

Lash / Condo Law


OUR CONDO EXPERTISE

CONDO DIRECTORS

GUIDE TO THE CONDO ACT
AMENDMENTS AS OF
NOVEMBER 1ST

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Important changes to the Condominium Act, 1998 (the “Act”) came into effect on November 1, 2017 and many more changes are coming in the near future.

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

As a condo director, here are some things you should know...


1. DIRECTOR TRAINING

Every condo director elected or appointed after November 1, 2017 must take the mandatory director training provided by the Condominium Authority of Ontario (“CAO”) within 6 months following his/her election or appointment. A director who does not complete the mandatory training within this time frame will be automatically disqualified from the board.

The director training will be valid for a period of 7 years. After that, directors will have to take additional training.

The director training is free and consists of 21 online modules found on the CAO’s website. It covers a variety of topics such as:

1. The condo corporation;
2. The legal framework governing condos;
3. The role of directors and their key responsibilities;
4. Effective leadership;
5. Meetings;
6. Corporate records;
7. Financial management and insurance;
8. Reserve funds;
9. Collection and liens;
10. Physical maintenance of the condo, modifications and procurement processes;
11. Information sharing with owners;
12. Status certificates; and
13. The regulatory and dispute resolution authorities.



Exceptions: any director elected or appointed to a board before Nov. 1, 2017 is exempt from the mandatory training requirements, until and unless they are re-elected or reappointed after Nov. 1, 2017.

2. DIRECTORS' QUALIFICATIONS AND DISQUALIFICATIONS

There are new director **qualifications**. A director:

- must be an individual;
- must be at least 18 years of age;
- must not have a status of bankrupt;
- must not be found, under the Substitute Decisions Act, 1992 or the Mental Health Act, to be incapable of managing a property;
- must not be found incapable of managing a property by any court in Canada or elsewhere; and
- must have complied with the disclosure obligations set out in the Regulations.

There are new director **disqualifications**. A person ceases to be a director if:

- the person has a status of bankrupt;
- the person has been found, under the Substitute Decisions Act, 1992 or the Mental Health Act, to be incapable of managing property;
- the person has been found to be incapable of managing a property by any court in Canada or elsewhere;
- a certificate of lien has been registered against a unit owned by the person and they does not obtain a discharge of lien within 90 days of the registration of the certificate of lien;
- the person has not completed the director training within 6 months of their election or appointment; or
- the person has not complied with the required disclosure obligations.

A Corporation may pass a by-law or amend its general operating by-law to include additional director qualifications or disqualifications.



3. DIRECTORS' DISCLOSURE OBLIGATIONS

The amendments create new disclosure obligations for directors.

Directors must disclose the following **before** becoming a director:

- if they are a party to any legal action to which the Corporation is also party and a general description of the action;
- if a member of the person's immediate family is a party to any legal action to which the Corporation is a party, the name of the family member and a general description of the action;
- if an occupier of a unit the person or their spouse owns, or an occupier living with the person is a party to a legal action to which the Corporation is a party, the name of the occupier and a brief description of the action;
- if the person has been convicted of an offence under the Act within the last 10 years and a general description of the offence;
- if the person has an interest in a contract or transaction to which the Corporation, declarant or declarant affiliate is a party, in a capacity other than as a purchaser, mortgagee, owner or occupier and the nature of the interest;
- if the person is an owner in the Corporation and if their common expenses are in arrears for 60 days or more;
- if the person is not an owner of a unit in the Corporation; and
- if the person is not an occupier of a unit in the Corporation.

How and When to Disclose:

Disclosure must be provided:

1. In writing, when the person notifies the board they intend to run as a candidate in the upcoming elections; or
2. Orally or in writing, at the meeting where the person is running for election, if they did not give the board notice they intended to run as a candidate.

The Information must be provided regardless of whether the person is present at the meeting.



Appointed to the Board?

If a director is appointed to the board, they must provide the necessary disclosure before being appointed or within another period of time set out in a by-law of the Corporation.

Exceptions

A person elected or appointed to a board before Nov. 1, 2017 will be exempt from the disclosure obligations, unless and until the person is re-elected or re-appointed after Nov. 1, 2017.

In addition, directors have ongoing disclosure requirements. Directors are obligated to disclose any interest in a contract or transaction to which the Corporation will or is a party to, whether or not the interest is direct or indirect. This only applies if both the contract or transaction and the director's interest are material.


Timing for Disclosure:

Directors must disclose this information either:

1. at the board meeting at which the contract or transaction is first considered;
2. if the director is not interested in the contract or transaction at the date of the meeting, at the subsequent board meeting;
3. if the director becomes interested in the contract or transaction after it is entered into, at the first board meeting held after the director becomes aware of the interest; or
4. if the contract or transaction is one that is in the ordinary course of the Corporation's business and would not require approval by the directors or owners, the first board meeting held after the director becomes aware of the interest.

The disclosure statements will be entered into the minutes of the board meeting where the disclosure was made.

Directors with a material interest in a contract or transaction are not permitted to be present during the discussion of the contract or transaction, vote or be counted in the quorum on a vote unless certain, limited, exceptions apply.



A director who complies with these disclosure obligations and has acted honestly and in good faith will not be accountable to the Corporation for any profit or gain realized from the contract or transaction and the contract or transaction is not voidable simply because of the director's interest in it.

Note: Similar disclosure requirements apply to officers of the Corporation

4. INFORMATION CERTIFICATES

The Corporation will be required to send out information certificates to owners at certain times throughout the Corporation's fiscal year, including:

- 1. Periodic Information Certificates (PICs):**
 - **When:** within 60 days of the end of the Corporation's first and third fiscal quarter
 - **What:** information about the Corporation.
- 2. Information Certificates (ICUs):**
 - **When:** on the certain "triggering" events (for instance, within 5 days of the board losing quorum).
 - **What:** the certificate provides updates to owners on the happening of certain events, such as, a change of address of service of the corporation or management, a change in directors or officers, a change in the Corporation's insurance or if there are vacancies on the board.
 - **Note:** if a board loses quorum, the remaining directors are required to send an ICU within 5 days of losing quorum. If the board does not send out an ICU and/or call a meeting, an owner would be able to call a meeting to fill the vacancies.
- 3. New Owner Information Certificate (NOICs):**
 - **When:** within 30 days of an owner supplying the Corporation with their information.
 - **What:** includes the most recent PIC and ICU.

PICs, ICUs and NOICs may be posted on the Corporation's website or sent by electronic communication, if the owners' agree and the Corporation has provided notice of same.



5. NOTICES

The Corporation will be required to send out preliminary notices prior to a notice of 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 -5 day before Notice of Meeting

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

At least 15 days before meeting

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

The preliminary notice must be sent out using a standardized form and must set out the deadline for owners to submit information to potentially be included in the subsequent notice of meeting.

The board will **not** be required to include any material in the notice of meeting, unless the submission is made on behalf of the owners of **15%** of the units and the submission does not request to add anything to be presented at the meeting that is contrary to the Act or the regulations.

A by-law may provide additional information to be included in the preliminary notice.

6. QUORUM AT BOARD MEETINGS

Quorum at board meetings is now the **MAJORITY** of board members, irrespective of any vacancies.

Note: a board must send out an ICU within 5 days of losing quorum asking candidates to identify themselves to the board. If the board fails to send out an ICU and call a meeting of owners within 15 days of losing quorum, an owner would be able to call a meeting to fill the vacancies. The owner would be required to send out the notice using a mandatory form and must distribute the notice using either the record of owners and mortgagees or by delivering notice personally to owners or owners' units or their mailboxes.



7. TELECONFERENCE BOARD MEETINGS

The amendments provide that a directors' meeting may be held by teleconference or another form of communications system prescribed by the regulations, if all directors of the Corporation consent to the means used for holding the meeting.

This means a Corporation is no longer required to pass a by-law authorizing teleconference board meetings.

8. QUORUM REQUIREMENTS AT OWNERS' MEETINGS

The amendments to the Act lower the quorum requirements for certain mandatory meetings. A quorum at turnover meetings and annual general meetings would be reached with:

1. The owners of 25% of the units at the first and second attempts to hold the meeting; and
2. The owners of 15% of the units at the third attempt and any subsequent attempt to hold the meeting.

Exception:

A Corporation may pass a by-law that requires quorum to remain the owners of 25% of the units at any owners' meeting, irrespective of the attempt.

9. VOTING

Who can vote?

For an owner to vote at a meeting of owners, the owner's name must appear in the record of the Corporation required by section 46.1 of the Act or be required by that section to appear in that record and the owner must be **entitled** to vote at the meeting.



Methods of Voting:

Vote may be cast by:

1. A show of hands, personally or by proxy; or
2. A recorded vote that is:
 - Marked on a ballot cast personally or by proxy;
 - Marked on a proxy; or
 - Indicated by telephonic or electronic means, if a by-law permits.

Note: “telephonic or electronic means” means any means that uses the telephone or any other electronic or other technological means to transmit information or data, including telephone calls, fax, e-mail, automated touch-tone telephone system, computer or computer networks.

Note: proxies are now on standardized, mandatory forms.

10. RETURNS AND NOTICES

Every Corporation will be required to file returns and notices with the registrar.

Every return must contain general information about the Corporation, all of which is provided for in the form.

1. **Initial Return (New Corporations):** A new Corporation will be required to file an initial return with the registrar if the Corporation is created on or after January 1, 2018. The initial return must be filed no later than 90 days after the Corporation is created.
2. **Turn-over Return (New Corporations):** A new Corporation will be required to file a turn-over return with the registrar if the Corporation holds a turn-over meeting on or after January 1, 2018. The turn-over return must be filed no later than 90 days after the day of the turn-over meeting is held and the owners elect a new board.
3. **Annual Return (Every condo):** Every Corporation is required to file an annual return with the registrar between January 1 and March 31 each year. If the Corporation is created after March 31, the annual return must be filed no later than 90 days after the corporation is created.

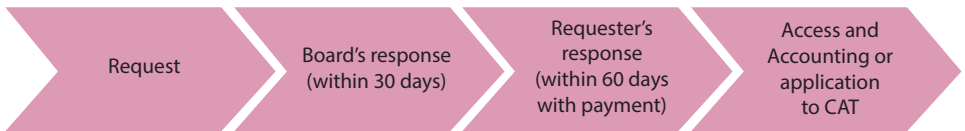
11. RECORD RETENTION PERIODS


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

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

12. PROCESS FOR EXAMINING RECORDS

There is a new method of requesting records:





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 request and board's response both use standardized forms. The right to examine records does not apply unless the record solely relates to interests as an owner, purchaser or mortgagee, having regard to the purposes of the Act. **However**, a requester does **not** need to provide the Corporation with any reasons for the request.

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).

The fees for requesting records vary whether:

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

Only actual costs incurred by the Corporation can be charged.

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

1. Does not respond and pay the fee payable for request within 60 days;
2. Apply to CAT for resolution of the request within 60 days of board's response; or
3. If the corporation does not respond to the request, the requester does not apply to CAT within 6 months of the request.

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.

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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