

# **BUILDING A BETTER CONDO ACT**

Recommended changes by COA



*Presented to the **Ministry of Consumer Services***

*by*

***The Condo Owners Association***

***COAOntario.com***

**Dated: July 15, 2012**

## ***BOARD OF DIRECTORS POSITIONS***

### **IMPLEMENTATION OF FINES FOR DIRECTORS**

**Recommendations** – implement a fine structure for Directors who operate the Affairs of the Corporation in compliance to the Condo Act

**Reasons** - the only way that our Ministry can build a better condo act is to make Board of Directors accountable for their actions and decisions when they are in non-compliance of the declaration. At the present time hundreds of Directors have ruled their Corporations by ignoring their Owners and making their own rules. There is no governance of practice so they have no repercussions on their decisions. Owners are powerless in the face of unscrupulous Board of Directors.

### **OWNER-OCCUPIED POSITION**

**Recommendation:** The owner occupied position should be held by an owner occupied unit owner and voting for this position should be allowed by all owners

**Reasons:** There is confusion with the owner-occupied position. Condo Owners, Board of Directors and sometimes even Property Managers are not aware that this position can be held by anyone as long as they qualify under the qualifications of the Condo Act. There is also disharmony between owner occupied unit owners and off site unit owners recognizing that the off-site unit owners have no say on this voting process. The position is for representation of on-site unit owners so the best representation would come from an on-site unit owner who can interact with the other on site unit owners.

## **NUMBER OF DIRECTORS ON THE BOARD**

**Recommendation** – There should be a mandated 5 Board of Directors for all Condominiums

**Reasons:** This allows proper discussion and decision making process without too much control. It protects the Condo Corporation and Owners because there is less chance of dictatorship and non-compliance to the act since it ensures better governance of responsibilities.

## **IMMEDIATE REMOVAL OF DIRECTOR**

**Recommendation** - If a Director is found to be in non-compliance to the Condo Act, Declaration and By Laws of the Corporation there must be an immediate removal of that Director.

**Reasons** – Self explanatory, a Director has a fiduciary duty to the Corporation and must adhere to all requirements of the above

## **EDUCATIONAL CONDOMINIUM OPERATIONS COURSE**

**Recommendation** – the Ministry of Consumer Services should be implementing a course structure (just like RECO with their REBBA requirements). They should work with COA, Condo Owners Association to implement these courses. COA is the only reg. non-profit Association representing Condo Owners. We do not represent Condo service related trades.

**Reasons** - to ensure that Directors have some understanding of the operations, declaration and bylaw structure of a Condo Corporation. Corporation Insurance policies, Directors Insurance and fines etc. relating to different situations should also be part of the course. We would suggest segments I, II and III provides proper certification and better knowledge.

## **LICENSING OF PROPERTY MANAGEMENT FIRMS/COMPANIES**

**Recommendation** – Property Management firms should be licensed and have regulatory policies as prepared by the Ministry of Consumers Services or Better Business Bureau

**Reason:** Property Management Firms/Companies are responsible for the actions of the Property Managers they have employed to work at their contracted Condominiums. It is not necessary and inappropriate to mandate that Property Managers are licensed when they are only employees of the Property Management Company. It is the company who has the contract as approved by the Board of Directors and accepts full responsibilities of the management operations of the condominium Corporation. Also as noted in the Reserve Fund section; many of these Property Management firms offer direction or have their accounting staff provide

recommendations for placement of reserve funds; licensing these firms will protect that situation as well as many other relating to contractual arrangements with other service providers and potential of conflict of interest between the Management firm and other service providers.

## **ALL CONDOMINIUMS**

### **STANDARDIZED DECLARATION**

**Recommendation** - To create a standardized declaration to protect the interest of the Corporation and written in everyday language for Condo Owners to understand

**Reason:** All condominiums should have a standardized declaration written in every language for the general public to read. This would prevent the Boards from changing the declaration at will. Although the condo act stipulates requirements to change a declaration; it is self-governing and in complete control of the Board of Directors. Proxies could be altered to achieve the votes required for the change considering that proxies are not monitored or held by a third party. A standardized declaration would prevent this from happening and allows Condo Owners, Lawyers and the general public the ability to familiarize themselves with the declaration in effect for all Condominiums across the province without confusion.

### **CORPORATION DOCUMENTATION requests from Owners**

**Recommendation** – implement specific guidelines for Board of Directors to follow when an Owner is requesting Corporation documentation.

**Reasons** – The Board of Directors has full control of the Corporation Documentation and can withhold the same from Owners although they have requested a copy of the same. The Owners has no options to obtain these documents other than to hire a lawyer for representation costing them unnecessary expenses

### **COMPLIANCE TO DECLARATION**

**Recommendation** - non-compliance to the declaration relating to renovations, alterations, key lock changes and installations and having this work done without the Board of Directors consent

**Reasons:** There are problematic issues which are not being recognized by the Courts and Condo Corporations have to spend unaccounted for Corporation funds to hire lawyers, go to court and still risk winning the case because the Declarations are ambiguous and the Courts may not rule in favour of the Corporation. Case studies in favour of the Corporations sometimes assist the final judgement, but the Corporations

should not be subject to the time, energy and cost associated with trying to enforce their declaration.

**Recommendation** – full costs for legal fees and court proceedings should be enforced on the declaration to prevent the above non-compliance issues and the Corporation can lien the unit in the event that these costs are not paid.

**Reasons:** Condo Owners will be reluctant to participate in non-compliance issues if they are held responsible for full payment of costs relating to enforcement of the declaration.

### **Short term rentals as noted in many declarations in particular newer buildings**

**Recommendation:** a standardized declaration would enforce the minimum time period for short term rentals and prevent the Builders lawyers and Directors from shortening the period

**Reason:** There is no governance or mandate on the time limits for short term rentals noted on the declarations. This affects the Corporation creating a transient community resulting in potential more security and safety concerns. It also affects our tourism and hotel industry because investors are purchasing these units and advertising 2-3 day stays across the internet to attract tourists. The Pan Am games are going to have a tremendous effect on this situation and the end result after the games may be a true hardship for owners.

### **Balconies - ensure responsibility with Corporation**

**Recommendation** – to ensure that balconies are noted on a standard declaration as part of the exterior building of the Corporation and not the responsibility of the owner

**Reason:** There are some buildings where the responsibility of repair etc. to a balcony rests on the shoulders of the owners as stated in their declaration. New owners buying into these building will have the reserve fund and status review by their lawyers their reserve funds study is based on requirements and responsibilities as per the declarations and the excessive costs of balcony repairs/replacements is extensive for condo owners. They must always be part of the Corporation expense so reserve funds can be used if they require repair/refurbishment etc.

### **DISPUTE RESOLUTION**

**Recommendation** – to establish a dispute resolution for Condo Owners having difficulty with their Board of Directors

**Reasons** - We have a catch 22 situation when it comes to Board of Directors and Property Managers or Property Management Firms. There is a huge misunderstanding within the Condo Community. Owners who have a dispute with Property Management must then go to their Board of Directors because the Property Managers are only employees of the Property Management Firm who is on contract by

the Board of Directors for the Corporation. If there is a dispute the Board of Directors are responsible to address the dispute but if they like the Property Manager or Property Management Firm they side with them and ignore the Condo Owner. On another note: unfortunately many Board of Directors depend on the Property Managers advice and recommendations because they may not be informed or educated to the requirements/operations of a Condominium Corporation so they leave too much power in the hands of the Property Managers and or Property Management Firms.

## **NEW CONSTRUCTION - CHANGES**

Note: this is applicable to Phase Condominium Complex – changes to the ACT

### **RESERVE FUND STUDY:**

**Recommendation:** Requirement to match year end dates with existing when there is a second phase of construction

**Reason:** New condominiums must have their study done within the first year and every three years after that on their building. There is an interesting time with shared facilities and reciprocal agreements on newly phased in condominiums because the existing condominiums reserve funds will have a different component life cycle on the common elements reserve funds since it is already in place when the new condo is phased in. Owners of the new condominium will not have up-to-date information on the shared facilities reserve fund study unless by chance it is scheduled for an update at the same time.

### **DECLARATION – NEW CONSTRUCTION**

**Recommendation:** - Standardized Declaration

**Reasons:** the Builders Lawyer prepares the declarations to protect the builder's interest and to assist the sale of the units therefore they include allowances which may be more beneficial to the prospective purchaser than to the Corporation.

## **TURN OVER MEETING**

### **PERFORMANCE AUDIT PRIOR TO TURNOVER MEETING**

**Recommendation:** Performance audit should be done prior to the turnover to clear as many issues as possible before the Corporation Directors have to exercise their warranties on

behalf of the Corporation.

**Reasons:** Condo Owners and Corporations should receive a notice of Performance Audit to see exactly what they purchased and what needs to be corrected prior to the turnover meeting. This enables them to ask questions of the builder's representative at the meeting and to document any concerns they have with respect to the building. Also it assists the newly elected Board of

Directors to be aware of large areas of concerns. At the present time; turnover meetings only elect Board of Directors and there is a room full of Condo Owners who have not been provided any information on the performance audit of their Corporation.

### **PROXIES FOR TURNOVER MEETING**

**Recommendation:** All proxies for the turnover meeting should be given to a third party not related to the Builder or Property Management

**Reasons:** It is to be noted that at the time of the turnover; the Property Management Company represents the Builder and not the Corporation. They are on contract with the Builder and until such time after the elections if and when their contracts have been ratified by the Board of Directors. There is a gray area of their fiduciary duties and responsibilities during the occupancy period until after the ratification of their contracts. There should be a third unbiased party to accept Proxies from Condo Owners to ensure proxies are recorded as given and not altered. The obvious; a new Directorship has the ability to either ratify the Property Management contract and maintain the same Company or choose to tender the contract for another company. These proxies could potentially be compromised to align with any particular candidate for board position because at the time of the turnover there is a direct conflict of interest.

### **FIRST YEAR DEFICIT – Condo Corporation Operating Budget**

**Recommendation:** Builders must be mandated to reimburse the first 4 years of deficits relating to the Condo Corporation Operating Budget.

**Reasons:** Maintenance fees prices per square foot are determined at least 3 years and possible 4 years prior to occupancy and do not have any inflationary regulations. New Condo construction is introduced to the public to make the maintenance fees appear low in comparison to the fees in existing condo buildings. Mortgages are determined based on these fees at registration only to find a huge increase in the 2<sup>nd</sup> year because only the first year's deficit of insufficient maintenance fees is covered by the builder. This situation starts an imbalance of increases in the 2<sup>nd</sup> year for the Condo Owners which become impossible to recover over the next few years so the building suffers on the market value and the maintenance fees continue to increase beyond the normal. If this building then has major deficiencies past the Tarion 1-2 year building coverage; the financial viability of the building is already challenged and the Condo Owners are not protected.

### **YEAR END BUDGET**

**Recommendation:** Yearend dates must be matched because inconsistency on value relating to maintenance fee increases when the year ends are different dates between the buildings and the shared facilities

**Reason:** There is an inconsistency on value relating to maintenance fee increases when the year ends are different dates between the buildings and the shared facilities

### **TARION – NEW HOME WARRANTY PROGRAM – NEW CONSTRUCTION**

**Recommendations:** Builders must be required to provide minimum 4 year Tarion Warranty coverage on the interior aspects of the building (having an estimated value of \$80,000,000). They also need to increase coverage on the exterior of the building and structural needs to be broadened to include various underground surface floor topping.

**Reasons:** The warranty is not sufficient for the Condo building because a 1-2 year coverage is equivalent to a single family home. Many of the deficiencies are not recognized till the 3-4<sup>th</sup> year and by then the warranty coverage is over and the Condo Corporations are left with extensive expenses in their operating budgets. They cannot access the reserve funds and these extensive costs are increasing the operating budgets and skyrocketing the maintenance fees.

The unit coverage of 1-2 years is sufficient but not the building coverage. Also there needs to be better security and safety protection as noted independently on this report.

**Case Study -** when a new Condo site is built within  $\frac{3}{4}$  of a metre from an existing foundation wall of an existing Condo building, there is no protection for the foundations of the existing building. The builders are not mandated to provide a liability insurance and/or any degree of compensation in the event of present or future damage to these walls as a result of their excavation and construction. Tarion will not cover anything that is not a result of nature causes so therefore the existing buildings are at a substantial risk of foundation problems. The City does not mandate any type of protection when building permits are requested and the existing condominium Unit Owners could potential have substantial damage and resulting costs relating to this problem.

le. The situation happened at 20 Blue Jays Way, with Fly condos building within  $\frac{3}{4}$  of a metre from their foundations – 2010/11.

### **SAFETY AND SECURITY**

**Recommendation:** Include specific mandates and requirements relating to safety and security to include a strong position for the Corporation to deal with illegal acts.

**Reason:** Illegal acts are becoming more prevalent and without proper safety measures of cameras, restrictive unit keys and restrictive elevator access with fab entry for each floor is required to ensure the safety of the owners. The declaration has to be superior court specific so that in the event that an issue arises in a condominium relating to Illegal Acts there is no confusion in the event that



**Hoarders** – cases have had to go as far as a full court process with excessive legal expenses. During this period “all condo owners and residents” are subjected to unsafe and hazardous living environment which could be potentially dangerous should something happen ie. Fire; chemical reactions; etc. The practice with Fire Marshalls and requirements for certificates of disposal of hoarder contents is a lengthy and costly process with limited available restrictions to assist.

**Meth Labs** – The standard declaration should allow an in –suite inspection twice a year accompanied by Security to ensure that there is no meth labs and/or hoarder situation. At present there is only a fire inspection whereby things could be missed. Sometimes Boards provide a fan coil maintenance of the units however many times they just have the owners do their own replacements.

### **Fan coil Inspections -**

**Recommendation** – all Corporations should conduct Fan coil inspections through Property Management and the cost as part of the yearly financials and operating budget

**Reason:** The safety aspect for internal water problems can be avoided if the Corporation takes responsibility for a fan coil inspection and at the same time they can check the units as a safety measure for illegal acts. Fan coils can cause fire and water damage if not maintained properly. It should not be left in the hands of individual owners and or tenants (with off site owners).

### **Restrictive Keys**

**Recommendation** – all condominiums should have specialized keys which cannot be duplicated through standard key outlets. They must be ordered and documented by property management

**Reasons:** this measure protects the condo owners/residents in the building from having too many keys duplicated with no registration of additional occupants of units

### **Restrictive Elevator Access with Fab Entry**

**Recommendation** - all elevators should have a fab entry access which only allows each unit owner to access their own floor of the building

**Reasons:** creates a safer and secure environment with more control for Security to do their job . It records the fab user when it is used and allows security a record of entry.

### **Elevator Cameras – in all elevators**

**Recommendation** – all condo buildings should have cameras in all elevators (new construction needs to be mandated for all elevators, access and entries throughout the building)

**Reasons:** cameras create a safe environment and allows security the ability to monitor the safety of the building and provides them and Police Dept with proper



camera footage in the event of an incident. It also deters incidents and ensures that visitors, condo owners and residents conduct themselves properly.

## **EXISTING BUILDINGS**

### **RESERVE FUND STUDIES - 3 year requirement confirmation report**

**Recommendation:** All Condominium must be required to send in a confirmation of compliance of completion of every 3 year reserve fund study

This can be done through the engineering firms who complete the study as a requirement or directly to the Ministry to ensure that the boards are not deferring the study because of the cost. Many times Boards ignore the time line because of cost and they also only do a type 3 without a site visit which is cheaper than a type 2 having a site visit.

### **RESERVE FUND BOND**

**Recommendations:** A government bond strictly for Condo Corporation Reserve Funds should be established.

**Reasons:** Minister of Finances can review benefits such as the saving of monies because no commissions would be payable on bonds to financial institutions. Bond interest rates could be higher benefitting the Corporations and strengthening their position. Many Reserve Fund Studies are showing that Reserve Funds are under water because of incorrect interest and inflation rate assumptions.

### **RESERVE FUND CONSIDERATIONS**

**Recommendation –** mandated reserve fund inflation rate and long term interest rates assumption

**Recommendation –** clearer definition of “Reserve Fund Expenditures”

**Recommendation –** Ministry must address energy saving initiatives and create a process and regulatory guidelines to ensure Condo corporations do not take on excessive financing and loans to retrofit throughout the building. Possible provide government endorse initiatives with a loan structure of repayment.

### **Special Note:**

#### **COA working with BMO Nesbitt Burns**

COA has established a relationship with BMO Nesbitt Burns and they have created a specific Reserve Fund Portfolio under the guidelines of the requirements of investing as noted in the present Condo Act.

**Reasons:** Many Board of Directors are using various institutions and investment advisors who may not be very business savvy to draw the best interest rate situation. There is also mismanagement of funds ie \$20 Million fraud case with Property

Management Firm. Many Property Management Firms are taking active roles in recommending certain investment advisors and or investments. Board of Directors do not at any given time have any record of their portfolio. BMO Nesbitt Burns has developed a specific web site to provide active information at any time to the Board of Directors for the Condo Corporations they now are working with by a log in process. It is a win win situation for all.

## ***INSURANCE POLICIES***

### **CONDO UNIT INSURANCE POLICIES**

**Recommendations:** Mandate that all condo unit owners require their own insurance policy

**Reasons:** Condo owners are not aware that the Building condo insurance included in their maintenance fee does not cover their unit and betterment/improvements they have made to their unit. Also in the event that the Board of Directors changes the insurance policy to save on deductibles the standard unit could now not include floor coverings. Board of Directors need to be mandated to either obtain approval from owners on this change or at least mandated to inform the unit owners in writing so they are protected within their unit. Condo unit policies are very confusing and there are stringent guidelines on what is covered and what is not. There is no mechanism in place to protect the condo owners. A standard declaration with condo unit owner insurance coverage would help the situation and also enforce guidelines for Board of Directors to follow on changes to the policies.

### **CONDO CORPORATION INSURANCE POLICIES**

**Recommendations:** A complete review of coverage must be implemented. Condo Owners, Board of Directors and many Property Managers have no idea on the guidelines of the coverage. Better protection of coverage for Board of Director Liability Insurance, the Condo Corporation and Condo Owners is required

**Reasons:** Insurance Companies split their insurance policies... ie Intact Financial Corporation is a well known Condo Insurance provider for Condominiums. Their coverage contains 50% of building under Intact and the other 50% of building under Novex. The Board of Director liability coverage, flooding and building liability is 100% under Intact. Specifics on the actual coverage between the building and the unit is not readily available and the above parties are unaware of their protection. As mentioned above (unit owner insurance) the Board of Directors can and do make changes to the building policy to keep deductibles lower without notification to the Condo Owners.

## **INSURANCE POLICIES AFFECTED BY NON COMPLIANCE ISSUES**

**Recommendation:** Board of Directors are responsible to ensure complete enforcement of the Declaration under the guidelines of the Condo Act. Penalties and fines must be implemented in the event that the Board of Directors do not.

**Reasons:** the insurance policies can be at risk in the event that Board of Directors and/or Condo Owners are not in compliance to their declaration, condo act which also tends to include non compliance to fire codes and the insurance policies. If the Board of Directors are aware of a non compliance issue with an owner or a fellow Board member and they do not take proper action there must be some measures of accountability and responsibility for their negligence.

## **DIRECTORS LIABILITY INSURANCE**

**Recommendation:** a distinct process must be established and available for Directors to register a complaint and or exercise their option for Directors Liability Insurance

**Reasons:** Directors liability insurance is the best kept secret of Insurance Companies. The Board of Directors, Property Management and even the Insurance Company cannot provide a direct quote of coverage with full facts and process of how a Director can exercise their rights and what is covered.

**Case Study:** We contacted Atrens Counsel, Insurance Brokerage for Intact Insurance which provides Condo Building Insurance and found out that there has to be a majority vote of Directors for a Director to claim coverage of the Directors Liability Insurance which would include a majority decision with only 3 Board Members. If the 3 Directors are unscrupulous and do not adhere to the Condo Act or Declaration then the other Board Members are left unprotected. The 3 Directors can manipulate and control the operations while the other 2 Board members have absolutely no recourse available to them. It opens the door for the 3 Directors to create slanderous and damaging rumours about the other 2 Directors hoping to force their resignation. All Directors should have specific Directors Liability to protect their personal & human rights and reputation should they be subjected to lies, deceitful manoeuvres and prejudices by other Directors, Property Managers and Condo Owners. At the present time, these Directors just resign leaving the Corporation in the hands of unscrupulous Board Members.

*Note: COA receives substantial complaints pertaining to the above.*

## **This Section Deals with Live-Work Units**

The Ministry of Consumer Services must include specific regulations pertaining to these units because they are being abused and Condo Corporations and unit owners are left unprotected.

## **NON COMPLIANCE OPERATIONS OF LIVE-WORK UNITS**

**Recommendation:** the Condo Act needs specifics for the usage of live-work units as a residential unit and outline restrictions with fines for non compliance.

**Reasons:** The live-work units place these Condo Corporations at risk for non compliance of the declaration, rules and regulations, by-laws, insurance liability coverage, zoning & building codes, fire codes and signage offering no protection to the Condo Owners.

Condo owners with live-works units generally have a main street and a common element entrance inside the building corridor. They are residential units with residential taxes, zoning and fire codes. They were built to allow an owner or tenant to live and work in the unit with specific guidelines for usage on the Condo Declaration. Condo Owners are not adhering to the Declaration and are operating full scale commercial businesses. In some situations the live-work unit owner is on the Board of Directors to ensure he can operate his live-work unit as a full scale commercial unit and not even living in the building. MPAC is now taxing these units with commercial taxes when they investigate and determine strong percentage of commercial activity yet they are a residential unit and should not be allowed to operate commercially.

**Case Study:** A unit owner is on the Board of Directors (for the past 10 years) and operates a commercial business with full admin staff, sales persons whereby the unit is 100% business operations and he does not live in the building. MPAC is now taxing his unit as a commercial and not residential unit. He was a Director when the Board of Directors changed their Condo Declaration qualification guidelines for Directors.

**The new qualifications as per their declaration are in non-compliance to the Condo Act.** This Corporation has restricted off site owner from being on the Board of Directors but does allow an Off Site owner to sit on the Board of Directors if they own a unit on the 1<sup>st</sup> floor (live-work unit) for the past 7 years plus. It was changed to benefit this owner/director. His term is expiring later this year however he will seek re-election to protect his position and jeopardize the Corporation and all Condo Owners. The Board of Directors are aware of the non-compliance to the Condo Act and the above however will do absolutely nothing about it.

**Case Study: Live Work Units** – many are in non compliance to renovations, improvements etc because they have a direct access to street level; they can evade security and property management. There is a case study where a live work unit owner split his unit into 2 sides, 1 side having no fire life safety systems and he was collecting 2 rents. The security only found out about it because 1 of the tenants operating a commercial business wanted parking for his client. Property management inspected the unit; the Board of Directors spent over a year dealing with the issue with a substantial legal fee of over \$100,000. Superior court finally ruled the owner to take down the walls and return the unit to a single unit at his expense however only part of the legal fees were his responsibility to reimburse to the Corporation yet the Corporations declaration stated that all legal fees born by the Corporation resulting from a unit owner in non-compliance are the responsibility of the unit owner and shall be reimbursed to the Corporation. The judge overruled the declaration and the

Corporation lost over \$35,000 only to enforce their declaration and create a safe environment for other Owners.

**Information**

The Condo Owners Association has provide these recommendations as a starting point of discussions recognizing their extensive knowledge regarding the operations and pitfalls of the present Condo Act, operations of the Condo Corporations and the Board of Directors.

This report has been prepared without prejudice and only to report facts and recommendations for the protection of all Condo Owners.

**Attendees - Meeting with Ministry of Consumer Services – July 19, 2012**

**COA participants in this recommendations report – Building a Better Condo Act.**

**Linda Pinizzotto**  
**Founder, President and CEO**

**Bob Coffey**  
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