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## **GUIDE TO RECORDS**

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# A PRACTICAL GUIDE TO RECORDS FOR CONDOMINIUM CORPORATIONS

The 2017 amendments to the *Condominium Act, 1998* (the “**Act**”) brought with it a number of new responsibilities and obligations on condominium corporations. Included in the amendments were changes to record keeping in corporations as well as the process owners and corporations need to follow when requesting and responding to records requests.

This pamphlet provides some practical advice that directors and managers need to know about the changes to record keeping and the records request processes that need to be followed.

## Maintenance and Retention Periods for Records

Section 55 of the **Act** requires corporations to keep adequate records of such things as: financial records, minutes of owners’ or board meetings; copies of the corporation’s governing documents, returns and notices, a list of the owners and mortgagees, performance audits, reserve fund studies... the list goes on and on.

Different records have different retention periods. Below, we’ve summarized some of the key records and their retention periods:



<b>Record</b>	<b>How long does the Corporation have to retain it?</b>
Financial Records	At least 6 years after the end of the last fiscal period to which they relate
Minutes of board meetings and owners' meetings	Always
A corporation's governing documents (declaration, by-laws, rules)	Always
Returns and notices from the CAO	7 years
Turnover documents	Always
The list of owners, mortgagees and tenants	Always
Reserve Fund Studies and Plans	Always
All agreements entered into by the Corporation	7 years
Status Certificates	7 years
Proxies and ballots from owners' meetings	At least 90 days after the meeting except if challenged by an owner, in which case until the challenge is resolved
Records related to units owners (such as incident reports)	7 years

**TIP:** Maintaining organized, electronic copies of records, in a safe and secure database can help directors and managers quickly find and access the records when required. Whether to respond to a records request or gather historical records needed for litigation – filing cabinets are out, virtual storage (provided it is safe, secure, reliable and complies with privacy legislation) is in!



## Records Requests

The 2017 amendments also brought with it an entirely new way for owners, mortgagees, purchasers, or their agents to request records from corporations.

Owners must now submit the mandatory and prescribed “Request for Records” form to a corporation when requesting access to and copies of records of a corporation. On the “Request for Records” form, the requester must indicate which core-records and/or non-core records the requester is seeking. The requester must also indicate whether they want to examine the records, obtain electronic copies, or paper copies.

Corporations have 30 days to respond to the “Request for Records” on, again, a mandatory and prescribed “Board’s Response to Records Request Form” indicating which records the corporation has determined may be examined by the requested and which records the corporation determined the requested may not have access to.

**TIP:** Sometimes its difficult to ascertain precisely what non-core records the requester is looking for. Don’t wait until the 30th day, when the Board’s Response to Records Request is due, to ask the requester to clarify what records they are seeking. Asking for clarity and a precise list of the records being requested prior to the 30 day deadline could avoid future conflict or even an application before the Condominium Authority Tribunal (the “**CAT**”).

If the requester is seeking core-records, in electronic format, corporations have to provide these records to the requester at the same time as the Board’s Response to Records Request (i.e. on the 30th day after the request was submitted).



If the requester is seeking core-records, in paper format, corporations must outline the total printing fees in the Board's Response to Records Request. The requester must respond and pay the printing fees. Within 7 days after payment is received, the corporation has to deliver the paper copies to the requester.

Now comes the fun part, responding to non-core records...

If a requester is seeking non-core records, corporations have to respond to the request within 30 days on the Board's Response to Records Request form outlining which records the corporation has determined the owner may examine or may not examine.

If a corporation determines that an owner may not examine a record, the corporation has to advise the requester as to the basis of the refusal on the Board's Response to Records Request form.

As a starting point, generally condominium corporation's records should be treated as an open-book. There are only few instances in the **Act** where a corporation can refuse to provide requesters with records:

1. If the record relates to employees of the corporation, except for contracts of employment between any of the employees and the corporation;
2. Records relating to actual or contemplated litigation, as determined by the regulations, or insurance investigations involving the corporation;
3. records relating to specific units or owners; or
4. any other prescribed records.



Since 2017, CAT has released several interesting decisions about a requester's entitlement to records. Below are just a few examples:

1. ***Baljak v HCC No. 371*** – Ex-owners are not entitled to records of a corporation;
2. ***Sharma v. TSCC No. 2510*** – Directors cannot circumvent the exemptions in section 55(4) of the **Act** by requesting exempt records in their capacity as “directors”;
3. ***Landau v. MTCC 757*** – Some records may be exempt from production under the common law principle of “solicitor-client privilege” such as opinions from a corporation’s legal counsel;
4. ***Gagnon v. CCC 331*** – draft meeting minutes are not records of the corporation and thus owners don’t have a right to access them. Minutes only become records of the corporation once approved by the owners (for owners’ meeting minutes) or the board (for board meeting minutes).

**TIP:** When in doubt about a requester’s entitlement to a record, contact your legal counsel. This could save you the unnecessary costs of defending an application before the CAT!

Corporations are permitted to charge a reasonable fee for labour costs incurred in compiling and producing non-core records. As of the date of this brochure, the CAT has held that a reasonable fee for labour is \$31.50/hour.

On the Board’s Response to Records Request form, corporations must provide an approximate fee of the estimated time and cost for the production of each non-core record.



Once receiving the Board's Response to Records Request form, the requester has 2 options: pay the fee or dispute the fee being charged at the CAT.

If the requester agrees and pays the fee, the corporation has an additional 30 days, upon receiving payment, to provide the requester with the records.

**TIP:** The accompanying statement! Pursuant the *Act*, if a corporation redacts any records, the corporation has to provide an "accompanying statement" describing the basis for the redaction. A common example is the redaction of board meeting minutes. Often, the board discusses individual units/owners, litigation or employees. All of these discussions may be exempt from examination by a requester and redacted from board meeting minutes. It is important to remember that corporations are obligated to provide a statement specifying why the particular discussion or name was redacted. For example: ***"This sentence has been redacted pursuant to section 55(4)(c) of the Condominium Act, 1998 as it involves discussions about a particular unit"***.

The law on records in condominium corporations is constantly evolving with new CAT decisions. To keep up to date, don't forget to subscribe to our blog!

*This brochure was drafted in October 2023. The law and decisions outlined herein are accurate as to the date of drafting. The information provided in this brochure is intended for general information purposes only and does not constitute legal advice or an opinion of any kind. Lash Condo Law does not warrant or guarantee the quality, accuracy or completeness of any information provided herein.*



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