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MAJOR REFORMS PROPOSED TO CONDOMINIUM LAW

By Stephen Thiele and Pinchas Huberman

At the end of May 2015, the Ontario government announced a major overhaul to the province's condominium legislation through the proposed *Protecting Condominium Owners Act*.

This comprehensive Bill, if passed as proposed, would, among other things, result in significant amendments to the *Condominium Act* and *Ontario New Home Warranties Act* and would see the enactment of the Condominium Management Act.

The proposed Bill is generally being viewed as a good start to an area of law that has yearned for reform.

The chief achievements of the proposed Act involve the creation of a new Condominium Authority, the enhancement of consumer protection, the strengthening of financial management, the improvement of condominium governance and the introduction of condominium management licensing.

A New Dispute Resolution Authority

Under the proposed Bill, the provincial government is seeking to distance current condominium disputes from the judicial system or mediation/arbitration by introducing a new Condominium Authority, which is intended to be responsible for administering condominium owner education and dispute resolution. By establishing a

new Condominium Authority, the Ontario government expects that disputes related to condominiums will be dealt with more expeditiously and at a lesser cost than currently incurred by condominium boards and owners.

This Authority is envisioned to be a self-funding, not-for-profit corporation, that would be subject to an administrative agreement with the Minister of Government and Consumer Services. Part of the Authority's responsibilities would be to administer the Condominium Authority Tribunal ("CAT") to, among other things, resolve applications made by condominium corporations, owners, mortgagees and purchasers in certain contexts.

Although initial start-up funding for the Condominium Authority is expected to come from the province, the Authority will have the power to set and charge its own fees in relation to dispute resolution services. There will be a projected fee -- \$1 per unit a month -- for every Ontario condominium corporation, which will be collected from unit owners as part of monthly common expenses.

This proposal has caused critics to argue that well-run condominium corporations and their respective owners, will be subsidizing the resolution of disputes of poorly run condominium corporations and that the payment scheme is unfair because the Landlord and Tenant Board, established to hear residential tenancy disputes, is funded through a combination of tax dollars and

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service charges. Neither landlords nor tenants are expected to contribute to the operation of the Board through a per rental unit fee.¹

Meanwhile, decisions made by CAT would bind the parties and any appeals from CAT decisions will only be permitted on questions of law.

Consumer's Will Receive Some Protection

The proposed Bill is also expected to enhance consumer protection.

More specifically, the proposed Bill would require the provincial government to publish a condominium guide which would specify, among other things, how condominium corporations are governed, the rights and responsibilities of owners, and requirements regarding the care and maintenance of common elements. Developers would be required to provide a copy of this guide to all buyers of newly built condominiums at the time of sale and would also be required to include certain specified information on websites that are dedicated to their respective condominium projects.

In addition, the proposed Bill would require a written agreement between condominium corporations, developers and other parties who share services, like electricity or water. The purpose of this part of the Bill is to avoid situations in which unit owners share services and split costs equally despite disproportionate use among parties.

Meanwhile, through the power to make regulations, it is expected that there will be rules for standardizing the form and content of disclosure statements and declarations so that they are easier for buyers to understand. Regulations are expected to require clear specification on which components must be part of the common elements and which will be owned by the corporation. A corporation

will not be entitled to acquire an interest in the condominium unless agreed upon by an owner-elected board. This proposed change is intended to prevent developers from separating certain building components which should otherwise be included in the common elements of the condominium and then either selling them or leasing them back to the condominium corporation.

The proposed Bill will expand the information which must be included in a status certificate and will enable the province to regulate how such documents are delivered as well.

The proposed Bill would also amend the *Ontario New Home Warranties Plan Act* so that some of the warranty protections contained therein will apply to certain building conversion projects and in some circumstances to both pre-existing and new elements of a condominium conversation.

Lastly, conduct regarding unreasonable noise or nuisance to an individual in a condominium property will be prohibited.

Financial Management To Be Strengthened

The proposed Bill has been designed to strengthen financial management in a number of ways set out below.

Under the current *Condominium Act*, condominium corporations are allowed to make changes to the common elements, assets or services they respectively provide without consulting unit owners if the estimated cost in any given month is less than \$1,000 or 1% of the annual condominium corporation budget. Proposals under the Bill will establish various instances when a condominium corporation will be permitted to make changes "without notice" provided that change will not involve spending over \$30,000 or 3% of the budgeted common expenses for a condominium corporation's fiscal year,

1. Greg Sheehan, "Condo owners act good...but", Toronto Star, June 4, 2015



the change would not materially limit the use of a property by its unit owners or a law or regulation requires the condominium to make a change or modification.

Condominium boards will also be required to notify unit owners within a prescribed period if an expense will exceed the budgeted amount by more than a certain margin that will be fixed by regulation and to prepare an annual budget for operating accounts and a condominium's reserve fund. These proposals are designed to enhance transparency.

In addition, the proposed Bill seeks to provide greater clarity with regard to the responsibilities of a condominium corporation and unit owners for the payment of repair and maintenance, and will define and determine what constitutes an "adequate" reserve fund. Under the current legislation, a condominium is required to have an adequate reserve fund. However the term "adequate" is undefined.

A default definition for "standard unit" will be created, making it easier for unit owners to know what they are responsible for insuring, and any charge-back or indemnification clause that adds to a unit owner's common expense fees will be regulated.

Condominium corporations will be required to submit notification to unit owners for any charge-back owed, file annual returns with the Condominium Registrar, and notify the Registrar of any change of directors.

Furthermore, developers will be required to disclose circumstances that they know, or ought to know, which may lead to an increase in common expenses within a prescribed time after the corporation's first year.

Lastly, expected regulations will permit a condominium Board of Directors greater flexibility in the investment of the funds of a condominium corporation.

Condominium Governance To Be Improved

A review of the current legislation identified that many condominium owners are disengaged from their respective condominium Board. Owners complained that they knew too little about how and why decisions affecting their interests were being made.

Accordingly the proposed Bill will require Boards to issue information on certain topics and to provide "information certificates" on a regular basis. "Preliminary notice" about owners' meetings will also be required 20 days prior to the delivery of the actual meeting notice.

In an effort to accommodate changing technology, Boards will no longer be required to pass a by-law to permit the holding of regular meetings by conference call and condominium corporations will be allowed to pass by-laws through votes cast electronically or by telephone. Quorum requirements for mandatory condominium corporation meetings will be relaxed too and will permit unit owners, unable to attend a meeting, to complete a standard proxy form, to give another person power to vote on the absent owner's behalf.

Sealed-bid processes will now need to be followed under the proposed Bill whenever procurements contracts are sought. This requirement is expected to protect unit owners from "kickbacks" on contracts with maintenance companies.

While the proposed Bill does little to alleviate concerns expressed by unit owners with respect to the increase of occupation by renters in many condominium buildings, the Bill will retain the "owner-occupied" position on Boards (renamed "non-leased voting unit") to protect the unit-owner minority in those buildings which have a greater proportion of



renter-occupied units. However, a corporation will only be required to reserve such a position on the Board if non-leased voting unit owners represent a minority and at least one of such unit owners requests a position on the Board.

Licensing Requirements For Property Managers

Lastly, the proposed Bill will create a new Licensing Authority which will govern the licensing of property management firms and managers under a proposed *Condominium Management Services Act*.

While the Licensing Authority will be an independent, not-for-profit corporation, like the Condominium Authority, it will be subject to oversight by the Auditor General and will be required to make public disclosure of certain prescribed information. The Licensing Authority will also have the power to establish licensing fees for individual managers and management firms.

As well, mandatory qualifications for property managers are expected to be introduced through regulation and a proposed code of ethics will be established under the Act. It has been stated in the past that there is overwhelming consensus in the condominium industry that condominium managers be qualified and licensed to carry out their significant responsibilities.²

The Bill has currently passed first reading in the Legislative Assembly of Ontario, and will be required to pass second and third reading before it can receive the Royal Assent of Ontario's Lieutenant-Governor and be proclaimed into force.

(This newsletter is provided for educational purposes only and the views expressed herein do not necessarily reflect the views of Gardiner Roberts LLP. Stephen Thiele is a Partner and the Director of Legal Research of Gardiner Roberts LLP. Pinchas Huberman is a summer student.)

2. Richard Brennan, "Changes to Condo Act will offer greater protection for residents, Liberals say", Toronto Star, July 17, 2013

