

**Service Alberta
Consultations
August 2019
DAY ONE**

Introduction

We would like to thank Minister Nate Glubish and Service Alberta for the opportunity to participate in these consultations. We agree with the new Government of Alberta initiative to ensure that the legislation does not create extra expense and 'red-tape' for stakeholders.

Condo Owners Forum believes that any of the changes to the legislation, however well thought-out and supported, provides no effective or equitable means of enforcement without the establishment of the Dispute Resolution Tribunal that has been promised but deferred for many years.

In effect, the delays in implementing the condominium dispute tribunal process is the most significant 'red tape' that Alberta condos face.

The only means of enforcing this legislation remains with the Courts, which are

- Costly for all stakeholders
- Slow, and
- Frequently result in poor conclusions: "No one 'wins'"

Both British Columbia and Ontario have had tribunal systems operating for some time. They would be a great source of information and experience that could be easily implemented in Alberta. There is no need to re-create a unique Alberta system.

Documents

Questions for Discussion

1. Will the amendments related to documents cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

What most Alberta condominium Owners need and want is increased transparency and a significant improvement in the governance of our corporations.

In our Owner workshops on the amendments to the CPA Regulation we heard that many stakeholders respected and accepted that there would be some additional administrative overhead to achieve enhanced transparency and governance, but that these improvements were essential and would provide value to Alberta's condominiums.

By maintaining condominium electronic files on the internet, which is very inexpensive, Owners can assume personal responsibility for informing themselves and can download and review much of the documentation they want, thereby reducing administrative workloads.

Owner document portals should be allowed under the regulations as satisfying the provision of such documents free of charge. In our experience, electronic portals are inexpensive and effective for all.

We do not believe that the amendments cause or create unnecessary or unreasonable burdens on the administration of the Corporation.

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on Board / condominium managers and respecting the rights and responsibilities of Owners?

Alberta condo Owners are the prime customer in any condominium business matter; therefore, we need to remember the reasons condo Owners wanted changes in document management:

- Owners believed that they were being overcharged by service providers for documents that they felt should have been provided to them at cost by their condo Corporations; and
- They were frequently charged excessively for documents because these were inappropriately labelled as "copyrighted".

We think that the action of distributing each of these documents free of charge fulfills the Corporation's obligations and that supplying subsequent copies of documents should remain a user-pay option at the new pricing fee schedule. It is important that Board are able to recover costs for the reproduction of documentation for Owners, particularly for large documents.

As noted in the discussion guide, “The amending Act allows corporations to charge fees listed in the Regulation **for document requests**. The regulations would establish maximum fees for producing and providing documents or information requested under the Act or the Regulation. With some exceptions, the corporation will be able to charge a maximum \$10 fee per document for a request. This fee would ensure the Owners have reasonable access to these documents on request, without facing a substantial fee barrier, but would still allow the corporation to recover costs involved in complying with the requests.”

During our stakeholder discussions and workshops it was apparent that there are misconceptions and misunderstandings that ‘ALL’ documents on the list would be expected to be provided ‘free of charge’ when the Regulations clearly differentiates between documents which should be distributed free of charge to Owners, and documents that, even-though they may have already been distributed free of charge, are now being ‘requested’ by Owners, Real Estate Agents, potential purchasers and others.

Condo Owners Forum believes that the amendments proposed found the appropriate balance between administrative burdens and the rights and responsibilities of owners.

There is a cost to transparency that is essential to the open and democratic management of Alberta condominiums.



Standard Insurable Unit Description

Questions for Discussion

1. Will the amendments related to SIUDs cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

COF believes that SIUD's are beneficial for the protection of Owners and the condominium Corporation. We believe that condominium Owners have the right to approve the SIUD's for the Corporation, therefore the establishment of an SIUD should require an Ordinary Resolution of Owners.

We also support the requirement for condominiums to file a notice of the corporation's most recent SIUD with the Land Titles Office as a separate document.

As a separate document, the SIUD should be included in "Information disclosed for purposes of s.44 of the Act" Section 20.57 of the Regulations and thereby making the document made easily available to insurance adjusters and other interested parties.

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on Board / condominium managers and respecting the rights and responsibilities of owners?

COF believes that having the SIUD is beneficial to Owners and Corporations, and it should be left to the Owners, in consultation with their insurers, to decide what an SIUD should be for their Condominium Plan or ratified for inclusion in the Corporations Bylaws.

Rental Deposits

Questions for Discussion

1. Will the amendments related to rental deposits cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

COF does not believe that this legislation creates an unreasonable financial relationship between the Condo Corporation and tenants, as the legal relationship is between the Condo Corporation and the Owner and is there to protect Owners and the Corporation from potential damages to common areas.

Some stakeholders believe that the right of condominium corporations to require Owners who lease their units to pay a deposit to the corporation discriminates against such Owners, since there are other means of collecting monies for repairs caused by tenants that are already available.

Corporations are already required to substantiate any repair costs charged to Owners

Condos are not required to collect rental deposits and many condos do not collect rental deposits from their landlord Owners.

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on Board / condominium managers and respecting the rights and responsibilities of Owners?

Condo Owners Forum believe that the amendments proposed found the appropriate balance between administrative burdens and the rights and responsibilities of Board and Owners.



Borrowing

Questions for Discussion

1. Will the amendments related to borrowing cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

COF believes that transparency of condominium operations is essential. Borrowing is usually required because there has been poor replacement reserve planning, which is quite common in our experience, or because there have been unplanned for or unexpected events.

We believe that requiring an ordinary resolution of Owners is essential for borrowing in excess of 15% of the current annual revenue threshold and that this threshold is fair and appropriate.

We recognize that, dependent upon their bylaws, condominium Corporations may still require a special resolution to borrow.

2. Who else is impacted by potential red tape and how?

This change does not create red tape: it enhances transparency and democracy.

3. How do we find the right balance between reducing administrative burden on Board / condominium managers and respecting the rights and responsibilities of Owners?

The proposed amendment is an appropriate balance between administrative burdens and respecting Owners rights.

Fidelity Bond

Questions for Discussion

1. Will the amendments related to fidelity bonds cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

Condo Owners need to be protected against mismanagement corporation's accounts or investments.

We believe that the requirement for fidelity bonds is essential to protect condominium Corporations.

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on Board / condominium managers and respecting the rights and responsibilities of Owners?

NA



Sale of Property When Condominium Status Is Terminated

Questions for Discussion

1. Will the requirement to hold a meeting before selling property or terminating a corporation cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

Holding an Owner meeting prior to selling or terminating a Corporation is a reasonable requirement to meet the needs of Owners for good governance, transparency and openness.

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on boards / condominium managers and respecting the rights and responsibilities of Owners?

The proposed amendment creates the right balance.



**Service Alberta
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DAY TWO**

Introduction

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In effect, the delays in implementing the condominium dispute tribunal process is the most significant 'red tape' that Alberta condos face.

The only means of enforcing this legislation remains with the Courts, which are

- Costly for all stakeholders
- Slow, and
- Frequently result in poor conclusions: "No one 'wins'"

Both British Columbia and Ontario have had tribunal systems operating for some time. They would be a great source of information and experience that could be easily implemented in Alberta. There is no need to re-create a unique Alberta system.

Meeting Notices

Questions for Discussion

1. Will the amendments related to meeting notices cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

We believe that the requirement for a 60-day notice will reduce burdens on condo Corporations by facilitating better communication with Owners. When Owners respond to the 60-day notice it will allow Board to

- Respond to simple questions/comments without complicating the AGM, and
- Help the Board and Owners be better prepared for the AGM

We have some relevant experience: The Corporations of two of our Board of Directors members, who own in large complexes (90 units or more), held their recent meetings using the new rules. The new rules helped make the AGM's successful, in their experience.

The 60-day notice should not only be used to provide a date, and a call for agenda items, but also a "call" for candidates to the Board. This has been omitted in Regulation 20.51 and could be included as it is an important best practice.

The 14-day Notice should include a list of board candidates. This will allow all Owners sufficient time to become informed about the candidates and will promote enhanced transparency and democracy. It is also a more democratic process for proxy voters, who would otherwise be excluded from being able to vote for board members of their choice. This does not preclude candidates from the floor from being nominated to the Board at the AGM.

With respect to board meeting minutes being a component of the AGM package, we recommend clarifying Regulation 20.5 by adding "unless for any board meeting held since the last annual general meeting the corporation has already provided such Owner or mortgagee with minutes of the meeting." As a result of this lack of clarity and understanding of the regulations, some Corporations, have unnecessarily included all the Board Minutes in their AGM packages.

Regulations concerning the AGM should be consistent with Robert's Rules of Order, which have proven effectiveness in meetings for over 150 years. Those who argue against the new regulations most probably have insufficient understanding of Robert's Rules of Order.





2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on boards / condominium managers and respecting the rights and responsibilities of Owners?

The proposed amendment is a great balance between administrative burdens and respecting Owner's rights.

Sanctions

Questions for Discussion

1. Will the amendments related to sanctions cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

We need to remember that condominium communities need good behaviour, not fine revenue.

Limiting the dollar amount of sanctions is essential because some Boards have been over-zealous in initiating fines and some Owners have felt they could completely ignore fines as there were no standard processes in place for imposing and administering fines and no effective means of enforcement.

We endorse the proposed amendment to limit fines to breaches of bylaws.

Although fines are commonly used by some condominiums, many others do not issue fines at all or do so very infrequently.

We believe that Board-required documentation and processes to substantiate sanctions are important and provide a clear-cut procedure that will protect Owners from vexatious fines and define Board responsibilities and steps for elaborating the validity of the fine.

Given the dispute resolution tribunal has not been established, Service Alberta should consider publicizing the importance of mediation and arbitration as important steps before resorting to court action.

A three-day window for owners to respond to a sanction notice may be too short. COF recommends a response period of five business days excluding weekends and holidays.

Feedback from commercial condominium Owners on the maximum allowable sanctions has been negative, especially for small businesses, where profit margins can be low. They feel they are being discriminated against and don't see why their sanctions should be any different from those of a residential Owner.

Forcing condo boards to interface with tenants, who we do not have any legal contractual relationship with is, in my opinion, significant red tap.e

2. Who else is impacted by potential red tape and how?

NA





3. How do we find the right balance between reducing administrative burden on boards / condominium managers and respecting the rights and responsibilities of Owners?

If we have any concern on the question of sanctions, it is that there are virtually no sanctions for Boards or condominium property managers in cases of misbehaviour, mismanagement or lack of compliance with the Condominium Property Act or Regulations.

In future, we believe Service Alberta / Real Estate Council of Alberta (RECA) need to thoroughly act on these issues by establishing governance oversight and enforcement. In addition, a resource for effectively deliberating and resolving differences and concerns between Owners and Boards or Managers needs to be established through a Dispute Resolution Tribunal.



Reserve Fund Studies and Provider Qualifications

Questions for Discussion

1. Will the amendments related to reserve fund studies and reserve fund study providers cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

Replacement reserve studies are essential to the continued effective physical and financial management of a condominium Corporation. They provide valuable information and guidance to Board and Owners.

It is therefore crucial to have well-qualified personnel completing studies: Studies are too important for condos to rely on under-qualified personnel.

We suggest that the 30-year requirement for replacement reserve studies is too short, as experience has shown that the life of some components can be longer – up to 40 years for some elevators or windows, for example. However, we recognize that legislation provides for minimums and prudent Corporations may well use best practices that exceed the legislative minimums.

Some larger condominiums would be wise to complete studies more frequently than five years, to ensure properties are well managed.

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on boards / condominium managers and respecting the rights and responsibilities of Owners?

The proposed amendment is an appropriate balance between administrative burdens and respecting Owners rights.

Voting

Questions for Discussion

1. Will these amendments related to voting cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

Preventing condominium property managers from holding proxies is essential to prevent conflicts of interest and to ensure good governance.

We believe that providing a form of proxy is a good initiative.

We think that the 6-month maximum for the life of a proxy could be increased to 12 months as it does create a little extra work for some, particularly for Owners located outside of Alberta or Canada.

Voting by co-owners, tenants-in-common versus joint tenants where the certificate of title must be presented at the AGM is administratively burdensome. Situations where co-owners would choose to vote differently on voting items occur infrequently therefore and the impact on overall voting results is likely insignificant.

While it may be time consuming, there are times when a polled vote, by unit factor, is essential to ensure Owners are properly represented.

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on boards / condominium managers and respecting the rights and responsibilities of Owners?

NA



Electronic Notices

Questions for Discussion

1. Will the amendments related to electronic notices cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

The world is moving to electronic communication and notification. Many Owners favour electronic notification which is faster and cheaper than other means.

In our opinion no organization can complain about the minor administrative work required to use electronic notices.

In our opinion electronic notices should be encouraged to reduce administrative burdens

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on boards / condominium managers and respecting the rights and responsibilities of Owners?

Electronic notices reduce costs, red tape and administrative burdens.

New Rules Notification

Questions for Discussion

1. Will the amendments related to new rules cause or create unnecessary or unreasonable burdens on the administration of the corporation? If so, in what ways?

We recognize the enhanced notification requirements will increase administrative work – but only to a minor degree and to the benefit of all Owners.

We agree with providing a comprehensive set of rules to all residents and generally providing for 30 day's notice of routine rule changes is adequate.

The repeal procedure for rules is important to Owners that may be dealing with rules which may not express the will of the majority of Owners.

We also have some concerns about enforceability of Rules since there is no way to provide for monetary sanctions unless the Rules are included in the bylaws. To force a Corporation to bring about a special resolution in order to create or amend a bylaw which would allow enforcement of a rule or rules does potentially create extra red tape and additional administrative burdens on the Corporation.

The interaction between condominium Board and tenants is a very difficult one as there is no legal contractual relationship between the condominium Corporation and the tenants, only Owners. In our experience passive landlords rarely provide tenant information to condominium Corporations.

It is in the best interests of the condominium community to know who tenants are and to ensure they are well-informed but it is very difficult, if not impossible, to obtain.

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on Board / condominium managers and respecting the rights and responsibilities of Owners?

NA



Other Topics

Questions for Discussion

1. In what ways do these “top three” issues increase burdens to the administration of the corporation?

Condo Owners Forum Society of Alberta is a little concerned about the resistance to change being expressed by some service providers. We cannot forget the positive impact of the changes on condominium Owners through the improved transparency and enhanced governance facilitated by the changes.

We ask Service Alberta to look very seriously at concerns on the rights of the key stakeholders: THE OWNERS.

What is paramount in all of these questions are the rights of Alberta condominium Owners who eventually pay all of the costs of condo administration and whose investments and quality of life are most impacted.

2. Who else is impacted by potential red tape and how?

NA

3. How do we find the right balance between reducing administrative burden on Board / condominium managers and respecting the rights and responsibilities of Owners?

There are a number of very important issues for Alberta condominium Owners that must be addressed in future, and although they are not the agenda for today, we need to mention a number of great concerns to Condo Owners Forum Society of Alberta:

1. We continue to be extremely disappointed in the lack of priority given by the Government to the Condominium Dispute Tribunal. The courts are slow, expensive and lead to lose-lose results for condo Owners. Both British Columbia and Ontario have had systems operating for some time that should be easy to learn from and implement in Alberta.
2. Condo Owners are impatient. Some of our members have been involved in consultations for over six years. We know that some industry stakeholders have been consulting with Government for ten years or more. Governments have given Service Alberta and the Condominium Property Act updates a low priority as there have been at least six ministers responsible for the portfolio since 2013.



3. The Real Estate Council of Alberta (RECA), charged with managing condominium property manager training and licensing, has recently undergone a governance review, conducted by internationally respected management consultants KPMG, who have recommended to the Government of Alberta that the Board be removed, and an administrator appointed.

Real estate consumers are the principal stakeholder that should be protected by RECA. Consumers, including Alberta condominium Owners, need to be more fully represented on the RECA Board of Directors. We suggest that one-half of the RECA Board be consumers

We question how an organization with such ineffective internal management can be responsible for licensing and training of condominium property managers (who should be providing guidance to condo Owners on governance) when they are essentially unable to effectively govern themselves.

We do not expect the Government to replace RECA and bring the licensing and training of condo managers under Government, however, the Government needs to ensure that RECA is performing much more effectively than it has recently.

We are looking forward to being consulted by RECA on the licensing and education requirements for condominium property managers later this year.

3. There continues to be no sanctions for Alberta condominium Board, service providers or Owners who contravene the Condominium Property Act or CPA Regulations. This requires future action. We believe Service Alberta / Real Estate Council of Alberta (RECA) need to consult stakeholders and to thoroughly examine the oversight and enforcement of Alberta condominium legislation.
4. We believe that Service Alberta and RECA need to ensure that all payments received by condominium property managers from third parties are declared / transparent to Board/Owners.
5. The implementation of new systems will always require some fine-tuning. We recommend that Service Alberta consider establishing an ongoing stakeholder liaison committee to allow for quick consultations on issues that evolve.

6. Requiring a special resolution to delete now obsolete bylaws is "red tape". Service Alberta must provide more clarity on what changes can be made to the Bylaws without jeopardizing the possibility of updating the Bylaws for conformity with the Act and Regulations on the one -year ordinary resolution basis. For example, due to the large amount of updating to be done, would changes in the numbering of the Bylaws require a special resolution. And can a bylaw which is obsolete, for example, dealing with the developer and interim Board, be deleted without requiring a special resolution. Since the Owner cannot vote in favour of keeping an obsolete bylaw, why would a special resolution be required?
7. It has been our experience recently that the CondoReview account has stopped responding to queries during this consultation process forcing Corporations to seek lawyer advice, which is expensive, instead of getting a simple answer from Service Alberta on the new proposed regulations. We hope that this service should be resumed very soon.