each year. Many condos in good working order don't need this involvement.
2.	What if RFS provider presented at the AGM following each update (with the cost of attending the AGM included as part of the cost of the study)? This is <b>NOT</b> recommended because many don't need this. Boards should just be educated to provide information about upcoming and prior year RF expenditures as a best practice via "Condo Brochure."	Access to the providers to ask questions and get answers directly rather than through the Board	Additional cost to each corporation. Mandatory even though many boards can easily handle this communication themselves.
3.	Auditors should be confirming that the investment plan has been approved via a formal motion at a meeting of the board or via a by-law that approves an officer to approve the plan. Add to requirements for Audit, or AGM package requirements.	Provides assurance to the owners that the investments have been thought about	Minimal additional cost, if any.

## Condominium Act Review Working Group Issue Form



4	<p>Make a reserve and operating budget mandatory and included in the AGM package. Reserve budget should include notes discussing deviations from the current RFS and implications of the deviations.</p>	<p>Significantly improved information for unit owners. Forces boards to think about how they are deviating from study and to justify the deviations.</p>	<p>Additional work for boards (and managers)</p>
5	<p>Board to notify owners of significant off-budget spending from Reserve. This could be a project that has arisen that was unplanned, or a cost overrun on a planned project that is material to the Corporations finances. This notification would not trigger a vote on the project or prevent the Board from making a decision they are entitled to make but would explain the situation and the board's decision-making process.</p> <p>Timing to be defined, no later than 30 days after awarding the contract for the work but ideally before it proceeds? (don't present emergency work)</p> <p>Recommended triggers: Unplanned reserve expenditure or over-run vs. budgeted amount that is greater than 10% of current year operating budget.</p> <p>Notification should include a specific comment like notification being provided for information only on the express understanding that the board has the authority to make this decision without owner's consent.</p> <p>See Finances issue form Ba - RFS Timing - unplanned projects or overruns could also trigger an early update to RFS</p>	<p>Notification of owners Reserve budget</p>	<p>Owners might try to challenge decisions that are rightfully the Board's to make</p>

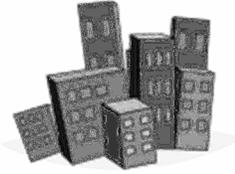
## Condominium Act Review Working Group Issue Form



6	<p>Should the notice of future funding include a section that lists all projects planned in the next three years rather than just providing the total estimated expenditure in each year? This would allow owners to ask more informed questions.</p> <p>Working group did not recommend because of proposed RFS budget in AGM package. Expert panel thought better to include in NFF and AGM package so purchasers are notified too. NFF would be projects in the RFS vs AGM would be actual planned work for upcoming year. These would be different which could be confusing. Perhaps budget RFS in status certificate instead of NFF.</p>	<p>Greater clarity about upcoming work but only when NFF issued.</p>	<p>Duplication of recommended RF budget to be included in AGM package - that was decided as the better option.</p>
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<b>Recommendation</b>	<p>Options 1 and 2 are NOT recommended as costs are considered to outweigh the benefits.</p> <p>Options 3, 4, and 5 are recommended.</p> <p>Option 6 was not recommended by working group, but is recommended by the expert panel.</p>
<b>Recommendation Rationale:</b>	<p>Providing a budget for upcoming year for Reserve Expenditures and then communicating with owners if material off-plan spending occurs would be a huge step forward in communication with minimal effort by board.</p>
<b>Notes:</b>	<p>The project requiring notification under option 6 could be restricted from proceeding for a period of time to give time for a requisition meeting to remove the board to be called. If there is a requisition meeting called, the board could be prohibited from signing contracts with respect to that project until after the meeting. This has not been recommended because of difficulties related to health and safety projects, or to contractors not being willing to hold their prices for a long time period.</p> <p>If the population thinks the board made a bad decision, then they can remove the board, even though the subject project will still proceed.</p>

## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Ac) Communication/Access to Information Other communications considerations (e.g. auditors reports, audited financial statements)

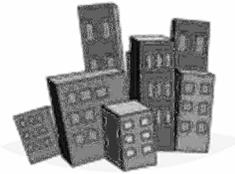
### Stage One Findings (summary):

In this item, we gathered up other communication improvement options that arose as we discussed other issues.

### Context for Discussion:

<b>Desired Outcome</b>	Improved communication between boards and owners
<b>Current Status</b> How is this issue currently addressed (if at all)	General consensus that there is inadequate communication by boards and that this is causing unnecessary misunderstandings and frustration.
<b>Guiding Principles</b> Key objectives and values	Clear information. Informed owners.
<b>Long-Term Implications</b>	Better informed owners will mean fewer disputes and better condos.

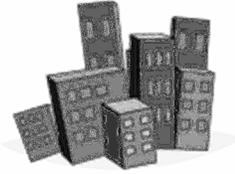
## Condominium Act Review Working Group Issue Form



### Options and Recommendation:

	Options:	Pros:	Cons:
1.	See Finances Issue form Cd - liens - one "free" notice of impending lien before any cost to owner are incurred. Not endorsed by expert panel. See CD.	Gives owner a chance to avoid cost of legal letter	People may ignore this letter and still feel unjustly treated.
2.	Should expenditures that differ significantly from planned be identified on status certificate (sent to this group from Consumer Protection Group) - This is <b>NOT</b> recommended. We have recommended that off-plan spending be subject to a separate communication - see Finances Issue form Ab.	Additional communication	Status certificate would not inform owners who have not purchased a status certificate, so not ideal communication channel
3	Require the boards to communicate any increases to the condo deductible as it changes (within 10 or 30 days of change?) and recommend that unit owners review their coverage. This is to encourage unit owners to ensure they have adequate deductible insurance to cover the Corporation's deductible.  This aligns with Consumer Protection issue form A.	Minimize insurance gap if deductible increases	Administrative burden on boards and managers.  What happens if they fail to notify and someone is uninsured as a result? Liability? Perhaps better just to include deductible in AGM package and Status Certificate.
4	If the board can't obtain D&O insurance - they should notify the owners within 30 days of being turned down. Expert panel deleted requirement to explain why due to privacy concerns.	Generally only refused coverage if someone on the board has a history of fraudulent activity so this would be highlighted to owners	Administrative burden
5	If the board can't obtain fidelity insurance, they should notify the owner's within 30 days of being turned down.		

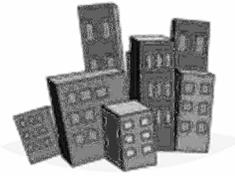
## Condominium Act Review Working Group Issue Form



6	<p>The education component for owners and directors should include information about the notice of future funding include a section that lists all projects planned in the next three years rather than just providing the total estimated expenditure in each year, etc. A “Fraud Prevention” component to available info.</p> <p>Could mandate use of specifications, tendering and CCDC contracts for projects over a certain threshold, but our committee thought better just to communicate best practices.</p>	<p>Help educate boards about how to minimize the risk of someone taking kick-backs, provides assurance to owners</p>	<p>Would be better if it was mandatory for contracts over 100k, but we weren’t sure if this was feasible.</p>
7	<p>AGM package should have a line in the form that tells the owners what the deductible is and advises them to purchase deductible insurance to cover this risk.</p>	<p>Tell them often so they get it that they need insurance</p>	<p>N/a</p>
8	<p>Condo Guide needs to tell people that they can requisition an information meeting at any time.</p> <p style="background-color: #00FF00;">Should be added to Consumer Protection list of items to cover in issue Form A</p>	<p>Informed owners</p>	

<b>Recommendation</b>	<p>Options 1 and 2 are not recommended. All other options are recommended.</p>
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# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Ba) – 1 Reserve Fund Study Changes to Timing of updates reserve fund study or other review of fund?

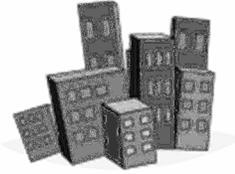
**Stage One Findings (summary):**

RF contributions should be recalculated or topped up after unexpected expenses. A threshold to trigger an early update should be considered.

**Context for Discussion:**

<b>Desired Outcome</b>	Avoid overspending without understanding the implications of the RF contribution.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>Time for studies</b></p> <p><a href="#">31. (1)</a> A corporation created before the day section 94 of the Act comes into force shall conduct a comprehensive study within three years of that day except if, (a) on that day it has a comprehensive study that meets the requirements of this Regulation; and (b) it conducts an updated study based on a site inspection within three years of that day. O. Reg. 48/01, s. 31 (1).</p> <p><a href="#">(2)</a> The reserve fund study that subsection 94 (4) of the Act requires a corporation created on or after the day section 94 of the Act comes into force to conduct within the year following the registration of the declaration and description shall be a comprehensive study. O. Reg. 48/01, s. 31 (2).</p> <p><a href="#">(3)</a> A corporation shall conduct a reserve fund study within three years of completing the reserve fund study that it is required to conduct under subsection (1) or (2), as the case may be, and after that, within every three years after completing the immediately preceding reserve fund study. O. Reg. 48/01, s. 31 (3).</p> <p><a href="#">(4)</a> A reserve fund study that a corporation is required to conduct under subsection (3) shall be,</p> <p>(a) a comprehensive study;</p> <p>(b) an updated study not based on a site inspection, if the immediately preceding reserve fund study for the corporation was a comprehensive study or an updated study based on a site inspection; or</p> <p>(c) an updated study based on a site inspection, if the immediately preceding</p>

## Condominium Act Review Working Group Issue Form

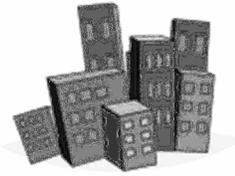


	reserve fund study for the corporation was an updated study not based on a site inspection. O. Reg. 48/01, s. 31 (4).
<b>Guiding Principles</b> Key objectives and values	Control board overspending without owners notice.
<b>Considerations</b>	If a condo overspends in year one after an update they are currently not required to do an update for another two years. The related increase is therefore deferred.

### Options and Recommendation:

	Options:	Pros:	Cons:
1.	<p>If the balance in the audited statement is less than 50% of the balance shown in the current Form 15, then the Corporation must ask the RF author if the change merits an early update or if the normal schedule can be followed. Provider should give reasons in a letter than can be part of the Corporation's records</p> <p>Notification about unplanned projects is covered in issue form Finances Ab.</p>	<p>Triggers an update if the recent overspending is material to the reserve (for example, if the change was just because a project was completed a year early but the funds are available, then no update would trigger vs. if this was a surprise project without funds allocated then an early update would trigger).</p> <p>This item works with the notification of unplanned spending in Ab to protect owners if reserve funds are depleted.</p>	<p>This might be seen as RF providers writing their own cheques but another method to check could not be identified.</p>
2.	<p>If material unplanned expenditure or over-run, then the Corporation must obtain a RFS update within one year (even if this is earlier than the normal three year cycle).</p> <p>Trigger:</p>	<p>Reduces risk of an unplanned cost depleting the reserve, leaving no balance to handle emergency work that arises before next planned update</p>	<p>Consider for vacant lands, zero lot line etc?</p> <p>Lots of condos are well-funded and this level would not be material, so unnecessary cost.</p>

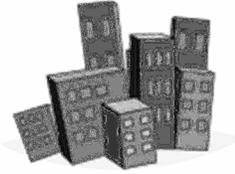
## Condominium Act Review Working Group Issue Form



	<p>Unplanned reserve expenditure or over-run vs. budgeted amount that is greater than \$500 per unit. OR Unplanned reserve expenditure or increase vs. budgeted that is more than 20% of current year operating budget.</p> <p>This option is <b>NOT</b> recommended - potentially large cost which will help a few but not most condos.</p>		
3.	<p>If material unplanned expenditure or over-run, then the Corporation must ask the RF author if the change merits an early update or if the normal schedule can be followed. Provider should give reasons in a letter than can be part of the Corporation's records</p> <p>Trigger: Unplanned reserve expenditure or over-run vs. budgeted amount that is greater than \$500 per unit. OR Unplanned reserve expenditure or increase vs. budgeted that is more than 20% of current year operating budget.</p> <p>This option is <b>NOT</b> recommended - option 1 addresses the same concern more effectively with less administration.</p>	<p>Reduces risk of an unplanned cost depleting the reserve leaving no balance to handle emergency work that arises before next planned update</p>	<p>Lots of condos are well-funded and this level would not be material, so unnecessary cost. Better to address at the fund level rather than the expenditure level - see Option 1.</p>

<b>Recommendation</b>	Option 1 is recommended. Options 2 and 3 are not recommended.
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## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Ba) – 2 Reserve Fund Study Any issues regarding enforcement of approved funding plan?

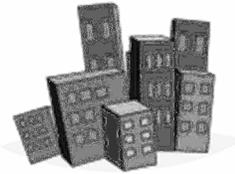
### Stage One Findings (summary):

Not discussed
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### Context for Discussion:

<b>Desired Outcome</b>	
<b>Current Status</b> How is this issue currently addressed (if at all)	<p>94 (10) implement the proposed plan after the expiration of 30 days – does this mean “no sooner than 30 days after” or does it mean “exactly 30 days after”?</p> <p>ALSO Currently require copy of funding plan to go to auditor. Not needed, as they get it at the end of the year. Delete this requirement.</p> <p>ALSO - should the board be allowed to deviate from the RFS?</p> <p><b>Plan for future funding</b> (8) Within 120 days of receiving a reserve fund study, the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period of time and in accordance with the prescribed requirements, the fund will be adequate for the purpose for which it was established. 1998, c. 19, s. 94 (8).</p> <p><b>Copy of plan</b> (9) Within 15 days of proposing a plan, the board shall, (a) send to the owners a notice containing a summary of the study, a summary of the proposed plan and a statement indicating the areas, if any, in which the proposed plan differs from the study; and (b) send to the auditor a copy of the study, a copy of the proposed plan and a copy of the notice sent to the owners under clause (a). 1998, c. 19, s. 94 (9).</p>

## Condominium Act Review Working Group Issue Form

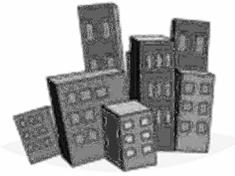


### Options and Recommendation:

	Options:	Pros:	Cons:
1.	<p>94(10) Implementation of proposed plan</p> <p>"(10) The board shall implement the proposed plan not later than the commencement of the corporation's next fiscal year."</p>	<p>Allows board to finalize RFS any time in the year with implementation at start of next year end, rather than fussing with timing so that the 30 days works</p>	
2.	<p><b>DELETE:</b> (b) send to the auditor a copy of the study, a copy of the proposed plan and a copy of the notice sent to the owners under clause (a)."</p>	<p>Unnecessary requirement because auditors see the plan at year end regardless, they don't act on it until doing audit.</p>	
3	<p>Consider prohibiting the board from developing their own funding plan - require them to follow one of the "adequate funding plans" in the RFS.</p> <p>This option is <b>not</b> recommended.</p>	<p>Prevents boards from over-riding the advice of professionals.</p>	<p>Probably excessive control if adequate has been defined.</p>
4.	<p>Add new subsection 93(10)</p> <p>"93(10) For all other changes, additions, alterations or improvements proposed to be made under section 97, only those which are as reasonably close in quality to the original as is appropriate in accordance with current technology and construction standards can be paid from the reserve fund."</p>	<p>If an improvement is approved under section 97, it is not clear if it can be paid from RF or not</p>	<p>Our committee indicated that they are not aware of this being a concern of significance, although it was raised by one individual as a potential concern.</p>

<b>Recommendation</b>	Options 1 and 2 are recommended. Option 4 could be considered, <b>but is believed to be</b> of limited value.
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## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Ba) – 3 Reserve Fund Study Clarification or standardization of scope of work and content of Reserve Fund Studies

### Stage One Findings (summary):

Widely agreed that the requirements are inadequate. Today, many reserve funds are too small to meet the corporation's needs. As condominiums age, owners are being called on to make significant contributions to pay for repairs that many neither planned for nor expected—and often cannot afford.

The Condominium Act needs to provide more specific and standardized requirements for a reserve fund study and provide more oversight of persons conducting the studies.

**STANDARDIZE THE APPROACH:** The Condominium Act requires that new condominiums produce a reserve fund study within the first year after registration and every three years after that. However, the requirements of what must be included in a study are not specific enough. As a result, studies can vary greatly, depending on who does them and what the board agrees should be considered. There was strong agreement that a renewed Act should clarify the scope of reserve fund studies and standardize the approach.

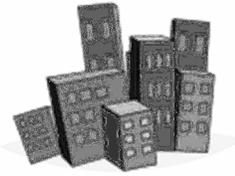
From “adequate funding” but belongs here:

Factors such as inflation and service fees (meaning not clear?) can also play an important role in the adequacy of a fund. The act should require such factors to be taken into account.

### Context for Discussion:

<b>Desired Outcome</b>	Clear standards, uniformly applied and providing reasonable assurance that a Corporation following the recommendations in the plan will only have financial shocks related to truly unexpected repairs (rather than repairs that should reasonably have been anticipated).
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## Condominium Act Review Working Group Issue Form



<p><b>Current Status</b> How is this issue currently addressed (if at all)</p>	<p>Current act prescribes the study requirements but the Act and Regs contain some clauses which should be clarified/improved</p>
<p><b>Guiding Principles</b> Key objectives and values</p>	<p>Need to guide the process of report preparation without limiting to a select few providers.</p>
<p><b>Considerations</b></p>	<p>People may be connecting underfunding with poor studies when this may be in larger part due to the 15 year phase-in period which causes “just in time” delivery of the funds with no room for shocks. Regardless, it is still appropriate to review the scope of RF and see if improvements can be made.</p> <p>Sometimes a corporation has a binding obligation to contribute to the replacement or major repair of assets it does not own. Had the corporation owned these assets then the replacement or major repair costs would have been included in, and funded from, the reserve fund, but since they do not then the costs are not included. Therefore, there should be the right of the corporation to fund the replacement or major repair from its reserve fund.</p>
<p><b>Long-Term Implications</b></p>	<p>More standardized studies should raise the quality of studies providing better guidance to corporations. This should reduce the likelihood of being underfunded, which should reduce conflict in the buildings. The opposite side of this equation is that proper reserve fund contributions drive maintenance fees up to realistic levels, which the marketplace is not entirely used to (but keeping them artificially low is a sure-fire way to develop future slums).</p>

**Options and Recommendation:**

This issue form covers many issues, so an alternate format has been used to describe what it covers:

**Issue 1:** 93(2) common elements and assets (leased, licensed or owned) - often the corp. has to pay to maintain leased HVAC system – but the Act would indicate that this can’t come from reserve.

Change Act to cover these major repair and replacement costs can also be paid from Reserve.

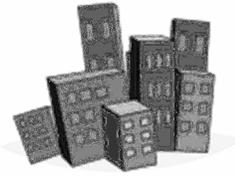
**Recommendation for Issue 1:**

93(2) Purpose of fund

Change (2) to 2(a)

“(2)(a) A reserve fund shall be used solely for the purpose of major replacement or major

# Condominium Act Review Working Group Issue Form



repair of the common elements, assets, common amenity assets [needs definition - see CCI brief for suggestion] of the corporation or other building components over which the corporation is responsible for replacement or major repairs whether or not it owns those assets.”

**Issue 2:** Intentionally blank (was a repeat of another form).

**Issue 3:** OReg 48 - 27 - \$500 limit to include in inventory is too low for the larger Corporations.

Option 1: Threshold should be a function of size of the corporation (perhaps \$10/unit to a bottom limit of \$500). Allow boards to choose a higher threshold if they elect to. OR

Option 2: Clarify that lower cost items can be handled via a contingency which reflects the spending history of the Corporation.

**Recommendation for Issue 3:** either option 1 or option 2, both are valid.

**Issue 4:** OReg 48 -27 and 29 - 30 year cash flow – 30 years of data is not enough because many components in the building have a service life longer than 30 years (and would therefore be excluded from a 30 year view “window”). Also, users think of the 30 year plan as showing the next 30 years of contributions, but if only 30 years of data is used, then contributions in later years are clearly incorrect (for example, the contribution shown for year 27 is only based on 3 years of forward looking projections). Having only 30 years of data underpin a 30 year cash flow analysis also results in significant increases in reserve contribution with every three year update because another three years of projects, potentially very large projects, would come into the thirty year window.

**Recommendation for Issue 4:** Recommend 45 or 60 years of cost projections be used to underpin a 30 year cash flow table (so even the later years of the cash flow table are based on 15 to 30 years of forward looking projections). NFF still only needs to show the first 30 years (for print-ability - 30 pages fits on one sheet).

**Issue 5:** Board can develop their own funding plan that deviates from those funding plans recommended in the RFS. It is not clear what timeframe the board needs to plan over. If we change the underlying basis of the RFS to 45 or 60 years, does the board have to plan on this timeframe too, or just 30 years of expenditures?

**Recommendation for issue 5:** the underlying costs for the Board’s funding plan should align with the time-frame in Issue 4 above. This may be difficult to communicate, but board plans that deviate from RFS are not common.

**Issue 6:** 29 2b “an assessment of each item in the component inventory that states its actual or estimated year of acquisition, its present or estimated age, its normal expected life, its remaining life expectancy considering its current condition and repair history, the estimated year for its major repair or replacement, its estimated cost of major repair or replacement as of the date of the study, the percentage of that cost of major repair or replacement to be covered by the reserve fund and the adjusted cost resulting from the application of that percentage.”

## Condominium Act Review Working Group Issue Form



The yellow highlight is not necessary and complicates for no reason – this was put in the act to reflect one provider’s approach to RFS planning - where they budgeted for a percentage of a system rather than the components in the system (% of HVAC system for example, instead of budgeting for the boilers, the chiller, the cooling tower, the distribution piping).. Industry practice is to budget for each component, with major systems renewed in phases because as systems are renewed over time the reality needs to be reflected (boiler # 1 was replaced, but boilers # 2 and #3 are still original, for example). The providers can explain the rationale behind their approach, particularly phased programs, without this mandatory requirement. For 95% of studies, the percent allocated to reserve is 100%.

**Recommendation for Issue 5:** This clause should be removed.

**Issue 7:** 29 2b – not clear if the remaining useful life should be based on normal expected life or if that should be refined based on current condition. Some clients complain of providers who budget for replacement of a component at the end of a standard service life even though the component can clearly be maintained for a few more years. This may result in a special assessment or increase that could be better handled if the project were deferred.

**Recommendation for Issue 7:** Clarify scope to indicate that the NEL should be modified from standard service life based on repair history, maintenance practices and visual condition at the time of the site visit, if appropriate.

**Issue 8:** Reg 48 29 3b (i) Estimated cost - There is currently no requirement to provide any detailed breakdown of a project budget – just one total number needs to be provided.

**Recommendation for issue 8:** Estimated cost should be developed based on quantities of components to be repaired or replaced, construction costs for this work, related design fees, project supervision and taxes.

**Issue 9:** Inflation and interest assumption considerations - Assumptions made about interest earned on the fund and cost inflation are important factors in a cash flow analysis.

Considerations: setting these rates for a cash flow analysis requires the provider to think about the overall cash flow. If the fund is going to hit a critical year soon, then clearly current interest rates and inflation rates should be used in the analysis. If, however, the fund will not hit a critical year for forty or more years, then using current interest and inflation rates would penalize the fund unnecessarily. For these longer-term studies, a more historically normal spread between interest and inflation would be appropriate.

Option 1: Dictate a source of the interest and inflation used in the cash flow analysis in the RFS - such as CPI or Construction inflation index. This option is **NOT** recommended because of the considerations described above. Also, both of these indexes are not representative of the inflation related to the restoration-type projects completed at occupied buildings (they better represent new construction, which is different).

# Condominium Act Review Working Group Issue Form



Option 2: Require the provider to include in their report an explanation of why the interest and inflation rates were set where they were.

**Recommendation for Issue 9:** We recommend Option 2.

**Issue 10:** 29 (4) indicates that the provider must understand what constitutes a standard unit – this is not relevant to the RFS – this is for insurance. A RFS provider needs to understand the unit boundaries (which is different). This should be changed.

**Issue 11:** 30 Review of service contracts – should not be required. These have 60 day termination clauses, so they should not impact a 60 year plan. They have no other bearing that would merit the cost of reviewing them. It is reasonable to require the RFS provider to speak to any usual contractors to understand major repairs that have been needed since the previous study was completed – this is valuable information for the study and should be added to the scope.

**Recommendation for issue 11:** delete requirement to review service contracts. Add the requirement to attempt to speak to any service providers who have standing contracts with the Corporation (HVAC, elevator and plumber in particular for high rise buildings).

**Issue 12:** 31 – we might clarify the three years – some corps receive a draft report and spend months before finalizing, extending the three years somewhat. It would be better to require no longer than 6 years between the site reviews (which would tie the whole process down) or within 3 years of finalizing the prior study. Finalize within three years of the date the last study was finalized. Study shall be done and finalized every three years.

**Recommendation for Issue 12:** Edit as follows:

[\(3\)](#) A corporation shall **obtain and finalize** a reserve fund study within three years of completing the reserve fund study that it is required to conduct under subsection (1) or (2), as the case may be, and after that, within every three years after completing the immediately preceding reserve fund study. O. Reg. 48/01, s. 31 (3).

**Issue 13:** 32 List of who is qualified to prepare an RFS should be reconsidered.

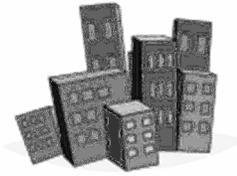
## Current Status:

### Person conducting studies

[32. \(1\)](#) Subject to subsection (2), the following classes are prescribed as persons who may conduct a reserve fund study:

1. Members of the Appraisal Institute of Canada holding the designation of Accredited Appraiser Canadian Institute.
2. Persons who hold a certificate of practice within the meaning of the *Architects Act*.

## Condominium Act Review Working Group Issue Form



3. Members of the Ontario Association of Certified Engineering Technicians and Technologists who are registered as certified engineering technologists under the *Ontario Association of Certified Engineering Technicians and Technologists Act, 1998*.
4. Members of the Real Estate Institute of Canada holding the designation of certified reserve planner.
5. Persons who hold a certificate of authorization within the meaning of the *Professional Engineers Act*.
6. Graduates of Ryerson University with a Bachelor of Technology (Architectural Science) — Building Science Option or Architecture Option.
7. Members of the Canadian Institute of Quantity Surveyors holding the designation of professional quantity surveyor.
8. Members of the Association of Architectural Technologists of Ontario holding the designation of architectural technologist, architecte-technologue or registered building technologist under the *Association of Architectural Technologists of Ontario Act, 1996*. O. Reg. 48/01, s. 32 (1); O. Reg. 383/12, s. 4 (1).

### Considerations:

Some of the qualifications above require extensive education and professional practice vs. others that are a few courses with no post-secondary requirements. One university is singled out and others are excluded.

Appraisal institute is four year university degree plus other requirements.

Engineering and Architect are four year university degree plus other requirements.

CET and Architectural Technologists and Technicians require min two-year college diploma.

REIC - requires no post-secondary education and completion of five courses which are three to four day courses

Canadian Institute of Quality Surveyors - Post-secondary education or courses defined by the institute (25 courses)

Buildings are becoming much more complex and the technical knowledge needed to develop a realistic reserve fund study is wide ranging.

Persons means corporations, not just individuals.

**Option 1:** Delete Ryerson as an option. These grads typically go on to work with as engineers or technologists and can qualify under those categories.

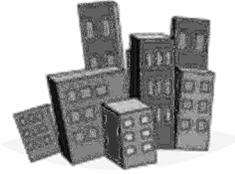
### Option 2:

Consider creating two categories of buildings

- For buildings that fall under Part 3 of the OBC, the RFS should be prepared by an Arch, Engineer or Quantity Surveyor
- For buildings that fall under Part 9 of the OBC - a wider list of providers may be appropriate.

**Recommendation for Issue 13:** We recommend both Option 1 and Option 2.

# Condominium Act Review Working Group Issue Form



**Issue 14:** 32(8) Conflict related to participating in a contract outside the Corporation is very far reaching. It basically means that if someone working for a major real estate company (like Oxford or Bentall) sits on a condo board, all of the engineers in the marketplace are conflicted from preparing an RFS for the board – in some way, all of our companies do work with these behemoths. Perhaps there could be a more direct link to the individuals rather than their companies? Or disclosure may be adequate.

**Recommendation for Issue 14:** Similar to section 40 of the Act, this conflict should not prohibit someone from providing an RFS, they should just be required to disclose the conflict and the board member involved should not participate in votes regarding selection of the provider.

**Issue 15:** 32 (4) (4) \$3,500 deductible on Professional Liability Insurance is not available as a standard product. Requires provider to either ignore this requirement or negotiate a special policy change for this one service.

Considerations: the committee could not determine the value to the Corporation. If there is a claim, the insurance company pays out and then pursues the insured for the deductible.

**Recommendation for issue 15:** delete this requirement (other professionals working for the corporation are not required to have a defined deductible). If we deleted the limit we could require disclosure of the deductible (with the insurance certificate).

Why not use same requirements for all professionals working for the corp.

**Issue 16:** Reg 49 – Notice of Future Funding of the Reserve Fund: large numbers stress Boards out.

**Recommendation for Issue 16:** We should add a column to the cash flow table showing the average contribution per unit per month (either the total or the increase). The big numbers involved (like an \$800,000 contribution) scare people. Converting this to \$29 per unit per month makes it much easier for the intended audience to understand. This is similar to the front page of the form which includes the averages for the first three years, but would make this content readily available on the cash flow table. Could also require this to be included in the cash flow tables included in an RFS.

**Issue 17:** Inconsistent application of year naming convention through the industry creates confusion.

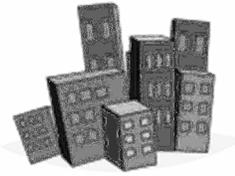
**Recommendation for issue 17:** Cash flow table should clarify the year annotation – is “2011” the “fiscal year ending in 2011”. Some assume 2010/2011, some assume 2011/2012. This could be right in the Notice of Future Funding Form to ensure consistency of application across the industry.

**Issue 18:** Minimum balance

Covered in issue form: Finances Bb - RF Adequacy

**Issue 19:** Some boards run small (yet eligible) projects through reserve and other do not. We could try to define more clearly what can be covered (repair vs. major repair) or we could require that the study providers reflect the spending patterns of the corp. by including a contingency that reflects “appropriate

## Condominium Act Review Working Group Issue Form



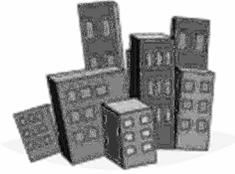
spending that was not predicted in the prior study”. This is basically segregating repairs that occurred in the three years preceding an update into three categories: Items that were covered in the plan, items that should have been covered in the plan (add line items in the update) and items which could not practically be planned, but which are permitted. The average spend for the third category could be included in the update as an annual contingency.

**Recommendation for Issue 19:** We recognize that this is probably too detailed to include in the regs. See item on defining repair and maintenance on separate issue form which supports resolution of this issue.

	Options:	Pros:	Cons:
1.	See above		

<b>Recommendation</b>	See above, issue by issue.
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# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Bb) Reserve Fund Study Clarification of “adequacy” of fund

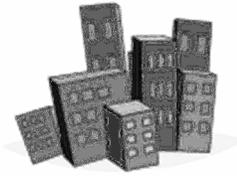
**Stage One Findings (summary):**

Define adequate funding: current Act fails to define adequate funding. This allows deferral to future owners, excessive phase-ins that result in special assessments.

**Context for Discussion:**

<b>Desired Outcome</b>	Funding of reserves that prevents unfair deferral, but also minimizes unfair shocks to current owners. Balance the interest of current and future owners.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>Same, after first reserve fund study</b></p> <p><a href="#">(6)</a> The total amount of the contributions to the reserve fund after the time period specified in subsection (5) shall be the amount that is reasonably expected to provide <b>sufficient</b> funds for the major repair and replacement of the common elements and assets of the corporation, calculated on the basis of the expected repair and replacement costs and the life expectancy of the common elements and assets of the corporation. 1998, c. 19, s. 93 (6).</p> <p><b>Reserve fund study</b></p> <p><a href="#">94. (1)</a> The corporation shall conduct periodic studies to determine whether the amount of money in the reserve fund and the amount of contributions collected by the corporation are <b>adequate</b> to provide for the expected costs of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 94 (1).</p> <p><b>Plan for future funding</b></p> <p><a href="#">(8)</a> Within 120 days of receiving a reserve fund study, the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period of time and in accordance with the prescribed requirements, the fund will be <b>adequate</b> for the purpose for which it was established. 1998, c. 19, s. 94 (8).</p>

## Condominium Act Review Working Group Issue Form

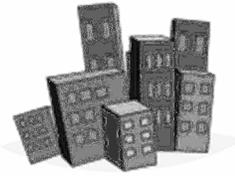


	The recommended amount of contributions to the reserve fund, determined on a cash flow basis, that are required to offset <b>adequately</b> the expected cost in the year of the expected major repair or replacement of each item in the component inventory, O. Reg. 48/01, s. 29 (3).b v
<b>Guiding Principles</b> Key objectives and values	Fairness Financial Sustainability
<b>Considerations</b>	Industry generally sees “inflation-matched” as the “best” definition of adequate, but also allows phase-in for the 15 year period for older buildings. Some new condos face a shock with no notification period.

### Options and Recommendation:

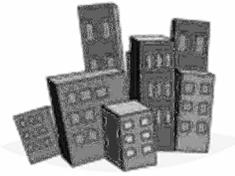
	Options:	Pros:	Cons:
1.	<p>Limit above inflation increases in the <u>TOTAL CONTRIBUTION</u> (annual + other) to first three years. This also inherently limits planned special assessments to the first three years:</p> <p><b>Modify 94(8) Plan for future funding</b></p> <p>"(8) Within 120 days of receiving a reserve fund study the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period of time and in accordance with the prescribed requirements, the fund will be adequate for the purpose for which it was established. <b>For the purposes of sections 93 and 94, adequate means that the year-over-year per</b></p>	<p>Prevents shocks to current owners by allowing phase-in over three years. This is important in the future as increases will be required at updates and it is better if fees change smoothly rather than abruptly. NFF will warn owners about upcoming changes with time to prepare. Within 36 months cleans up the three year reference. Some corps start the next study within three but don't really finalize within three, extending the cycle.</p>	<p>One problem case - if a corp is very underfunded and needs to special assess, the assessment might not be needed until year four or five because that is when the big unfunded expense occurs. Under this option, any special assessment would have to be in the next three years but no later.</p>

## Condominium Act Review Working Group Issue Form



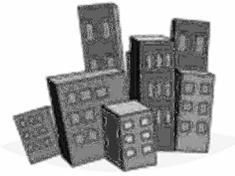
	<p>cent change in the <u>total contribution</u> for each year calculated in the term of the study is no greater than the assumed inflation rate used in the study, except in the first three years where an increase greater than inflation is permitted, and that the present value of the closing balance in any year of the term of the study shall not be less than ten percent of the current year annual operating budget or such other higher minimum balance set by the Board. This option is not recommended. Expert panel agreed to three year limit.</p>		
<p>2.</p>	<p>Limit above inflation increases in the <u>ANNUAL CONTRIBUTION</u> (annual excludes “other” contributions”) to first three years. Allow special assessments beyond first three years:</p> <p><b>Modify 94(8) Plan for future funding</b></p> <p>“(8) Within 120 days of receiving a reserve fund study the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period of time and in accordance with the prescribed requirements, the fund will be adequate for the purpose for which it was established. For the purposes of sections 93 and 94, adequate means that the year-over-year per</p>		<p>This adequate def’n covers the “annual contribution” but not the “other” contribution as written. This allows a special assessment beyond three years, but may also open the door to having special assessments every year (in the “other” category).</p>

## Condominium Act Review Working Group Issue Form



	<p>cent change in the <u>annual contribution</u> for each year of the term of the study is no greater than the assumed inflation rate used in the study, except in the first three years where an increase greater than inflation is permitted, and that the present value of the closing balance in any year of the term of the study shall not be less than ten percent of the current year annual operating budget or such other higher minimum balance set by the Board. This option is not recommended. Expert panel endorsed three year period.</p>		
<p>3.</p>	<p>Same as 2 but be more specific about special assessments and loans.</p> <p><b>Modify 94(8) Plan for future funding</b></p> <p>"(8) Within 120 days of receiving a reserve fund study the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period of time and in accordance with the prescribed requirements, the fund will be adequate for the purpose for which it was established. For the purposes of sections 93 and 94, adequate means that the year-over-year per cent change in the <u>annual contribution</u> for each year of the term of the study is no greater than the assumed inflation rate used in</p>	<p>Avoids a funding by special assessment approach</p>	<p>This has basically extended the time to get to inflation matched to six years from three, if someone wants to game the analysis - but I can't figure out a way to allow a loan or assessment out further than three without allowing someone to just plan an assessment every year.</p>

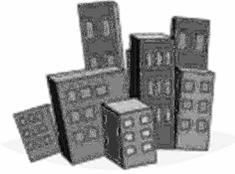
## Condominium Act Review Working Group Issue Form



	<p>the study, except in the first three years where an increase greater than inflation is permitted, AND that there are no “other” contributions except in the first six years AND that the present value of the closing balance in any year of the term of the study shall not be less than ten percent of the current year annual operating budget or such other higher minimum balance set by the Board.</p>		
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<b>Recommendation</b>	Option 1 was endorsed by the expert panel.
<b>Recommendation Rationale:</b>	Industry consensus on getting to inflation-matched has been established in a wider group via the ACOMO CCI consultation process and also reached the agreement of the members of this working group.
<b>Notes:</b>	After the group meetings, Co-chair realized that the definition should address ‘annual’, ‘other’ and ‘total’ contributions more clearly, and also that sometimes a loan or assessment is needed beyond three years, so two more options were developed for consideration by the expert panel and option 1 when modified to clearly indicate “total” contribution (= annual + other).

# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Bc) Reserve Fund Study Manner and method of determining initial reserve fund contribution as reflected in first year budget prepared by the developer (raise minimum contribution? Require plan-based RFS? Something different?).

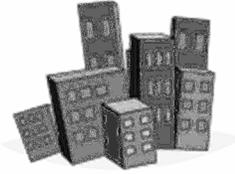
### Stage One Findings (summary):

A new minimum reserve contribution for the first year should be developed, as 10% of operating budget has been proved over and over not to be adequate.

### Context for Discussion:

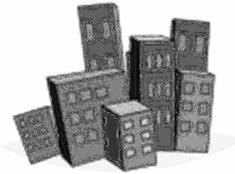
<b>Desired Outcome</b>	1st year contributions that are reasonably close to what will be found by the RFS to be needed.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><a href="#">(5)</a> Unless the regulations made under this Act specify otherwise, until the corporation conducts a first reserve fund study and implements a proposed plan under section 94, the total amount of the contributions to the reserve fund shall be the greater of the amount specified in subsection (6) and <b>10 per cent of the budgeted</b> amount required for contributions to the common expenses exclusive of the reserve fund. 1998, c. 19, s. 93 (5).</p> <p><b>Same, after first reserve fund study</b></p> <p><a href="#">(6)</a> The total amount of the contributions to the reserve fund after the time period specified in subsection (5) shall be the amount that is reasonably expected to provide sufficient funds for the major repair and replacement of the common elements and assets of the corporation, calculated on the basis of the expected repair and replacement costs and the life expectancy of the common elements and assets of the corporation. 1998, c. 19, s. 93 (6).</p>
<b>Guiding Principles</b> Key objectives and values	Fairness Well being Financial Sustainability And basic consumer protection.

## Condominium Act Review Working Group Issue Form



<p><b>Considerations</b></p>	<p>Most builders follow the 10% of operating budget minimum when defining first year contribution. This is inadequate and the result is that second year contributions need to be much higher (50 to 150% higher). This causes a significant jump in fees in the second year of a Condominium Corporation's existence.</p> <p>As utilities are sub-metered, the operating budgets drop significantly, making 10% of operating an even worse level. Sub-metering for electricity is now believed to be mandatory for new buildings, not clear for gas.</p> <p>Our group did some analysis to evaluate the impact of an inadequate first year budget.</p> <p>1- We looked at how much more mortgage a unit purchaser could obtain if their maintenance fees were \$50 less per month - using a few examples, this results in an increased mortgage of about \$3,700. This is not significant in one unit, but across the entire building translated to a significant upside for the builder.</p> <p>2 - We asked managers to provide us with sample first year operating budgets and first year notices of future funding to get a sense of the scale of the increase in the reserve contribution, and to inform our recommendations for new first year contributions. <b>Some data has been received - it still needs to be analyzed.</b></p> <p>Some builders add two months fees to the fund (paid by owners) to start the fund, which is good but still gives a false sense of the ongoing monthly fees (because in most cases, these “extra two months” would need to be contributed every year).</p> <p>ALSO: 93 (5) and (6) are very confusing ‘after the time period specified’ vs. ‘until the corporation conducts a first study’. There are a lot of interpretations of this but no one really understands what it means so it should be clarified. Builders are not reading this as requiring them to do a study and fund the greater of the study or 10%; they are just doing 10%.</p> <p>Increase first year contribution to reserve to protect unit owners from a second year shock, but not so high that a decrease is needed, as this would also not be fair to the builders.</p> <p>Get the builders on an even playing field.</p> <p>Make the actual cost of condo maintenance fees clearer to the marketplace. Builders expressed concerns that this might impact the viability of some developments, but the committee felt that viability based on misleading numbers could not possibly be a reasonable solution.</p>
<p><b>Long-Term Implications</b></p>	<p>Reducing the negativity caused by having unit owners feel that they were deceived by the builder will not only prevent the financial concerns but also help get a condo off on the right foot.</p>

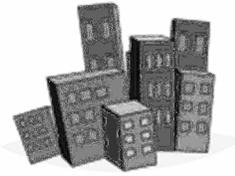
## Condominium Act Review Working Group Issue Form



### Options and Recommendation:

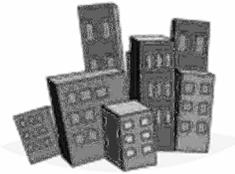
	Options:	Pros:	Cons:
1.	<p>Fix 93 (5) and 93(6) confusion by deleting the reference in (5) to section (6) and changing (5) as follows:</p> <p><b>93(5) Amount of Contribution</b>                      (5)(a) “Unless the regulations made under this Act specify otherwise, until the corporation conducts a first reserve fund study and implements a proposed plan under section 94, the total amount of the contributions to the reserve fund shall be based on a reserve fund study completed pre-disclosure, based on the design, but in no case less than XX% of the construction cost of the facility based on published construction cost data (like Helyar or Marshall and Swift). Need to determine percentage and appropriate resource. [Should the specified XX% be in the regs?]</p> <p>Add new 93(5)(b)                      (b) Qualifications for individuals and methodology to be followed for the builder's reserve fund study shall meet or exceed those prescribed for the reserve fund studies prepared for the Corporation.</p>	<p>Makes it clear that the builder is to follow RFS based on design or XX%.</p>	
2.	<p>Rather than just specifying one percentage for all corps (in Option 1 above):                      Add a table and prescribe amounts (shown as XX% in option 1):                      Standard corp with gas and electric sub-metered = 30%                      Standard corp gas on a house meter, electric sub-metered = 25%                      Other condo types = 20%</p>		<p>Operating budgets have been changing because suites are being sub-metered - this is reducing the operating budget. May need to do 20% for operating budgets that include utilities and more if suites are sub-metered.</p>

## Condominium Act Review Working Group Issue Form



	<p>[As part of this option, we recommend that the Ministry conduct a study of recent corporations to evaluate the first year operating budget vs. “steady-state” inflation matched contributions for a sufficient sample size to permit percentages to be set at appropriate levels.]</p> <p>This option is no longer recommended because the expert panel agreed on percent of construction cost not percent of operating budget.</p>		<p>In other words, if we just change all to 20% we may then find this is just as insufficient as 10% used to be in the new sub-metered world.</p> <p>Limits for zero lot line or other condo types?</p> <p>Higher percentages of operating may cause builders to limit the operating budget by cutting security or concierge services when really these are needed.</p>
<p>3.</p>	<p>Option deleted as it has been incorporated into Option 1, per expert panel.</p>		
<p>4.</p>	<p>Suggested by one member of committee: Developer prepares two RFS - one of drawings at time of marketing and a second RFS after construction, but before registration. Change not considered a material change (so</p>	<p>Gets them info sooner</p> <p>Covers ONE year of the additional cost.</p>	<p>have shifted the problem from second year to first year but have not solved the problem and the unit owners still need to pay the higher amount EVERY year.</p>

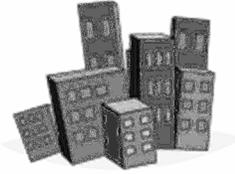
## Condominium Act Review Working Group Issue Form



	<p>owners can't rescind the agreement for purchase) but any change in contribution would be part of the first year deficit. Keep a lower limit of 15% or 20% of operating?</p> <p>This is <b>NOT</b> recommended because it moves the problem forward a year but does not really address it.</p>		<p>Risk of poor quality RFS being prepared by the builder's consultant actually worsening the problem. Builders challenge RFS because they are used to new-build costs, rather than restoration costs, which invariably results in a battle between the builder and the RFS provider (when working for the builder). There is a risk that only the strongest consultants (willing to forfeit their fee to stand strong) will be able to withstand the pressure.</p>
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<b>Recommendation</b>	<p>Option 1 is recommended to make it clear that it is greater of amount determined by study or XX% so builders can't just skip the study.</p> <p>Option 2 is <b>no longer</b> recommended.</p> <p>Option 3 <b>was deleted and option 1 modified per expert panel.</b></p> <p>Option 4 - not recommended</p>
<b>Notes:</b>	<p><b>Expert panel added: the difference between the 1st year contribution and the contribution required by the corp's first study should not factor into the 10% for determination of a material change that would allow PSA to be voided.</b></p> <p>We think the Energy Consumer Protection Act (excerpt from regs below) requires sub-metering for hydro for all condos going forward. So can we assume that all buildings will be sub-metered? Or should we write the condo act to reflect the fact that the Energy Consumer Protection Act could be changed in the future to permit buildings without sub-metering again? <b>No longer relevant if not using operating cost as a basis for contribution.</b></p>

## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Bd) Reserve Fund Study Should developer first year budget deficit liability include a RF deficit component? If so, how calculated?

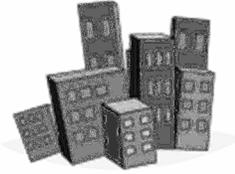
### Stage One Findings (summary):

If the first year contribution to reserve is less than found to be required by the first reserve fund, should the difference between the actual first year contribution and the calculated reserve contribution be added to the first year deficit and be the responsibility of the builder?

### Context for Discussion:

<b>Desired Outcome</b>	Purchasers stop being given misleading information about what it will cost to live in the building.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>Accountability for budget statement</b> <a href="#">75. (1)</a> The declarant is accountable to the corporation under this section for the budget statement that covers the one-year period immediately following the registration of the declaration and description. 1998, c. 19, s. 75 (1).</p> <p><b>Common expenses</b> <a href="#">(2)</a> The declarant shall pay to the corporation the amount by which the total actual amount of common expenses incurred for the period covered by the budget statement, except for those attributable to the termination of an agreement under section 111 or 112, exceeds the total budgeted amount. 1998, c. 19, s. 75 (2).</p> <p><b>Revenue</b> <a href="#">(3)</a> The declarant shall pay to the corporation the amount by which the total actual amount of fees, charges, rents and other revenue paid or to be paid to the corporation, during the period covered by the budget statement, for the use of any part of the common elements or assets or of any other facilities related to the property, is less than the total budgeted amount. 1998, c. 19, s. 75 (3).</p> <p><b>Set-off</b> <a href="#">(4)</a> If the total actual amount of revenue described in subsection (3) exceeds the total budgeted amount, the declarant may deduct the excess from any amount payable under subsection (2). 1998, c. 19, s. 75 (4).</p> <p><b>AND</b> <b>Contributions to fund</b></p>

## Condominium Act Review Working Group Issue Form

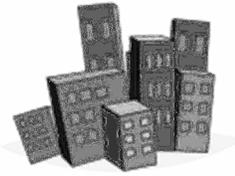


	<p>(4) The corporation shall collect contributions to the reserve fund from the owners, as part of their contributions to the common expenses. 1998, c. 19, s. 93 (4).</p> <p>“Common expenses” means the expenses related to the performance of the objects and duties of a corporation and all expenses specified as common expenses in this Act or in a declaration (“dépenses communes”).</p>
<p><b>Guiding Principles</b> Key objectives and values</p>	<p>Fairness Financial sustainability</p>
<p><b>Considerations</b></p>	<p>Could be that the builder picks up the difference, but ideally there should be very little difference so that the purchasers are being given a realistic idea of what it will cost to live in the building.</p> <p>Also, even if the builder picks up the difference in the first year, the owners will still have to pay the higher contribution for every year in the future, so they haven't won much. Far better to get the first year contribution where it should be.</p> <p>Also, reserve fund studies are based on 30 to 60 years of forecasts. These are inherently opinion pieces, and no two studies would give the exact same results. Adding the difference to the builder's first year deficit payment would invariably result in legal action which would be costly and negative for all involved.</p>

### Options and Recommendation:

	Options:	Pros:	Cons:
<p>1.</p>	<p>Include the shortfall in the first year contribution in the 1st year deficit.</p> <p>We do <b>NOT</b> recommend this option. Instead we recommend focusing attention on processes to prevent the first year contribution from being too far off the mark - see separate issue Form - Finances Bc - 1st year contribution.</p> <p>If first year contribution continues to be inadequate in future condos under the revised act, then in theory we could make the builder</p>	<p>Some incentive to builders to get first year contribution right, but not really one - they only cover the first year increment - the unit owners still have to cover the other 30 years of this increment (the board may pay 100k in the first year, but the unit owners have to contribute this additional 100k every year - better to get rid of the 100k gap to start with)</p>	<p>RFS is based on facts AND opinions and there is no “correct” contribution. Legal battles over the builders' responsibility could become widespread and costly.</p>

## Condominium Act Review Working Group Issue Form



	<p>responsible, but we need to remember that reserve fund studies are opinion-based, not only fact-based, so we would be sentencing Corporations to potentially costly legal battles to prove what the 'correct' 1st year contribution should have been,.</p>		
2.			

<p><b>Recommendation</b></p>	<p>We do NOT recommend any options on this form. We do recommend altering the minimum first year contribution - see Finances form Bc.</p>
<p><b>Recommendation Rationale:</b></p>	<p>More important to get first year fees realistic than to penalize the builders when they get it wrong. Even if the builder pays one year of the required increase, the unit owners still need to pay all future years of this increase.</p>

# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Be) Reserve Fund Study Flexibility in use of reserve funds (changes required by legislation). Note – green separated into new item Bh)

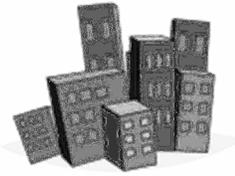
### Stage One Findings (summary):

<p>Provide flexibility in the right places. Should legislated work be allowed to be paid from reserve?</p>
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### Context for Discussion:

<b>Desired Outcome</b>	Clarity about whether or not legislated changes can be paid from reserve.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><u>(2)</u> A reserve fund shall be used solely for the purpose of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 93 (2). AND <b>Changes made by corporation</b> <u>97. (1)</u> If the corporation has an obligation to repair the units or common elements after damage or to maintain them and the corporation carries out the obligation using materials that are as <b>reasonably close in quality to the original as is appropriate in accordance with current construction standards</b>, the work shall be deemed not to be an addition, alteration or improvement to the common elements or a change in the assets of the corporation for the purpose of this section. 1998, c. 19, s. 97 (1).</p>
<b>Guiding Principles</b> Key objectives and values	<p>Fairness for current and future owners. Well-being Strong Communities</p>
<b>Considerations</b>	The act is not clear if legislated changes (such as mandatory fire code retrofit, sheave jammer replacement, back flow preventers, elevator equipment guarding, elevator car top rails, addition of a ramp for barrier-free access etc.) can be paid from reserve. In theory, the fund can only be used to repair or replace the common

## Condominium Act Review Working Group Issue Form



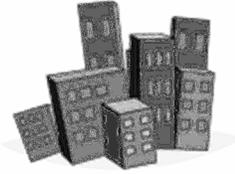
	<p>elements and assets. These legislated changes are generally additions to the common elements (rather than repair or replacement of existing components) but they are clearly a long-term benefit to the corporation, so should not have to be paid for 100% by current owners in one year.</p> <p>Once these components have been added, it is clear that their future repair and replacement can be funded from reserve - so can their first installation be funded or not.</p>
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### Options and Recommendation:

	Options:	Pros:	Cons:
1.	<p><b>Add new subsection 93(8)</b> 93(8) Notwithstanding section 97, additions, alterations or improvements to the common elements and assets of the corporation that are required by legislation, regulation, rule or other law, may be considered major repair or replacement for the purposes of subsection (2) and may be charged to the corporation's reserve fund.</p>	Clarity	<p>Unplanned expenditures from reserve - but this would be helped by the proposed requirement to notify the owners if unplanned expenditures have a material impact on the viability of the fund.</p>

<b>Recommendation</b>	Option 1 is recommended.
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## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Bf) Reserve Fund Study Change name of reserve fund?

### Stage One Findings (summary):

Some participants thought that the term reserve fund was a misnomer and might lead owners to think the fund is just a contingency for emergencies (rather than a plan for expected). They might even think it could be used to cover an overrun in the operating budget. Name the fund in a way that clearly conveys the idea that it is to pay for planned repairs and replacements.

### Context for Discussion:

<b>Desired Outcome</b>	A name that makes purpose of the fund clear.
<b>Current Status</b> How is this issue currently addressed (if at all)	Reserve fund
<b>Guiding Principles</b> Key objectives and values	Informed community members and stakeholders Effective communications
<b>Considerations</b>	Don't create other confusions. Most jurisdictions use the same term "Reserve fund study" is very well established term

### Options and Recommendation:

	Options:	Pros:	Cons:
1.	"Reserve Fund for Major Repair and Major Replacement"	Clear	Will get shortened to Reserve Fund

## Condominium Act Review Working Group Issue Form



2.	“Repair and Replacement Fund”	Clear	What is the study called? Repair and Replacement Fund Study?
3.	Educate owners about what a Reserve Fund is to help reduce the confusion.	Simple	Not all will be educated. (but not all will notice that we have renamed it anyways).

<b>Recommen- dation</b>	We see this as a relatively unimportant item and do not think a change is needed.
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# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Bg) Reserve Fund Study Phase-in rules for older corporations regarding period of time fund is to be adequate (maintain status quo? Change? Is this obsolete?).

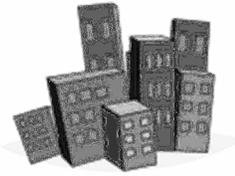
### Stage One Findings (summary):

<p>Allowing phase-in over 15 years has contributed to under-funded funds.</p>
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### Context for Discussion:

<b>Desired Outcome</b>	Encourage proper funding of a Reserve Fund as early in a buildings life as possible.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p>Buildings that existed before the current act came into force were given ten years for their fund to become adequately funded. When HST came into force, this was extended to 15 years. The corollary of this is that these buildings were allowed to be under-funded for 15 years. Buildings inevitably have “unplanned” projects, which make this under-funding worse.</p> <p>Thinking of it another way, the outflow of funds cannot be deferred the way the inflow of funds is being deferred. This creates a mismatch.</p> <p>Phasing in over 15 years is like saving for retirement by only putting a little bit away when you are thirty and planning to put more away later. Not only does this penalize later owners, but it also does not allow the Corporation to benefit on compounding interest on the fund because balances in the fund don’t build.</p>
<b>Guiding Principles</b> Key objectives and values	<p>Fairness to both current and future owners</p> <p>Well being</p> <p>Financial Sustainability</p>
<b>Considerations</b>	The current term is 15 years from the date of the first comprehensive study completed at the corporation. The latest date this could have been completed is 2004, so the industry typically allows phase-in until 2019.

## Condominium Act Review Working Group Issue Form



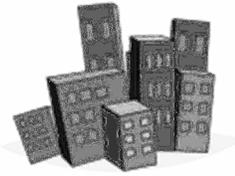
	<p>If the new act comes into force in 2015, and the proposed definition of adequate funding is accepted (no annual increase greater than inflation except in the first three years) then these two timings will basically coincide (three years forward looking from a study completed in 2015 will calculate funding for 2016, 2017 and 2018).</p>
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### Options and Recommendation:

	Options:	Pros:	Cons:
1.	Delete the 15 year period from the Act (recognizing that the new “three years to inflation-matched” adequacy definition will not “penalize” those corporations currently using the 15 years).	Would clean it up	
2.	Do not add a clause like this again, even if there is a cost-change paradigm (like HST increase). While it seems like a benefit to the corporations, it is actually to their detriment to defer funding.		

<b>Recommendation</b>	Options 1 and 2 are recommended.
<b>Notes:</b>	By the time the new act launches, it will be 2014 or 2015. If adequate allows greater-than-inflation increases for three years, that will cover 2014 to 2017. The existing 15 year clause ends 2019. Might consider leaving as is, but that might leave the temptation for future governments to extend this again.

## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Bh) Reserve Fund Study Flexibility in use of reserve funds (Green projects)

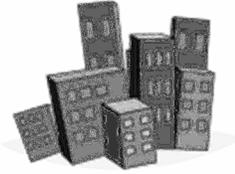
### Stage One Findings (summary):

<p>There should be opportunities to use RF money to pay for green initiatives that are of long-term benefit to the corporation. Need to establish clear standards.</p>
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### Context for Discussion:

<b>Desired Outcome</b>	Allow boards to invest in green initiatives that are to the long term benefit of the corporation - for example, spending an extra \$100k on improving the efficiency of HVAC systems if the payback on the investment is ten years.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><a href="#">(2)</a> A reserve fund shall be used solely for the purpose of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 93 (2).</p> <p>AND</p> <p><b>Changes made by corporation</b></p> <p><a href="#">97. (1)</a> If the corporation has an obligation to repair the units or common elements after damage or to maintain them and the corporation carries out the obligation using materials that are as <b>reasonably close in quality to the original as is appropriate in accordance with current construction standards</b>, the work shall be deemed not to be an addition, alteration or improvement to the common elements or a change in the assets of the corporation for the purpose of this section. 1998, c. 19, s. 97 (1).</p>
<b>Guiding Principles</b> Key objectives and values	Financial sustainability Effective communication
<b>Considerations</b>	<p>Can use systems that are “current construction standard” but upgrades would require notification or approval of owners, depending on the cost.</p> <p>Prevent boards from pursuing pet projects without real value and ensure that the</p>

## Condominium Act Review Working Group Issue Form

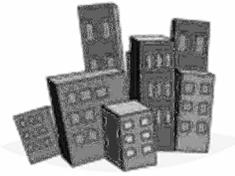


	<p>spending is being prioritized relative to other needs in the building.</p> <p>TAF was concerned that focusing on energy savings means that other “green” projects (like drought-resistant plantings, green roofs, minimizing light pollution off the site, adding EV charging and similar) would be excluded.</p>
<b>Long-Term Implications</b>	Reduced operating costs, or greener lifestyle.

### Options and Recommendation:

	Options:	Pros:	Cons:
1.	<p>Improvements that result in cost-savings can be considered a major repair or replacement and proceed without owner approval if the simple payback (prepared by a professional engineer hired by the corporation) of the incremental cost (when compared to a like-with-like replacement) is less than 66% of the normal expected life of the involved equipment AND the higher cost is reflected in the RFS and notice of future funding.</p> <p>EG spend 100k more on boilers with a 20 year service life. Estimate savings of 12k per year on energy. 100k/20 years= 5k per year. 5k &lt; 12k so can proceed.</p>	<p>Allows energy saving projects that are beneficial to the owners to proceed without obtaining approval.</p> <p>Requiring them to be reflected in the study requires planning and foresight, preventing ad hoc decisions from being made off the cuff.</p>	Limited to energy saving projects
2.	<p>Should we require savings estimate to be guaranteed with an insurance policy in place?</p> <p>This option is <b>NOT</b> recommended.</p>	Assurance	Very expensive insurance to buy and usually high deductible (10% which is the riskiest slice).
3.	Allow green projects that do not generate energy savings, but which are good for the planet to be paid from reserve without consent of the unit owners.	Would help with greening.	Risk someone with a green agenda depleting the fund installing green roofs when there were other pressing priorities

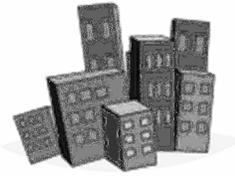
## Condominium Act Review Working Group Issue Form



	<p>This option is <b>NOT</b> recommended. These should be considered improvements and should follow section 97 requirements in the opinion of the committee. There is a morality issue to “green” that should not be decided by the Act.</p>		<p>to be addressed, and when these items may not be a priority to other unit owners.</p>
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<b>Recommendation</b>	<p>Option 1 is recommended Options 2 and 3 are not recommended</p>
<b>Recommendation Rationale:</b>	<p>See discussions under each option.</p>
<b>Notes:</b>	<p>Expert panel: There was discussion of whether operating savings need to be fed back into reserve to replenish the fund or if it is appropriate to fund via the related general contribution increase. As the nature of the energy savings are long-term, it was felt that replenishment of the fund via general contribution increases was reasonable.</p>

# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Ca) Operating Budget Changes WITHOUT notice (additions, alterations or improvements (“AAI”) to common elements and/or changes to a service corporation provides”): should there be a change to the \$1000/1% budget threshold? Should there be a different calculation? Should there be a change/clarification to “estimated cost”?

### Stage One Findings (summary):

#### **General for Management of Operating Expenses:**

Some stakeholders and residents felt that the AAI provisions are too restrictive, preventing boards from proceeding with sensible work. Others felt that they were too permissive, allowing boards to abuse their authority via wasteful spending. Thresholds are one issue; the other is trust in the board members.

Need clearer rules overall.

The bigger issue is about transparency, accountability and trust.

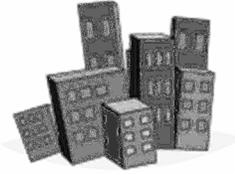
#### **Changes without notice**

General consensus was that current limit is too low and needs to increase to simplify decision-making. A level of the greater of 3% of the annual budget within any 12 month period could be considered. Any communication with residents needed when spending this money?

### Context for Discussion:

<b>Desired Outcome</b>	Effective operation of the board without creating an opportunity for abusive board members from funding pet projects
<b>Current Status</b> How is this issue currently addressed (if at all)	<b>Changes made without notice</b> <a href="#">(2)</a> A corporation may, by resolution of the board and without notice to the owners, make an addition, alteration or improvement to the common elements, a change in the assets of the corporation or a change in a service that the corporation provides to the owners if,  (a) it is necessary to make the addition, alteration, improvement or change to comply with an agreement mentioned in section 113 or the requirements imposed by any general or special Act or regulations or by-laws made under that Act;

## Condominium Act Review Working Group Issue Form

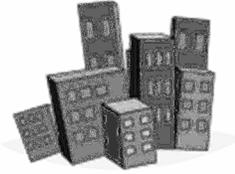


	<p>(b) in the opinion of the board, it is necessary to make the addition, alteration, improvement or change to ensure the safety or security of persons using the property or assets of the corporation or to prevent imminent damage to the property or assets; or</p> <p>(c) Subject to the regulations made under this Act, the estimated cost, in any given month or other prescribed period, if any, of making the addition, alteration, improvement or change is no more than the greater of \$1,000 and 1 per cent of the annual budgeted common expenses for the current fiscal year. 1998, c. 19, s. 97 (2).</p>
<p><b>Guiding Principles</b> Key objectives and values</p>	<p>Fairness Informed Community Members and Stakeholders Financial Sustainability.</p>
<p><b>Considerations</b></p>	<p>Should we communicate when below threshold? No - too many items fall into this category - would they have to communicate for a \$300 item?</p>

### Options and Recommendation:

	Options:	Pros:	Cons:
<p>1.</p>	<p>(c) subject to the regulations made under this Act, the estimated total cost within a twelve month period, [if any, of making the addition, alteration, improvement or change is no more than the lesser of 3 per cent of the annual budgeted common expenses for the current fiscal year and such other prescribed amount."</p>	<p>Look at total cost, not in a time period. 3% total cost (vs. used to be 1% per month, which could conceivably add up to 12% in a year)</p>	
<p>2.</p>	<p>(d) A change in service referred to in subsection (c) shall be permitted only if such change in service is not expected to constitute a material adverse reduction or elimination of services"</p> <p>Material reduction - could we use a similar definition to material change: reasonable purchaser, on an objective basis, would have</p>	<p>Prevents a board from making a material change in service (at no cost or savings - like eliminating concierge, shutting amenities).</p>	

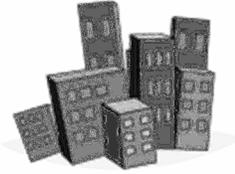
# Condominium Act Review Working Group Issue Form



	<p>regarded collectively as sufficiently important to the decision to purchase a unit or proposed unit in the corporation that it is likely that the purchaser would not have entered into an agreement of purchase and sale for the unit or the proposed unit or would have exercised the right to rescind such an agreement of purchase and sale under section 73</p>		
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<b>Recommendation</b>	Options 1 and 2 are recommended.
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# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	<p>Cb) Operating Budget Standard Unit Definition: issues?/concerns? Should there be a legislated/prescribed form of standard unit definition/bylaw? If so, what considerations are important? Should it be open to amendment by corporations individually? Should there be a prescribed form for the standard unit definitions that developers are required to provide?</p>

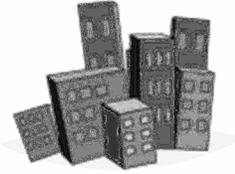
### Stage One Findings (summary):

Uncertainty over the standard unit bylaw (what is the responsibility of the corp. [standard unit] vs. what is the responsibility of the unit owner [betterment]) leads to confusion over what insurers will cover to an insured peril claim within a unit. Although the Act requires the developer to include a standard unit schedule in the documents it turns over to the owners (S43 5h) some developers do not or provide insufficient info. Prior to May 5 2001, there was no requirement to turn over this description. Many corps. do not have a standard unit description unless they prepared a standard unit bylaw (which can be very difficult to achieve). To cover these two, the Condo Act should have a basic, default definition of a standard unit which can be modified by either the S435h) definition or by a bylaw passed by the corp.

### Context or Discussion:

<b>Desired Outcome</b>	Clarity about responsibility to simplify insurance procurement.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>Determination of improvements</b> <a href="#">(5)</a> For the purpose of this section, the question of what constitutes an improvement to a unit shall be determined by reference to a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 99 (5). <b>Standard unit</b> <a href="#">(6)</a> A standard unit for the class of unit to which the unit belongs shall be, (a) the standard unit described in a by-law made under clause 56 (1) (h), if the board has made a by-law under that clause; (b) the standard unit described in the schedule mentioned in clause 43 (5) (h), if the board has not made a by-law under clause 56 (1) (h). 1998, c. 19, s. 99 (6). <b>Amount of recovery</b> <a href="#">(7)</a> Subject to a reasonable deductible, the insurance required under this section shall cover the replacement cost of the property damaged by the perils to which the insurance applies. 1998, c. 19, s. 99 (7).</p>

# Condominium Act Review Working Group Issue Form

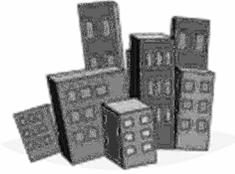


<p><b>Guiding Principles</b> Key objectives and values</p>	<p>Fairness Well-being Informed community members and stakeholders</p>
<p><b>Considerations</b></p>	<p>If a unit is damaged and the unit owner does not repair, then the corp. can step in and take on their obligations and charge the cost to the owner's common expenses - do we need to define the criteria (able to obtain an occupancy certificate from the municipality? Livable?)?</p> <p>Need to decide if we should eliminate the S43h description and just define the standard unit unless it is changed via declaration or specific bylaw? A condo lawyer raised concerned about special cases like units shared with the City or the portlands - boundaries should include exterior walls (vs. standard boundaries might exclude). This would presumably need to be addressed case by case, but default would work for most.</p> <p>For some high-end buildings, a standard unit is bare drywall on the fire partitions and an otherwise completely unfinished unit, so there was concern about defining standard unit finish bylaw for all corps.</p> <p>Currently need only a schedule of what was provided - generally not adequately described - also this list often goes well beyond the unit and lists chattels which is clearly not the intent of a SUB.</p> <p>Some corps put together a standard unit bylaw but seems to miss the point and don't discuss all the items that need to be considered. These corps. need guidance.</p>

**Options and Recommendation:**

	<b>Options:</b>	<b>Pros:</b>	<b>Cons:</b>
1.	<p>Define a province wide standard unit definition that applies to all units except those with a bylaw amending the standard.</p> <p>This would cover a livable unit, with finished walls and ceiling, fixtures and cabinetry. The description needs to be adequately detailed to permit a valuation to be ascertained.</p> <p>Existing buildings should be able to</p>	<p>Simple, easy to apply. Boards wouldn't need approval of owners to implement.</p>	<p>Some buildings are sold with bare units - the standard would not apply. This can presumably be handled via modifications to that particular buildings bylaws.</p>

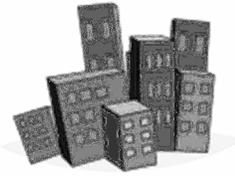
## Condominium Act Review Working Group Issue Form



	adopt this standard without passing a bylaw.		
2.	Require the declarant to provide a standard unit <b>finish</b> bylaw (or would this be in the dec?) for each class of units in the corp. The bylaw should be put in place before turn-over. The bylaw should cover sufficient components to get a unit back to a reasonable condition that is not detrimental to adjacent units and appropriate for the building in which the unit is located. The description needs to be adequately detailed to permit a valuation to be ascertained.	Ensures that new condos have a standard unit defined.	Doesn't help existing buildings that don't have a standard unit bylaw
3.	Provide a standard form of Standard unit finish bylaw. This would guide Corps when they develop their own bylaw (this would at least include a table of items that need to be covered).	Provides guidance to existing buildings without a bylaw	Corps. still face the challenge of getting the bylaw passed.

<b>Recommendation</b>	Option 1 is recommended and endorsed by the expert panel. Option 2 was seen as problematic by the expert panel. Option 3 has value to assist boards who write their own bylaw modifying the provincial minimum SUFB.
<b>Notes:</b>	The SUFB should include specific information indicating the materials used for all components that form part of the standard unit (particle board or wood? granite or not? quality of appliances). The quality of the standard unit items has to reflect the lowest standard installed in any unit of each class in the Corp (so no one can profit from loss).

# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Cc) Insurance Responsibility for damage: owners' responsibility for payment up to an amount of corporation's insurance deductible; should Act be expanded to clearly include damage to common elements? Should owners' responsibility be limited more to unit origin/responsibility? Other considerations?

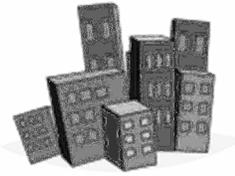
### Stage One Findings (summary):

Confusion about responsibility when a unit owner causes damage to the common elements or another unit. The Act is unclear about who pays the Corporation's deductible for the damaged property. The Condo Act should clarify who is responsible, which is the owner of the unit where the damage originated.

### Context for Discussion:

<b>Desired Outcome</b>	Clarity about responsibility
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>105. (1)</b> Subject to subsection (2) and (3), if an insurance policy obtained by the corporation in accordance with this Act contains a deductible clause that limits the amount payable by the insurer, the portion of a loss that is excluded from coverage shall be a common expense. 1998, c. 19, s. 105 (1).</p> <p><b>Owner's responsibility</b></p> <p><b>(2)</b> If an owner, a lessee of an owner or a person residing in the owner's unit with the permission or knowledge of the owner through an act or omission causes damage to the owner's unit, the amount that is the lesser of the cost of repairing the damage and the deductible limit of the insurance policy obtained by the corporation shall be added to the common expenses payable for the owner's unit. 1998, c. 19, s. 105 (2).</p> <p><b>Same, by-law</b></p> <p><b>(3)</b> The corporation may pass a by-law to extend the circumstances in subsection (2) under which an amount shall be added to the common expenses payable for an owner's unit if the damage to the unit was not caused by an act or omission of the corporation or its directors, officers, agents or employees. 1998, c. 19, s. 105 (3).</p> <p><b>Owner's insurable interest</b></p>

## Condominium Act Review Working Group Issue Form

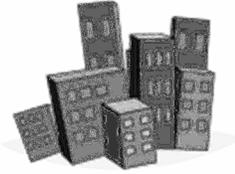


	<p><a href="#">(4)</a> The amount payable by an owner under this section or as a result of a by-law passed under this section constitutes an insurable interest of the owner. 1998, c. 19, s. 105 (4).</p> <p><b>Act prevails</b></p> <p><a href="#">106.</a> If any provision of an insurance policy required by section 99 or 102 or any part of the <i>Insurance Act</i> conflicts with anything in this Act, the provisions of this Act apply. 1998, c. 19, s. 106.</p>
<p><b>Guiding Principles</b> Key objectives and values</p>	<p>Fairness Informed Community members and stakeholders</p>
<p><b>Considerations</b></p>	<p>Does the board have an obligation to notify the owners if the deductible changes? Is deductible insurance a mandatory part of a condo home owners policy? Could it be?</p> <p>Should there be a maximum portion of the deductible that can be charged back (say \$25,000) for the cases where the Corp has very high deductible? Not really fair to the other unit owners, particularly in the case of repeat offenders so not recommended.</p> <p>Should it be the unit where the problem originated, or the responsibility of the unit owner (if they spill paint in the corridor, the “originated in the unit” would not cover)</p>

### Options and Recommendation:

	Options:	Pros:	Cons:
<p>1.</p>	<p><a href="#">(2)</a> If an owner, a lessee of an owner or a person residing in the owner’s unit with the permission or knowledge of the owner, through an act or omission causes damage to the owner’s unit, <b>other units or the common elements</b>, the amount that is the lesser of the cost of repairing the damage and the deductible limit of the insurance policy obtained by the corporation shall be added to the common expenses payable for the owner’s unit. 1998, c. 19, s. 105 (2)</p>	<p>Unit owners become responsible for the corporation’s deductible even if the damage is beyond the owner’s unit.</p> <p>Delete the provision that allows changes - a bylaw shouldn’t be allowed to change the coverage that negatively impacts the lenders holding the mortgages on the units without their knowledge.</p>	<p>Extends the cases when an owner is responsible for damage they cause - this can be seen as a positive for the owners as a whole, but does mean that an individual can face significant personal cost in the event of an accidental occurrence.</p>

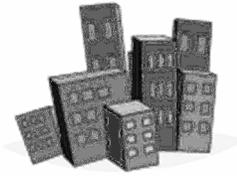
## Condominium Act Review Working Group Issue Form



	Expert panel agreed that no by-law should be allowed to change this obligation.		
2.	Communicate change in deductible - added to communication issue form.		
3.	Consider requirement for it to be mandatory for unit owners to carry insurance, as a minimum to cover exposure to deductible.	Protection	Perhaps too oppressive. An investor with many units may prefer to gamble than have insurance

<b>Recommendation</b>	Option 1 should be implemented. Option 2 is covered on another issue form. Option 3 should be considered
<b>Notes:</b>	Should the act define what is an “act or omission” - is failure to maintain an act or omission. Expert panel discussed if only negligent acts and agreed to keep “acts or omissions”

# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Cd) Operating Budget Common expenses/liens: should there be greater clarification/change regarding which costs may/or may not be added to the common expenses of a unit?

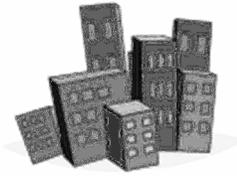
### Stage One Findings (summary):

In certain circumstances, boards may place a lien against an owner's unit. This might happen, if, for example, the owner fails to pay monthly fees. Liens are an important tool for financial management and all parties agreed that the community needs this protection. However, some owners were concerned that some boards are abusing this power, using liens to pressure owners to have to accept the board's position. When there are disagreements, the corp. gets the lawyer to write a letter to the unit owner, the cost of the letter gets liened if not paid - this feels very unfair to the unit owner who believes that they are correct in the disagreement).

### Context for Discussion:

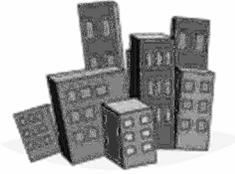
<p><b>Current Status</b> How is this issue currently addressed (if at all)</p>	<p><b>Lien upon default</b> <a href="#">85. (1)</a> If an owner defaults in the obligation to contribute to the common expenses, the corporation has a lien against the owner's unit and its appurtenant common interest for the unpaid amount together with all interest owing and all reasonable legal costs and reasonable expenses incurred by the corporation in connection with the collection or attempted collection of the unpaid amount. 1998, c. 19, s. 85 (1).</p> <p><b>Expiration of lien</b> <a href="#">(2)</a> The lien expires three months after the default that gave rise to the lien occurred unless the corporation within that time registers a certificate of lien in a form prescribed by the Minister. 1998, c. 19, s. 85 (2).</p> <p><b>Certificate of lien</b> <a href="#">(3)</a> A certificate of lien when registered covers, (a) the amount owing under all of the corporation's liens against the owner's unit that have not expired at the time of registration of the certificate; (b) the amount by which the owner defaults in the obligation to contribute to the common expenses after the registration of the certificate; and (c) all interest owing and all reasonable legal costs and reasonable expenses that the corporation incurs in connection with the collection or attempted collection of the amounts described in clauses (a) and (b), including the costs of preparing and registering the certificate of lien and a discharge of it. 1998, c. 19, s. 85 (3).</p> <p><b>Notice to owner</b> <a href="#">(4)</a> At least 10 days before the day a certificate of lien is registered, the</p>
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# Condominium Act Review Working Group Issue Form



	<p>corporation shall give written notice of the lien to the owner whose unit is affected by the lien. 1998, c. 19, s. 85 (4). <b>Apparently this letter costs \$250 and is also charged to the owner - can they be required to send a notice earlier at no cost?</b></p> <p><b>Service of notice</b></p> <p><u>(5)</u> The corporation shall give the notice by personal service or by sending it by prepaid mail addressed to the owner at the address for service that appears in the record of the corporation maintained under subsection 47 (2). 1998, c. 19, s. 85 (5).</p> <p><b>Lien enforcement</b></p> <p><u>(6)</u> The lien may be enforced in the same manner as a mortgage. 1998, c. 19, s. 85 (6).</p> <p><b>Discharge of lien</b></p> <p><u>(7)</u> Upon payment of the amounts described in subsection (3), the corporation shall prepare and register a discharge of the certificate of lien in the form prescribed by the Minister and shall advise the owner in writing of the particulars of the registration. 1998, c. 19, s. 85 (7).</p> <p><b>Priority of lien</b></p> <p><u>86. (1)</u> Subject to subsection (2), a lien mentioned in subsection 85 (1) has priority over every registered and unregistered encumbrance even though the encumbrance existed before the lien arose but does not have priority over,</p> <ul style="list-style-type: none"> <li>(a) a claim of the Crown other than by way of a mortgage;</li> <li>(b) a claim for taxes, charges, rates or assessments levied or recoverable under the <i>Municipal Act, 2001</i>, the <i>City of Toronto Act, 2006</i>, the <i>Education Act</i>, the <i>Local Roads Boards Act</i> or the <i>Statute Labour Act</i>; or</li> <li>(c) a lien or claim that is prescribed. 1998, c. 19, s. 86 (1); 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 7.</li> </ul> <p>AND</p> <p>139</p> <p><b>Lien</b></p> <p><u>(5)</u> If an owner defaults in the obligation to contribute to the common expenses of a common elements condominium corporation, the corporation has a lien against the owner's parcel of land. 1998, c. 19, s. 139 (5).</p> <p><b>Same</b></p> <p><u>(6)</u> The lien is a lien for the purposes of sections 85 and 86. 1998, c. 19, s. 139 (6).</p> <p><b>Priority of lien</b></p> <p><u>(7)</u> Despite section 86, the lien does not have priority over an encumbrance registered against an owner's parcel of land before the common interest of the owner attached to it unless the encumbrancer agrees in writing otherwise. 1998, c. 19, s. 139 (7).</p>
<p><b>Guiding Principles</b> Key objectives</p>	<p>Fairness</p>

## Condominium Act Review Working Group Issue Form

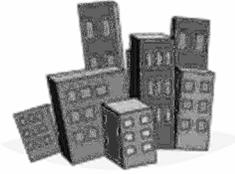


and values	
<b>Considerations</b>	When there is a dispute and the Corp thinks the owner is responsible but the owner disagrees, the lien for enforcement including legal costs can be unilaterally applied to the common expenses and liened. This feels very unfair when the dispute has not yet been resolved.

### Options and Recommendation:

	Options:	Pros:	Cons:
1.	<p><b>Notice to owner</b> (4) At least 10 days before the day a certificate of lien is registered, the corporation shall give written notice of the lien to the owner whose unit is affected by the lien.</p> <p>Do not allow the Corporation to charge the unit owner for this notice. This option is not recommended because Form 14, which is a prescribed form is complex and requires legal input and cost.</p>	for the unit owner - no legal costs for the letter informing them of the lien	Significant legal costs could be incurred by a corporation on behalf of a unit owner who is routinely delinquent in making payments.
2.	<p>The Corp should have to provide a notice which does not cost the unit owner money to explain why the common expenses apply to the unit and what will happen if the unit owner fails to pay including the cost of registering and discharging the lien. The notice should also describe available mechanisms to help resolve any dispute (presuming a condo -office or dispute resolution office would be available under the new act). Then the legal letter (which costs money) could be issued. Create a standard form to be used.</p> <p>[Consider the notice provisions used in the landlord and tenant act]</p>	People don't get hit "out of the blue" with legal costs for enforcement, they have some warning that these costs are coming	Timing is a challenge. board needs to issue this "free" notice and the official notice all in the three month window open to register the certificate of lien.

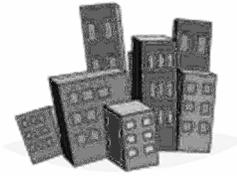
## Condominium Act Review Working Group Issue Form



	<p>[Consider perhaps two categories: 1 - failure to pay routine monthly common expenses, and 2 - failure to pay other common expenses attributed to this unit only (Corp's insurance deductible, cost of enforcement of a bylaw etc).</p> <p>Category 1 non-payment - process as it currently stands would apply. Category 2 - alternate process with one free notice]</p> <p>Expert panel did not support this option.</p>		
3.	<p>Leave as-is. Ensure that the dispute resolution process put in place can reverse the legal costs if the dispute is resolved in favour of the unit owner.</p>	Fair	<p>Unit owner might have to pay and then wait for the outcome of the dispute resolution process to recover.</p>
4	<p>Consider a hard limit on the cost of compliance letters to prevent boards from using this punitively</p>	<p>Prevents silly use and over-spending by boards just to make life difficult for a unit owner</p>	<p>may not cover full legitimate costs</p>
5	<p>Leave as-is for collection of arrears. Modify for costs related to compliance so that the corp. keeps the cost until the issue has been rectified at which time costs can be assigned to the appropriate party. Freeze lien rights during dispute resolution process.</p>		

<b>Recommendation</b>	<p>Option 5 is endorsed by the expert panel.</p>
<b>Notes:</b>	<p>Be careful not to impact existing requirements for common expenses to be due even if the owner has a dispute. Also need to be sure that utility check meter changes are included in common expenses.</p>

# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Ce) Operating Budget Greater clarity on the definition of “repair” and “maintenance”; and of “addition”, “alteration” or “improvement”? Any other related issues?

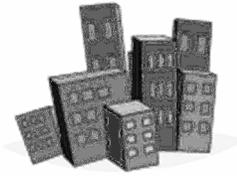
### Stage One Findings (summary):

	<p>Perhaps creating clarity about definitions of terms to repair and maintenance could distinguish these from expensive or unnecessary aesthetic improvements such as additions or alterations. Greater flexibility could then be allowed for repairs and maintenance while other improvements would require board to notify owners of its plans or possibly seek approval.</p> <p>More sharply delineate section 97 items from Reserve.</p> <p>How to prevent boards from extending a project</p> <p>[Not in findings report, but there is also apparently a hot button issue about lack of clarity about who is responsible for what in insurance claims, and with respect to maintenance and repair when a Condo dec changes obligations away from those specified in sections 89 and 90 by following the provisions in 91.]</p>
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### Context for Discussion:

<b>Desired Outcome</b>	Reduce the fighting between boards and unit owners about who is responsible for what on an ongoing basis and for insurance purposes.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>89 and 97 refer to “repair after damage” and “maintain”</b> <b>93 and 94 refer to “major repair and replacement”</b></p> <p><b>Changes made by corporation</b> <b>97. (1)</b> If the corporation has an obligation to <i>repair</i> the units or common elements <i>after damage [repair after damage includes repair and replacement after damage or failure]</i> or to <i>maintain [maintain includes repair after normal wear and tear]</i> them and the corporation carries out the obligation using materials that are as reasonably close in quality to the original as is appropriate in accordance with current construction standards, the work shall be deemed not to be an addition, alteration or improvement to the common elements or a change in the assets of the corporation for the purpose of this section. 1998, c. 19, s. 97 (1).</p>

# Condominium Act Review Working Group Issue Form



## Repair after damage

**89. (1)** Subject to sections 91 and 123, the corporation shall **repair** the units and common elements **after damage**. 1998, c. 19, s. 89 (1).

### Extent of obligation

**(2)** The obligation to **repair after damage** includes the obligation to repair and **replace after damage or failure** but, subject to subsection (5), does **not** include the obligation to **repair after damage improvements made to a unit**. 1998, c. 19, s. 89 (2).

### Determination of improvements

**(3)** For the purpose of this section, the question of what constitutes an improvement to a unit shall be determined by reference to a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 89 (3).

### Standard unit

**(4)** A standard unit for the class of unit to which the unit belongs shall be,  
(a) the standard unit described in a by-law made under clause 56 (1) (h), if the board has made a by-law under that clause;  
(b) the standard unit described in the schedule mentioned in clause 43 (5) (h), if the board has not made a by-law under clause 56 (1) (h). 1998, c. 19, s. 89 (4).

### Transition, existing corporations

**(5)** A corporation that was created before the day this section comes into force and that had the obligation of **repairing after damage** improvements made to a unit before the registration of the declaration and description shall continue to have the obligation unless it has, by by-law, established what constitutes a standard unit for the class of unit to which the unit belongs. 1998, c. 19, s. 89 (5).

## Maintenance

**90. (1)** Subject to section 91, the corporation shall **maintain** the common elements and each owner shall **maintain** the owner's unit. 1998, c. 19, s. 90 (1).

### Normal repairs included

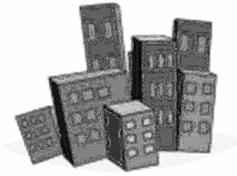
**(2)** The obligation to **maintain** includes the obligation to **repair** after normal wear and tear but does not include the obligation to **repair after damage**. 1998, c. 19, s. 90 (2).

### Provisions of declaration

**91.** The declaration may alter the obligation to **maintain** or to **repair after damage** as set out in this Act by providing that, **[Per legal advice - this section applies only if the declarant decides not to adopt the provisions of 89 and 90 but instead chooses to modify them in some way. May be possible to pick and choose from these options regardless of the "and" ]**

(a) subject to section 123, each owner shall **repair** the owner's unit **after damage**;  
(b) the owners shall **maintain** the common elements or any part of them;  
(c) each owner shall **maintain and repair after damage** those parts of the common elements of which the owner has the exclusive use; and **Note - this causes stress - if maintain means repair after normal wear and tear, does the unit owner need to make concrete repairs to balcony? As per legal advice, the declarant needs to clearly define "maintain"**.

# Condominium Act Review Working Group Issue Form



	<p>(d) The corporation shall maintain the units or any part of them. 1998, c. 19, s. 91.</p> <p><b>Work done for owner</b></p> <p><u>92. (1)</u> If the declaration provides that the owner has an obligation to repair after damage and the owner fails to carry out the obligation within a reasonable time after damage occurs, the corporation shall do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (1).</p> <p><b>Same, maintenance</b></p> <p><u>(2)</u> If the declaration provides that the owner has an obligation to maintain the common elements or any part of them and the owner fails to carry out the obligation within a reasonable time, the corporation may do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (2).</p> <p><b>Same, maintenance of units</b></p> <p><u>(3)</u> If an owner has an obligation under this Act to maintain the owner’s unit and fails to carry out the obligation within a reasonable time and if the failure presents a potential risk of damage to the property or the assets of the corporation or a potential risk of personal injury to persons on the property, the corporation may do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (3).</p> <p><b>Cost</b></p> <p><u>(4)</u> An owner shall be deemed to have consented to the work done by a corporation under this section and the cost of the work shall be added to the owner’s contribution to the common expenses. 1998, c. 19, s. 92 (4).</p> <p>ALSO</p> <p><b>Purpose of fund</b></p> <p><u>(2)</u> A reserve fund shall be used solely for the purpose of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 93 (2).</p>
<p><b>Guiding Principles</b> Key objectives and values</p>	<p>Well-being Financial sustainability</p>
<p><b>Considerations</b></p>	<p>Confusion between repair after damage and repair after normal wear and tear. Also, if a unit owner is responsible for repair after wear and tear for exclusive use common elements, then how can the Corp also be responsible for repair of the same elements from reserve?</p> <p>ALSO</p> <p>The Act does not define the term “major” and thus corporations improperly charge routine maintenance costs and minor repairs to the reserve fund. These minor costs are not contemplated in the preparation of the corporation’s reserve fund study and these funds have not typically been allocated in the funding analysis and a shortfall results. The cost of repairs and replacements less than the reserve</p>

## Condominium Act Review Working Group Issue Form



	<p>threshold should be funded out of the corporation's operating account at any condominium corporation. At corporations having a budget in excess of \$100,000 per year up to .5% of its current annual budgeted amount is a reasonable minimal limit before reserve funds can be utilized as a "major" repair.</p> <p>Some projects, like replacement of failed sealed insulating glazing units, or repair of isolated wall leaks are completed a few locations at a time. Each of these smaller projects may not meet the criteria for "major repair" but in aggregate, they are major repair programs. These should be allowed to be paid from reserve.</p> <hr style="width: 30%; margin-left: 0;"/> <p>Section 97 - two questions: how does a board know if the work is appropriate at all? Currently only repair (which means after damage and failure) or maintain (which means after normal wear and tear). Is the manner of repair an addition, alteration or improvement, or not? How to get greater clarity.</p> <p>88 and 90 - Define if you have an obligation to do work (that might not be an AAI).</p> <p>Repair - NOT after damage, ONLY after failure or end of service life due to normal wear and tear Maintain - exclude replacement (because all RF items are replace after normal wear and tear and RF excludes maintenance). Replace - after normal wear and tear or failure Repair after damage - for insurance only. Major repair -</p>
<b>Long-Term Implications</b>	This mostly just creates unnecessary conversations, and opens a board up to criticism. Clarification would simplify the process.

### Options and Recommendation:

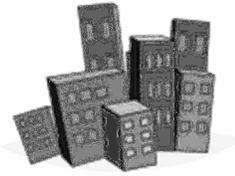
	Options:	Pros:	Cons:
1.	<p>Develop clear definitions of:</p> <ul style="list-style-type: none"> <li>- repair after damage</li> <li>- maintenance</li> <li>- major repair (somehow - differentiate this from the repair after normal wear and tear that is currently included in the definition)</li> </ul>	<p>Might help better define unit owner obligations vs. corp. obligations for both ordinary course work and for insurance claim related work</p>	<p>The committee struggled to find definitions that covered all cases (for example: one written to make it clear that unit owners aren't expected to chip concrete on balconies might also</p>

## Condominium Act Review Working Group Issue Form



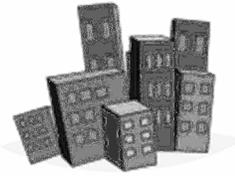
	<p>of maintain. - addition - alteration - improvement</p> <p>One group member's attempts at these definitions are included at the bottom of this form for consideration.</p>		<p>preclude them from being obligated to change rotten boards on a wood deck which may be appropriate).</p>
2.	<p>More attention could be paid to defining "current construction standards".</p>	<p>This would clarify and hopefully reduce disputes</p>	<p>The courts have been generous in giving boards the authority to include quite extensive "updating" in reserve expenditures without owner approval. - changes to the act should perhaps not go against these decisions</p>
3.	<p>97 1 could more clearly include "replacement of common elements" as well as repair and maintenance in the category of "not an addition, alteration or improvement"</p> <p>This item needs to clearer so that it is clear that is addresses both operating and reserve expenditures</p>	<p>Clarity</p>	<p>Not clear if this is a concern or not, it just became apparent as we analyzed these sections. Reserve clearly includes replacement, so this may not be an issue, particularly if we allow "energy-saving" improvements to be paid from Reserve (the example is someone changing equipment early to save energy - not replacing after failure, not repairing after wear and tear, so not clear where it fits).</p>
4.	<p><b>97. (1)</b> If the corporation has an obligation to repair the units or common elements or to maintain them and the corporation carries out the obligation using materials that are as reasonably close in quality to the original as is</p>		<p>This option was put forward by the committee, but "repair after damage" is clearly intentional and serves a purpose, so not clear if this is an improvement or</p>

## Condominium Act Review Working Group Issue Form



	<p>appropriate in accordance with current construction standards, the work shall be deemed not to be an addition, alteration or improvement to the common elements or a change in the assets of the corporation for the purpose of this section. 1998, c. 19, s. 97 (1).</p>		<p>just makes it more confusing.</p>
<p>5.</p>	<p>Change 91 c from: (c) each owner shall <b><i>maintain and repair after damage</i></b> those parts of the common elements of which the owner has the exclusive use; and <b>Note - this causes stress - if maintain means repair after normal wear and tear, and repair after damage includes replacement after failure, does the unit owner need to make concrete repairs to balcony?</b></p> <p>Somehow make the declarant responsible for clearly defining the boundaries of the repair after wear and tear that is the unit owner's obligation vs. reasonable reserve expenditures if this type of clause is used in a dec.</p> <p>OR prohibit and standardize - see option 6.</p>		
<p>6.</p>	<p>The province could consider standardizing the maintenance and repair obligations for all condos in Ontario so that no matter what condo you are in, the same rules apply. For example, all in-suite HVAC equipment could be owned by the unit owner but maintained by the condo corp. All windows could be made common element with the owner responsible for cleaning interior surfaces and</p>		

## Condominium Act Review Working Group Issue Form



	<p>surfaces accessible from an adjacent terrace or balcony, and the corp responsible for cleaning that requires specialized access, and responsible for repair after wear and tear and replacement.</p> <p style="color: red;">This option was not discussed in the working group meeting - it came from a recommendation from discussions with a lawyer on the expert panel.</p>		
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<b>Recommendation</b>	<p>This issue requires further review by the expert panel. Our group did not include a diverse enough group of participants for us to fully grasp the problems we were trying to resolve. We have attempted to capture the concerns and possible remedies but do not have a strong recommendation.</p> <p style="background-color: yellow;">Expert panel agreed that this item which impacts 89 to 97 covers many issues, including insurance reserve and addition alterations and improvements and that it merits some time with a group of lawyers to attempt to sort it out. If definitions not successful then it may need to standardize for province and sort out if standard can be modified by corp - Insurance would prefer it to be modified by corp.</p>
<b>Recommendation Rationale:</b>	
<b>Notes:</b>	

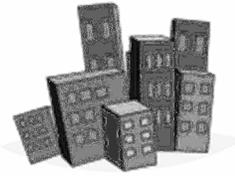
**Maintenance:**

Activities to keep the property and assets operable, safe, clean and orderly, together with supplies and [minor?] parts related thereto.

**Repair:**

Activities to restore the property and assets of the corporation to their designed functionality, together with supplies and parts related thereto. If repairs are carried out using materials as reasonably close in quality to the original as is appropriate in accordance with current standards of construction, technology and design when compared with comparable new condominiums, the work shall be deemed not to be an addition, alteration or improvement.

# Condominium Act Review Working Group Issue Form



## Replacement:

If common elements or assets of the corporation are replaced using materials that are as reasonably close in quality to the original as is appropriate in accordance with current standards of construction, technology and design when compared with comparable new condominiums, the Work shall be deemed not to be an addition, alteration or improvement. [Does this also need to cover replacement in units by owners?]

## Addition:

Acquisition of major common elements or major assets not part of the common elements and assets of the corporation prior to their acquisition. [What about a unit-owner addition of their own stuff on the exclusive-use common element]

## Alteration:

That part of major repair or major replacement which significantly alters the shape, size or functionality of the common elements or assets of the corporation in excess of repair or replacement as reasonably close to original design and functionality as is appropriate in accordance with current standards of construction, technology and design when compared with comparable new condominiums.

## Improvement:

That part of major repair or major replacement of the common elements or assets of the corporation in excess of repair or replacement using materials that are as reasonably close in quality to the original as is appropriate in accordance with current standards of construction, technology and design when compared with comparable new condominiums [what about in a unit?]

## Change:

With respect to a service

## Repair after damage:

If the corporation has an obligation to repair the units or common elements after damage and the corporation carries out the obligation using materials that are as reasonably close in quality to the original as is appropriate in accordance with current standards of construction, technology and design when compared with comparable new condominiums, the Work shall be deemed not to be an addition, alteration or improvement.

Wentworth Condominium Corporation 198 versus McMahon, March 10, 2009:

## Condominium Act Review Working Group Issue Form



This case concerns a hot tub on exclusive use common elements

15 In the case of Carleton Condominium Corporation No. 279 v. Rochon (\$1987), 59 O.R. 12d) at para. 36 the Ontario Court of Appeal described a large satellite dish that was attached to the roof of a penthouse condominium unit as a "substantial addition".

16 In the Halton Condominium Corporation No. 315 v. Guccz'ardz', delivered April 15, 2004, unreported, it was held that ceramic tiles installed on a concrete porch constituted both "an alteration" and "an addition".

18. Definitions:

The word, "add", means to join, to supplement, or to connect.

The word, "alter", means to change or to make different.

The Word, "improve", means to make better, or to add value.

20 At para. 14 of the Boychuk case the presiding judge wrote:

The words 'addition' and 'alteration' in s.38 (1) connote something added to the structure or some changes in the structure. 'Improvement' carries with it the idea of betterment of an existing facility or enhancement in value, not merely replacement of something which was already there and worn out.

22 Therefore, I find that the word "addition" means something that is joined or connected to a structure, and the word "alteration" means something that changes the structure.

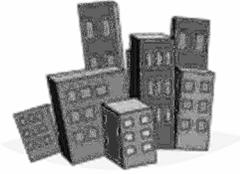
23 I find that the Word "improvement" means the betterment of the property or enhancement of the value of the property. I also accept that an "improvement" refers to an improvement or betterment of the property. That is, to be an improvement there must be an increase in the value of the property. If the item increases the enjoyment of the property, but does not increase the value of the property, I find that the item is not an improvement.

Little V. Metropolitan Toronto Condominium Corp No. 590, August 14, 2006

This case involves alleged inappropriate use of Reserve Funds for the following

- a) Security system upgrades
- b) Purchase of exercise equipment
- c) Replacement of entrance canopy

## Condominium Act Review Working Group Issue Form



d) Lobby renovations, and

e) Design fees

The judge held that

a) “Changing the security system by replacing it with a more modern version ensures the safety

or security of persons using the property”

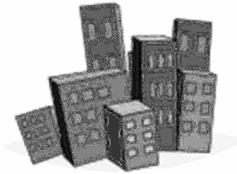
b) “The expenditure on exercise equipment involved replacing a 1974 rowing machine with a newer used model. The weight machine was replaced because no parts were available to put it back into safe operating condition”

c) “The change from a canvas canopy to a glass and granite canopy was simply the substitution of a modern canopy for what had once been a modern canopy”

d) “The Board determined that the owners wanted a lobby redesign, which would project the same high-end image for the building as, had existed when the building was first marketed and built. The owners were able to agree on a new design.” The Board determined that a vote of owners was required and obtained the required votes by adjourning the meeting called to vote on the issue and soliciting further votes. The judge found that this contravened the Condominium Act but declined to make an order enforcing compliance with the Act.

e) “I am not persuaded that the payment of Design Fees out of the Reserve Fund was inappropriate”

# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Cf) Operating Budget Substantial change: should 10% threshold be maintained or changed? (Example: 10% for first \$100,000 then a sliding scale thereafter). Should there be a different calculation? (Note that the Stage One Findings Report appears to confuse the concept of a change, i.e. it confuses AAI with R&M.)

### Stage One Findings (summary):

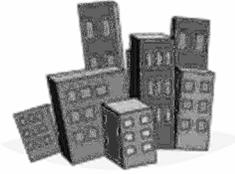
Participants agreed that the board should have authority to approve some more expensive projects (that might be substantial changes) which are not included in the RFS (the examples given were fixing leaky windows or repainting a lobby - these could easily be RF items, but I suppose could be argued to be maintenance rather than a major repair? Or perhaps they were trying to come up with an example that was a addition, alteration or improvement?). They disagreed on how much a board should be allowed to spend on such projects without informing the owners or seeking their approval. Some thought 10% of operating budget is a reasonable threshold. Some thought that for larger corporations with operating budgets over \$1million, this is too high a number (the message was that they understood that larger corporations needed to spend more, but that this needs to be tempered by the fact that large sums of discretionary money to spend tends to attract unsavory characters to abuse the privilege). Perhaps a sliding scale?

Perhaps creating clarity about definitions of terms to repair and maintenance could distinguish these from expensive or unnecessary aesthetic improvements such as additions or alterations. Greater flexibility could then be allowed for repairs and maintenance while other improvements would require board to notify owners of its plans or possibly seek approval.

### Context for Discussion:

<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>Approval of substantial change</b></p> <p><a href="#">(4)</a> Despite subsection (3), the corporation shall not make a substantial addition, alteration, improvement to the common elements, a substantial change in the assets of the corporation or a substantial change in a service that the corporation provides to the owners unless the owners who own at least <math>66\frac{2}{3}</math> per cent of the units of the corporation vote in favour of approving it. 1998, c. 19, s. 97 (4). Meeting</p> <p><a href="#">(5)</a> The vote shall be taken at a meeting duly called for the purpose of subsection (4). 1998, c. 19, s. 97 (5).</p> <p><b>Meaning of substantial change</b></p> <p><a href="#">(6)</a> For the purposes of subsection (4), an addition, alteration, improvement or</p>
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## Condominium Act Review Working Group Issue Form

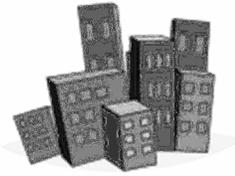


	<p>change is substantial if,</p> <p>(a) its estimated cost, based on its total cost, regardless of whether part of the cost is incurred before or after the current fiscal year, exceeds the lesser of,</p> <p>(i) 10 per cent of the annual budgeted common expenses for the current fiscal year, and</p> <p>(ii) the prescribed amount, if any; or</p> <p>(b) the board elects to treat it as substantial. 1998, c. 19, s. 97 (6).</p>
<p><b>Guiding Principles</b> Key objectives and values</p>	<p>Well-being Financial Sustainability Informed community members and stakeholders</p>
<p><b>Considerations</b></p>	<p>This connects to the issue form covering changes WITHOUT notice.</p>

### Options and Recommendation:

	Options:	Pros:	Cons:
1.	<p>97(3) Changes made WITH notice</p> <p>"(3)(b) 2. The owners have requisitioned a meeting in accordance with section 46 within 30 days of the Board <b>having given notice</b> under clause (a) but have not voted against the proposed addition, alteration, improvement or change, at the meeting or if quorum was not achieved at the meeting."</p>	<p>Fix 30 days of receiving notice, to 30 days of board having given notice so people can't claim they didn't receive (or not give address so they can't receive)</p>	N/a
2.	<p>97 (4) – Approval of Substantial Change</p> <p>"(4) Despite subsection (3), the corporation shall not make a substantial addition, alteration, improvement to the common elements, a substantial change in the assets or common amenity assets of the corporation or a substantial change in a service</p>	<p>Currently 66 2/3 of all units, which makes change almost impossible. Make it 66% of the folks present in person or by proxy.</p> <p><b>Assuming option 3 also implemented so more changes will trigger the requirement for a vote.</b></p>	<p>Makes it easier to make changes - could lead to "monkey business" with notices - boards not being particularly careful about ensuring that they have accurate records of where to contact unit owners. Need to balance this with the fact that current requirements</p>

## Condominium Act Review Working Group Issue Form



	<p>that the corporation provides to the owners unless at least 66 2/3% of the owners present in person or by proxy vote in favour of approving it or provide their written consent.</p> <p>Also require 33% for quorum for this vote so the # of units approving is higher than 66% of 25% standard quorum.</p>		<p>hamstring Corporations and prevent good works from proceeding.</p>
3.	<p><b>Meaning of substantial change</b> (6) For the purposes of subsection (4), an addition, alteration, improvement or change is substantial if,</p> <p>(a) its estimated cost, based on its total cost, regardless of whether part of the cost is incurred before or after the current fiscal year, exceeds the lesser of,</p> <p>(i) 10 per cent of the annual budgeted common expenses for the current fiscal year, and</p> <p>(ii) the prescribed amount, if any;  <b>Add a prescribed amount of a fixed limit (say \$150,000)</b></p> <p>(b) the board elects to treat it as substantial. 1998, c. 19, s. 97 (6).</p>	<p>Cap the 10 per cent of operating for the corps with very large operating budgets due to many services offered.</p>	<p>Not really bought into why the larger corps shouldn't inherently have a similar percentage limit as the smaller ones - the impact on each individual unit is the same in both cases.</p>

<b>Recommendation</b>	<p>We recommend Options 1 and 2          Have put option 3 forward as this was requested, but our committee is not convinced this is needed.</p>
<b>Notes:</b>	<p><b>Cap on substantial charge could be a fixed amount in regs (say 150k) or a formula based on number of units or a sliding scale.</b></p>

## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Cg) Operating Budget Consider whether the powers/restrictions on the use of surplus funds should be changed or maintained?

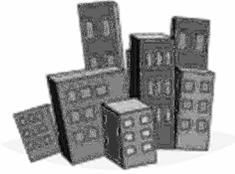
### Stage One Findings (summary):

Should surplus be capped to prevent boards from creating slush funds.
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### Context for Discussion:

<b>Current Status</b> How is this issue currently addressed (if at all)	“Common surplus” means the excess of all receipts of the corporation over the expenses of the corporation (“excédent commun”).  <b>Common surplus</b> <a href="#">(2)</a> A common surplus in a corporation shall be applied either against future common expenses or paid into the reserve fund, and except on termination, shall not be distributed to the owners or mortgagees of the units. 1998, c. 19, s. 84 (2).
<b>Guiding Principles</b> Key objectives and values	Fairness Financial sustainability
<b>Considerations</b>	Limit slush fund spending, but don’t prevent reasonable surpluses that are used for valid purposes.

## Condominium Act Review Working Group Issue Form

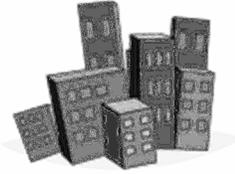


### Options and Recommendation:

	Options:	Pros:	Cons:
1.	<p>Cap the maximum size of an operating surplus.</p> <p>This option is <b>NOT</b> recommended - see pros and cons.</p>	<p>Prevents boards from building up and using a large slush fund.</p>	<p>Prevents appropriate saving up to fund an addition, alteration or improvement, which would force boards to use special assessments for this type of work.</p> <p>Capping surpluses also prevents corporations from protecting themselves from swings in cost (like the cost of a utility increasing).</p>

<b>Recommendation</b>	Option 1 is NOT recommended. No change to the status quo.
<b>Recommendation Rationale:</b>	<p>This group thinks current status is ok because of the notification and <b>improved</b> approval requirements of section 97 should prevent inappropriate use of a “slush fund”. Capping surplus would also prevent corporations from developing a savings plan for an addition, alteration or improvement approved by the owners, or saving a buffer for significant utility price swings.</p> <p>We think it would be ill-advised to put secondary policing in place regarding the use of the funds in beyond those included in section 97.</p>
<b>Notes:</b>	<p><b>The requirement for notification of off-plan spending could provide additional protection against inappropriate use of slush funds if it were somehow extended to operating funds. This is not immediately clear because the board never requires owners’ vote for reserve fund expenditures but may for operating surplus expenditures.</b></p>

## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Ch - NEW ITEM Insurance  Appraisals covered in declaration, not Act. Fidelity insurance - protection from fraud.

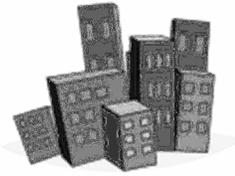
### Stage One Findings (summary):

<p>Not raised - this issue came to light via the insurance expert on our team.</p>
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### Context for Discussion:

<b>Desired Outcome</b>	Consumer protection (in the wrong group perhaps, but not covered there).
<b>Current Status</b> How is this issue currently addressed (if at all)	Requirements for appraisals are included in the declaration, not the Act. Some have a reasonable expectation, others don't. Without periodically refreshing the appraisal, there is a risk that the Condo is under-insuring the property because the "replacement value" is out of date.  Fidelity insurance - which protects against criminal acts of the Board members or the Corporation's employees - is not mandatory.
<b>Guiding Principles</b> Key objectives and values	Well-being Financial sustainability
<b>Considerations</b>	Newer condos will have fully funded reserves. There is a concern that these larger sums of money (expected to reach over \$10m at many of the larger condos) will be a magnet for criminals. Fidelity insurance would help protect owners.  Note that fidelity insurance does not protect against identity theft (like the Channel case).

## Condominium Act Review Working Group Issue Form

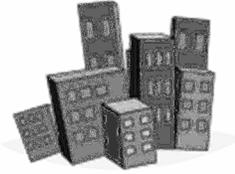


<b>Long-Term Implications</b>	Adds a cost. Low levels of insurance are a reasonable cost - about \$1000 premium for \$1m of coverage. Not clear the implications of a \$10m fund - probably much higher premium.
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### Options and Recommendation:

	Options:	Pros:	Cons:
1.	<p>Mandatory independent appraisals to determine replacement cost should be added to the Act to override existing declarations and to make mandatory for future condos.</p> <p>Require a new update every five years and for one to be obtained during the first year.</p> <p>This could have a relationship with Standard Unit Finish Bylaw - appraisal depends on SUFB.</p> <p>If no SUFB then could the appraisal trigger development of one without approval of owners - see separate issue form on Standard Unit Bylaw. <b>If we adopt province-wide main standard unit finish bylaw, then this issue is no longer valid.</b></p>	<p>Helps prevent under-insuring</p>	<p>Increased cost</p> <p>Not clear how often being under-insured really presents a risk - would the whole industry be spending a lot of money to protect one corp a decade?</p>
2.	<p>Add a requirement that Board shall obtain a fidelity bond for the Corporation (to cover acts of the board and the corporation's employees).</p> <p>The minimum amount of insurance should be evaluated relative to the cost of premiums and the incidence of fraudulent activity. Perhaps a minimum of 30% of the Corporation's total assets per the last audited financial statement.</p>	<p>Protects consumers</p> <p>Recognizes that the amounts sitting in reserve funds is going to increase significantly in the future due to fully funded reserves</p>	<p>Additional cost for each corporation.</p> <p>At some point, insurance costs too high - perhaps cap the min to the greater of 30% of the Corp's assets, or \$2m which ever is less.</p>

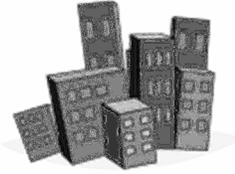
## Condominium Act Review Working Group Issue Form



	<p>If a board cannot obtain fidelity insurance a notice should be sent to the owners'. See issue form Finances Act.</p>		
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<b>Recommendation</b>	Items 1 and 2 should proceed.
<b>Notes:</b>	Consider if “identity theft” insurance might also be required. We do not have the expertise to evaluate on the committee.

## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Da) Investment of Corporation's Money Should there be greater flexibility for investment options? How?

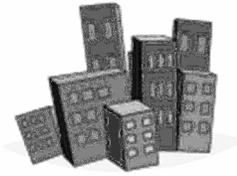
### Stage One Findings (summary):

<p>Allow broader opportunities to invest funds: consider broader investment opportunities.</p>
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### Context for Discussion:

<b>Desired Outcome</b>	Increased earnings on money held in Reserve, which means that unit owners need to contribute less through common expenses.
<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>Definition</b> <a href="#">(5)</a> In subsections (6) and (7), “eligible security” means a bond, debenture, guaranteed investment certificate, deposit receipt, deposit note, certificate of deposit, term deposit or other similar instrument that,</p> <p>(a) is issued or guaranteed by the government of Canada or the government of any province of Canada,</p> <p>(b) is issued by an institution located in Ontario insured by the Canada Deposit Insurance Corporation or the Deposit Insurance Corporation of Ontario, or</p> <p>(c) is a security of a prescribed class. 1998, c. 19, s. 115 (5); 2009, c. 34, Sched. E, s. 1.</p> <p><b>Investment</b> <a href="#">(6)</a> The board may invest all or any part of the money in the corporation’s general accounts in eligible securities if,</p> <p>(a) they are convertible to cash within 90 days following a request by the board; and</p> <p>(b) they are,</p> <p>(i) registered in the name of the corporation, or</p> <p>(ii) held in a segregated account under the name of the corporation by a member of the Investment Dealers Association of Canada and insured by the Canadian Investor Protection Fund. 1998, c. 19, s. 115 (6).</p>

# Condominium Act Review Working Group Issue Form

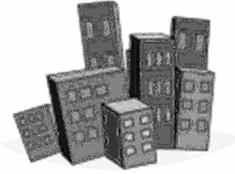


	<p><b>Same, reserve fund accounts</b></p> <p><u>(7)</u> Subject to subsection (8), the board may invest all or any part of the money in the corporation's reserve fund accounts in eligible securities if they are,</p> <p>(a) registered in the name of the corporation; or</p> <p>(b) held in a segregated account under the name of the corporation by a member of the Canadian Investment Dealers Association and insured by the Canadian Investor Protection Fund. 1998, c. 19, s. 115 (7).</p> <p><b>Investment plan</b></p> <p><u>(8)</u> Before investing any part of the money in the corporation's reserve fund accounts, the board shall develop an investment plan based on the anticipated cash requirements of the reserve fund as set out in the most recent reserve fund study. 1998, c. 19, s. 115 (8).</p>
<p><b>Guiding Principles</b> Key objectives and values</p>	<p>Financial sustainability</p>
<p><b>Considerations</b></p>	<p>Institutions are not insured by CDIC, only instruments are, investors are limited to one insured instrument (of each type) at each institution.</p> <p>Current act not clear. Can they invest more than 100k as long the investment is of a type that is insured or are they limited to fully insuring all investments (which leads to them having money in 20 or 30 places, which is difficult to manage)?</p> <p>Do we need to prevent a large condo from investing all their funds (potentially 10 or more millions) in a small credit union?</p> <p>"Located in Ontario" not clear - must the funds be located in Ontario? Or must the financial entity have a PO Box in Ontario?</p>

**Options and Recommendation:**

	<b>Options:</b>	<b>Pros:</b>	<b>Cons:</b>
<p>1.</p>	<p>Change to:</p> <p>(b) is issued by an institution located in Ontario</p> <p>(d) is invested in an instrument <b>that is insurable</b> by the Canada Deposit Insurance Corporation or the Deposit Insurance Corporation of Ontario, or</p>	<p>Clarify that the full amount of the investment doesn't need to be insured, but rather than the investment must be insurable.</p> <p>If currently interpreted as all investments being insured, then Corps can</p>	<p>A corp. could conceivably invest \$10m in a single credit union with 100k insurance and still be compliant. (the feeling of the committee was that the risk of Class A and B Canadian financial institutions</p>

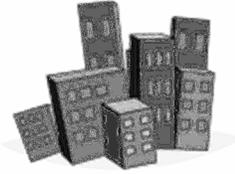
## Condominium Act Review Working Group Issue Form



	(c) is a security of a prescribed class. 1998, c. 19, s. 115 (5); 2009, c. 34, Sched. E, s. 1	struggle to manage many bank accounts to keep all below 100k.	failing was low)
2.	Other guaranteed funds are available through insurance companies. These could be added to the list - if cons can be worked out.	Wider range	Apparently all insurance products currently include a death policy components, which means they are connected to one individual - this would need to be changed or is not feasible for condos
3.	In addition to 1, also remove the "Ontario" requirement. b) is issued by an institution located in any Canadian province or territory	Increases number of available options	Current act must be trying to keep funds in Ontario for the good of the province, in which case Ontario could remain but should be clarified.

<b>Recommendation</b>	Option 1 - allow more than 100k in an insurable instrument Consider Option 2 - but we don't have enough info to evaluate now Option 3 - open to other provinces unless there is a valid reason not to.
<b>Notes:</b>	Clarify what "located in Ontario" means - is this "having a head office in Ontario," "any office in Ontario" or "account located in Ontario"? If the allowable investments extend to other provinces, the insurance clause might need to be modified to add these other insurance programs - our committee members are not familiar with the other insurance.

# Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Db) Investment of Corporation's Money Pooling of reserve fund moneys; if so how? Consider pooling of operating funds as well.

### Stage One Findings (summary):

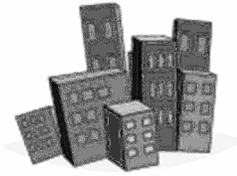
Consider creating funds which can be invested in by Condos. This pooling of Reserve Funds into funds similar to those used in the Social Housing sector - by the Social Housing Investment Program should help improve investment returns. With an estimated 2.5 billion in reserve funds (and growing), a better rate of return could be generated. Social housing has had a positive experience, even through the downturn, with earnings on the fund higher than what could have been obtained if the buildings had invested individually.

Would this also reduce service fees for investment advice?

### Context for Discussion:

<b>Current Status</b> How is this issue currently addressed (if at all)	<p><b>Definition</b></p> <p><a href="#">(5)</a> In subsections (6) and (7), “eligible security” means a bond, debenture, guaranteed investment certificate, deposit receipt, deposit note, certificate of deposit, term deposit or other similar instrument that,</p> <p>(a) is issued or guaranteed by the government of Canada or the government of any province of Canada,</p> <p>(b) is issued by an institution located in Ontario insured by the Canada Deposit Insurance Corporation or the Deposit Insurance Corporation of Ontario, or</p> <p>(c) is a security of a prescribed class. 1998, c. 19, s. 115 (5); 2009, c. 34, Sched. E, s. 1.</p> <p><b>Investment</b></p> <p><a href="#">(6)</a> The board may invest all or any part of the money in the corporation’s general accounts in eligible securities if,</p> <p>(a) they are convertible to cash within 90 days following a request by the board; and</p> <p>(b) they are,</p>
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## Condominium Act Review Working Group Issue Form

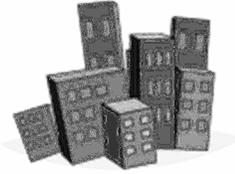


	<p>(i) registered in the name of the corporation, or (ii) held in a segregated account under the name of the corporation by a member of the Investment Dealers Association of Canada and insured by the Canadian Investor Protection Fund. 1998, c. 19, s. 115 (6).</p> <p><b>Same, reserve fund accounts</b></p> <p><u>(7)</u> Subject to subsection (8), the board may invest all or any part of the money in the corporation's reserve fund accounts in eligible securities if they are, (a) registered in the name of the corporation; or (b) held in a segregated account under the name of the corporation by a member of the Canadian Investment Dealers Association and insured by the Canadian Investor Protection Fund. 1998, c. 19, s. 115 (7).</p> <p><b>Investment plan</b></p> <p><u>(8)</u> Before investing any part of the money in the corporation's reserve fund accounts, the board shall develop an investment plan based on the anticipated cash requirements of the reserve fund as set out in the most recent reserve fund study. 1998, c. 19, s. 115 (8).</p>
<p><b>Guiding Principles</b> Key objectives and values</p>	<p>Financial sustainability</p>
<p><b>Considerations</b></p>	<p><a href="http://www.hscorp.ca/our-programs-and-services/social-housing-investment-program/">http://www.hscorp.ca/our-programs-and-services/social-housing-investment-program/</a> <a href="http://www.shscfi.ca/">http://www.shscfi.ca/</a> Could the SHSCFI be changed so it is also accessible to Condos without much other change? Risk profile should be aligned already.</p>

### Options and Recommendation:

	Options:	Pros:	Cons:
<p>1.</p>	<p>Recommend that a specialist financial analyst evaluate if condos would have been further ahead to have been participating in a "housing investment corp." series of investments like the social housing corp. program used by social housing in Ontario. If this analysis demonstrates a net benefit at reasonable risk, it may merit researching if social housing investment program could be</p>	<p>Potentially demonstrated success in earning a higher rate of return - to be confirmed.</p>	<p>Is there is risk to principal?</p>

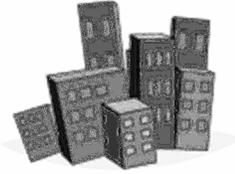
## Condominium Act Review Working Group Issue Form



	expanded to accommodate condos as well.		
2.	<p>Make it mandatory to invest reserve funds over a certain fund balance in “housing investment corp.” funds which could have tight controls on release of the funds. This could be done as a theft minimization strategy to reduce the temptation presented by multi-million dollar RF balances - see comments below. Other strategies like requiring signature of all board members for withdrawals of &gt; 1m. Might also be effective.</p>	Consumer protection	Government “control”

<b>Recommendation</b>	Needs further review, but has potential for significant positive impact.
<b>Notes:</b>	<p>In addition to seeking higher returns for Corporations, investment pooling could potentially also be used as a protection against criminals. Larger buildings will build up massive RF balances (over \$10m). Perhaps it would be better to require balances over, say \$5m (if not being spent within 24 months) to be invested in the pooled funds. This would allow central control of the funds and help protect against fraudulent activities by only permitting withdrawals based on signed CCDC contracts (for example). Need to ensure that the cost of the protection is not many times higher than cost of the fraud that we expect might occur.</p>

## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Dc) Investment of Corporation's Money Investment strategies: new rules for prudent investing?

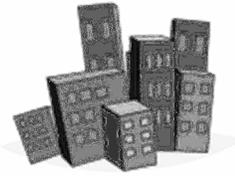
### Stage One Findings (summary):

	Not clear what this item was to cover. We have assumed it is about the requirement for an "investment plan."
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### Context for Discussion:

<b>Current Status</b> How is this issue currently addressed (if at all)	<b>Investment plan</b> <u>(8)</u> Before investing any part of the money in the corporation's reserve fund accounts, the board shall develop an investment plan based on the anticipated cash requirements of the reserve fund as set out in the most recent reserve fund study. 1998, c. 19, s. 115 (8).
<b>Guiding Principles</b> Key objectives and values	Financial sustainability
<b>Considerations</b>	<p>There is currently a lack of clarity about what an investment plan is. Many corps. have a plan developed by the treasurer, but not approved via a formal motion of the board.</p> <p>Auditors are not currently confirming that an investment plan has been properly approved by the Board. Perhaps add to their responsibilities.</p> <p>We wanted to include a requirement for a formal motion and approval of the investment plan. Marko says that all boards carrying out all their business have to do things like this at a board meeting, so we can't add it to one item in isolation.</p>

# Condominium Act Review Working Group Issue Form

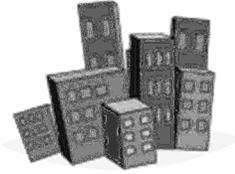


**Options and Recommendation:**

	Options:	Pros:	Cons:
1.	Added to the “communications” item Finances Issue form Ab - option 3		

<b>Recommendation</b>	See communications item.
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## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Fraud Protection

### Stage One Findings (summary):

<p>We felt from the issues raised that the three main areas of concern were:</p> <ol style="list-style-type: none"> <li>1 - Theft of funds</li> <li>2 - Kick-backs on contracts</li> </ol> <p>and</p> <ol style="list-style-type: none"> <li>3 - Money being poorly spent.</li> </ol>
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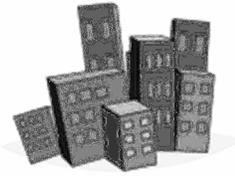
### Context for Discussion:

<b>Desired Outcome</b>	Reduced risk of fraudulent activity around use of Corporation's funds.
<b>Considerations</b>	<p>Criminal acts are covered by other statutes, but this group wanted to consider if impediments could be put into the act to make fraudulent activity more difficult.</p> <p>A big concern is that Ontario has powerful Reserve Funding requirements and newer buildings are fully funded. This means that much larger sums of money will be built up in Reserve Funds than the industry is used to seeing. There seems to be an inherently greater temptation to criminal acts when there is \$10m sitting in a fund than there would be for \$2m. Also fidelity insurance is unlikely to be available to protect these larger amounts.</p>

### Options and Recommendation:

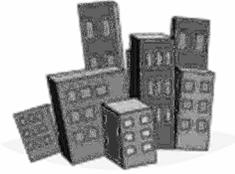
	Options:	Pros:	Cons:
1	<p>Theft from operating or reserve funds: see recommendations for fidelity insurance - see Finances Issue Form Ch.</p> <p>Amounts above insurable level remains a risk (the insurance industry reported that \$1 to \$2m could be readily available -</p>		

## Condominium Act Review Working Group Issue Form



	<p>above this level would involve re-insurance with related much higher costs). We considered if tighter controls could be put on the condos access to their own money over a certain threshold. But no obvious improved control mechanisms were identified.</p> <p>See discussion in Finances Issue Form Db, which discusses if mandatory investments (pooled investments) above a certain threshold might be used to provide tighter controls on withdrawal of funds.</p>		
2	<p>Kick-backs are one of the biggest complaints brought forward by owners' groups. Kick-backs are almost impossible to prove. The best protection is a proper sealed bid process where tenders are opened in front of witnesses and immediately signed. This prevents under-the-table deal making.</p> <p>This could be a best practice/education issue, or could be a mandatory process for projects over a certain threshold.</p> <p>This is also discussed in Finances issue form Ac.</p>		
3	<p>Money spent unnecessarily - residents think board spending money on pet projects or unnecessary costs. We have made recommendations on Finances Issue Form Ab, to provide an RF budget with discussion of deviations from RFS, and a notification process</p>		

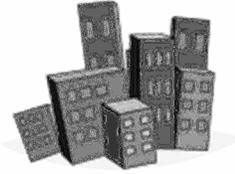
# Condominium Act Review Working Group Issue Form



	for off-plan spending, that we think will go a long way to making these “pet” projects more difficult to hide.		
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<b>Recommendation</b>	Recommendations have been covered on other issues forms. This form was assembled to join the dots between how the various education and reporting recommendations help serve the cause of Fraud prevention.
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## Condominium Act Review Working Group Issue Form



<b>Working Group:</b>	Finances
<b>Issue/Problem Statement:</b>	Finances Eb Shop Drawings turned over to condo corporation

### Stage One Findings (summary):

Not covered. But the absence of shop drawings limits the ability of condos to repair. It forces them to do a lot of investigation to try to understand how things were assembled when the shop drawings would provide this information clearly.

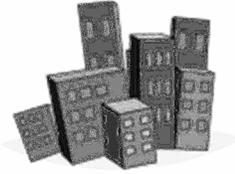
### Context for Discussion:

<b>Desired Outcome</b>	
<b>Current Status</b> How is this issue currently addressed (if at all)	Only as-built arch, struct, mech elec drawings are turned over. Shop drawings are not.
<b>Guiding Principles</b> Key objectives and values	Well-being
<b>Considerations</b>	Shop drawings provide details that are not available on as-built drawings. These are extremely valuable when undertaking major repairs of components like windows, guards.  Builders are concerned because there are so many sets of drawings - which would be turned over.
<b>Long-Term Implications</b>	Improved ability to maintain buildings.

### Options and Recommendation:

	Options:	Pros:	Cons:
1.	Require shop drawings for major components including balcony guards, glazing systems, cladding systems and specialty structural	Reduced cost of future repairs. Better understanding of buildings.	Builders have to gather the info and turnover which is effort and paper. Builders are concerned

## Condominium Act Review Working Group Issue Form



	systems (engineered trusses, engineer joists, precast structures, etc)		that this will “reveal” more warrantable deficiencies.
2.	Require maintenance manuals for windows, guards, wall systems, and specialty structural systems to include typical details of system sections and connections to facilitate maintenance.		

<b>Recommendation</b>	Recommend Option 1
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# Condominium Act Review Working Group Issue Form

