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WE ARE PLEASED TO INTRODUCE...



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Bill 106
Condo Act Reform and
Licensing of Managers

Larlyn Property Management Ltd.

Armand Conant
Shibley Righton LLP

November 24, 2015



Bill 106 - Status

An Act to amend the Condominium Act, 1998, to enact the Condominium Management Services Act, 2015 and to amend other Acts with respect to condominiums

- One Act with two statutes, plus amending other statutes
- NOT a new Condo Act – rather, amending it.
- Amending other statutes – e.g. ONHWPA (Tarion)
- First Reading – May 27, 2015
- Skeletal – much to be in Regulations



Bill 106 - History

- New review and reform process – never tried before
- Broad based public consultation before drafting
- Focus on working groups and stakeholders panels
- Experts Report – September 2013
- More Committees; Residents Panel confirmed Report
- Licensing of Managers – announced summer of 2014



Bill 106 – Next Steps

- Second Reading – passed Sept. 15th
- Standing Committee Hearings – ongoing
- Third Reading; then Royal Assent (end of this year?)
- Concurrently drafting the Regulations
- Proclamation – end of 2016??
- Much more to do – particularly Regulations



Five Key Areas of Reform

- Condo Authority/Dispute Resolution
- Consumer Protection for Owners and Buyers
- Financial Management
- Governance (how to run a corporation)
- Condo Property Manager Licensing



CONSUMER PROTECTION



Consumer Protection

- Condo Guide
- Expands information in status certificate
- Notice to owners for expenses exceeding budget
- Standard Unit definition – default definition
- Insurance Deductible clarified
 - Covers unit, common elements and other units
 - Will eliminate “no-fault” by-laws for deductible as can only be amended by amending declaration



Consumer Protection

- Sale or Leaseback of units and C.E.
 - Prohibit developer forcing corporation to acquire property unless post-turnover Board agrees
- Quiet Enjoyment - right recognized (Sec. 117)
- Disclosure Statements and Declarations
 - Standardization of some portions (in the Regs.)
 - Can't be changed by developer
- Tarion to cover certain conversions



Consumer Protection

- Developers Cannot Cancel Remedies, such as common law claim for construction deficiencies of common elements
- Project specific websites – regulate information required to be posted



CONDOMINIUM AUTHORITY



Goal & Delegation

- Goal
 - Streamline Dispute Resolution
 - Correct power imbalance during disputes between Boards and residents
- Delegated Administrative Authority
 - Not government – independent, self-funded and not-for-profit; no funds to government; own Board
 - Similar to TICO, VQA and Tarion
 - Publicly disclose certain information
 - Oversight by Attorney General



Functions

- Fast, accessible and lower cost dispute resolution, primarily between corporations and unit owners
- Resource center for education of unit owners, including self-help tools
- Education for directors
- Registry of all condominium corporations in Ontario, including director names and contact information
- Publish a condominium guide for prospective buyers



Funding

- Initial funding from the Ontario government
- Developers not funding Authority
- Then will set own fee structure:
 - Approx. \$1 per unit per month (from corporations – add to operating budget/common expenses)
 - user fees
 - Starts when dispute resolution services in place



DISPUTE RESOLUTION



Tribunal

- Resolve disputes through case management, mediation and arbitration
- Online resources and self-help tools
- Final & Binding decisions enforceable as if court order
- Existing ADR mechanisms still apply for disputes outside tribunal's jurisdiction
- Appeals to Divisional Court on questions of law.



Tribunal

- Mandatory if dispute comes within jurisdiction:
 - Enforcement of declarations, by-laws and rules
 - Procurement processes
 - Access to records (Sec. 55)
 - Procedures for requisitioning meeting of owners
 - proxies
- Jurisdiction not include:
 - Liens
 - Amalgamation and termination
 - Title to real property



Section 132 & Section 134

- Section 132
 - no longer applicable for disputes within jurisdiction of Tribunal
 - Regulations will provide for med/arb procedure for corporations that have not passed a med/arb by-law
- Section 134
 - No longer applicable to applications that can be made to the tribunal
 - additional actual costs in favour of a unit owner who obtains an order against a corporation



Orders

- Order a party to act or refrain from action (injunction)
- Direct parties to mediation
- Damages up to \$25,000 or as prescribed
- Costs to another party or to the Tribunal
 - Can be added to or set off from common expenses
- Penalty of max. of \$5,000 against corporation for failure to allow examination of records,



FINANCES



Financial Management

- Alteration to C.E. by Corporation (Sec. 97)
 - No notice to owners if:
 - Required by a shared facilities agreements
 - 3% or \$30,000 per annum – No notice to owners
 - If owners would not see the spending change as materiality limiting their use or enjoyment of the units, the C.E. or any assets
- Notice of off-budget spending
 - Notify owners (not need approval) if expense is greater than a prescribed % increase from budget



Financial Management

- Budget for Operating and Reserve Fund
- Increased communications to owners
- Maintenance & Repair – clarify terms
- Reserve Funds - define term “adequate”
 - “as determined by the regulations”
 - obtain a study to determine adequate, develop a funding plan that provides adequate, collect fees that fund adequate



Financial Management

- Standard Unit Definition – Default definition
- Charge-backs (some) allowed and fines prohibited
- Owners liability for damage to units, C.E. and other units – insurance deductible (can't be modified by a by-law)
- Obtain opinion if RF balance lower than planned
- Increased accountability for 1st year deficit by Developer



GOVERNANCE



Records

- Defined list – clarity of what are “records”
- Retention
 - Financial records - 6 years – others as per Regs.
 - By-law can modify retention period
 - Can be electronic storage
- Examination – prescribed process
 - Requesting access & Board’s response
 - Standard forms
 - Prescribed Fees for examination & copying



Owners Meetings

- Electronic delivery of notices (if owner consents)
 - Preliminary notice of meeting Call for Directors
 - Call for materials (agenda items)
 - Information from non-leased voting units if vacancy on Board
- Quorum
 - Turnover and AGMs
 - 25% at first and second attempt
 - 15% at third and any more attempts
 - can't add anything to agenda on second + attempts
 - Can be modified - by-law



Governance

- Threshold for passing by-laws - same
 - Lower threshold to pass – for transition
 - Borrowing – only via a by-law and not if in budget
- Rules
 - date of 1st meeting if no quorum, or when not rejected
- Mandatory communications to owners
 - Information certificate + other notices
- Conference calls, etc. – not need by-law
- Procurement processes



Governance

- Preliminary notice of owners' meetings
- Proxies – prescribed form
- Voting at owners meetings – electronic, etc.
- Electronic Delivery of Notices (on consent)
- Quorum
 - 25% at first and second attempt
 - 15% at third and any more attempts Proxies
- Non-Leased Units Board Position (OOEP)
 - If these owners are minority in building and 1 person requests



Requisitioned Meetings

- Requisitioned Meetings
 - Mandated form and procedure on both owners and corporation
 - Board must state why reject – then owners can cure defect
 - Appeal to Condo Authority



LICENSING OF MANAGERS



Management Licensing

- Separate Designated Administrative Authority (DAA)
- Licensing Individuals
- Licensing Management Companies
- Details regarding the number of Board members etc. will be set out in the by-laws of the DAA to be approved by Minister

Management Licensing

- License will be required to manage a condominium
- Section 35 – exemptions, to be detailed in the regulations to allow for self management
- One mechanism to enforce licensing - unlicensed condominium managers or management companies will not be able to sue for remuneration

Management Licensing

- Requirements for receiving a license - in the regulations
 - Probably 2 levels of license
- Registrar of DAA:
 - charged with the responsibility of issuing licenses
 - authority to temporarily suspend a license
- Right to request a tribunal hearing on a suspension or revocation

Management Licensing

- Management companies must provide name of the principal condominium manager (PCM)
- PCM is responsible to ensure the Condominium Management company complies
- Sec. 52 - A licensee who, directly or indirectly, has an interest in a contract or transaction to which the client is a party must disclose in writing the nature and extent of the interest

Management Licensing

- Sec. 53 - Immediate transfer to the client all documents and records relating to the client upon termination of any contract for services
-
- Sec. 55 - No licensee shall counsel, advise or knowingly assist a person to contravene this Act, the *Condominium Act, 1998* or any other prescribed Act.

Management Licensing

- Registrar is an inspector.
- An inspector may, without a warrant or court order, conduct an inspection to investigate a complaint
- Sec. 65 - The director may make an order in respect of the money or assets of an unlicensed person who is alleged to have engaged in activities for which licensing is required under this Act

QUESTIONS?

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QUESTIONS

If you have not done so already, please type your questions in the area provided on your screen where it says “TYPE MESSAGE HERE.”

We will address as many questions submitted as possible and follow up personally with those we are not able to discuss this evening.



Thank You for joining us



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