

# Distinctive Advisors

## Ontario Residential Condominiums



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# Ontario's Residential Condominium Buyers' Guide - Using the Condo Guide

## Purpose

According to section 72 (1) of the Condominium Act, 1998 (the "Condo Act"), Ontario's Residential Condominium Buyers' Guide ("the Condo Guide") prepared by the Condominium Authority of Ontario (CAO) is required to be provided to buyers of residential pre-construction/new condo units by the declarant ("developer") when buyers are purchasing from the developer or a person acting on behalf of or for the benefit of the developer. Purchasers of resale residential condo units may also wish to review the Condo Guide.

This Condo Guide has been approved by the Minister of Government and Consumer Services.

The purpose of the Condo Guide is to provide condo purchasers in Ontario with information and resources to make a more informed decision when purchasing a residential condo unit ("unit").

Under section 73(2) of the Condo Act, purchasers have a 10-day cooling off period in which they may rescind their agreement of purchase and sale. This 10-day period begins on the later of the date on which you receive your agreement of purchase and sale and your disclosure documents and the Condo Guide. The CAO recommends that you carefully review the disclosure statement, agreement of purchase and sale, and the Condo Guide within the 10-day period.

The Condo Guide can be found below, commencing on page three with the table of contents, and will be updated from time-to-time. To confirm that you have the most up-to-date version, please visit the CAO website at [www.thecao.ca](http://www.thecao.ca).

## Important Information Regarding Governing Documents

To make sure a particular condominium corporation ("condo corporation") is right for you, you may wish to read a condo corporation's existing or proposed governing documents, as applicable, before purchasing a unit. Information describing these governing documents, which consist of **1) the declaration; 2) the by-laws; and 3) the rules** is provided in the Condo Guide in Sections 1.1 and 3.3.

These documents, along with the rest of the disclosure statement (including the budget statement), and the agreement of purchase and sale, contain important information about what you are buying, and what you will need to pay for etc. This information may impact your decision to purchase a unit. If you have questions about the information contained in these documents, you may want to seek help from a legal professional.

## Key Information for Buyers of Pre-Construction Residential Condo Units

To find information about buying a unit from a developer, you should review the following sections of the Condo Guide:

- Introduction
- Part 1.1: Before You Buy a Pre-Construction Condominium Unit
- Part 1.2: Buying a Pre-Construction Condominium Unit
- Part 1.4: Additional Considerations
- Part 2: Moving into a Pre-Construction Condominium Unit

For more information on rescission of agreements of purchase of sale within the 10-day cooling off period, please visit Part 1.2 of the Condo Guide.

## **Key Information for Buyers of Resale Residential Condo Units**

To find information about buying a unit from an existing owner (i.e. a 'resale condo' that is not sold by the developer), you should review the following sections of the Condo Guide:

- Introduction
- Part 1.3: Buying a Resale Condominium Unit

## **Key Information for Condominium Owners**

To find information about condo living and governance that may be helpful before or after your condo purchase, you should review the following sections of the Condo Guide:

- Part 2.3: Tarion and the Ontario New Home Warranties Plan Act
- Part 3: Condo Living
- Part 4: Resources for Issues Resolution

## **Next Steps**

Given the importance of this buying decision and the many factors to the condo purchase process, along with your expectations for condo living, it is important that you carefully review the condo corporation's governing documents, the rest of the disclosure statement (including the budget statement), the agreement of purchase and sale, and this Condo Guide. Also, the CAO is encouraging condo owners to subscribe to our email list to receive important email updates from the CAO. You can subscribe by either clicking [here](#).

Additional information on the above can also be found on the CAO's website at [www.thecao.ca](http://www.thecao.ca).

You may also wish to consider seeking legal advice for any questions or concerns that you may have.

***Please note that the material in the Condo Guide should not be interpreted as legal advice.***

***This Condo Guide has been approved by the Minister of Government and Consumer Services and is intended to apply to the purchase of new and pre-construction residential condominium units beginning on January 1, 2021.***

# Ontario's Residential Condominium Buyers' Guide

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# Introduction

## What is a Condominium?

When most people hear the word “condo” they may think of a single residential tower or maybe a townhouse, but what “condo” really refers to is a specific kind of real estate ownership structure that involves shared ownership of common elements and community decision making. This means that a condo could resemble a park, parking lot, or even an empty field. If you are considering purchasing property in a condo corporation, it is important to understand upfront that condo living involves shared ownership and therefore a responsibility to your community.

Unlike when you own a traditional house, when you purchase a condo you become part of a condo community and become responsible for paying your share of the common expenses and complying with the condo corporation’s governing documents, among other things. You will also be able to participate in condo governance by, for example, voting for directors.

A “condo” is also a type of corporation. A condo corporation is responsible for making decisions about the condo property on behalf of the owners. A condo corporation may also get a condo manager/management services provider to help manage the property and the affairs of the corporation on the corporation’s behalf. The condo property is described in certain documents that must be completed and officially registered to establish the condo corporation. Those documents specify how the land is divided into units and common elements, as applicable. The owner of the land where the condo corporation is being established arranges for those documents to be registered with a Land Registry Office. That owner is known as a “declarant”, who may be the developer of the land. The condo owners (e.g., unit buyers) are the members of the condo corporation. The Condo Act sets out rights and responsibilities related to the management of a condo, including rights and responsibilities of condo owners and condo boards.

Condo corporations are created for many different uses including for residential, commercial, industrial, or mixed-use purposes.

## Different Kinds of Condominiums

The Condo Act outlines various types of condo corporations. There are two main categories of condo corporations: freehold and leasehold. Freehold condos are condo corporations where the condo property is owned by the condo owners. Leasehold condos are condo corporations on leased land. Owners have a leasehold interest in units and common elements but do not own the land. Under the Condo Act, there are **four** different types of freehold condos:

### 1. Standard Condominium

- The most common type of condo corporation in Ontario.
- Has individual units.
- May include common elements, which often include areas such as a foyer, exterior walls, and amenities (e.g., pools, gardens).

### 2. Phased Condominium

- A condo corporation that is intended to be built and registered in phases.
- New units and common elements are constructed and added to the condo corporation.
- Upon completion, a phased condo corporation becomes a standard condo corporation.

### **3. Vacant Land Condominium**

- The units may be vacant lots at the time of purchase, and the layout of the lands may resemble a subdivision. Common elements are often things such as roadways, sewer systems, and amenities such as parks or recreation facilities.
- The developer can sell the lots as vacant or build (e.g., homes) on the lots and sell the lots with buildings on them.

### **4. Common Elements Condominium**

- There are no units in this type of condo corporation. Instead, ownership is of a common interest in the common elements of the condo corporation by a separate parcel of land that is “tied” to the common elements corporation.
- Owners purchase a part of a common elements. Examples include shared roads, golf courses, or ski hills.

### **Leasehold Condominium**

- Developed on land that is leased for a term between 40 and 99 years.
- Common expenses include a portion of the rent payable to the landowner.
- Once the lease expires, the owners’ rights to occupy their units are automatically terminated.
- Leasehold condo corporations may be less common in Ontario.

It is important to note that the Condo Act has some different requirements for different types of condo corporations.

## **Part 1: Buying a Condominium Unit**

### **1.1 Before you Buy a Condominium Unit**

One of the most important steps you can take before you buy is to educate yourself and get the help you need to make an informed decision. Consulting this Condo Guide is a good start, but it is also important to seek legal advice before you buy. Buying a condo is a complex process and involves reviewing lengthy and sometimes difficult-to-understand documents. Seeking legal advice is the best way to ensure you are making an informed decision.

Reviewing a condo corporation’s governing documents provides an opportunity to learn important information about the condo corporation you are considering. The information found in a condo corporation’s governing documents may be key to your enjoyment of your unit and could have an impact on your buying decision. For more information on governing documents, including the 1) the declaration; 2) the by-laws; and 3) the rules, see section 3.3.

Researching builders is another important step you may wish to take before purchasing a pre-construction unit. It is important to ensure that the builder you plan to buy a unit from is licensed by Tarion (Ontario's new home warranties and protections administrator – for more information see section 2.3 of this Condo Guide).

Tarion's [Ontario Builder Directory](#) is a useful resource for confirming the status of the builders before you buy. Please note that the Ontario Builder Directory will be available through The Home Construction Regulatory Authority (HCRA) starting in early 2021.

The HCRA is an independent, not-for-profit corporation that is preparing to potentially be designated as the new regulator of new home builders and vendors under the *New Home Construction Licensing Act, 2017*. If a regulatory authority is designated, Tarion would cease to provide this function, subject to potential exceptions during transition. At this time, it is expected that the future regulatory authority would be operational in early 2021.

## 1.2 Buying a Pre-Construction Condominium Unit

### Documents to Review

Along with reviewing the information in this Condo Guide, it is important to review and fully understand the information in the following documents that are generally required to be provided to purchasers by developers:

#### 1. Pre-construction Agreement of Purchase and Sale

The agreement of purchase and sale, sometimes referred to as the purchase agreement, contains important information about your rights and obligations as a condo buyer, the builder's rights and obligations, the unit, and the condo construction project. You may wish to review this document carefully with a legal professional.

#### 2. Tarion's Information Sheet for Buyers of Pre-Construction Condominium Homes about the Possible Termination of Purchase Agreement

All buyers of residential units in a standard or phased pre-construction condominium project where the first arm's length purchase agreement for the project was signed on or after January 1, 2020 must be given an information sheet that includes an outline of the possible risks of buying a unit in a pre-construction condominium project, in addition to other information (e.g., the estimated occupancy date for your unit and the status of construction).

#### 3. Tarion Addendum

The Tarion Addendum (expected to be a joint Tarion/HCRA addendum if the HCRA is designated in early 2021) is a required part of the agreement of purchase and sale for a residential condo and contains important information that both the builder and condo buyer are required to agree to. Information contained in the Tarion Addendum includes the delayed occupancy warranty provided by the builder, in accordance with the Ontario New Home Warranties Plan Act. The Tarion Addendum also contains a Statement of Critical Dates and early termination conditions that apply to the

agreement. In a disagreement or dispute about information contained within the agreement of purchase and sale and the Tarion Addendum, the Tarion Addendum prevails over the agreement of purchase and sale document and any other attachments to the extent of any conflict or inconsistency.

#### **4. Disclosure Statement**

Another very important document to review and understand is the disclosure statement which the builder is required to provide to condo buyers who buy directly from the developer or a person acting for the developer's benefit. This is required under section 72 of the Condo Act. Your agreement of purchase and sale is not binding on you as a buyer until you receive the disclosure statement and this Condo Guide from the developer.

The disclosure statement includes a lot of important information, including but not limited to:

- A copy of the existing or proposed declaration, by-laws, and rules for the condo corporation.
- A summary of the agreements to be entered into by the builder before the turn-over meeting, including agreements for condo management services and services like repairs and landscaping, and
- A copy of the budget statement for the first year after registration of the condo corporation.

It is important to carefully review the disclosure statement, consult with a legal professional about it and ensure that you do not have any outstanding questions.

#### **Deposits**

Generally, under the Condo Act, funds received by the builder of a condo project must be held in trust. This includes deposits and certain other payments covered by the purchase agreement.

If a project is terminated, the builder is generally required under the Tarion Addendum to refund all monies paid, plus interest, if any, calculated in accordance with the Condo Act (for information on the interest rates, see section 19 (3) of Ontario Regulation 48/01 under the Condo Act).

If the money is not refunded, then buyers may be able to make a claim to Tarion under the *Ontario New Home Warranties Plan Act*. Deposits and other payments by residential condo buyers are protected under the *Ontario New Home Warranties Plan Act* for up to a maximum of \$20,000.

[For more information about deposit protection, please click here.](#)

#### **Cooling Off Period and Rescission of Agreement**

Section 73 of the Condo Act provides you as a buyer with a cooling off period of 10 days to consider whether you want to proceed with the purchase. Section 73 allows you to rescind the purchase agreement by notifying the developer of your wish to do so within the 10-day cooling off period.

This 10-day period begins on the later of the date on which you receive your agreement of purchase and sale executed by the declarant and the purchaser and your disclosure documents and Condo Guide. Within the 10-day cooling off period, you have the right to rescind or cancel the purchase agreement that you have signed for any reason whatsoever. Generally, you should also be refunded, without penalty or charge, all money deposited toward the purchase price, along with any applicable

interest (for information on the interest rates, see section 19(3) of Ontario Regulation 48/01 under the Condo Act).

Additionally, the Condo Act provides for a further rescission right where there is a material change in the disclosure statement. If there is a material change (i.e. an important change that would have caused a reasonable buyer to no longer want to proceed with the purchase, had that information been included in the disclosure received by the purchaser), then you may be able to rescind or cancel your purchase agreement during an additional 10-day cooling off period. This 10-day cooling off period starts from the later of:

1. the date that the declarant has delivered a revised disclosure statement or a notice to you confirming the material change;
2. the date that you otherwise become aware of the material change; or
3. the date that the Ontario Superior Court of Justice has determined that a material change has occurred.

## **Occupancy Dates & Delayed Occupancy**

A page of the Tarion Addendum within your agreement of purchase and sale contains a Statement of Critical Dates which must be signed by both the condo buyer and the builder. The Statement of Critical Dates sets out when the builder expects to finish the unit and the latest dates for permitted extensions. You should review these dates closely including the firm occupancy date and the outside occupancy date.

Note that condo construction can sometimes be delayed, which means you may not be able to take occupancy of your unit on the anticipated occupancy date set out in the agreement. This is called delayed occupancy.

Your new home warranty coverage includes delayed occupancy coverage in certain circumstances. Details on the delayed occupancy warranty are provided in the Tarion Addendum in your agreement of purchase and sale.

[For more information about occupancy dates and delayed occupancy warranty, visit Tarion's webpage.](#)

## **Condo Cancellations**

Pre-construction condo projects can sometimes be cancelled even after you have made a deposit on your purchase. This is because there are many stages in building a condo that may remain to be completed after you have made a deposit. The Tarion Addendum forming part of your purchase agreement must set out any conditions that may result in the condo not proceeding and therefore the potential termination of the purchase agreement. In these cases, it is the vendor who would terminate the agreement.

These conditions may include, but are not limited to:

- Failure to sell enough units,

- Inability to secure financing for the project, or
- Delays in obtaining the required building or planning approvals.

It is important for you to be aware of the potential conditions when you are thinking of entering the purchase agreement. Buyers may wish to review the Tarion Addendum for identification of early termination conditions applicable to their purchase agreement.

In most cases, if a condo project is cancelled, buyers are entitled to get their deposit back, plus any accrued interest, if applicable. The Condo Act also provides for interest to be paid based on an interest rate calculation (for more information on those interest rates, see section 19(3) of Ontario Regulation 48/01 under the Condo Act).

[For more information on condo cancellations, please click here.](#)

### 1.3 Buying a Resale Condominium Unit

Purchasing a resale unit involves buying a unit from the current owner rather than from the developer. If you are thinking of buying a resale unit, it is important to do your research on the unit and condo corporation before making any decisions and consult a legal professional. **Before purchasing a unit, you may wish to consider the following:**

- **The status of the reserve fund and age of the building.** A reserve fund is required to ensure that the condo corporation has enough money to pay for major repairs and replacement of the common elements and assets of the condo corporation. It is important to note if the building will require any significant repair, maintenance or updating with its age and the plan for addressing those issues. You should consider the health of the reserve fund and review what is your responsibility to repair and maintain.
- **Common expenses.** This is the amount unit owners pay toward the operation of the condo corporation (e.g., security costs, cleaning costs, etc.) and contributions to the reserve fund. It is important to incorporate common expense fees into your budget when considering purchasing a condo. Common expense fees may change over time depending on the needs of the condo corporation.
- **The units and common elements.** The size, layout, and boundaries of the unit and the common elements generally will not change. You may wish to consider what is your responsibility to repair and maintain. For more information on units and common elements, see section 3.5 of this Condo Guide.
- **Amenities.** Consider that, in general, all the owners must pay for the common elements, regardless of whether you use them or not.
- **Litigation.** It is important to be aware of any litigation against the condo corporation or that the condo corporation is a party to, as owners generally will be responsible for the costs. If the condo corporation cannot cover the costs with the operating fund, a special assessment (an extra one-time charge added to an owner's common expenses) may be required. You can

learn about on-going litigation by requesting a status certificate from the condo corporation, which is described in the next section.

- **New Home Warranty Information.** You may wish to consider whether the unit is still covered by any remaining new home warranties and protections under the *Ontario New Home Warranties Plan Act*. There are three different warranty periods that cover different types of defects, the longest of which is seven years. The maximum statutory coverage available is \$300,000. More information about new home warranties and protections can be found on the [Tarion website](#). To check the status of your home's warranty you may wish to contact Tarion by phone (toll free) 1-877-982-7466 or via e-mail at [ismyhomecovered@tarion.com](mailto:ismyhomecovered@tarion.com).

## Documents to Review

- **The condo corporation's governing documents.** You will be required to abide by your condo corporation's declaration, by-laws, and rules. For more information see section 3.3 of this Condo Guide.
  - The declaration is the foundational document of the condo corporation and includes, among other things, the proportion which each unit owner contributes to common expenses and the repair and maintenance responsibilities of owners vs. the condo corporation. The declaration may also include information about how units and common elements can or cannot be used. The existing or proposed declaration will be included in the disclosure statement you receive from the developer when purchasing a pre-construction/new condo.
  - The by-laws may lay out how the condo corporation governs itself and how the condo corporation operates (e.g., some of the requirements for electing directors).
  - The rules may govern what the owners and occupants can and cannot do in their specific condo community in certain circumstances (e.g., for safety reasons).
- **Status Certificates.** A status certificate is an important document for purchasers of resale condos containing information about a specific completed condo unit and the condo corporation to which it belongs. Any person can request a status certificate for a unit from a condo corporation. A condo corporation can charge up to \$100 (including all applicable taxes) for the status certificate. The condo corporation must provide the status certificate within 10 days of receipt of the request and payment for it.

Status certificates are particularly important for prospective buyers of resale units because they contain important information, such as:

- A copy of the condo corporation's current declaration, by-laws, and rules.
- A copy of the budget for the current fiscal year, the last annual audited financial statements and the auditor's report.
- A statement of the most recent reserve fund study.
- A statement of the common expenses for the unit and whether the unit is in arrears of payment.
- If the common expenses for the unit have increased since the current year's budget was prepared, a statement of the increase and the reason.

- If an assessment has been charged against the unit since the current year's budget was prepared, a statement of the assessment and the reason.
- The address for service for the condo corporation (e.g., the address where the condo corporation receives mail).
- The names and addresses for service for the directors and officers of the condo corporation.
- A certificate of insurance for each of the current insurance policies.
- Information about certain legal issues that may affect the condo corporation (e.g., whether there are outstanding legal judgments against the condo corporation, or if the condo corporation is involved in any ongoing litigation).

You can also access key information on any condo corporation in the province through the CAO's Public Registry. You may wish to consider speaking to a legal and/or real estate professional when considering purchasing a resale condo and before signing any documents.

## 1.4 Leasing Your Unit

**Leasing** out a condo unit is an option that many condo owners use at some point during their time as a condo owner, however, there are special considerations that you must keep in mind if you choose to lease out a condo unit. In Ontario, the *Residential Tenancies Act, 2006* outlines the rights and responsibilities of landlords and tenants who rent residential properties. The *Commercial Tenancies Act* applies to leasing commercial properties.

It is the responsibility of the unit owner to ensure that the renter abides by the condo corporation's declaration, by-laws, and rules. Additionally, a unit owner must, within 10 days of entering the lease or the renewal of the lease, provide the renter with these documents. Section 83 (1) of the Condo Act requires that an owner also notify the condo corporation that the unit has been leased within the same timeframe, and provide the renter's name, the unit owner's address and a copy of the lease or renewal or a summary of the lease or renewal. [A form is available on the CAO's website](#) which will allow you to easily communicate this information to a condo corporation.

If you plan on leasing your unit you must also be aware of restrictions that the condo corporation's governing documents may place on owners in relation to leases. For example, the condo corporation could have minimum terms for unit leases to prevent the units in the condo corporation from being used as short-term rentals.

## Part 2: Moving into a Pre-Construction Condominium Unit

### 2.1 Interim Occupancy

Interim occupancy occurs in pre-construction condo projects when the developer/builder lets the buyer take occupancy in the unit before the declaration has been registered and the title can be transferred to the buyer. During interim occupancy, you cannot make mortgage payments until the condo corporation is registered.

As your building nears completion, your developer/builder will advise you of your interim occupancy date. On the interim occupancy date, you can live in your unit, but it is important to note that you do not own it yet. Ownership of your unit can only be transferred to you once the condo corporation has been registered.

During the interim occupancy period, you will be required to pay the developer/builder an interim occupancy fee, regardless of whether you move into the unit or not.

The interim occupancy fee cannot be more than the total of:

- The interest (calculated monthly) on the unpaid balance of the purchase price at the prescribed interest rate;
- The estimated monthly municipal taxes for the unit; and,
- The projected common expense fees for the unit.

[For additional information regarding interim occupancy, click here.](#)

## 2.2 Creating the Condominium Corporation

### Condominium Registration Process

Condo corporations are created when the developer registers the declaration and description with the Land Registry Office. Some registration requirements vary by the type of condo corporation being proposed (e.g., phased, common elements etc.).

The declaration and description are legal documents that contain fundamental information about the condo corporation and the property. The proposed or existing declaration must be included in the disclosure statement provided to you by your developer. You may wish to review this carefully.

The **declaration** will contain information such as:

- The proportions, expressed in percentages, of the common interests allocated to each unit;
- How much each unit will pay for common expenses, expressed as a percentage;
- Which parts of the building will be exclusive use common elements, which are often things such as balconies; and
- The responsibilities of owners and the condo corporation to repair and maintain the units and common elements.

The **description** defines the units and the common elements and specifies the boundaries between them. The description will contain information such as:

- A survey showing the boundaries of the property;

- Diagrams showing the shape and dimensions of each unit; and
- Specification of the boundaries of each unit and what is considered part of the common elements.

The Condo Act requires developers to take all reasonable steps to finish construction and register the condo corporation without delay.

[More information about the declaration and description as well as your condo corporation's other governing documents can be found in section 3.3 of this Condo Guide, or by clicking here.](#)

## Declarant-controlled boards

\*Please note that, for ease-of-understanding the Condo Guide uses the term “developer” throughout in place of the term “declarant”, which is used in the Condominium Act, 1998. This section will use both as the term “declarant-controlled board” is used often in materials related to pre-construction and new condo projects.

Within ten days after the condo corporation has been registered, **the declarant (who is generally your developer/builder)** is required to appoint at least three individuals to make up the condo corporation's first board of directors. This first board is called the declarant-controlled board. The declarant-controlled board is responsible for carrying out all normal board duties until the declarant ceases to own a majority of the units in the condo corporation. For example, the declarant-controlled board may propose or make by-laws and rules. More information about condo boards and condo board duties can be found in section 3.2 of this Condo Guide.

Once the declarant ceases to own a majority of the units, the declarant-controlled board is required to call a meeting of the owners to elect a new board within 21 days. The meeting must then be held within 21 days of being called, meaning that the meeting must occur within 42 days of the declarant no longer owning a majority of the units. This meeting is called a turn-over meeting.

## Turn-over Meetings

The turn-over meeting is an important meeting for the condo corporation because the turn-over meeting must cover two important items:

- The turn-over of important documents from the declarant (i.e. generally your developer or builder) to the condo corporation, and
- The election of the first owner-controlled condo board of directors.

The declarant is responsible for turning over important documents at the turn-over meeting such as:

- The condo corporation's minute book (a minute book is the primary record of a condo corporation's meetings);
- The condo corporation's declaration, by-laws, and rules;
- Agreements already entered into on the condo corporation's behalf;

The declarant must turn over other important information within 30 days of this turn-over meeting, such as:

- All financial records of the condo corporation and of the declarant for the condo corporation from the date of registration onwards;

- A copy of any reserve fund studies conducted to date (if any); and
- A copy of the most recent disclosure statement.

Within 60 days after the turn-over meeting, the declarant must also turn over audited financial statements.

Additionally, at the turn-over meeting, unit owners will vote for new board members. For certain requirements related to a turn-over meeting, see section 43 of the Condo Act.

## **First-Year Budget**

According to section 72 of the Condo Act, the declarant (i.e. generally your developer or builder) is responsible for preparing, and including in the disclosure statement, the first-year budget (also referred to as the budget statement) which covers the one-year period immediately following the registration of the declaration and description. Information included in the first-year budget should include, among other things:

- The projected common expenses for the condo corporation;
- The particulars of the type, frequency, and level of services to be provided;
- The projected costs of the performance audit;
- The projected monthly common expense contribution for each type of unit;
- The projected cost of the first reserve fund study; and
- The costs of preparing the audited financial statements.

Overall, the first-year budget is meant to give you a good idea of the expenses you can expect to pay in addition to the cost of buying your unit.

Additionally, section 75 of the Condo Act requires that the declarant be accountable for the first-year budget. After receiving the audited financial statements for the period covered by the first-year budget, the board has 30 days to compare the actual expenses with the first-year budget prepared by the declarant. If there is a shortfall (i.e., there are less funds projected based on the first-year budget than the actual first year expenses), the declarant may be responsible for the shortfall.

## **2.3 Tarion and the Ontario New Home Warranties Plan Act**

### **What is Tarion?**

Tarion is an independent not-for-profit corporation with responsibility for administering the *Ontario New Home Warranties Plan Act*, including warranties and protections claims. Until early 2021, Tarion also serves the function of licensing new home builders and vendors.

[For more information on Tarion, please visit their website by clicking here.](#)

### **What is The Home Construction Regulatory Authority?**

The Home Construction Regulatory Authority (HCRA) is an independent, not-for-profit corporation that is preparing to potentially be designated by the Ontario government as the new regulator of new home builders and vendors under the *New Home Construction Licensing Act, 2017*. If the HCRA is

designated, Tarion would cease to regulate builders and vendors, subject to potential exceptions during transition. Tarion would remain responsible for warranty administration. At this time, it is expected that the future regulatory authority would be operational in early 2021.

[For more information on the HCRA, please visit their website by clicking here.](#)

## **New Home Warranties Plan Act and Coverage**

Tarion's legal responsibilities and mandate come from the *Ontario New Home Warranties Plan Act*. In Ontario, all new residential condos are required to be enrolled in the Ontario new home warranty and protection program, administered by Tarion. If you purchase a new condo and there are warrantable defects (e.g., construction issues, unfinished work, etc.), you can report these to Tarion and your builder. If your builder does not fix the defects, Tarion may provide warranty assistance, if the item is warrantable. Be sure to visit the Tarion website for a breakdown of new home warranty and protection coverage and more information.

[For more information about new home warranty coverage click here.](#)

[Information for purchasers of units in residential condominium conversions is available here.](#)

The common elements of most condos are also covered by Tarion's warranties. If a common element requires warranty coverage, the condo corporation will address the issue (rather than any one individual owner). Section 44 of the Condo Act requires that between the six- and ten-month mark following the registration of the declaration, the board must appoint an engineer or architect to conduct a performance audit. This audit must be submitted to Tarion which will allow the corporation to make claims regarding issues with the common elements. If the corporation does not file in time, it will be impossible to make claims under the Tarion warranty program. It is common that the condo board directors appoint an individual to manage this process on behalf of the board.

[To access more information on the common elements warranty process, please click here.](#)

## **Pre-Delivery Inspection**

A very important step for identifying potential issues or deficiencies is the pre-delivery inspection (PDI). A PDI is your chance to raise issues you notice with your new condo, such as incomplete construction, a damaged area, or an element of poor workmanship of the unit.

During the inspection, the builder of the condo will take you to inspect the new unit and may demonstrate the internal systems (such as air conditioning) of your unit. If you identify a defect during your PDI, your builder should note it on the PDI Form to establish that it existed prior to closing and thus was something not caused by you. It is your builder's responsibility to list these items and provide you with a copy of the completed PDI Form.

The PDI form is an important document, as it will be the official record of the state of your home before you move in, so keep your copy in a safe place. However, the PDI form is not an official warranty form and any items that are not corrected by the time you move in need to be listed on a 30-Day or Year-End Form.

## **Builder Registration/Licensing**

Under the *Ontario New Home Warranties Plan Act*, all new home builders and vendors must be registered with Tarion and enroll their homes in the Ontario new home warranty and protection program.

In early 2021, the Home Construction Regulatory Authority (HCRA) is expected to be designated as the new regulator for new home builders and vendors. As the regulator of new home builders and vendors upon designation, the HCRA would be responsible for receiving and responding to any licensing related inquiries or complaints regarding a builder or vendor. Tarion would remain responsible for any warranty-related inquiries or complaints.

Until early 2021, Tarion will maintain an Ontario Builder Directory of all new home builders and vendors. Buyers of new homes are encouraged to check the Ontario Builder Directory to ensure their builder or vendor is registered with Tarion.

In addition, the Ontario Builder Directory includes information about condominium projects retroactive to January 1, 2018, including cancelled condominium projects and the status of each condominium project (i.e., completed, in progress or cancelled).

If the HCRA is designated by the Ontario government as the new regulator for new home builders and vendors, the HCRA would become responsible for the Ontario Builder Directory once it is operational in early 2021.

## **Part 3: Condominium Living**

### **3.1 Introduction to Condominium Living**

#### **Your Unit and Common Elements**

In a condo corporation, as an owner, you typically own your individual unit and collectively share in the ownership of and expenses for the common elements.

Unlike units, common elements may not be for the exclusive use of a particular unit owner. Common elements may include parking garages, elevators, lobbies, and much more. They may also include structural elements like the walls between the units, doors, plumbing and electrical work.

#### **Exclusive Use Common Elements**

Certain common elements may be for the exclusive use of a particular condo owner. These are called exclusive-use common elements. An example of an exclusive-use common element may be the balcony of a unit. Although a condo owner might think of a balcony as part of their unit, it could be an exclusive-use common element.

Every condo corporation is unique in the breakdown between units and common elements. If you are unsure about what constitutes a common element in your condo corporation, you can refer to your condo declaration.

#### **Rights and Obligations of Owners**

Condo owners in Ontario have rights and obligations that you should be aware of before purchasing a unit:

### **Rights**

- Attending and voting at owners' meetings;
- Seeking election to the condo board, if qualified under the Condo Act;
- Reviewing certain records of the condo corporation, such as certain financial statements and meeting minutes;
- Requisitioning an owners' meeting in certain circumstances;
- Using the common elements and amenities of the condo corporation in accordance with the Condo Act and the condo corporation's declaration, by-laws, and rules; and
- Requesting that an item be added to an owners' meeting agenda.

### **Obligations**

- Complying with the Condo Act and the condo corporation's declaration, by-laws, and rules;
- Repairing and maintaining your unit in accordance with and subject to the Condo Act and the condo corporation's declaration and by-laws;
- Paying your common expense fees on time;
- Notifying the condo corporation if your unit is leased; and
- Attending and voting at certain meetings.

[Click here for more information on condo ownership.](#)

## **3.2 Condominium Governance**

### **Board of Directors and Board Responsibilities**

The board of directors of a condo corporation that is turned over is an elected group of people that is responsible for governing the affairs of the condo corporation. The board of directors will ideally play a critical role in supporting a positive, healthy condo community and ensure that the condo corporation and its assets are well managed and maintained.

The board has certain responsibilities such as:

- Setting the condo corporation's annual budget;
- Making most decisions about how the condo corporation will spend its money, including selecting contractors or service providers your condo corporation will work with;
- Hiring and overseeing the work of a condo manager (should your condo corporation decide to get a condo manager);
- Ensuring required maintenance and repairs are carried out;
- Hiring specialists, such as engineers, to conduct reserve fund studies;
- Proposing changes to the condo corporation's rules and/or by-laws;
- Giving various notices to owners; and
- Making decisions related to the condo corporation's finances.

A condo's board is usually made up of owners in the condo corporation (but can include non-owners depending on the provisions of the condo corporation's by-laws). Directors are elected by the owners and serve for defined terms. Directors must seek re-election when their term expires if they want to remain on the board.

## **Duties of Directors and Required Disclosures**

Board directors are responsible under section 37 (1) of the Condo Act to exercise their power or carry out their duties for the condo corporation with a standard of care. This means directors have a duty under the Condo Act to:

- Act honestly and in good faith; and
- Exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances.

A condo corporation may also have a code of ethics outlined in a by-law. A code of ethics will govern matters such as conflicts of interest, confidentiality, and standards of behaviour at board meetings.

Individuals looking to become directors (i.e. candidates) must meet disclosure requirements listed under section 11.6 of Ontario Regulation 48/01 as well as any such requirements listed in the by-laws of the condo corporation. To qualify as a candidate an individual must disclose, among other things:

- Whether the candidate (or their spouse, child or parent) is party to a legal proceeding in which the condo is also a party;
- Whether the candidate has, directly or indirectly, an interest in a contract or transaction that the condo corporation is a party to;
- If the candidate is a unit owner with common expense fees in arrears for 60 days or more; and
- Whether the candidate has been convicted of an offence under the Condo Act or under the regulations within the preceding 10 years, a statement of that fact and a brief general description of the offence.

A director is immediately disqualified if they do not meet certain disclosure obligations. In addition, directors may be disqualified if they meet any of the criteria listed in section 29(2) of the Condo Act (e.g., they have the status of bankrupt).

[More information regarding director disclosure obligations can be found on the CAO website here.](#)

[For a full list of disclosure obligations, please see 11.10 of Ontario Regulation 48/01.](#)

## **Election Process**

Aside from the developer-appointed directors, and instances where an individual is appointed to the board by the existing directors, directors are elected by the owners at a meeting, such as a turn-over meeting, an annual general meeting, a requisitioned meeting, or a meeting called specifically for elections due to loss of quorum. Directors usually serve for three-year terms, but this period may be shorter, depending on a condo corporation's by-laws. Once their term is over, they must seek re-election to continue to act as a board member.

## **Requirements for Being a Director**

Before a candidate can become a director, there are a few requirements that must be met. The candidate must:

- Be an individual;
- Be at least 18 years old;
- Not have a status of bankrupt;
- Not have been found incapable of managing property;
- Not have been found incapable by a court; and
- Meet the required disclosure obligations, as mentioned above.

Once an individual becomes a director, they can be immediately disqualified from their position if, for example:

- They are bankrupt;
- They have been found incapable of managing property or found incapable by a court;
- They have a certificate of lien registered against their unit that has not been discharged within 90 days;
- They failed to complete the mandatory director training within six months; or
- They failed to comply with mandatory disclosure obligations.

Note that different condo corporations may have additional requirements for directors. You may wish to check your condo corporation's by-laws for more information.

## Director Training Requirements

All directors appointed, elected, or re-elected on or after November 1, 2017 are required to complete the training program provided by the Condominium Authority of Ontario (CAO) within six months of their appointment, election, or re-election, and at least once every seven years. Director training is provided for free and is easily accessible online on the CAO website.

Directors who fail to complete the training within the six-month timeframe are immediately disqualified from their board and cease to be a director.

Although director training is mandatory for directors, director training is not just for condo directors. It is available to any individual and contains plenty of useful information regarding condo living and condo governance.

[If you wish to know more about director training, please click here for more information.](#)

## Meetings and Quorum

Condo meetings can be divided into two types: owners' meetings and board meetings. The Condo Act requires that a minimum number of participants be present at meetings, which is called "quorum". Without quorum, voting cannot take place, however discussion on relevant business is still permitted. Note that a corporation may also be able to make by-laws with respect to meetings, including with respect to quorum and voting. For owners' meetings, owners can either attend in person or by proxy. For more information on proxies, see **Voting by Proxy and Voting Method** below.

Owners' meetings are meetings in which all condo owners are invited to attend. The following are the most common types of owners' meetings:

- **Annual General Meetings (AGM)** are annual meetings where the board has the chance to report to owners on matters such as the financial health of the condo corporation. The AGM

also gives owners the opportunity to discuss matters that are relevant to the business of the condo corporation. The following items may be on the agenda at an AGM:

- Approval of the minutes of the previous AGM;
- Review of year-end audited financial reports;
- Selection of the condo corporation's auditor for the next fiscal year;
- Report of the board of directors regarding matters like past performance;
- Major upcoming projects (e.g., repairs or renovations), potential by-law changes and ongoing issues; and
- Election of directors.

The standard quorum for an AGM is the owners of 25% of the units. If the quorum is not reached on the first two attempts to hold the AGM, the quorum is reduced to 15% on the third and on any subsequent attempts unless the by-laws specify otherwise.

- **Owner-Requisitioned Meetings** are meetings that the board is required to call at the request of the owners of the condo corporation. All owners can attend. Some examples of why owner-requisitioned meetings may be called include:
  - Voting on a proposed rule;
  - Discussion of an emerging issue (e.g., the behaviour of owners, residents, or guests); or
  - The removal and replacement of a director before the expiry of that director's term.

Information related to requisitioning a meeting of owners can be found under section 46 of the Condo Act. Other sections also may be relevant.

[More information on requisitioning a meeting can be found here.](#)

- **Board Meetings** are meetings attended by the condo board to manage the affairs of the condo corporation. The only people who are entitled to attend board meetings are the directors, however, condo boards may invite individuals to attend board meetings as guests. A condo's board of directors can only conduct condo related business at a board meeting. Before any condo business can be conducted, the board must make sure there is a quorum of directors attending the board meeting. For board meetings, quorum is a majority of the total number of positions on the board. For example, if there are 3 positions on the board, quorum would be 2 board members in attendance at the board meeting.

## **Voting by Proxy and Voting Method**

At owners' meetings, votes may be held regarding condo business.

Unless the Condo Act provides otherwise, at a meeting, votes may be cast by:

- A show of hands, personally or by proxy
- A recorded vote that is:
  - Marked on a ballot cast personally or by a proxy;
  - Marked on an instrument appointing a proxy; or
  - Indicated by telephonic or electronic means if the by-laws so permit.

If you are an owner who cannot attend a meeting but still want to participate in decision-making, you can enable somebody who will attend the meeting to vote for you. This individual is called a proxy (who need not be an owner in your condo corporation). You can appoint a proxy by completing a legal document called a proxy form and giving the form to the proxy. You can create only one proxy per unit. If you co-own your unit, the proxy represents all owners of the unit.

[A form is available on the CAO website](#) which gives instructions on how to use a proxy, and how a proxy can vote in a meeting.

## Notices

A condo corporation must provide various notices to owners to make owners aware of upcoming owners meetings. There are a variety of notices required under the Condo Act, such as:

- **Preliminary Notice of Meeting:** The Preliminary Notice of Meeting must be delivered to owners at least 20 days before a Notice of Meeting. The Preliminary Notice will, among other things, let owners know that a Notice of Meeting will be sent, state the purpose of the meeting, and, if applicable, request that individuals interested in being candidates for director positions notify the board in writing.

[More information about a Preliminary Notice of Meeting can be found by clicking here.](#)

- **Notice of Meeting:** The Notice of Meeting must be delivered to owners in writing at least 15 days prior to the day of the meeting. A Notice of Meeting of owners will include the date, time, and place of the meeting. It must also identify the business to be discussed, among other things. No vote can take place on an item, other than routine procedure, that was not disclosed in the Notice of the Meeting.
  - If an owner wishes to receive notices electronically, they must provide an Agreement to Receive Notices Electronically form, and the condo corporation must have a statement of this method of receiving notices in the record of owners and mortgagees (unless the Condo Act provides otherwise).

[More information about the Notice of Meeting can be found on the CAO website here.](#)

## Information Certificates

Information Certificates help ensure that condo owners receive important information about the state of the condo corporation throughout the year. Information certificates can be broken down into three types:

- **Periodic Information Certificate (PIC).** Sent out twice per fiscal year to all owners (within 60 days of the end of the first quarter and 60 days of the end of the third quarter). Includes key information about the condo's board, finances, insurance, reserve fund, legal proceedings, and other matters.
- **Information Certificate Update (ICU).** Sent to owners if there are certain key changes before the next scheduled PIC (such as changes in the directors or officers of the condo corporation). To be distributed within 30 days of the change.

- **New Owner Information Certificate (NOIC).** Sent to new owners within 30 days after the new owner provides written notice stating their name and the unit that they own in the condo corporation. A NOIC covers the most recent PIC and any subsequent ICUs.

Condo corporations may be able to pass by-laws related to PICs and ICUs.

[More information on Information Certificates can be found on the CAO website here.](#)

## **Records Requirements and Process to Request or Examine Records**

As a condo owner, you have the right to access certain records regarding how the condo corporation is managed. It is the condo board's duty to ensure that adequate records are kept and that they are retained for the legally required amount of time. If an owner wants to access certain records, they must use a Request for Records form. In their request, they can specify whether they wish to review records or request copies of records and they can indicate whether they would like electronic or paper copies.

As an owner, you may have the right to access:

- Your condo corporation's declaration, by-laws, and rules;
- The financial records of your condo corporation;
- The minute book containing the minutes of owners' meetings and the minutes of board meetings;
- A copy of the returns or notices of change that the condo corporation has filed with the CAO;
- All lists, items, records, and other documents from your condo corporation's turn-over meeting;
- A list of the names of the owners of each unit in the condo corporation and their address for service;
- All reserve fund studies and all plans to fund the reserve fund;
- All agreements entered by or on behalf of the condo corporation;
- All instruments appointing a proxy or ballots for a meeting of owners that are submitted at the meeting; and
- Other records as specified under the Condo Act, including in its regulations, or your condo corporation's by-laws.

[More information about records can be found on the CAO website here.](#)

## **3.3 Condominium Corporation Governing Documents**

In addition to complying with all applicable requirements under the Condo Act, all owners, residents, employees of the condo corporation, guests and others must comply with the condo corporation's governing documents. It is very important that you read and understand a condo corporation's governing documents before purchasing a unit. If you are unfamiliar with the requirements set out in

your governing documents, you may unknowingly cause issues, requiring the condo corporation to respond to enforce the provisions found in these documents. The governing documents include:

1. **The Declaration;**
2. **By-laws; and**
3. **Rules.**

The governing documents must be consistent with the Condo Act.

1. The **Declaration** is one of the foundational documents of the condo corporation. The declaration is often considered the constitution of the condo corporation and contains many important provisions. It will include:

- The proportions, expressed in percentages, of the common interests allocated to each unit;
- How much each unit will pay for common expenses, expressed as a percentage;
- Which parts of the building will be exclusive use common elements, which are often things such as balconies; and
- The responsibilities of owners and the condo corporation to repair and maintain the units and common elements.

The declaration may be changed with the consent of at least 80% or 90% of voting units depending on what the change is.

2. **By-Laws** describe how the condo corporation is to govern itself. The by-laws can be considered the administrative guide for the condo corporation. A condo corporation's by-laws often deal with a wide range of matters. For example, by-laws may govern:

- How directors are elected;
- How common expenses are collected; and
- When/how the condo corporation can borrow money.

By-laws must be both reasonable and consistent with the declaration, as well as the Condo Act. By-laws must be approved by the owners of a majority of the units, except where the Condo Act provides otherwise, and registered with the Land Registry Office.

3. **Rules** regulate the use of the units or common elements or assets in a condo corporation. The condo rules will dictate what individuals on the condo property can and cannot do. Rules must be reasonable and consistent with the declaration and by-laws, in addition to the Condo Act. Rules must either: promote the safety, security or welfare of the owners, property, or assets of the condo corporation; or prevent unreasonable interference with the use and enjoyment of units, common elements or assets. Examples may include:

- Restricting smoking, vaping and/or the growing of cannabis;
- Restricting short-term rentals; or
- Limiting the number or size of pets allowed in the building.

Upon making, amending or repealing a rule, the board shall give a notice of it to the owners that includes:

- A copy of the rule;
- A statement of the date that the board proposed the rule will become effective;
- A statement which says that the owners have a right to requisition a meeting; and
- A copy of sections 46 and 58 of the Condo Act.

Owners who disagree with the rule may be able to requisition an owners' meeting regarding the rule and then have a vote during the meeting to prevent the changes to a rule(s) from being passed. If the owners do not requisition a meeting, the rule becomes effective the day after 30 days have passed since the board gave the owners notice of the rule. For more information on owner requisitioned meetings, please see section 3.2 of this Condo Guide.

[More information about the declaration, by-laws, and rules can be found on the CAO website here.](#)

## 3.4 Condominium Finances

### Reserve Funds

A **reserve fund** is a fund that condo corporations use for major repair or replacement of common elements and assets as needed. The Condo Act requires that all condo corporations have a reserve fund. Adequate reserve funds and proper use of those funds are critical to maintaining the structural integrity of the condo corporation's property. Reserve funds may only be used for major repairs and replacements of the common elements and assets of the condo corporation. Condo corporations must collect contributions to the reserve fund from owners as part of their common expense fees. Condo corporations must complete reserve fund studies. Reserve fund studies are completed by certain specialists (e.g., engineers) and determine how much money needs to be in the fund to be able to pay for anticipated major repairs/replacements that will be needed in the future. Generally, after the first reserve fund study, reserve fund studies are completed/updated every three years.

[More information about reserve funds and reserve fund studies can be found on the CAO website.](#)

### Common Expenses

Common expenses, which are typically described in the Condo Guide as "common expense fees" (also commonly known as condo fees or maintenance fees) are collected by the condo corporation under the Condo Act. In addition to including a contribution to the reserve fund as described above, common expense fees may be used to fund:

- The cost of maintenance to the common elements (e.g., standard elevator repairs, cleaning).
- The cost of your condo manager or management service provider.
- The condo corporation's insurance policies.
- Services, such as garbage or snow removal, landscaping, security etc.

As an owner, you are required under section 84 (1) the Condo Act to pay your share of common expense fees attributed to your unit. As per section 84 (3) of the Condo Act, you are obligated to pay your common expense fees even if:

- You have waived or abandoned your right to use the common element(s);
- You have made a claim against the condo corporation; or
- The condo corporation's declaration, by-laws or rules restrict you from using the common element(s).

## **How are Common Expense Fees Calculated?**

Condo boards make a budget every year which outlines various expenses for the fiscal year that are to be paid by the owners. The condo corporation's declaration will state the portion of the common expenses each owner is required to contribute, expressed as a percentage. The percentage may, but need not, relate to the size of your unit. The amount of common expenses you are required to contribute may fluctuate (e.g., increase) for various reasons (e.g., as the needs of the condo corporation change).

Section 56 (1) of the Condo Act also permits condo corporations to pass by-laws governing the assessment and collection of common expense fees.

## **Liens**

If you as an owner default on your obligation to pay common expense fees, your condo corporation automatically has a lien on your unit. The lien will cover the unpaid amount owing as well as all interest, and all reasonable legal costs and expenses incurred by the condo corporation in its attempt to collect.

The condo corporation has three months from when the default occurred to register a certificate of lien, otherwise the lien will expire after three months of the default. At least ten days' notice is required to be provided to owners before the certificate of lien can be registered on title. Condo liens have priority over every other liability, including mortgages, subject to some exceptions, and may be enforced in the same manner as a mortgage.

## **Special Assessments**

As described above, your condo corporation will create a budget for every fiscal year. Should there be a budget shortfall (i.e., where expenses exceed revenues), your condo corporation may levy a special assessment to cover expenses. A special assessment is an extra one-time charge added to your common expense fees.

Your board may need to levy a special assessment for unforeseen major expenses such as repairs related to flooding, costs related to legal proceedings, etc. Your condo corporation's by-laws may include provisions about special assessments.

Under section 84 of the Condo Act, you are required to pay your unit's share of the common expense fees, which may include special assessment fees. Your portion is calculated using the same percentage used to calculate your regular common expense fees.

[More information about special assessments can be found on the CAO website here.](#)

## **Chargebacks**

A chargeback is an addition to an owner's common expense fees to reimburse the condo corporation for a cost it incurred. This is to ensure that certain expenses or costs incurred are not levied to all

owners, particularly where they are not all responsible for the circumstances leading to the expense or cost.

Some chargebacks are specifically authorized by the Condo Act. For example, section 92 (4) of the Condo Act allows condo corporations to add repair costs to a unit's common expenses fees, where repairs were completed on an owner's behalf after they failed to complete them within a reasonable time. Condo corporations may also have provisions within their declaration that require owners to indemnify the condo corporation for certain costs, called an indemnification clause.

If an owner does not pay the chargeback, a lien will automatically be placed on the defaulting unit, just as would occur if the owner does not pay their regular common expenses on time. If the condo corporation registers a certificate of lien and the owner does not pay the lien in full (this is known as discharging the lien), the condo corporation has the ability to attempt to have the unit sold to cover the costs.

## **Condo Insurance**

Under the Condo Act, condo corporations are required to obtain and maintain both property insurance and liability insurance.

- **Liability Insurance:** Under section 102 the Condo Act, condo corporations are required to obtain and maintain insurance against the liability resulting from a breach of duty as the occupier of the condo corporation's common elements or certain land as well as insurance against liability arising from the ownership and use of boilers, machinery, pressure vessels and motor vehicles.
- **Property Insurance:** Section 99 (1) of the Condo Act requires condo corporations to obtain and maintain insurance for damage to the units and common elements that is caused by certain major perils, including fire, smoke, lightning, windstorm, hail, or any other peril specified in the condo corporation's declaration or by-laws.

## **Standard Unit**

A condo corporation's obligation to insure the units does not cover "improvements" made to units. Section 99 of the Condo Act states a condo corporation's obligation to insure against damage to units from major or other perils only includes what is called a "standard unit".

What constitutes a standard unit in your condo corporation is important as it not only outlines responsibility for property insurance coverage but also partly determines what the condo corporation or the condo owner is responsible for when dealing with repairs after damage.

For more information on where to find your condo corporation's definition of a standard unit, see section 3.5 of this Condo Guide - Living in Units and Using Common Elements.

## **Deductibles**

According to section 105 (1) of the Condo Act, if an insurance policy obtained by the condo corporation has a deductible clause that limits the amount payable by the insurer, the condo corporation is responsible for paying the portion of a loss that is excluded from coverage, and that amount must be included in the common expenses.

A single owner may be responsible for paying a deductible if a claim to the condo corporation's insurer arose due to the owner's (among others) action or inaction. In this case, the lesser of the deductible limit or the actual cost of the repairs must be charged back to that owner's unit. For more information on chargebacks, please see section 3.4 of this Condo Guide.

Your condo corporation may also have an insurance deductible by-law that would extend the circumstances in which an owner would be responsible for paying for a property insurance deductible. Common examples of extended circumstances could include:

- Where the owner, occupant, or guest of the unit, through an act or negligence causes the insured damage; and/or
- Where the insured damage is caused by accident (i.e., where no one is at fault).

## **3.5 Living in Units and Using Common Elements**

### **Units vs. the Common Elements**

For a description of what a common element is and what an exclusive use common element is, please refer to section 3.1 of this Condo Guide. As noted in section 3.1, common elements are elements which may not be for the exclusive use of a particular unit owner.

In a condo corporation, typically owners own their individual unit(s) and collectively share ownership of and expenses for the common elements (e.g. roof, hallways, elevators, pool).

What is considered part of a "unit" and what is considered part of the "common elements" will be outlined in the condo corporation's declaration and description. Schedule C of the declaration contains this information for most types of condo corporations, and more, as explained below. In addition, the Condo Act includes information about what is a unit vs. a common element. The term "common elements" generally means all the property except the units.

Understanding the breakdown between a unit and the common elements is important when considering repair and maintenance obligations, condo insurance, and making changes to your unit.

### **Repair and Maintenance Obligations**

Section 89 (2) of the Condo Act requires that, subject to the Condo Act and a condo corporation's declaration:

- Condo corporations are responsible for repairing damage to both the common elements and units. This obligation to repair does not include any improvements made to units.
- Unit owners are responsible for maintaining their units (i.e., upkeep and repairing after normal wear and tear) and condo corporations are responsible for maintaining the common elements (e.g., parking, gardens, hallways, elevators, amenities, etc.).

The following documents, together with the Condo Act, are notable when it comes to figuring out repair and maintenance responsibilities:

**1. Schedule C.** Schedule C (within your condo corporation's declaration) typically will outline unit boundaries and therefore clarify repair and maintenance responsibilities, especially in unclear areas (e.g., plumbing, electrical, areas behind drywall, etc.).

**2. Standard unit by-law.** A standard unit by-law or, if none, a schedule provided by the developer, will detail which components of a unit are the "standard unit" and therefore the responsibility of the condo corporation to repair.

Also, section 91 of the Condo Act allows condo corporations to alter these repair and maintenance obligations in their declaration. This means that when determining who is responsible for repairs or maintenance it is necessary to review your condo corporation's declaration. Note, there are some different repair and maintenance requirements under the Condo Act for different types of condo corporations (e.g., vacant land condo corporations).

## **Making Changes to Your Unit**

A condo corporation's declaration, by-laws, and rules may contain rules about making modifications to your unit or common elements (such as requiring notice to the board, restrictions on design, décor, materials to be used, restriction on days or times when renovations are permitted, etc.). You may wish to review these requirements, as well as applicable requirements under the Condo Act, before considering changes to your unit.

## **Modifications to the Common Elements by Owners**

Changes to the common elements (e.g., exterior walls) by owners generally will require board approval. Section 98 of the Condo Act states that an agreement (often referred to as a section 98 agreement) must be entered into between the condo corporation and the owner specifying, for example:

- The allocation of cost of the proposed modification between the owner and the condo corporation; and
- The respective duties and responsibilities of the owner and condo corporation for the costs of repairs after damage, maintenance, and insurance of the modification.

The board may approve a proposed modification, and there will be no requirement to provide notice to other owners if the modification is to an exclusive use common element, and the board is satisfied that the modification will not:

- Have an adverse effect on units owned by other owners;
- Give rise to any expense to the corporation;
- Negatively impact the appearance of buildings on the property;
- Affect the structural integrity of buildings; or
- Contravene the declaration or any prescribed requirements.

## **Right of Entry**

Section 19 of the Condo Act provides condo corporations, or a person authorized by the condo corporation, the right to enter units to perform the objects and duties or to exercise the powers of the condo corporation. They can only do so after providing reasonable notice to the owner of the unit.

Examples of when condo corporations may typically seek to enter units include:

- To perform maintenance and repairs to the common elements;
- To perform routine inspections on things such as smoke detectors; and
- To ensure compliance with the Condo Act and the condo corporation's declaration, by-laws, and rules.

Your condo corporation will also have the right to enter units in the case of an emergency, such as a fire or water leak, without any reasonable notice.

## **3.6 Condominium Management**

Condo corporations, while not required to, may decide to hire a condo manager or a condo management company to oversee the condo corporation's day-to-day operations. Condo managers act on behalf of the condo corporation and are directed by the board of directors. A condo manager's range of responsibilities may include:

- Creating and maintaining records for the condo corporation;
- Responding to owner complaints;
- Coordinating the maintenance and repair of the property;
- Hiring and monitoring the performance of service providers;
- Preparing draft annual budgets and monitoring the reserve fund;
- Issuing meeting notices; and
- Organizing board meetings and overseeing administration of all owners' meetings.

Under section 17.0.1 of the Condo Act, condo corporations cannot enter into agreements with a condo manager or management company unless they are licensed through the Condominium Management Authority of Ontario (CMRAO). For more information about the CMRAO, see section 4.2 of this Condo Guide.

[For more information on the CMRAO, you can visit their website by clicking here.](#)

## **Part 4: Resources for Issues Resolution**

### **4.1 Raising Issues with your Condominium Board**

Occasionally, issues can arise with condo living. There are several options that may be available to condo owners who have concerns with their board of directors or condo corporation generally. Before raising any issues, you may wish to consult the governing documents of your condo corporation as

some condo corporations may have specific protocols for raising issues. When raising issues, you may wish to consider the following:

### **1. Writing a Letter to the Board**

You may wish to contact your board to request formal consideration of your concern if you are experiencing a condo-related issue that you wish to raise with the board. Within the letter or email it is helpful to provide as much detail as possible about the issue.

[The CAO also has email and letter templates for writing to your board, available on the CAO website by clicking here.](#)

### **2. Requisitioning a Meeting of Owners**

Owners may be able to requisition a meeting to discuss certain issues. For example, owners may be able to requisition a meeting to discuss:

- The removal and replacement of a director before the expiry of that director's term;
- A proposed new rule or change or repeal of an existing rule; and
- The discussion of any emerging issue (e.g., a board decision).

For more information on meetings in general, see section 3.2 of this Condo Guide.

[For more information regarding the requisitioning of meetings, please click here.](#)

### **3. Raising Issues at an AGM**

An AGM provides another opportunity to bring up issues regarding the condo corporation and condo business to the board and other owners. Owners may be able to raise their concerns at their AGM. Section 45(3) of the Condo Act states that owners may raise any matters for discussion in the AGM, as long as they are relevant to the affairs and business of the condo corporation.

### **4. Seeking Legal Advice**

If a particular issue cannot be resolved through any of the above options, you may wish to consider seeking legal advice.

If you require legal advice, you may wish to contact a lawyer or paralegal familiar with condo law. The names of lawyers or paralegals may be obtained from the [Law Society of Ontario Referral Service](#). They may provide a free consultation of up to 30 minutes.

Additionally, you may wish to consider reviewing the [CAO's Issues and Solutions](#) page for additional information on common issues associated with condo living.

## **4.2 The Condominium Authority of Ontario**

The CAO is a not-for-profit organization designated by the Ontario government to administer delegated provisions of the Condo Act and its regulations. The CAO's role is to support condo living by providing services and resources for condo communities and the general public. These include:

- Offering information about condo living to condo owners, residents, and other members of the public;
- Administering mandatory training for condo directors;
- Hosting and providing access to several mandatory and optional condo forms;
- Maintaining the CAO's Public Registry, which contains and displays information filed with the CAO through returns and notices of change; and
- Overseeing an online dispute resolution forum - the Condominium Authority Tribunal (CAT).

The CAT is an online tribunal that is authorized to resolve certain disputes primarily between condo corporations and owners. Part I.2 of the Condo Act and related regulations, including Ontario Regulation 179/17, set out certain provisions related to the CAT's jurisdiction.

Currently, the CAT resolves certain disputes relating to:

- the retention of and access to condo records.
- condo corporation governing document provisions about:
  - vehicles;
  - pets or other animals;
  - parking and storage; and
  - indemnification or compensation of the condo corporation, owner or mortgagee related to the above-noted governing document disputes.

[For more regarding the CAT, its function, and its jurisdiction, click here.](#)

## 4.3 Condominium Management Regulatory Authority of Ontario

The Condominium Management Regulatory Authority of Ontario (CMRAO) is a not-for-profit corporation that is responsible for administering provisions under the Condominium Management Services Act, 2015 (CMSA), including by licensing condo managers and management providers. The CMRAO:

- Ensures that condo managers and condo management companies are licensed, meet education standards, and comply with a code of ethics, among other requirements.
- Maintains a list of licensed condo managers and condo management providers.
- Promotes awareness of the condo management regulatory system and enforces compliance with the CMSA.

### Handling Complaints

If you think your condo's manager or management service provider is in violation of the CMSA you can submit a complaint to the CMRAO. If the registrar of the CMRAO receives a complaint about a licensee, the registrar may do any of the following, as appropriate:

- Attempt to mediate or resolve the complaint;

- Give the licensee a written warning;
- Require the taking of further educational courses;
- Refer the matter, in whole or in part, to the discipline committee;
- Propose to suspend, revoke, or add conditions to a licence;
- Propose to refuse to renew a licence; or,
- Take further action as is appropriate in accordance with the CMSA.

[More information about making a complaint can be found on the CMRAO's website here.](#)

## **4.4 Compliance and Enforcement Mechanisms**

### **Responsibility to Comply with the Condo Act**

Section 119 of the Condo Act provides that the condo corporation, owners, directors, officers, employees, mortgagees, developer and occupants are all required to comply with the Condo Act as well as the condo corporation's declaration, by-laws, and rules.

Section 17 (3) of the Condo Act provides that condo corporations have a duty to take all reasonable steps to ensure that owners, occupiers, lessees, agents and employees of a condo corporation comply with the Condo Act, the declaration, the by-laws and the rules. Additionally, section 119 (2) of the Condo Act provides that owners are obliged to take all reasonable steps to ensure occupants and visitors of their unit also comply with the Condo Act, the declaration, the by-laws, and the rules.

### **Mediation, Arbitration, and Compliance Orders**

Under section 132 of the Condo Act, certain disputes must be resolved through mediation or arbitration. Condo corporations may also have provisions in their declaration or by-laws establishing a procedure for resolving certain disputes and compliance.

To resolve certain disputes between an owner and the condo corporation, the first step would be mediation, and then arbitration, if required.

As per section 134 of the Condo Act, certain compliance disputes may be resolved through an application to the Superior Court of Justice, including if the mediation and arbitration process has failed to solve the issue. Condo corporations, owners, occupants of a proposed unit, and developers are all entitled to apply as set out in that section; however, it is recommended to talk to a lawyer or paralegal if considering any legal action.

Please note that sections 132 and 134 of the Condo Act do not apply to disputes that may be brought to the CAT.

### **Offences Under the Condo Act**

Sections 136.1 and 137 of the Condo Act set out provincial offences under the Condo Act that the Ministry of Government and Consumer Services (Ministry) administers. If you have information about conduct you believe may constitute an offence under section 136.1 or section 137 of the Condo Act, you may provide that information to the Ministry.

[You can file the information by clicking here.](#)

The Ministry will review the information and determine if compliance or enforcement action would be appropriate. Please note that not every complaint will lead to compliance or enforcement action.

Section 136.2 of the Condo Act sets out provincial offences under the Condo Act which are administered by the CAO. If you have information about conduct that you believe may constitute an offence under section 136.2 of the Condo Act, you may provide that information to the CAO.

## Part 5: Glossary of Key Terms

**Addendum:** The Tarion Addendum (expected to be a joint Tarion/HCRA addendum if the HCRA is designated in early 2021) is a required part of the agreement of purchase and sale for a residential condo and contains important information that both the builder and condo buyer are required to agree to.

**Agreement of Purchase and Sale:** The Agreement of Purchase and Sale contains important information about your rights and obligations as a condo buyer, the builder's rights and obligations as seller (as applicable), the unit, and the condo construction project.

**Annual General Meeting:** Annual owners' meeting where the board of directors presents to the owners on the financial health of the condo corporation and other business.

**Board Meetings:** Meetings attended by board members to manage the affairs of the condo corporation.

**By-laws:** By-laws are part of the condo corporation governing documents. By-laws govern how a condo corporation operates. By-laws can cover topics such as: the size of your condo board, the process for electing directors, and the format of board meetings. By-laws must be consistent with the declaration and the Condo Act as well as reasonable.

**Chargebacks:** Charges that are added to the amount of a unit owner's common expense fees. This may happen, for example, due to a condo corporation handling an owner's maintenance obligations or where a condo corporation incurs certain court costs in a legal proceeding against an owner to enforce compliance.

**Common Elements:** All condo property except units.

**Common Elements Condominium:** A condo corporation that creates common elements but does not divide the land into units. Owners purchase land tied to part of a common element condo corporation in which they also have an ownership interest (such as a shared road, ski hill or golf course) and pay common expense fees.

**Common Expense Fees:** The amount of money that an owner contributes in the proportions specified in the declaration. These go towards paying expenses (operating and reserve), including for, among other things, the maintenance and upkeep of the condo corporation's common elements.

**Condo Corporation:** A legal entity that comes into existence when a declaration and description are registered with the Land Registry Office. All units and common elements are part of a condominium corporation, and condominium corporations are governed by boards of directors on behalf of owners.

**Condo Manager:** An individual licensed by the Condominium Management Regulatory Authority of Ontario who is hired by a condo corporation to oversee a condo corporation's day-to-day operations. Condo managers are accountable to the board of directors of the condo corporation.

**Condominium Act, 1998 (Condo Act):** The Condo Act provides a legal framework that enables condo owners and their elected board of directors to make decisions about the governance of a condo corporation.

**Condominium Authority Tribunal (CAT):** an online tribunal administered by the Condominium Authority of Ontario that is authorized to resolve certain disputes primarily between condo corporations and owners.

**Condominium Management Services Act (CMSA):** The CMSA provides a framework for regulating condo managers and condo management providers and requires that they be licensed to provide condo management services in Ontario.

**Cooling Off Period:** Ten-day period within which buyers of pre-construction condos have the right to rescind, or cancel, a purchase agreement they have signed, for any reason whatsoever. Begins on the later of the date the buyer received the disclosure statement, a copy of this Condo Guide, and the copy of the agreement of purchase and sale.

**Declarant:** The owner of the land where the condo corporation is being established. \*Note that, for ease-of-understanding, the Condo Guide sometimes uses the term "developer" in many places in place of the term "declarant", which is used in the Condominium Act, 1998. The Ontario New Home Warranties Plan Act also uses the terms "vendor" and "builder".

**Declaration:** Governing document that contains important information about the condo corporation, such as the percentage that the unit owner must contribute to the common expenses and a breakdown of the responsibilities for repairing and maintaining the units and common elements.

**Description:** The description defines the units and the common elements and specifies the boundaries between them.

**Declarant-Controlled Board:** A condo corporation board including directors appointed by the declarant (i.e. the developer).

**Delayed Occupancy:** When a unit buyer is unable to take possession of the new residential unit by the firm or outside occupancy dates contained in the Addendum to a purchase agreement.

**Director / Board of Directors:** The individuals who are appointed or elected to manage the affairs of the condo corporation. Directors are responsible for making important decisions and serve for terms of up to three years.

**Director Training:** Training program provided by the Condominium Authority of Ontario. All condo directors appointed, elected, or re-elected on or after November 1, 2017 are required to complete the training program within six months of their appointment, election, or re-election. Directors do not have to take the training if they have completed the program within the previous seven years.

**Disclosure Statement:** A document that your declarant must provide when you purchase your unit from them or someone benefiting them, and which includes important information about your unit and the condo corporation (proposed or registered).

**Exclusive Use Common Elements:** Are common elements that specific unit owners/occupiers have exclusive use of (e.g., a balcony connected directly to a single unit).

**Governing Documents:** A condo corporation's declaration, by-laws, and rules.

**Information Certificates:** Information Certificates help to ensure that owners receive ongoing information about their condo corporation throughout the year. There are three types: Periodic Information Certificates, Information Certificate Updates, New Owner Information Certificates.

**Information Certificate Updates:** are information certificates which include information on certain key changes before the next scheduled Periodic Information Certificate (such as changes in the directors or officers of the condo corporation). These are to be distributed within 30 days of the change.

**Interim Occupancy:** When a buyer takes occupancy of their unit before the condo corporation has been registered with the Land Registry Office, and before ownership is transferred to the buyer. The duration of the interim occupancy is called the interim occupancy period, and during that period the buyer is required to pay occupancy fees.

**Interim Occupancy Fee:** The amount that a buyer is required to pay the declarant during the interim occupancy period.

**Interim Occupancy Period:** The period from your interim occupancy date to the date ownership is transferred to you.

**New Owner Information Certificates:** Information certificates which are sent to new owners within 30 days after the new owner provides written notice stating their name and the unit that they own in the condo corporation.

**Notices:** Notices are documents containing information that an individual is entitled to receive as a unit owner. Notices will be delivered to you in either hardcopy or digitally (if the condo corporation and owner agree to electronic delivery or if that is otherwise permitted).

**Owners' Meetings:** Meetings which all owners are invited to. Includes annual general meetings, owner-requisitioned meetings, turn-over meetings, and meetings called by the board regarding the transaction of any condo business.

**Owner-Requisitioned Meetings:** Meetings requested by the owners to discuss/vote on a specific topic, such as the removal of a director or voting on a rule proposed by the board of directors.

**Periodic Information Certificates:** Information certificates which focus on the condo corporation's board, finances, insurance, reserve fund, legal proceedings, and other matters.

**Phased Condominium:** A condominium that is built and registered in phases. Once the construction is complete, it becomes a standard condominium.

**Quorum:** The law requires that a minimum number of owners be present (either in person or by proxy) at a meeting. Without quorum, voting cannot take place, however discussion on relevant business is still permitted.

**Reserve Fund:** A fund condo corporations save and use to handle the larger financial burdens, for major repair or replacements of common elements and assets as needed.

**Reserve Fund Study:** Determines how much money needs to be in the reserve fund to ensure the major repairs/replacements can be paid for in the future. The reserve fund study must be prepared by a specialist, like an engineer. The board of directors approves the study, then informs owners of the results of the study.

**Rules:** Rules are part of the condo corporation's governing documents. Rules exist for the protection of those living in the condo corporation as well as the protection of the assets of the condo corporation itself, and to prevent unreasonable interference with the use and enjoyment of the units, common elements, and assets of the condo corporation. Rules must be consistent with the Condo Act and the declaration and by-laws of the condo corporation as well as reasonable.

**Special Assessment:** An extra one-time charge added on top of an owner's common expense fees.

**Standard Condominium:** The most common type of condo corporation in Ontario, where the condo corporation is made up of units and common elements.

**Statement of Critical Dates:** The Statement of Critical Dates can be found in the Addendum to your purchase agreement. The Statement contains the dates you can expect to take occupancy of your unit, as well as other important information.

**Status Certificate:** A document that anyone can request from a condo corporation and which contains important information about the unit and condo corporation.

**Turn-Over Meeting:** The meeting held by the declarant-controlled board within 42 days of the declarant ceasing to own a majority of the units. At this meeting, the owners will elect a new board and the declarant-controlled board will turn over several items to the new owner-elected board.

**Vacant Land Condominium:** A type of condo corporation in which the units may be vacant lots at the time of purchase, and the condo corporation may resemble a subdivision. Common elements are often things such as roadways, sewer systems, and amenities such as parks or recreation facilities.