Records Requests under the New Regulatory Framework

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**Categories**

**Condominium, Records**

The new draft regulations to be established under the *Condominium Act* provide more detailrespecting what is expected of both condominiums and owners alike in relation to the retention and production of condominium records.  This blog examines the new legislative framework for the retention of condominium records and the new procedure governing requests for access to records by interest holders.

***Retention of Records – Format and Timing***

The amendments to the Condominium Act specifically confirm that condominiums may retain records either in paper or electronic format.  Regardless of the format, the draft regulations establish the following primary retention periods for condominium records:

(a) A default 7 year retention period for financial records;
(b) Unlimited retention period for certain “fundamental” records;
(c) Proxies, ballots and recorded votes from meetings must be kept a minimum of 90 days from date of meeting.

For any other records not specifically mentioned in the regulations, those records must be kept for whatever period the Board deems necessary in order for Corporation to perform its objects and duties.

The above-noted retention periods are considered “minimum” retention periods.  These minimums can be extended if desired, and they **must** be extended in the event of contemplated or actual litigation, or where there is an outstanding request for records at the time that the minimum retention period draws to an end.

***New Procedure to Govern Requests for Records***

There are four main steps for accessing records, summarized as follows:

(a) Step 1: The Request

* The request must be made on a standardized form (to be established by the Ministry), and it must identify the records requested and indicate preferred method of delivery (email, hard copy, or examination in person

(b) Step 2: The Board’s Response

* Within 30 days of receipt of the request, the Board must respond on a standardized form (also to be established by the Ministry), with an itemized estimate of the associated costs (if any), and identifying records that will **not** be disclosed, with an explanation.

(c) Step 3: The Requester’s Response

* The requester responds to the Board, confirming which records he/she  wishes to have, and including payment of the estimated cost.

(d) Step 4: Access and Accounting

* The Corporation delivers or provides access to the records requested (and paid for) by the requester.
* If the actual costs are more than estimated, the requester must pay the difference – but the difference cannot be greater than 10% of the estimate; if the actual costs are less than estimated, the Corporation must reimburse the requester for the difference.

The regulations distinguish between “core” records (which are defined in the regulations, and are essentially the basic records of the condominium) and “non-core” records, for purposes of establishing the applicable timing for completion of the above-noted steps and for the related costs.

In general, **core documents** must be made available on an expedited basis at a reduced cost.  The timing and delivery of core documents can be summarized as follows:

* If core records are requested in electronic format, they must be delivered either in electronic format or in paper form (at no charge) within 30 days of receipt of the request (i.e. within 30 days of Step 1); in other words, they would be delivered along with the Board’s response in Step 2.
* If core records are requested in paper format, they must be made available for delivery/pick up within 7 days of the Corporation receiving the requester’s response and payment in Step 3. The estimated cost must be limited to copying charges, at no more $0.20 per page.
* If the requester makes a request to examine records in person, the records must be made available for examination within 7 days of the Corporation receiving the requester’s response and payment in Step 3. But in this case, the estimated cost can also include reasonable labour cost *during the examination*.

For **non-core** records, the same four steps apply, but with different time periods and potentially different costs.  **Non-core** records must be delivered or made available for access within 30 days of receiving the requester’s response and payment in Step 3.  In the case of non-core records, the estimated costs can include photocopying charges for paper copies (at no more than $0.20 per page), and reasonable labour costs for the board to redact the record and to otherwise respond to the request.  [Some information in the corporation’s non-core records is not available to be seen by owners.  The draft Regulations include some additional detail about this “private” information.]

The draft Regulations also say that a request will be deemed to be abandoned in certain circumstances.

If a condominium, without reasonable excuse, does not permit a requester to examine or obtain copies of records, the condominium may be subject to a penalty of up to $5,000.00.  This is a significant increase over the $500 penalty available under the current Act.

Similar to the current Act, an owner may enforce payment of the penalty through the Small Claims Court.  The contemplated amendments to the Act also specifically confirm that the Small Claims Court has the jurisdiction to order production of documents where appropriate.

Stay tuned to[**Condo Law News**](https://dhacondolaw.ca/subscribe/)for more blogs about Records under the new Regulations.