

CANADA'S  
PUBLIC POLICY

**FORUM**

DES POLITIQUES PUBLIQUES  
DU CANADA

# ONTARIO'S CONDOMINIUM ACT REVIEW

Stage One Findings Report  
Executive Summary

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JANUARY 2013



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Established in 1987, the Forum has earned a reputation as a trusted, nonpartisan facilitator, capable of bringing together a wide range of stakeholders in productive dialogue. Its research program provides a neutral base to inform collective decision making. By promoting information sharing and greater links between governments and other sectors, the Forum helps ensure public policy in our country is dynamic, coordinated and responsive to future challenges and opportunities.

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# EXECUTIVE SUMMARY

## A Public Engagement Process to Review Ontario's Condominium Act

Ontario's *Condominium Act, 1998* (the Condominium Act) came into effect over a decade ago. Since then, Ontario's condominium sector has experienced remarkable growth and change. There is now considerable variety in both the size and type of condominium buildings.

Today, condominiums account for half of all new homes built in Ontario. With roughly 589,000 units in the province, about 1.3 million Ontarians call a condominium their home. As the sector has expanded, so has this housing option, the size and complexity of the market, and the number of people affected. Moreover, the issues today are not only legal or technical in nature. Increasingly, they are about relationships within the condominium sector—tensions between owners, other residents, board members, condominium managers, developers, lawyers and others.

*Like good neighbours, stakeholders must learn to work together to achieve common goals.*

Real solutions to these tensions will require a mix of new or updated rules, better information and a broad array of tools to help solve problems. But they will also require effective management of relationships within the condominium sector itself, as well as individual condominium communities. Everyone has a role to play. Owners and others with a stake in the condominium sector must see themselves as members of a single community who share common interests. Like good neighbours, they must learn to work together to manage their differences in order to achieve their common goals.

A new approach was needed to understand this new environment. In response, the Ministry of Consumer Services has provided funding to Canada's Public Policy Forum to lead an innovative public engagement process to review and recommend changes to the Condominium Act. Working with MASS LBP, which specializes in citizens' panels, the Forum is engaging condominium owners and

other condominium community stakeholders in a three-stage, 18-month review process that will identify issues, consider options, and propose and confirm an action plan for renewal.

The findings from the engagement process so far suggest that new tools are needed not only to strengthen how condominium corporations are managed and governed, but also to help owners and other condominium sector participants build a stronger sense of shared responsibility for the resilience and well-being of their communities.

### *Taking a Collaborative Approach*

This report contains the findings from Stage One of the three-stage review process. Stage One was launched in September 2012 and concluded with the release of this report in January 2013. It involved four engagement or discussion streams:

- Minister's Public Information Sessions provided information about the review and convened town-hall forums for over 500 participants in five Ontario communities;
- A Residents' Panel assembled 36 representative condominium residents from across the province for three full-day sessions to learn more about condominiums, discuss issues and propose solutions;
- Stakeholder Roundtables brought together 25 stakeholders from across the condominium community for four full-day sessions to identify issues and discuss solutions; and
- The entire condominium community was invited to provide input, resulting in over 400 emails and letters, including approximately 180 formal submissions.

While all four discussion streams were diverse in their representation, similar issues emerged, including how challenging it can be to understand the Act itself.

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## ***Condominiums Based on Rules and Community Values***

The Condominium Act is “framework” legislation, which means it sets the parameters within which individual corporations can make by-laws and rules to shape their community. It is also “administrative” in the sense that compliance with the Condominium Act or the corporation’s by-laws is not “policed” by the provincial government the same way as, say, taxation. Instead, condominium corporations, led by elected boards of directors, govern their community members according to the framework set out in the Condominium Act. In Stage One, this governance arrangement was the subject of much discussion.

*Residents identified seven values for a revised Act: well-being, fairness, informed communities, responsiveness, strong communities, financial sustainability and effective communication.*

In particular, some owners were concerned about how condominium communities manage and resolve disputes. When boards, managers or other owners fail to comply with the Condominium Act, they said, there is no reliable and cost effective way to enforce the rules: the Condominium Act lacks “teeth”. However, others replied that most noncompliance issues, such as breaking a rule or by-law, will be more effectively managed through better information, communication, or mediation, rather than through more enforcement tools. They agreed that effective enforcement is necessary, but stressed that relying too much on this approach can erode trust and create new and even deeper tensions within the community.

A second key issue concerned the rights and responsibilities of condominium owners. When someone buys a condominium, they not only have legal rights and responsibilities, they also join a community. These community responsibilities go beyond paying monthly fees for upkeep of the building. They extend to the well-being of the community as a whole. A consistent finding of both the Residents’ Panel and the Stakeholder Roundtables has been that owners need to

more fully understand their responsibility to contribute to effective community governance, such as, by attending their condominium’s annual general meetings (AGMs).

As a result of the Residents’ Panel’s discussion of issues such as these, Panel members proposed a list of seven basic values they felt should be supported by a revised Act:

- Well-being
- Fairness
- Informed Community Members and Stakeholders
- Responsiveness
- Strong Communities
- Financial Sustainability
- Effective Communication

These values not only establish basic benchmarks for the kinds of improvements condominium owners want from a revised Condominium Act; they also provide a clear and persuasive blueprint for the kinds of communities that owners want to build for the future.

## **Key Issues and Potential Solutions**

The issues and solutions raised in the four discussion streams can be grouped into six basic categories: governance, dispute resolution, financial management, consumer protection, the qualifications of condominium managers and issues outside the Condominium Act.

Stage One has been about identifying key issues and solutions and exploring where agreement and disagreement lie. While important differences and disagreements remain, when all is said and done, there is a remarkable degree of agreement among residents and other stakeholders on what the key issues are and what needs to be done to solve them.

The following is a brief summary of the issues and potential solutions identified during Stage One:

- **GOVERNANCE:** Condominium boards of directors, particularly first-time directors, need training and support. Boards need to be more diligent in informing and educating their own members and the owners about everything from community rights and responsibilities to the financial state of their condominium. Boards also need to take steps to increase their responsiveness, transparency and accountability. In particular, corporate and governance documents (such as by-laws or board meeting minutes) must be made more readily available and information must be accurate, accessible, up to date, and complete. For their part, owners need to be more engaged and accept a greater degree of responsibility for the good governance and management of the community, including participating in AGMs.

*Condominium boards, especially first-time directors, need training and support.*

- **DISPUTE RESOLUTION:** Although a more effective and efficient means to enforce the rules and responsibilities set out in the Condominium Act is needed, this is only one part of a high-quality system for resolving disputes. Participants agreed that issues could often be resolved quickly and amicably if they had better access to the right information, informed and impartial advice, and reliable, trusted mediation. Such tools likely will need to be incorporated into a more effective dispute resolution system for the future. However, this raised further questions around how such a system would work and be managed. Many felt that some form of independent, authoritative agency or organization is needed to oversee the development and implementation of these tools and processes.
- **FINANCIAL MANAGEMENT:** Reserve funds (funds that owners pay into as part of their common expense contributions for major repairs and replacement of common elements and condominium assets) must be adequately funded through contributions that are based on appropriate, standardized studies.

The rules around the use of operating funds need to be revisited and adjusted. In some cases, more flexibility may be appropriate but, if so, it should be very clear how and where funds can be used and how owners will be informed of this. Owners need access to tools and information that will keep them well informed on how their monthly contributions (and possible special assessments)<sup>1</sup> are set and used. Such information must be in a form that is accessible, timely and reliable.

- **CONSUMER PROTECTION:** Documents related to the sale of a condominium unit should be supported by plain language summaries that explain the key information buyers need to make an informed choice on whether to purchase. The full cost of purchasing and living in a condominium must be fully transparent. All costs should be included in the first year. Any exceptions should be required to meet stringent criteria, including disclosure to ensure consumers can make an informed decision.

*A higher standard of skills and training is needed for condominium managers.*

- **CONDOMINIUM MANAGER QUALIFICATIONS:** A higher standard of skills and training is necessary for managers and management firms. This almost certainly involves mandatory knowledge and may also require regulation of the industry by government, or some organization acting on its behalf.
- **ISSUES OUTSIDE THE CONDOMINIUM ACT:** Participants in all four discussion streams also raised issues that went beyond the scope of the Condominium Act and that, in various ways, affected other pieces of legislation. These included concerns around property taxes, condominium conversions, insurance rates, tenant rights and responsibilities, as well as industry trends and power imbalances in the condominium sector. These comments and proposals have been duly noted and shared with officials in the appropriate ministries.

<sup>1</sup> Special assessments are additional (typically one-time) common expense charges that are sometimes used by condominium corporations to pay for unplanned expenses or budget shortfalls.

# EXECUTIVE SUMMARY

For each of these areas, it was recognized that there is great diversity in the size and scope of condominiums in Ontario. Future work would need to account for these differences and not follow a “one-size-fits-all” approach. For example, the qualifications of a part-time manager of a six-unit rural residential condominium might need to be different from those of a manager for a mixed-use, urban condominium tower housing hundreds of owners.

## Conclusion

Providing the tools and supports needed to strengthen transparency and accountability of the boards, ensure better management from the managers, and encourage greater participation from owners will be challenging.

Nevertheless, if there is an overall conclusion from this Findings Report, it is that we should be encouraged by how much agreement exists across the condominium community on the issues and solutions. There is still a long distance to travel and no reform package will please everyone or solve all the issues, but a good one should address a critical mass of the issues and garner support from across the community. On this front, there has been real progress.

With the submission of this Findings Report to the Ministry of Consumer Services, Stage One of the review process is complete. Stage Two will begin in March 2013 when groups of experts in condominium issues (including owners) will be convened to review the findings from this report. Based on the issues, proposals and arguments it contains, the experts will work together to develop a detailed set of options for renewal of the Condominium Act. In Stage Three, which will begin in the fall of 2013, the options will be reviewed and validated by condominium owners and other stakeholders, after which they will be presented to the government and the condominium sector.

*For more information and updates on this project, including supporting documents please visit [ppforum.ca/publications](http://ppforum.ca/publications).*

