### Consultation on topics under the Condominium Act, 1998

### Feedback Form

Please use the following pages to provide any feedback on the consultation questions listed below. Please submit any feedback through [Ontario’s Regulatory Registry](https://www.ontariocanada.com/registry/view.do?language=en&postingId=31627) or return a copy of this Feedback Form to Sean Gardiner at sean.gardiner@ontario.ca by **March 10, 2020.**

The ministry recognizes that not all of the topics will be relevant to every individual or organization. Please provide comments on the topics that are relevant to you or your organization.

**Contact Information**

**Organization Name (If applicable):**

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**Key Contact Name:**

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**Condominium Act, 1998**

The Condominium Act, 1998 (Condo Act) governs the rights and responsibilities of the condo community including developers, purchasers, owners, mortgagees, residents, condo corporations and their boards.

Changes were made to the Condo Act in 2015 to address various concerns raised by the public about condo issues including: information given to buyers when purchasing a condo, condo fee increases, financial mis-management, etc.

There are many changes in the Condo Act that are not yet in effect and several steps are needed to bring these changes into effect, including consultations with the condo sector and the development of associated regulations.

This consultation will help to inform the ministry’s path forward with considering changes to regulations and proclaiming related legislative changes under the Condo Act.

**Topic #1: Interest rates**

**Context:** When purchasing a pre-construction condo, purchasers are generally required to provide the developer with deposit(s) and other payment, to be held in trust. In most cases, if a project is cancelled, and in some other circumstances, buyers are entitled to get their deposit(s) and other payments back, plus any accrued interest (if applicable).

The Condo Act allows for interest to be paid based on an interest calculation, which is currently prescribed as the Bank of Canada overnight interest rate, minus 2% (the Bank of Canada overnight interest rate, as of January 2020, is 1.75%). In the current environment, buyers may not receive any interest on their returned deposits if the condo project is cancelled (i.e. the current overnight rate of 1.75% - 2% = 0).

**Questions to Consider:**

1. In the event of a cancellation, the current interest rate in the Condo Act is calculated based on the Bank of Canada overnight interest rate, minus 2% (e.g., the current interest calculation is 1.75%-2%).
	1. Is this Bank of Canada overnight interest rate the appropriate rate to reference in the Condo Act for returned deposits etc.?
	2. Should there be a percentage that is added to or subtracted from the interest rate used and, if so, what should that be?
	3. Should the same rate and calculation be used in all circumstances where a condo development project is cancelled (e.g. unable to secure financing, zoning issues, etc.)?
2. Should the same rate and calculation be used for other scenarios under the Act where the same interest applies (e.g. rescission of contract under s. 73 of the Act, material changes in disclosure statement under s. 74 of the Act, etc.)?
3. Are there approaches to this topic taken in other jurisdictions that should be adopted?
4. Are there any specific considerations for various types of condos (e.g. common elements condos)?
5. Are there any other considerations associated with Topic #1?

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**Topic #2: Condo guide**

**Context:** Currently when buying a condo, purchasers are entitled to receive certain relevant information about their purchase, including in various technical documents (e.g. disclosure statements, declarations). Assistance from professionals, such as lawyers, may also be sought by purchasers to help understand their purchase. Nevertheless, plain-language information about condo living provided at the point-of-purchase may be helpful to condo purchasers.

The Condominium Authority of Ontario (CAO) is a private not-for-profit corporation operating at arm’s length from the government, managed by an independent board of directors and self-financed from assessments paid by condominium corporations and from fees for certain services. The CAO provides information about condos for prospective condo buyers and other members of the public on its website (including in the CAO’s [Condo Buyer’s Guide](https://www.condoauthorityontario.ca/resources/condo-buyers-guide/CondoBuyersGuide_Oct2019.pdf)) but this information is not currently required to be provided by developers to purchasers at the point of purchase.

**Questions to Consider:**

1. Would it be helpful to require developers to provide a plain-language condo guide to condo buyers at the point-of-purchase?
2. What information would be helpful to prospective condo purchasers, in addition to what is provided on the CAO’s online [Condo Buyer’s Guide](https://www.condoauthorityontario.ca/resources/condo-buyers-guide/CondoBuyersGuide_Oct2019.pdf)?
3. Is there any value in having different types of guides, depending on the type of condominium corporation or other circumstances? If so, what types of guides would be valuable?
4. Are there any other considerations associated with Topic #2?

**Enter Feedback Here:**



**Topic #3: Procurement process**

**Context:** While the Condo Act contains a number of provisions that facilitate accountability and transparency between condo boards and condo owners regarding condo corporation expenditures, there are no procurement standards, requirements or processes specified under the Act that condo corporations must adhere to when obtaining/purchasing goods or services.

A clear process for the procurement of certain types of goods and services could help to protect condo owners’ financial investments and promote increased transparency, trust and confidence in the procurement decisions of their condo corporation.

**Questions to Consider:**

1. Should there be a mandatory procurement process prescribed under the Condo Act?
2. If so, what types of contracts and transactions should be subject to a prescribed procurement process (e.g. contracts or transactions above a certain monetary value, for a particular type of good or service, etc.)?
3. Should certain types of contracts or transactions be excluded from being required to undergo a prescribed procurement process? If so, what are they and why?
4. Are there certain procurement principles or guidelines that condo corporations should be required to adhere to? If so, what are they and why?
5. What procurement process should condo corporations be required to follow before entering into certain types of contracts and transactions?
	1. How should condo corporations call for bids?
	2. Should condo corporations be required to request or receive a certain number of bids?
	3. How should the bids be evaluated?
	4. How should the winning bid be selected?
	5. How should the winning bid be communicated to the condo community?
6. What records related to the procurement process should the condo corporation be required to maintain and for how long?
	1. Are there any other considerations with respect to how condo corporation records would be impacted by the regulation of procurement processes?
7. Should information about a procurement be communicated to owners through a corporation’s information certificate or some other manner?
	1. If so, what information should be required?
	2. Would this be overly burdensome for the corporation?
8. Are there any specific considerations for various types of condos (e.g. common elements condos)?
9. Are there any other considerations associated with Topic #3?

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**Topic #4: Interim occupancy fees**

**Context:** Purchasers of a new condo unit may be required to occupy their unit on an interim basis prior to the condo being registered. During this time, purchasers may be obligated to pay the developer an interim occupancy fee on a monthly basis.

The Condo Act provides a formula for determining the maximum amount of the monthly occupancy fee that a purchaser is required to pay the developer for interim occupancy. That is, the developer can charge the purchaser a monthly occupancy fee that cannot be greater than the total of the following amounts:

1. Where applicable, interest (at the prescribed rate) on the unpaid balance of the purchase price of the unit, calculated on a monthly basis
2. Reasonably estimated municipal taxes attributable to the unit, calculated on a monthly basis
3. Projected monthly common expense contribution for the unit

The Condo Act also outlines when developers must hold in trust and remit to the condo corporation upon its registration the portion of the occupancy fee related to a proposed unit for residential purposes that is collected for the projected contribution to the reserve fund.

However, there could be more certainty and predictability regarding how occupancy fees are handled.

**Questions to Consider:**

1. How are interim occupancy fees currently being used by developers?
2. The new (unproclaimed) s. 80(5) of the Condo Act, if proclaimed, would enable prescribing certain requirements dealing with developers’ contributions to the reserve fund from monies obtained through the collection of interim occupancy fees.
	1. What is an appropriate length of time before the developer should be required to hold in trust and remit to the condo corporation upon its registration the portion of the occupancy fee related to a proposed unit of a prescribed class collected for the projected contribution to the reserve fund (i.e. is 6 months appropriate)?
	2. Should there be a process for how the developer is required to remit the accumulated reserve fund contribution monies to the corporation?
3. As discussed above, the Condo Act provides a formula for determining the maximum amount that a purchaser is required to pay the developer for interim occupancy. This formula may include interest calculated on the unpaid balance of the purchase price, where applicable. The current prescribed rate of interest in this circumstance is the rate the Bank of Canada has most recently reported as the chartered bank administered interest rate for a conventional one-year mortgage as of the first of the month in which the purchaser assumes interim occupancy of a proposed unit or is required to do so under the agreement of purchase and sale.
	1. Is this an appropriate interest rate to use in the formula, and why?
	2. If not, what interest rate would be the most appropriate, and why?
4. The formula for determining the maximum amount that a purchaser is required to pay the developer for interim occupancy also includes, among other things, a purchaser’s projected contribution to monthly common expenses. Should the projected contribution to monthly common expenses be subject to restrictions?
	1. If so, what are they and why (e.g. length of time this component can be levied, how the projection of common expense fees should be calculated, if there should be a limit on this portion of the occupancy fee, etc.)?
5. Are there any other considerations associated with Topic #4?

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**Topic #5: Charges added to an owner’s common expenses (i.e. chargebacks)**

**Context:** A chargeback is a colloquial term used to describe an amount of money added as an additional charge to an owner’s common expenses (i.e. condo fees or maintenance fees) to cover certain costs incurred by a condo corporation as permitted under the Condo Act. Currently, a condo corporation may add, for example, the additional costs of carrying out an owner’s repair or maintenance obligations to the owner’s common expense fees. Most condo declarations also contain indemnification clauses that set out when a corporation may add an amount to an owner’s common expenses.

A clearer process for when and how these charges are added to an owner’s common expenses could help to create enhanced transparency and clarify how owners can respond in the event of a dispute.

**Questions to Consider:**

1. When and how should chargebacks be applied?
2. How best can a corporation provide notice of a chargeback to affected owners?
	1. What information should be included in that notice (e.g. rationale for applying the chargeback to the owner’s common expenses, options available for repayment)?
3. In what timeframe should an affected owner be required to respond to the notice of a chargeback by either paying the amount of the chargeback or otherwise seeking to resolve the requirement to pay (e.g. is 30 days appropriate)?
4. How should an owner be required or permitted to pay the chargeback to the corporation (e.g. allow for payment to be made in installments)?
5. Are there any specific considerations for various types of condos (e.g. common elements condos)?
6. Are there other considerations associated with Topic #5?

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**Topic #6: Reserve funds and reserve fund studies**

**Context:** Adequate reserve funds and proper use of those funds are critical to maintaining the structural integrity of the condo property. Reserve fund studies are currently required under the Condo Act and they determine how much money needs to be in the fund to ensure that anticipated major repairs to and replacements of condo property can be paid for in the future.

While the Act currently requires condominium corporations to establish and maintain a reserve fund, there may be some ambiguity with respect to the adequacy of those funds, including how to determine “adequacy”. Underfinanced reserve funds could be detrimental to the financial well-being of the condo corporation and of its members and to the safety of individuals who live in condos. Clearer rules could help clarify and standardize the requirements of reserve fund adequacy.

**Questions to Consider:**

Reserve Funds

1. What should be considered a “major repair” for which funds can be used from a reserve fund?
2. Are there other purposes for which a reserve fund could be used that would fall outside the scope of a typical operating fund?
3. Are there particular circumstances where the condo board should be required to seek the consent of the owners to use the reserve fund? If so, what are they and why?
4. How should the “adequacy” of the reserve fund be determined?
5. At what point should a reserve fund require an outside opinion, after it falls below a certain amount?
	1. Outside of the standard reserve fund requirements, within what time frame should the corporation be required to obtain an outside opinion?
	2. What information should the outside opinion provide?

Reserve Fund Studies

1. When should a reserve fund study be required? Are the current requirements under the Condo Act adequate?
2. What content should the reserve fund study include?
3. How should the reserve fund study be carried out?
4. Who should be able to conduct a reserve fund study and what qualifications should a reserve fund study provider have?
	1. Is the currently prescribed list under the Condo Act of who can conduct the study adequate?

General Questions

1. Are there specific considerations for various types of condos (e.g. common elements condos)?
2. Are there other considerations associated with Topic #6?

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**Topic #7: Mediation and arbitration**

**Context:**

Under the Condo Act, certain disputes are required to be resolved through mediation and arbitration. Processes for carrying out mediation and arbitration under the Act are not explicit, which can contribute to delays and costs for the parties involved.

Clearer processes could lead to greater effectiveness of mediation and arbitration.

**Questions to Consider:**

1. What should be the process for mediation and arbitration under the Condo Act?
2. Should there be particular process requirements for different circumstances (e.g. disputes between a developer and corporation, a dispute between corporations, disagreements on shared facilities, disagreements with managers/management service providers, etc.)?
3. Should certain types of disputes continue to be required to go to mediation and arbitration or should all applicable disputes under the Condo Act eventually be required to go to the Condominium Authority Tribunal, as the Tribunal’s jurisdiction expands?
	1. If so, what are they and why?
4. Are there any specific considerations for various types of condos (e.g. common elements condos)?
5. Are there models for mediation and arbitration processes for condo disputes in other jurisdictions that should be adopted?
6. Are there other considerations associated with Topic #7?

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**Privacy Statement**

This survey is being conducted by the Ministry of Government and Consumer Services (Ministry) with respect to feedback related to the Condominium Act, 1998 (Condo Act).

The collection of this information is authorized pursuant to the Ministry’s responsibility for this Act and is necessary to consider any potential changes to the Condo Act. Please note that the Ministry is subject to the *Freedom of Information and Protection of Privacy Act* and may disclose the information you provide in accordance with the Act.

Please note that unless otherwise agreed to by the Ministry, all submissions received from organizations or individuals affiliated with organizations will be considered public information and may be used and disclosed by the Ministry to help evaluate the feedback.

Submissions received from individuals who do not indicate an affiliation with an organization will not be considered public but may be used and disclosed by the Ministry to help evaluate changes to the Condo Act. Any personal information such as an individual’s name and contact details will not be disclosed by the Ministry without the individual’s prior consent unless required by law.

If you have any questions about the collection of this information by the Ministry, please contact Victoria Walker at victoria.walker@ontario.ca.