

March 27, 2020

Hon. Lisa Thompson  
Minister of Government and Consumer Services  
777 Bay Street, 5<sup>th</sup> floor  
Toronto, ON M5B 2H7

Dear Minister Thompson,

There is no doubt that we are living in an unprecedented time right now and that industries and organizations throughout the Province of Ontario are scrambling to find ways to continue to operate their businesses and/or serve those who they represent during this pandemic. The Condominium industry is no exception. Condominiums are home to roughly 2.5 million Ontarians many of whom are currently facing an uncertain financial future.

The Canadian Condominium Institute (CCI) is a national not-for-profit organization founded in 1982 that deals exclusively with condominium issues affecting the condominium market in Canada. CCI has seventeen chapters across the nation, including eight very active Ontario chapters collectively representing over 250,000 units. As an active contributor to the amendments to Ontario's condominium legislation and regulations over the decades, several of our Directors have participated in various stakeholder groups during public consultations and have also served on expert panels established by the Ministry of Government and Consumer Services.

As such, CCI is reaching out to the Ontario Ministry of Government and Consumer Services with respect to seeking relief from COVID-19 induced implications facing the condominium industry.

### **Temporary Relief from Condo Act and Regulatory Deadlines**

CCI applauds the Government for making O.Reg. 73/20, being the Order in Council under s. 7.1 of the *Emergency Management and Civil Protection Act* suspending limitation periods and procedural time periods. That temporary suspension will assist condo corporations and their unit owners in protecting their legal positions in claims with third parties and in any pending proceedings.

It would be similarly appropriate and appreciated if MGCS would request a similar order that would temporarily relieve condominium corporations and directors from performing or completing certain time-limited tasks under the Condo Act and regulations, namely:

- complete director training under s.29(1), per timeline in s.11.7 (4) in O.Reg 48/01. This is critical, as loss of quorum impedes a board's ability to make critical, time-sensitive decisions.
- respond to records requests under s.55 (per timeline in 13.3(6) of O.Reg 48/01);
- hold requisitioned meetings under s.46(4(b)), to obey restrictions against large gatherings;
- hold annual general meeting per s.45(2), for the same reason;

- issue PICs, ICUs or NOICs per s. 11.1, 11.2 and 11.3 of O.Reg 48/01; and
- File Condominium Authority of Ontario (CAO) information returns and remit levies under s. 6(3)(2) of O.Reg 377/17.

With respect to the requirement to register certificates of lien within 3 months as per s.85(2), there is confusion about whether or not the Order in Council recorded as O.Reg. 73/20 suspended the 90-day timeline or not. Clarity is urgently needed. There is a lack of consensus amongst condominium lawyers as to whether this Order in Council applies to suspend the timeline in s.85(2) and which interpretation better serves condominiums.

We recommend that the suspension of time for the above requirements be limited to the duration of the period of emergency. But because COVID-19 may present similar exigent circumstances arising in future months and years, we recommend on a longer term that regulations eventually be modified to give the CAO discretion to relax its training and filing deadlines in extraordinary cases in its discretion.

We believe that temporary suspension of these timelines under the Condo Act and Regulations, as above, would provide meaningful relief to condo boards and managers faced with an extraordinary situation. It would also help alleviate unnecessary cost and service disruptions to condo unit owners and protect their health and safety in the case of meetings.

At this point, CAO has maintained that the timelines for the steps it administers remain in force but has offered to assist people needing to complete the director training and to waive late fees for late filings. This is appreciated but does not address more consequential and pressing timelines facing Ontario condominium corporations, like holding meetings and issuing information certificates.

### **Use of Current Year Reserve Fund Contribution to Offset Increased Operating Costs or Fee Shortfalls**

During the current outbreak of COVID-19, Ontario's 11,000 condominiums are not immune from the financial difficulties that have followed this pandemic. However, condominiums are strictly governed by robust financial controls, mandated by a combination of the *Condominium Act, 1998* and its attending regulations. We recommend that the government consider the Condominium framework when developing provisions to support Ontarians during this time of crisis.

Condominiums in Ontario are owned in collective fashion by their unit owners. Unit owners in turn leave the governance of their community to an elected board of directors. A condominium corporation is a non-for-profit organization that runs a zero-balance budget each fiscal year. Accordingly, common expenses are set to cover two costs: operating and capital replacement expenses.

Common expense fees are the sole source of funding. During an emergency, such as COVID-19, Corporations have a duty to manage the assets of the Corporation and stay operating. As such, condominium corporations continue to incur costs on a daily basis, including utilities and service costs for cleaning and management, at a time when individuals may be struggling to pay their common expense fees.

Pursuant to the Condominium Act, 1998, failure to pay one's common expenses gives right to the Corporation's right to lien. Unit Owners are liened within (90) days of defaulting on their payment of monthly common element fees.

In this time of crisis, condominiums have little latitude to moderate the current circumstances being experienced by families in Ontario, while costs are still being incurred. We anticipate significant additional costs related to COVID-19 (such as disinfection costs, or premium payments to staff and contract workers) as well as having many unit owners unable to make their payment of common expenses. Fortunately, it is possible for most condominiums to use their current year reserve fund contribution as a buffer against the financial shocks that will be incurred.

In keeping with subsection 93(2) of the Act, a condominium may not use a reserve fund for anything but the, "...major repair and replacement of the common elements and assets of the corporation." This strict language does not allow a condominium to access such monies already in the fund to fund a condominium's operating account. We recommend against allowing condominiums to remove money from their reserve fund to fund operating costs during the pandemic, as this risks creating prolonged financial hardship. However, most condominiums will be able to reduce the amount being contributed to the reserve fund in the current year provided they work with their reserve fund study provider to develop a new *Notice of Future Funding* showing the reduced contribution for the current year and a plan for adequate funding going forward.

The only condominiums who are unlikely to be able to use a single-year reduced contribution to reserve to help manage the current year financial crisis, might be those with a very low existing fund balance, a planned special assessment, a planned loan, an existing loan or an already committed contract that requires the funds. These cases may have no choice but to implement a special assessment.

Otherwise, most condominiums should be able to obtain some relief in this manner. It will be important that all condominiums that modify their current year contribution only do so through a properly prepared *Notice of Future Funding* that is issued to the unit owners and included with any Status Certificates.

No legislative change is needed to allow condominiums to reduce their current year contribution to reserve fund in order to free up additional funds to cover shortfalls in owner payments or additional costs incurred. However, there may be value in communicating this permitted flexibility and reminding corporations that it can only be done through the proper preparation of a revised Notice of Future Funding.

## **Utility Payments**

A Condominium Corporation's budget includes utilities and these costs often form about 30 to 40% of the budget of a condominium. Given the present circumstances, we are of the opinion that delay of payment or debt forgiveness for Ontarians including, multi-unit dwellings such as Condominiums for a period of three months, will ease the cashflow burden on all Ontarians. This will allow for a better allocation of resources in Condominiums.

We all need to continue to work together to ensure that condominiums in Ontario are well equipped to handle the unique challenges brought about by this unprecedented pandemic outbreak. CCI looks forward to continuing a strong relationship with the Ministry and we are available for a call with Ministry staff to discuss the input contained within this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Armand Conant". The signature is fluid and cursive, with a large initial "A" and "C".

Armand Conant, CCI Legislative Committee Chair  
On behalf of: CCI Ontario Legislative Committee

Cc: Mike McRae – Director, Ministry of Government and Consumer Services  
c.c. Victoria Walker, Manager, Policy and Business Law Unit, Ministry of Government and Consumer Services