

Lash / Condo Law

OUR CONDO EXPERTISE

CONDO MANAGERS

GUIDE TO THE CONDO ACT
AMENDMENTS AS OF
NOVEMBER 1ST

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PROTECTING NEW CONDOMINIUM OWNERS ACT, 2015

What Condo Managers Need to Know

Important changes to the Condominium Act, 1998 (the "Act") came into effect on November 1, 2017. Many of these changes will impact condo managers because they affect the day-to-day responsibilities of Corporations.

This guide provides general information on relevant changes to the Act. Please consult the Act and the regulations in conjunction with this guide.

New Requirements as of November 1st
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1. COMMUNICATION

Corporations will now have to issue a variety of information certificates to owners.

1. Periodic Information Certificates (PICs):

When: Twice per year, within 60 days of the last day of the first and third fiscal quarter.

What: PICs acts as “mini status certificates” meant to provide owners with pertinent information about the Corporation throughout the year, such as:

- Management’s name and address for service;
- Information about legal actions the Corporation is involved in and their financial implications;
- A copy of the Corporation’s budget for the current fiscal year, amendments to the budget, and whether there will be a surplus or deficit;
- The reserve fund balance and anticipated reserve fund expenditures.

2. Information Certificate Update (ICUs):

When: On “triggering” events, namely:

- Within 30 days of change in: directors or officers, the address of service of the Corporation, address for service of directors or management;
- Within 30 days of knowledge of change in an insurance deductible;
- As soon as reasonably possible after termination of an insurance policy; or
- Within five days of the loss of board quorum.

What: An ICU must contain a statement about a change in any of the categories above and updated information about the change.

If there is a loss of board quorum the ICU must set out the number of vacancies on the board and request that owners notify the board within five days if they are interested in running for a board position.



3. **New Owner Information Certificate (NOIC):**

When: Within 30 days of an owner supplying the Corporation with their information.

What: Most recent PIC and ICU and any other materials required by by-law.

4. **How are Information Certificates Sent?**

PICs, ICUs, and NOIC's must be sent using the standard forms.

Information certificates may be:

- Posted on a Corporation's website for at least 30 days if owners are sent a notice of the posting;
- Sent by email (if owners have signed agreements for electronic service);
- Delivered personally, by mail, or another form of communication by which the owner agrees to receive notices.

5. **Exemption from Information Certificates**

For Corporations that have elected a board after turnover, there is no requirement to send information certificates for the remainder of the fiscal year if owners of at least 80% of the units consent in writing to dispense with information certificates until the next fiscal year.

6. **Other Important Information**

By-laws can require PIC/ICU on a more frequent basis, add information to be included in a PIC, or create additional triggering events for an ICU;

A copy of most recent PIC and ICU must be available at the AGM.



2. RECORDS, RETENTION AND ACCESS

The amendments categorize records as **core records** or **non-core** records. The retention period for a particular record depends on the type of record.

1. Core Records

Core-Record	Retention Period
Declaration, by-laws, rules, shared facilities agreements	Unlimited
Budget for current fiscal year	7 years
Most recent approved financial statements	7 years
Most recent reserve fund plan	Unlimited
Performance Audits	Unlimited
Record of owners and mortgagees	7 years
Information Certificates	7 years
Minutes of owners' and board meetings held after November 1, 2017	Unlimited
Any other record required by a by-law, if applicable	As per by-law



2. Information Certificate Update (ICUs):

- Proxies and ballots must be held for 90 days unless challenged;
- 7-year minimum record retention for financial and other operating records;
- Unlimited retention for fundamental documents (governing documents, insurance policies, meeting minutes, performance audits, and reserve fund studies).

3. Process for Accessing Records



Request


In order to make a record request, an owner, purchaser, mortgagee, or their agent must submit the standard form.

- A requester **does not** have to tell the board or management why they want to see a record. However, the request must be *"solely related to that person's interest as an owner...having regard to the purposes of the Act."*
- Requesters cannot access records relating to:
 - i. Employees of the Corporation (except an employment agreement between an employee and the Corporation);
 - ii. Records relating to actual or contemplated litigation or insurance investigations involving the Corporation;
 - iii. Unit owners, or units (except for the person's unit).

Board's Response

The board must respond within 30 days of a request. If the request is for a core record provided electronically, the record must be provided within 30 days of the request (no fee can be charged for these).

The costs of examining or obtaining the records requested are estimated and itemized in the board's response (may not exceed 20 cents per page for photocopying and printing). Managers should include the costs of labour for records requests as additional fees in their management agreements.



The fees for requesting records vary whether:

- Record is a core-record;
- Copies vs. examination of records;
- Records are kept in electronic vs. paper form;
- Records require redacting; and
- Estimated time spent on responding to the request.

Only actual costs incurred by the Corporation can be charged. Managers should invoice corporations for these costs.

Requester's Response

A requester must respond (using a standard form) to the board's response within 60 days, submitting payment of the estimated records fee.

Access and Accounting or CAT Application

- If the actual cost of providing the record is more than the estimate, the requester is obligated to pay the difference up to 10% more than the estimate;
- If there is a dispute, the CAT is the forum for resolving the dispute;
 - i. An application to the CAT must be commenced within 6 months (if there is no response from the board) or 60 days from the board's response.

4. Abandonment of Records Request

A request for records is deemed to be abandoned if the requester:

- Does not respond and pay the records fee within 60 days;
- Does not apply to CAT for resolution of the request within 60 days of the board's response; or
- If the Corporation does not respond to the request and the requester does not apply to CAT within 6 months of the request.

5. Penalty for Non-Compliance

A Corporation may be required to pay a penalty of non-compliance under section 55(3) up to \$5,000.00. An owner may set off amount against contribution to common expenses payable for owner's unit if the Corporation fails to pay.



3. MEETINGS

1. Preliminary Notices

When: Corporations are required to send preliminary notices to owners at least 35 days before the meeting and at least **20** days before the notice of meeting is sent out.

What: The notice must contain:

- information regarding the purpose/nature of the meeting;
- proposed changes to the declaration, description, by-laws, rules or agreements;
- the number of positions on the board for election at the meeting.

At least 35 days before the meeting and 20 days before the Notice of Meeting

- Preliminary Notice
- What's included: purpose; projected date; call for candidates; call for material to be included in the notice of meeting; appointment of an auditor; etc.

1 day before Notice of Meeting

- Deadline for owners to submit info to be included in the notice of meeting

15 days before meeting

- Notice of Meeting
- Includes: quorum requirements; candidate info; other material owners submitted, if applicable; etc.

2. Notice of Meeting

Owners may submit information they want to include in the notice of meeting, as long as this information is provided by the deadline stipulated in the Preliminary Notice. It is up to the board to decide whether or not to include the owner's information. However, if the owners of **15%** of the units submit information to be included in the notice of meeting, the board **must** include the information, unless the information is contrary to the Act.

3. Quorum

At AGMs and turnover meetings, a meeting will have quorum if the owners of 25% of the units are present in person or by proxy at the **first and second attempts to hold the meeting**. At the third attempt (and for subsequent attempts) to hold the meeting only the owners of 15% of the units are required.

A by-law may restrict the quorum threshold to remain at 25% notwithstanding the attempt to hold the meeting.



4. By-law Voting Thresholds

Passing most by-laws still require the vote of the owners of a majority of the units in the Corporation. However, a majority of owners present or represented by proxy **at an owner's meeting** can approve a by-law regarding the following:

- allowing owners to vote at meetings using telephonic or electronic methods;
- requiring the Corporation to keep additional records to those required by the Act and the time-frame for keeping such records; and
- any other purpose specified in subsection 14 (0.1) of the Regulations.

4. RETURNS AND NOTICES OF CHANGE

Corporations will now have to file annual returns with the Condo Authority of Ontario. Each return will include information about the Corporation (such as the registration date, the number of units and names of directors). Some of the information on these returns will be publicly accessible on the CAO's database.

1. Initial Returns (new Corporations)

- Only need to be filed for Corporations created on or after November 1, 2017;
- Must be filed no later than 90 days after registration.

2. Turn-Over Returns (new Corporations)

- Only need to be filed for Corporations that hold a turn-over meeting on or after November 1, 2017;
- Must be filed no later than 90 days after the turn-over meeting.

3. Annual Returns (all Corporations)

- Must be filed between January 1 and March 31, except, if the Corporation was created between **January 1 - March 31**, it must be filed 90 days after the Corporation was created.



4. Notices of Change

Every Corporation must file a notice of change with the Registrar within 30 days of:

- A change of address for service of the Corporation or management;
- A change of the names of directors;
- A change in the number of units;
- An order appointing an administrator or inspector;
- The sale of property owned by the Corporation;
- Any notice of expropriation.

5. Filing Notices of Change and Returns

- Returns and notices of change must be filed electronically;
- There will be fees for filing late returns and notices (amounts TBD).

6. Registrar's Certificates

After filing a return or notice, the Registrar will issue a certificate. This certificate is evidence that a Corporation has complied with its obligations to file returns and notices of change. The certificate will likely be requested by parties such as lenders.

5. THE CONDOMINIUM AUTHORITY TRIBUNAL (CAT)

The Condominium Authority Tribunal (CAT) is a dispute resolution body. As of November 1, 2017, CAT has authority to hear disputes relating to records. It is anticipated that CAT will be authorized to hear other types of disputes in the future.

1. CAT Application Time Limits

An application to CAT on a records dispute must be made within 6 months (if there is no response to a record request from the board), or 60 days from the board's response.



2. CAT Dispute Resolution Process

Stage 1 – Guided Negotiation (**\$25 fee**): provides access to CAT’s online dispute resolution services, where parties will be directed to a guided negotiation process.

Stage 2 – Assisted Resolution (**\$50 fee**): CAT members will assist parties to try to resolve the dispute collaboratively.

Stage 3 – Tribunal decision (**\$125 fee**): provides parties with a CAT member who will conduct a formal adjudication of the issues in dispute, consider the evidence of the parties and issue a binding order.

CAT can order:

- A party to take, or refrain from taking, an action;
- A party to pay compensation for damages incurred up to \$25,000;
- Legal costs payable to another party, or to the Tribunal; and/or
- Costs payable for refusing to provide records.

Visit our website at www.lashcondolaw.com to find all of the standardized forms we refer to in this guide and learn more about the amendments to the Condo Act!

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