Guide to Condo Act changes

GUIDE TO KEY CONDO ACT CHANGES TAKING EFFECT IN FALL 2017 AND EARLY 2018

Contents

This guide provides a summary of some of the key changes in the Condominium Act, 1998 ("Condo Act") and the accompanying General Regulation (O. Reg. 48/01) that came into force on November 1, 2017 or will come into force in early 2018. This guide does not summarize all of the Condo Act and regulatory changes. For complete information on what came into force on November 1, 2017 or January 1, 2018 and what is coming into force in early 2018, please consult the official versions of the Condo Act, O. Reg. 48/01, O. Reg. 179/17 and O. Reg. 377/17 on the e-Laws website. This guide also does not reflect the complete technical scope of the changes it summarizes. For details about the changes that are not addressed in this guide, please consult the official versions of the Condo Act, O. Reg. 48/01, O. Reg. 179/17 and O. Reg. 377/17 on the e-Laws website.

This guide is provided for information purposes only and is not legal advice. It is not intended to replace the Condo Act or its regulations, and reference should always be made to the official version of the legislation. Although we endeavour to ensure that the information in this guide is as current and accurate as possible, errors occasionally do occur. You are encouraged to review the relevant provisions in the Condo Act and accompanying regulations.

I. Communications by corporations to owners and mortgagees

A. Information Certificates

As of November 1, 2017, condominium corporations are required to send out three different types of "information certificates" to owners, using mandatory forms developed by the Ministry of Government and Consumer Services and posted on the government's website:

1. A "periodic information certificate" (PIC) must be sent to owners at least twice in a corporation's fiscal year: within 60 days of the end of the first fiscal quarter and 60 days of the end of the third fiscal quarter. The PIC contains information for owners about the condominium corporation's board, finances, insurance, reserve fund, legal proceedings, and other matters. Some of the information that must be included in the PIC is based on information that must already be included in status certificates, which are typically provided to purchasers (see s. 76 of the Condominium Act). The information in the PIC must be current as of the last day of the quarter before it is sent out (either the last day of the first or the third fiscal quarter). Please see the PIC form and s. 11.1 of O. Reg. 48/01 for details on what information must be included in the PIC.

2. A “information certificate update” (ICU) must be sent to owners when certain events trigger the need for an update, for example, when there is a change in the directors on the board. Please see the ICU form and s. 11.2 of O. Reg. 48/01 for details on what events require an ICU to be sent.

3. A “new owner information certificate” (NOIC) must be sent to all new owners, containing information from the most recent PIC and any subsequent ICU that were sent to owners. Please see the NOIC form and s. 11.3 of O. Reg. 48/01 for details.

Corporations are allowed to distribute information certificates through a website, as long as a notice of online posting is sent to owners using the mandatory Notice of Online Posting of Information Certificate form. Information certificates and notices of online posting would have to be sent to owners using the allowed communication methods set out in ss. 47 and 54 of the Condominium Act.

Condominium corporations can pass by-laws to require that a PIC or ICU be sent on a more frequent basis (in those cases, the information must be current as of the date set out in the by-law). A copy of the most recent PIC and any subsequent ICU would also need to be made available at the Annual General Meeting.

Condominium corporations that have held a turnover meeting under s. 43 of the Condo Act can exempt themselves from the information certificate requirements for any given fiscal year, provided that the owners of 80% of the units agree by way of consent. See s. 11.4 of O. Reg. 48/01 for details.

For more detail on the timing and content of information certificates, see s. 26.3 of the Condo Act and ss. 11.1 to 11.5 of O. Reg. 48/01.

B. Record of Owners and Notice to Owners

As of November 1, 2017, there are new requirements for how the corporation’s record of owners and mortgagees is created and maintained, and for how notices should be delivered to owners and mortgagees. This includes new requirements around agreements by owners and mortgagees to receive notices from the corporation electronically. See new ss. 46.1 and 47 of the Condo Act.

Changes or updates to the record of owners and mortgagees after November 1, 2017, would have to proceed under the new provisions.

Details regarding how owners and mortgagees can get added to the corporation’s record, and how owners and corporations can agree to communicate electronically, are set out in new ss. 12.3 to 12.7 of O. Reg. 48/01.

1. Record of owners and mortgagees

New owners must give notice in writing to the corporation setting out the owner's name and identifying the owner's unit, as soon as possible after becoming an owner and in any event no later than 30 days after becoming an owner. The same provision applies to owners of common interests in a common elements condominium corporation. The owner can also choose to identify an address for service to be included in the record of owners. The corporation will then be obligated to maintain this information in the record of owners and mortgagees, along with any agreement with the owner to receive notices electronically. The Condo Act also gives mortgagees a right to be included in the corporation's record of owners and mortgagees in certain cases, and if proper notice is given. See s. 46.1 of the Condo Act and ss. 12.3 to 12.6 of O. Reg. 48/01 for more detail.

Owners and mortgagees can identify their units to the corporation in a number of different ways, including by using optional forms available on the government's website. Similar options apply to owners of common interests in a common elements condominium corporation. For more detail on the different ways that owners and mortgagees can identify their units and interests, see the Notice Relating to Record of Owners and Notice Relating to Record of Mortgagees forms on the government's website, s. 41.6 of the Condo Act, and ss. 12.3 and 12.5 of O. Reg. 48/01. Corporations have the option of serving notices to owners at the address for service or at the owners unit. If an owner wants to require the corporation to send notices to the owner's address for service and not the owner's unit, the owner must make a separate request in writing to the corporation. See s. 47(4) of the Condo Act for more detail.

The developer (i.e., the "declarant") who is the first owner of a condominium property's units (or the common interest in a common elements condominium corporation) immediately after the condominium is registered is also required to identify all of the units in the property using a combination of full addresses and legal descriptions. For more detail on developers are required to identify the units, see s. 12.3 of O. Reg. 48/01.

2. Agreements to communicate electronically

The November 1, 2017 changes contain new provisions about how owners and mortgagees can agree to receive notices from a corporation by electronic delivery (for example, email). Information about agreements to receive notices electronically must be maintained by the corporation in the record of owners and mortgagees.

Owners and mortgagees can make use of an optional form for their agreement to electronic delivery available on the government's website, or they can follow the requirements set out in the Condo Act and the regulations.

When corporations send a communication electronically, it must be sent in a way that allows recipients to view, store, retrieve, and print the contents of the communication.

See new ss. 46.1(3)(d) and (e) and 47(4)-(6) of the Condo Act and ss. 1(2) and 12.7 of O. Reg. 48/01.

II. Mandatory Disclosures and Training for Condominium Board Directors

A. Disclosures

Changes to the qualifications and disqualifications for condo board directors came into force on November 1, 2017. These include new requirements that: (1) directors and candidates for director positions make certain disclosures, and (2) directors complete mandatory training. Most of the details about these new requirements are set out in s. 29 of the Condo Act and ss. 11.6 to 11.10 of O. Reg. 48/01.

1. Timing and process for disclosures by candidates for director positions

The new disclosure rules for candidates for director positions will only apply to candidates in elections that are held on or after Dec. 11, 2017 (40 days or more after November 1, 2017) and only if a notice for that meeting was not sent before November 1, 2017.

The disclosure process for candidates makes use of the new procedures for preliminary notices of meeting, and notices of meeting. If a preliminary notice of meeting announces an election for a director position, and you respond to the notice by indicating your intention to be a candidate in the election, you would also be required to submit a statement containing any required disclosure information. That information would then be distributed to owners with the notice of meeting, in advance of the election. If candidates did not identify their candidacy in advance, they would be required to make the disclosure at the meeting where the election takes place. Candidates who wish to be appointed to a vacant board position by a majority of the remaining board members would need to make the required disclosures directly to the board in advance of the appointment. Directors appointed by a developer, or elected by owners, to the first

board (the pre-turnover board that is controlled by the developer) are exempt from the candidate disclosure requirement.

The disclosure process for candidates is different in cases where there are not enough directors remaining in office to constitute a quorum. In those cases, no preliminary notice of meeting is sent to owners. Instead, the corporation would be obligated to send an information certificate update (ICU) to owners requesting that candidates submit their names to the board. When responding to the ICU, candidates would be required to submit a statement containing any required disclosure information. That information would then be distributed to owners with the notice of meeting, in advance of the election. If candidates did not identify their candidacy in advance, they would be required to make the disclosure at the meeting where the election takes place. An owner can also call a meeting to fill the vacancies if the conditions in s. 34(5) of the Condo Act are met. In that case candidates would be required to disclose the required information at the meeting where the election is taking place.

See ss. 11.2, 11.6, 11.9 to 11.11, 12.1 to 12.2, and 12.8 of O. Reg. 48/01 for more detail.

2. Timing and process for disclosures by sitting directors

The new disclosure requirements for sitting directors also came into force on November 1, 2017. As of that date, individuals appointed or elected to a position on the board are subject to ongoing disclosure requirements for the duration of the person's term. Failure to meet the disclosure requirements immediately disqualify the person from being a director.

For directors elected or appointed to their position before the disclosure regulations come into effect, the deadlines for disclosure to the board will typically begin on November 1. The disclosures need to be made orally or in writing to the condominium corporation's board. For more details, see s. 29(2)(f) of the Condo Act and s. 11.10 of O. Reg. 48/01 for more detail.

3. What candidates for director positions and sitting directors must disclose

Candidates for director positions (excluding positions on the first developer-appointed board) must disclose the following information:

1. If the candidate is a party to any legal action in which the corporation is also a party, together with a statement containing a brief and general description of the legal action.

2. If the spouse, child, or parent of the candidate, or the child or parent of the candidate's spouse, is a party to any legal action involving the corporation, together with a statement containing the name of the spouse, child or parent and a brief and general description of the legal action.

3. If an occupier of a unit that the candidate or a candidate's spouse owns, or that the candidate occupies with the occupier, is a party to any legal action to which the corporation is also a party, together with a statement containing the name of the occupier and a brief general description of the legal action.

4. If the candidate has been convicted of an offence under the Condominium Act or the regulations, within the past 10 years, together with a statement containing a brief and general description of the offence.

5. If the candidate has an interest in a contract or transaction that the corporation is also a party to, and the candidate's interest is not as a purchaser, mortgagee, or owner/occupier of a unit, then a statement of that fact and the nature and extent of this interest. This obligation is similar to but not the same as the obligation in existing s. 40 (1) of the Condominium Act, dealing with disclosure of director interests.

6. If the contract or transaction that paragraph 4 applies to involves the purchase or sale of property by the corporation (as a buyer) or to the corporation (as a seller), that the seller acquired within 5 years before the date of the contract or transaction, then the candidate must provide a statement of the cost of the property This obligation is similar to but not the same as the obligation in s. 40 (2) of the Condominium Act, dealing with disclosure of director interests in the purchase of property.

7. If the candidate has an interest in a contract or transaction, in a capacity other than as a purchaser, mortgagee, or owner/occupier or a unit, to which the developer or a developer's affiliate is a party as well, then the nature and extent of this interest.

8. If the candidate is a unit owner in the corporation and the candidate's common expense contributions are in arrears for 60 days or more.

9. If the candidate is not an owner of a unit in the corporation.

10. If the candidate is not an occupier of a unit in the corporation.

11. Anything else a condominium corporation's by-laws require.

See ss. 11.6 and 11.9 of O. Reg. 48/01 for more detail.

Sitting directors (other than directors on the first developer-appointed board) are subject to ongoing disclosure requirements relating to the information in items 2 through 7 and 11 in the above list of candidate disclosures. See s. 11.10 of O. Reg. 48/01 for more detail.

If a director is appointed or elected to the first developer-appointed board under s. 42 of the Condominium Act (before a turnover meeting where control is transferred to the owners), then the director would need to disclose if the director has been convicted of an offence under the Condominium Act or regulations within the previous 10 years and all other information set out in a by-law of the corporation. See s. 11.10 of O. Reg. 48/01 for more detail.

B. Training

1. Who must take the training and when

The November 1, 2017 changes include new director training requirements. All directors elected or appointed to a position on the board after November 1, 2017, must complete the required training within 6 months of being elected or appointed. Directors elected or appointed to a board before November 1, 2017 do not need to take the training unless they are re-elected or re-appointed after November 1, 2017.

Directors are required to retake the training if they are elected or appointed to the board again and have not completed the training within the past seven years. Directors appointed by a developer or elected by owners to the first board (the pre-turnover board controlled by the developer) are exempt from the training requirement, unless they are elected or appointed to the board on or after the turnover meeting.

See ss. 11.7 to 11.9 of O. Reg. 48/01 for more detail.

2. What training must be taken

The Condominium Authority of Ontario (CAO) is authorized to designate the training that directors need to take. Check the CAO's website for information on the designated training.

Directors have a right to be reimbursed by their condominium corporation (the one in which they held a director position at the time they took the training) for any costs directly incurred in taking the required training.

See ss. 11.7 to 11.8 of O. Reg. 48/01 for more detail.

3. Records relating to training

Within 15 days of receiving evidence of completion, directors who complete the training are required to send the evidence of completion to all condominium corporations in which they held a director position at the time of the training.

The CAO is required to maintain adequate records relating to each person who has completed the training course, including:

a. the name of each person who has completed the training,

b. the name of each corporation in respect of which the person was a director at the time the person completed the training, and,

c. the date the person completed the training.

The CAO must allow a corporation to examine or obtain copies of these records with respect to the corporation's own directors.

See s. 11.8 of O. Reg. 48/01 for more detail.

III. Meetings and Voting

A. Preliminary Notices and Notices of Meeting

As of November 1, 2017, there is a new requirement for boards to send out a preliminary notice to owners in advance of a notice of meeting of owners, and new requirements for the content of notices of meeting. The preliminary notice of meeting and notice of meeting must be sent out using mandatory forms available on the government's website. Many of the details regarding the preliminary notice of meeting and notice of meeting are set out in new ss. 45.1 and 47 of the Condo Act, and ss. 12.2 and 12.8 of O. Reg. 48/01.

1. Timing of notices

There is a short transition period for these new requirements. The new requirements for preliminary notices and notices of meeting apply only to a meeting of owners that is held on or after December 11, 2017 (40 or more days after November 1, 2017), and only if a notice for that meeting was not sent before November 1, 2017.

Under the new requirements, a preliminary notice must be sent to owners using the new mandatory form at least 20 days in advance of a notice of meeting. Two exceptions to this requirement are:

1. If the meeting has been requisitioned by owners under section 46 of the Act, the preliminary notice only needs to be sent out at least 15 days in advance of the notice of meeting.

2. Boards or individual owners that call a meeting to fill vacancies when there are not enough directors to constitute quorum are exempt from the preliminary notice requirements. See section G. below for a summary of the proposed procedure for calling a meeting when there are not enough directors to constitute quorum.

The notice of meeting must in turn be sent to owners, using the new mandatory form, at least 15 days in advance of a meeting of owners.

The preliminary notice must also set out a deadline for owners to submit information to potentially be included in the subsequent notice of meeting. This deadline must be at least 15 days after the preliminary notice is given and at least 1 day before the notice of meeting is given.

Here is a sample timeline for calling a meeting, consistent with the new requirements:

35 days before the meeting: Preliminary notice is given to owners.

20 days before the meeting: Deadline for owners to submit information to potentially be included in the notice of meeting.

15 days before the meeting: Notice of meeting is given to owners.

Meeting day: Meeting is held.

See ss. 47(1)(b) and (c) of the Condo Act and ss. sections 12.2 and 12.8 of O. Reg. 48/01 for more detail.

2. Content of preliminary notices and notices of meeting

Below is a summary of a few of the key elements of the new preliminary notice and notice of meeting forms. For more detail, please see the mandatory Preliminary Notice of Meeting of Owners form and the mandatory Notice of Meeting of Owners form available on the government's website, and ss. 12.2 and 12.8 of O. Reg. 48/01.

a) Information about candidates for director positions

If the meeting is to elect a director, the preliminary notice must request that individuals interested in being candidates notify the board in writing of their intention to be candidates, their names, and their addresses. Candidates are required to submit any necessary disclosures along with their notice of candidacy to the board. If a candidate notifies the board of their candidacy by the deadline identified in the preliminary notice, then the candidate's information must be included in the notice of meeting. See ss. 28(2) and 45.1(1)(a) of the Condo Act and ss. 11.6, 12.2 and 12.8 of O. Reg. 48/01 for more detail.

b) Information about candidates for auditor

If the meeting is to remove or appoint an auditor, the preliminary notice must request that owners who wish to propose a candidate for auditor may notify the board in writing of the name and address of the candidate. If the information about the proposed candidate for auditor is submitted to the board by the deadline identified in the preliminary notice, then this information would need to be included in the notice of meeting. See ss. 12.2 and 12.8 of O. Reg. 48/01 for more detail.

c) Other material that owners wish to be included in the notice of meeting

Every preliminary notice must include a request that owners can submit to the board any material they wish to include in the notice of meeting by the deadline identified in the preliminary notice. The board is not obligated to include the material in the notice of meeting, unless, among other things, the submission is made on behalf of the owners of 15 per cent of the units who also appear in the corporation's record of owners, and is submitted using the mandatory Submission to Include Material in the Notice of Meeting of Owners form available on the government's website. For more detail on these requirements, see the Submission to Include Material in the Notice of Meeting of Owners form on the government's website and s. 12.8 of O. Reg. 48/01.

3. Notice of meeting when there is no quorum on the board

If there are not enough directors remaining in office to constitute a quorum the remaining directors are required to send an information certificate update (ICU) to owners asking candidates to identify themselves to the board. The remaining directors must then send out the usual notice of meeting.

An owner can also call a meeting to fill the vacancies (pursuant to s. 34(5) of the Condo Act) if there are no directors left on the board or the remaining directors do not

constitute a quorum and do not call a meeting within 15 days of the board losing quorum, and no other owner has called a meeting. The owner would be required to send out a notice of meeting using a special mandatory form for such meetings, available on the government's website. The meeting would need to be held within 30 days of the notice going out.

See in particular ss. 11.2, 11.11, 12.2, and 12.8 of O. Reg. 48/01 for more detail.

B. Quorum and Voting

As of November 1, 2017, new provisions in the Condo Act and the regulations lower the quorum requirements for certain mandatory meetings, create new rules for voting, require a mandatory proxy form, and provide greater flexibility for board meetings.

1. Quorum

Quorum requirements are lowered for turnover meetings, annual general meetings, and any other meeting to elect one or more directors and or to appoint an auditor. For these meetings, quorum is reached with:

a. 25% of owners at the first and second attempts to hold the meeting; or,

b. 15% of owners at the third attempt and any subsequent attempts.

There is a short transition period for these new quorum requirements. They apply only to those meetings that are held on or after December 11, 2017 (40 days or more after November 1, 2017), and only if a notice for that meeting was not sent before November 1, 2017.

See in particular s. 12.9 of O. Reg. 48/01 for more detail.

2. Voting

As of November 1, 2017, amendments to the Condo Act and the regulations clarify who can vote at a meeting and the methods that can be used for voting. Corporations will also have explicit authority to make provisions in their by-laws to allow for voting by telephonic or electronic means. See ss. 51, 52, and 56 of the Condo Act and s. 12.10 of O. Reg. 48/01.

Changes to the regulations also create a new standard by-law provision for all condominium corporations in the province, providing that owners who cast a vote have the right to keep the content of the vote secret. Only a board described in the new s.

11(8) of the Condo Act would be able to amend or repeal this standard by-law provision. See s. 14.1 of O. Reg. 48/01 for more detail.

3. Proxies

As of November 1, 2017, owners or mortgagees who wish to be represented at a meeting of owners by proxy, or to vote on any matters at a meeting of owners by proxy, must use a mandatory proxy form available on the government's website. Any owner or mortgagee who appoints a proxy on or after November 1, 2017 must use the new form. For more detail about the content of the form, see the mandatory Proxy Form available on the government's website.

C. Board meetings by electronic means

Changes to the Condo Act and the regulations allow directors to agree to hold board meetings by teleconference or another electronic or digital communication system, as long as the system allows the directors to communicate concurrently. These changes would apply to any meeting of directors called on or after November 1, 2017. See proposed s. 11.12 of O. Reg. 48/01 for more detail.

D. By-law voting thresholds

Changes to the Condo Act and the regulations lower the required by-law voting threshold for specific matters, including to allow for voting at owners' meetings by telephonic or electronic means, to add material or information to be included in information certificates and meeting notices, and to add additional disclosure obligations for candidates and directors. For the complete list of matters subject to the new lower threshold, see ss. 14(0.1) and (2) of O. Reg. 48/01. For these matters, the by-law voting threshold is a majority of the votes cast by owners at the meeting. The new by-law threshold will apply to votes taken at meetings that are held on or after December 11, 2017 (40 days or more after November 1, 2017), and only if a notice for that meeting was not sent before November 1, 2017.

E. When condo board rule changes become effective

As of November 1, 2017, changes to the Condo Act affect when rule changes made by the board will become effective. If the board gives notice of a rule change and does not receive a requisition for a meeting of owners within 30 days, the rule change becomes effective the next day. If the board does receive a requisition for a meeting of owners within 30 days of giving notice of the rule change, the rule change will become effective

if (1) there is no quorum at the first attempt to hold the meeting, or (2) quorum is established but the owners do not vote against the rule change at the meeting. This new provision applies when the notice of a rule change is given to owners on or after November 1, 2017. See s. 58 of the Condo Act and s. 69 of O. Reg. 48/01 for more detail.

F. Consents by owners

As of November 1, 2017, changes to the Condo Act make the loss of a unit owner's right to consent consistent with the loss of an owner's right to vote under s. 49(1) of the Condo Act. This means that owners in arrears of contributions to common expenses for 30 days or more are not entitled to consent. Changes to the Condo Act also clarify that consents by owners are on the basis of one consent per unit. Transition rules apply to the new provisions relating to the loss of a unit owner's right to consent. See ss. 22, 51.1, 60, 107, 120, and 124 of the Condo Act and ss. 11.4, 63, 70 and 75-77 of O. Reg. 48/01 for more detail.

IV. Record Retention and Access

Changes to the Condo Act and regulations create new obligations and procedures relating to how a corporation must retain records, and how owners, mortgagees, and purchasers (or their agents) can access a corporation's records. The new Condominium Authority Tribunal has exclusive jurisdiction to resolve most disputes about record retention and access.

A. Condominium Authority Tribunal

As of November 1, 2017, the Condominium Authority Tribunal has jurisdiction to hear most disputes about matters relating to the retention of, or access to, a corporation's records under s. 55 of the Condo Act. Disputes relating to a request for records can be brought to the Tribunal if the request was made on or after November 1, 2017. For more detail on the Tribunal's jurisdiction, see O. Reg. 179/17 under the Condo Act.

B. Record retention

The November 1, 2017 changes include new requirements relating to a corporation's obligations to keep records. These changes identify specific types of records that a corporation must keep in addition to those records identified in s. 55(1) of the Condo Act. The changes also provide for new minimum retention periods for each type of

record, and new requirements for how and where records must be maintained. See s. 13.1(1) of O. Reg. 48/01.

1. Two primary retention periods

The regulations rely on two primary retention periods for a corporation's records:

1) a default 7 year minimum retention period for financial records and other operating records of the corporation; and,

2) an unlimited retention period for important corporation documents, including current or unexpired versions of agreements and insurance policies.

The chart at the end of this guide lists specific types of records types corporations are required to retain, and the corresponding retention period for each. For more detail on retention periods, including the start dates for counting the retention period, see in particular s. 13.1(2) of O. Reg. 48/01.

2. Minimum retention period for proxies, ballots, and other records

A special minimum retention period applies to proxy instruments, ballots, and recorded votes from meetings of owners: they must be kept for a minimum of 90 days from the date of the meeting.

For records that a corporation keeps and for which a retention period is not specifically identified in the regulations, the corporation would be required to keep them for whatever period the board determines is necessary for the corporation to perform its objects and duties or to exercise its powers.

See s. 13.1(2) of O. Reg. 48/01 for more detail.

3. Extensions of the minimum retention periods

In certain cases, the minimum retention period is extended.

If the corporation receives written notice of actual or contemplated litigation relating to proxy instruments or ballots, and the corporation still has those records, the records must be kept until the dispute is abandoned or finally resolved.

If records are subject to a request for access from an owner, mortgagee or purchaser, and the corporation still has those records, they must be kept until the request is abandoned or finally resolved.

See s. 13.1 of O. Reg. 48/01 for more detail.

4. Method of Retention

The changes set out a framework for how a corporation should maintain its records.

1) Electronic records: Electronic records need to be kept in a manner that is capable of reproducing the record in an intelligible form within a reasonable time. The system would need to use reasonable methods to protect against unauthorized access (e.g., password-based access), and would need reasonable protection against loss of the information (e.g., use of back-ups).

2) Paper records: The condominium corporation would need to store paper records on any part of the condominium property that is appropriate for record storage, or at another location if: (1) the board determines the location will enable it to carry out its duties with respect to records, (2) the location is an appropriate location for record storage, and (3) the location is either reasonably close to the property, or is at an office of the corporation's condo manager or management provider located in Ontario.

See s. 13.2 of O. Reg. 48/01 for more detail.

C. Access to Records

As of November 1, 2017, the process for accessing records:

- Requires the use of standardized forms for record requests and a corporation's response to requests.
- Sets mandatory timelines for a corporation to respond, including quicker access to certain "core" records.
- Puts limits on the fees that corporations can charge for record requests.

The new procedures apply to any request for records made on or after November 1, 2017.

1. Overview of process for accessing records

The new process for accessing a corporation's records proceeds in four main steps: (1) Request, (2) Board's Response, (3) Requester's Response, and (4) Access and Accounting. Steps 1, 2, and 3 are completed by using mandatory forms available on the government's website.

1) **Request**: The requester (either an owner, mortgagee, purchaser, or their agent) must send their request to the corporation using the Request for Records form, identifying the records being sought and how the requester prefers to access them (e.g., in electronic or paper format). The request must be solely related to the requester's interests as an owner, a purchaser or a mortgagee of a unit, having regard to the purposes of the Condo Act, but requesters are not required to tell the corporation the purpose of their request. Requests can be sent to the address for service for the corporation or the corporation's manager, or at another address, or by another method, that the corporation's board designates (for example, an email address). Addresses for receiving record requests are included in the periodic information certificate sent to owners.

2) **Board's Response**: The board of the corporation must respond to the requester within 30 days using the mandatory Board's Response to Request for Records form, which requires an estimate of the cost, if any, of providing access to each set of records requested, and identifies any records or portions of records that will not be disclosed and the reasons for not disclosing them.

3) **Requester's Response**: Requesters may be required to send back the Board's Response to a Request for Records form to confirm which records they want, along with payment of any estimated cost.

4) **Access and Accounting**: The corporation provides access to the requester, along with an accounting of the actual costs incurred in providing the access. When providing records electronically or in paper copy in response to a request, each record must be separately identified by the corporation.

The timing for steps 3 and 4 (Requester's Response, and Access and Accounting), and the costs associated with the request, depend on whether the request is for "core" or non-"core" records. See the Request for Records form available on the government's website for a list of "core" records. See also the definition of core records in s. 1(1) of O. Reg. 48/01.

Corporations and requesters can also agree to skip any or all of the above steps by using the Waiver by Requester of Records form available on the government's website that allows requesters to agree to waive their rights to the above steps.

A request for records will deemed to be abandoned by the requester under two scenarios:

1) If within 60 days of receiving the board's response, the requester does not return the required requester's response or start an application at the Condominium Authority Tribunal.

2) If within 6 months of submitting the initial request, the requester does not start an application at the Condominium Authority Tribunal.

See ss. 13.3 to 13.10 of O. Reg. 48/01 for more detail.

2. Process for accessing non-core records

For non-core records, all four steps of the process will apply (request for records, board's response, requester's response, and access and accounting). The corporation is obligated to provide access to the records within 30 days of receiving the requester's response from the requester, along with the requester's payment of the estimated costs. There are limits on the costs a corporation can charge to requesters. See below for a summary.

See ss. 13.3, 13.5, 13.7 of O. Reg. 48/01 for more detail.

3. Limits on the costs for providing access

Corporations can charge costs for providing access to records within the limits summarized below, but would not be obligated to charge these full amounts. Requests for core records are subject to additional limits on allowable costs that are summarized in section 4, below.

Printing/Copying costs: For printing/photocopying costs, corporations cannot charge more than 20 cents per page. If the requester wishes to examine records (rather than obtain copies) but the records are maintained in electronic form, the requester could either accept delivery in electronic form (rather than examine them in person), or pay to have them printed or copied for examination.

Labour and delivery costs: The corporation would only be able to charge a fee for labour or for delivery of the records if the fee is reasonable and will reimburse the corporation for the actual costs incurred by the corporation in providing access to records.

Accounting: If the actual cost is more than the estimated cost that the requester paid (when the requester submitted the requester's response), the requester would be obligated to pay the amount of the difference to the corporation, but only up to a certain amount. If the actual cost is less than the estimate, the corporation would reimburse the requester for the full difference.

See ss. 13.3 and 13.8 of O. Reg. 48/01 for more detail.

4. Special process for accessing core records

Requesters have the right to access core records on an expedited basis at a reduced cost. Core records include fundamental corporation records such as current versions of the declaration, by-laws, rules, the current fiscal year budget, and minutes of meetings from the last 12 months (that are held after November 1, 2017). A corporation can pass by-laws to add records to the list of core records.

The timing and costs for core records differ depending on the form in which the requester agrees to have the records delivered.

a) Request for electronic copies: If the requester agrees to obtain copies of core records in electronic form, the corporation cannot charge for providing them (although the corporation could still choose to deliver the records in paper form if they are not kept electronically). The corporation would need to deliver the records within 30 days of receiving the request for records. This means that the records are delivered at the same time as the board's response (step 2 of the process).

b) Request for paper copies: If the requester does not agree to delivery of records in electronic form, then the corporation may only charge for copying or printing costs. The paper copies would need to be delivered or made available for pick up within 7 days of the corporation receiving the requester's response, along with payment of the estimated copying cost (step 3 of the process).

c) Request for examination in person: If the requester asks to examine core records in person (and does not agree to delivery of the records in electronic form), then the corporation may only charge labour costs for the examination, and copying and printing costs. The records would need to be made available for examination within 7 days of the corporation receiving the requester's response along with payment of the estimated costs (step 3 of the process).

Any allowable printing/copying and labour costs are subject to the general limits on costs summarized above.

See ss. 1(1), 13.3, 13.4, and 13.6 of O. Reg. 48/01 for more detail.

5. Exemptions from access

As of November 1, 2017, changes in the Condo Act and the regulations clarify exceptions to and interpretation of the right to access records. Among other things, the regulations make clear that while requesters have a right to access the record of owners and mortgagees under s. 46.1 of the Condo Act, the email addresses (or other methods of electronic communication) agreed to by owners or mortgagees for the purposes of receiving notices from the corporation cannot be disclosed, unless those owners or mortgagees consent to the disclosure in writing.

Changes in the regulations also make clear that requesters do not have a right to access any portion of a ballot or proxy form that identifies specific units or owners in a corporation (unless a by-law provides otherwise).

See s. 13.11 of O. Reg. 48/01 for more detail.

6. Penalty for corporation's non-compliance

As of November 1, 2017, the Condominium Authority Tribunal can make an order requiring the corporation to pay a penalty to a requester who is entitled to get access to records, if the corporation denies access to the records without a reasonable excuse. The penalty can be a maximum of $5,000.

See s. 13.11 of O. Reg. 48/01 for more detail.

7. Access to records by managers

As of November 1, 2017, s. 55(2.2) of the Condo Act gives condominium managers or management providers the right to access a corporation's records that they reasonably require.

Changes to the regulations provide that if a manager or management provider is entitled to a corporation's records pursuant to an agreement to provide management services to the corporation, the corporation must provide those records in the manner set out in the management services agreement.

If a manager or management provider requires a corporation's records in order to comply with the Condominium Management Services Act, 2015 or the regulations made under it, the corporation must provide those records in accordance with the procedures set out in s. 13.12 of O. Reg. 48/01, subject to any procedures or other requirements set out in the management services agreement.

If a provider or manager no longer has a management services agreement with the corporation, the corporation can withhold certain records from the manager or provider, including records relating to actual or contemplated litigation, reports or opinions of lawyers relating to the manager or provider, or records relating to other managers or providers. The corporation would also be obligated to withhold certain records from the manager or provider, including records relating to employees and to specific units or owners.

Disputes between a condo corporation and manager or provider about access to records by the manager or provider under these new provisions would need to be submitted to mediation and arbitration for resolution.

See s. 13.12 of O. Reg. 48/01 for more detail.

D. Retention Chart

The chart below summarizes the specific record types a corporation must keep and the minimum retention periods for each. See s. 13.1 of O. Reg. 48/01 for more detail.

Type of record	Retention period
• Proxies, ballots, and other recorded votes	90 days (unless a challenge is made)
• Financial records • Condominium authority returns and notices • Expired agreements and policies • Inspector reports • Employee records • Records relating to specific unit owners (correspondence, maintenance records, unit liens, etc.) • Status certificates • Expired warranties • Section 97 or 98 modifications • Appraisals • Director disclosures and training records • Concluded insurance claims/investigations • Past or concluded litigation records • Reports of architects, engineers and other professionals • Records relating to a claim affecting land	May be destroyed after 7 years (unless subject to an ongoing records request)

• Current or ongoing versions of:
  ○ Declaration, by-laws, rules
  ○ Agreements and insurance policies
	Cannot be destroyed

Type of record	Retention period
○ Record of owners; record of leases ○ Warranties ○ Records relating to litigations and insurance claims/investigations • Meeting minutes • Drawings and plans • Turnover documents • Performance audits • Reserve fund studies and plans	
• All other records that a corporation is required to maintain under s. 55 of the Condominium Act	A period that a board determines is necessary for the corporation to perform its objects and duties or to exercise its powers

V. Condo returns

A. Types of returns and timing

As of January 1, 2018, condo corporations are required to file four types of informational returns with the Registrar.

1. **Initial Return**: The initial return must be filed within 90 days after the declaration and description are registered and the condo corporation is first created. This applies to all corporations that are created on or after January 1, 2018.
2. **Turn-over Return**: The turn-over return must be filed within 90 days after the turn-over meeting is held and the owners elect a new board under s. 43 of the Condo Act. This applies to all corporations that hold turn-over meetings on or after January 1, 2018.
3. **Transitional Return**: The one-time transitional return must be filed by condominium corporations created before January 1, 2018. This return must be filed by March 31, 2018.
4. **Annual Return**: The annual return is filed annually by all condo corporations in the province. In most cases, it must be filed between January 1 and March 31 of each year.

B. Notices of change

In addition to filing returns, corporations are required to file notices of change when certain information related to a return changes (for example, a change in the directors on the board of the corporation). All notices of change must be filed within 30 days of the change.

C. Information collected in the returns and notices of change

The content for the returns and notices of change is summarized in the chart below. The information in the returns and notices of change would need to be current as of the date they are filed.

#	Item	Type of Return				
		Initial	Turnover	Annual	Transitional	Notice of Change
1.	name of declarant	✓	✓		✓ (if no turn-over meeting has been held)	
2.	date of registration	✓	✓	✓	✓	
3.	date of turn-over meeting		✓			
4.	condo corporation name	✓	✓	✓	✓	
5.	type of condo corporation (standard, common elements, etc.)	✓	✓	✓	✓	
6.	condo corporation's	✓	✓	✓	✓	✓

	address for service					
7.	email address (optional)	✓	✓	✓	✓	✓
8.	municipal address contained in the corporation's declaration, if any	✓	✓	✓	✓	
9.	names of directors, and effective date of director's election or appointment	✓	✓	✓	✓	✓
10.	Total number of units *not applicable for Common Elements Condo Corporations	✓	✓	✓	✓	✓
11.	Total number of voting units *not applicable for Common Elements Condo Corporations	✓	✓	✓	✓	✓
12.	In the case of Common Elements Condo Corporations: maximum number of votes that could be	✓	✓	✓	✓	✓

	counted at a meeting of owners					
13.	name and address for service of condo manager and management firm, if any	✓	✓	✓	✓	✓
14.	start and end dates of the corporation's fiscal year	✓	✓	✓	✓	
15.	date of last AGM			✓	✓	
16.	Information about court-appointed administrator, if any			✓	✓	✓
17.	Information about court-appointed inspector, if any			✓	✓	✓
18.	Termination of the condo corporation in certain cases					✓

D. Manner of filing returns and notices of change

Returns and notices of change are to be filed with the Registrar of the CAO electronically, or by another method approved by the Registrar, if the Registrar is of the opinion that delivering it electronically would cause undue hardship to the corporation.

A late filing fee is payable if a corporation files a return or notice under Part II.1 of the Condo Act after the time set out in this proposed regulation for filing the return or notice.

E. Content and publication of the Registrar's database

The Registrar is required to maintain a database of information contained in returns and notices of change, plus the following information, if applicable:

- Information about a compliance order made against the corporation or a director or officer of the corporation under s. 134.1 of the Condo Act, relating to non-compliance with any provision of Part II.1 of the Condo Act (dealing with condo returns) if there is no possibility of it being replaced through an appeal under s. 134.1(5) of the Condo Act.

Starting April 1, 2018, the Registrar will be required to publish information contained in the database.

Published information will include all current information in the database about a condominium corporation, and updated by any notices of change, except for any email address supplied by the corporation and the date of the turn-over meeting. The public information will be made available electronically on the Internet and in any other manner that the Registrar considers appropriate. The Registrar cannot disclose the information contained in the database in bulk except as authorized under s. 9.8 of the Act. The information would be made publicly available to users for personal purposes only.

See the Returns Regulation for more detail:
https://www.ontario.ca/laws/regulation/170377.

VI. Electric vehicle charging systems

A. Condo corporation installations of electric vehicle charging systems (EVCS) on condo property or the assets of a condo corporation

Section 97 of the Condo Act sets out notice and approval requirements for when a condo corporation seeks to make an addition, alteration or improvement to the common elements or a change in the corporation's assets or the services it provides to owners. The Regulation would exempt condo corporations from the requirements of section 97 of the Condo Act in relation to an EVCS installation if certain conditions are met.

1. Condo corporation notice to owners without the right to requisition a meeting to vote on the proposed EVCS installation

Under the Regulation, condo corporations will be allowed to install an EVCS 60 days or more after providing notice to owners with certain information about the installation, subject to the following conditions:

1. The board of the corporation has assessed the cost of the installation (excluding any costs related to the use, operation, repair after damage, maintenance and insurance of the system), and the estimated total cost is not greater than 10 per cent of the annual budgeted common expenses for the current fiscal year, regardless of whether part of the cost is incurred before or after the current fiscal year.
2. In the reasonable opinion of the board, the owners would not regard the installation as causing a material reduction or elimination of their use or enjoyment of the units that they own or the common elements or assets of the corporation.

If these conditions are met, the board would be able to install the EVCS 60 days after giving notice to owners that includes (among other things) statements indicating that each condition is met.

2. Condo corporation notice to owners with the right to requisition a meeting to vote on the proposed EVCS installation

If either of the above two conditions is not met, in order to be exempt from section 97 of the Act for the proposed EVCS installation, the board would need to provide a notice to owners that indicates the owners have the right to requisition a meeting (within 60 days of receiving the notice) to vote on the matter. This notice would also need to provide certain information about the installation.
The board could then proceed with the installation without having to comply with section 97 of the Act only if:

1. The owners of at least 15% of the units do not requisition a meeting within 60 days.
2. The meeting is requisitioned but quorum is not met.
3. The meeting is held and a quorum is present at the first attempt to hold the meeting but do not vote against the proposal.

See s. 24.3 of O. Reg. 48/01 for more detail.

B. Unit owner installations of EVCS on condo property

Under section 98 of the Condominium Act, a condominium owner can only make changes to the common elements (for example, installing an EVCS at their assigned parking spot) with the approval of the board of directors of the condominium corporation in addition to other requirements. In certain circumstances, notice to and/or the approval of other owners may be required before a change may take place

The regulation exempts owners and condo corporations from the requirements of section 98 of the Condo Act in relation to an EVCS installation that the owner wishes to make, if certain conditions are met. Condo corporation boards would not be permitted to reject an owner's application to install an EVCS on condo property except under certain limited circumstances. Condo corporation would be required to enter into an agreement on reasonable and necessary terms with the owner to govern the installation, maintenance, insurance, costs, ownership and use of the EVCS, if the proposed installation is not rejected and the application is not abandoned or withdrawn.

1. The application process for a unit owner requesting to install an EVCS on condo property includes the following:

- An owner must make an application in writing to the condo corporation that includes necessary drawings, specifications or information with respect to the proposed installation and its location. The condo corporation is required to provide information, permission or authorization requested by the owner, and which on a reasonable basis is required to complete the application (e.g., schematics, electrical information).
- A condo corporation board has 60 days, or another time period that the corporation and the owner agree to in writing, to respond to the owner's completed application. The corporation may reject the application only if, based on the opinion or report of a qualified professional obtained by the corporation, the installation will be contrary to the requirements of an Act or regulations (which does not include a declaration, by-law or rule under the Condo Act), would adversely affect the structural integrity of the condo property or assets of the corporation, or would pose a serious health and safety risk to an individual or a serious risk of damage to the condo property or assets of the corporation.
- Alternatively, if the board does not reject the application, the condo corporation may require that the proposed installation be carried out in an alternative manner or location if the alternative manner or location would not cause the owner to incur unreasonable additional costs. Further, the alternative manner or location must be necessary to avoid causing a material reduction or elimination of other owners' use or enjoyment of the property, or to avoid violating the corporation's declaration, by-laws, rules, or agreements.
- The condo corporation and the owner are obligated to bear their own costs for all steps they take as part of the application process, unless they agree otherwise.

See ss. 24.4 and 24.5 of O. Reg. 48/01 for more detail.

2. Agreement for installation

- If the application is not rejected, the condo corporation and owner must enter into an agreement within 90 days of the board providing the owner with its response, or another agreed upon time period, if the owner has not withdrawn the application before the expiry of the applicable time period.
- The agreement must specify the parties' respective roles and responsibilities regarding installation, maintenance, insurance, certain costs, ownership and use of the EVCS. The terms and conditions of the agreement must be reasonable and necessary to facilitate the EVCS installation, use and operation.
- Unless the parties agree otherwise in the agreement, the unit owner would be responsible for the cost of the EVCS installation. Other terms and conditions for the agreement would need to be negotiated between the corporation and owner, subject to the requirement that the terms be reasonable and necessary.

See s. 24.6 of O. Reg. 48/01 for more detail.

The Regulation also includes complementary amendments to O. Reg. 48/01 which are required for consistency in making necessary updates to forms and other matters. In particular, the Status Certificate and Status Certificate in Amalgamation forms under the Condo Act have also been updated to address these changes. The new versions of these forms are dated March 23, 2018 and are also effective as of May 1, 2018. They are now available on the ministry's web page for Condo Act forms. Please note that the existing versions of the forms, dated September 1, 2011, are also still available on the ministry's web page for Condo Act forms and must be used until May 1, 2018.

See ss. 1.1 (4), 12.2 (2), 12, 8 (1), 13.1 (1), 14 (0.1), 17 (4), 18 (0.1) and 34 (2) of O. Reg. 48/01for more details.