



Condo Connection

Wilson, Blanchard Management Inc. – *Condominium Management with Experience and Integrity*
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The WB Condo Connection highlights Ontario condominium related articles and educational items that may be of interest to Boards of Directors and condo owners. It is published online and available on our website (www.wilsonblanchard.com) as well as in hard copy format to each of the members of our Boards of Directors.

We hope you enjoy this edition and we welcome your comments, suggestions, or article topic requests by email to newsletter.editor@wilsonblanchard.com or by mail to:

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The following article is printed in the most recent edition of the CondoBusiness Magazine. It is reproduced in this edition of the WB CondoConnection's newsletter with the permission of the author. Following some of the items listed here in this summary of important changes coming in Bill 106, are comments inserted by WB.

BETTER KNOW BILL 106

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Bill 106, also known as the 'Protecting Condominium Owners Act', passed the first of three readings in the provincial legislature on May 27. If it becomes law, the proposed legislation would overhaul the Condominium Act and introduce the Condominium Management Services Act.

The major changes, already widely reported, include a cheaper, faster means of dispute resolution than the courts and condo manager qualifications and licensing. As industry experts continue to pore over the 159-page bill, we highlight 25 details, broken into the five major areas of reform.

Note: It's important to recognize that Bill 106 may change as it progresses through the provincial legislature, and the current Condominium Act (1998) remains in force.

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Consumer protection

1. New unit owners often don't fully understand what they've bought into — that there are community rules and monthly fees, as examples. The proposed Act would see the province create a condo guide which would educate buyers on their rights and obligations.
2. Regulations would simplify and, to some extent, standardize disclosure statements and declarations. These documents contain important information but typically lack readability.
3. The proposed Act would require developers to disclose any circumstances they know of or should know of that could lead to year two increases in common expenses, along with the amount of the expected increase.

WB: *An important reason for the standardization of disclosure documents and even declarations is to allow lawyers, real estate agents and even purchasers to rely on a schedule of variances from the standardized documents. Think of real estate sales agreements that state all chattels are included except those specifically excluded in an attached schedule. This type of practice will increase the consumer protection when lawyers are reviewing the sales agreements for condos and help reduce legal costs for purchasers.*

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4. Plans change, but developers are obligated to disclose defined 'material changes' to buyers. If a developer fails to meet this obligation, the proposed Act would give purchasers recourse to the courts, which could order the developer to comply and pay costs, damages, and up to \$10,000.
5. The proposed Act would prohibit the increasingly common practice of developers leasing back or selling building components, such as party rooms, that would normally form the common elements. Exceptions might include energy-efficiency equipment.

Dispute resolution

6. The Condominium Act Review identified the need for a cheaper, faster means of dispute resolution compared to the courts. The proposed Act would establish a Condo Authority Tribunal, which would mainly hear disputes between owners and corporations.
7. Regulations would set out what types of disputes could be referred to the Tribunal, but may include cases concerning access to records; enforcement of declarations, bylaws and rules; procurement processes, and procedures for requesting an owners meeting.
8. Applications to the Tribunal would need to be made within two years of the dispute in question, unless the Tribunal granted an extension. The Tribunal could also reject or dismiss applications it deemed frivolous or vexatious.
9. Tribunal proceedings could occur in person, in writing, or by phone, email or video conference; parties to a proceeding could be directed to alternative dispute resolution such as mediation.
10. The Tribunal could issue orders to comply, issue orders to pay another party's costs, prohibit or require an action, and award damages of up to \$25,000. The only grounds to appeal Tribunal decisions to Divisional Court would be on questions of law.

WB: You will note throughout the points listed above reference to a tribunal which has yet to be created. The interesting point driven home by this decision is the fact that responses given to owners from Management and the

Board are often viewed as self-serving and owners appear to lack faith in the information given to them by management and even the corporation's lawyer at times.



The Ministry obviously feels that owners want a decision rendered by a third party (judge and tribunal) and that the creation and operation of the tribunal is more cost effective than expensive court proceedings for what can be relatively minor disputes.

Finances

11. The proposed Act would require corporations to prepare an annual budget covering the operating and reserve fund accounts 30 days before the end of its fiscal year.

WB: *It was almost shocking to realize that Corporations are operating without sending a budget to their unit owners and that the legislation didn't already require the distribution of a budget to unit owners.*

12. The proposed Act would require corporations to notify owners of annual budgets in a standardized form, along with a copy of the budget. Regulations would set a threshold and timeframe for boards to report off-budget spending to owners.

WB: *The budget must be approved 30 days before the start of the new fiscal year and the owners must receive a copy at least 15 days prior to the start of the new fiscal year. This gives management the time to prepare and distribute the budget and notice of any change in fees using a prescribed form.*

WB: *The notification of off-budget spending is a new requirement which will be more fully explained in the*

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regulations which will follow. It is expected that any unbudgeted deficit spending will have to be disclosed to owners.

13. The proposed Act would allow boards to alter, improve, or add to the corporation's assets, common elements or services without notice to owners if they are complying with laws and regulations or shared facilities agreements.
14. The proposed Act would clarify the difference between 'maintenance' and 'repairs', as well as who is responsible for them. Corporations would be responsible for maintaining and repairing their assets and common elements; owners would be responsible for maintaining and repairing their units.
15. Regulations would set out how to determine the adequacy of reserve funds. A board would be required to consult an outside expert on whether it needs a new study before its next regularly scheduled study if its reserve fund level dipped below the regulated level.

WB: The definition of 'adequately funded' is one which has developed over the past 14 years working under the current Act. Most engineers have taken the definition to mean that contribution to the reserve fund should not need to increase at more than the anticipated rate of inflation. The new definition is expected to allow increases in contributions to the reserve fund to be more than inflation for the 3-year period of the current study.



Governance

16. The proposed Act would make it easier to attain quorum (the percentage of unit owners who must be represented in person or by proxy to conduct business at owners meetings). The current 25-per-cent threshold would drop to 15 per cent on a corporation's third attempt to hold a meeting.

WB: The other side of this assistance from the Act is the expectation that a Corporation must attempt to hold the meeting at least three times. There are few condos that would attempt to hold their AGM three times if the first two times failed to achieve quorum. Now the clear expectation is that the AGM must be held.

17. The proposed Act would standardize proxy forms; it would also permit corporations to pass bylaws allowing voting by computer, email, fax or phone.

WB: Look for the advent of computerized voting systems to assist in achieving quorum. While these services have already begun to appear the questions of their compliance with the Act will now be answered clearly.

18. The proposed Act would standardize the form for requisitioning an owners meeting. Boards would have to respond in writing within 10 days of receiving a requisition. If a board rejected a requisition, it would have to specify why it believed the requisition did not meet the legislated requirements.

19. Regulations would set out a process for requesting and responding to requests for records. The Tribunal could order a corporation to pay a penalty of up to \$5,000 for refusing, without reasonable excuse, access to records to a person who is entitled to it.

WB: It is expected that the regulations will require that current year records be provided at no cost while costs for records from previous years records can be provided at costs to be set out in a bylaw. It is hoped that this will help curtail the problem of owners who are using this section of the Act to be disruptive to management in asking for multiple records and documents from previous years that are not easily accessible.

20. Responding to concerns about kickbacks, the proposed Act would prohibit a corporation from entering procurement contracts without carrying out a sealed-bid process.

WB: We will be following this development in the Act closely. These new requirements could be administratively burdensome and in many cases unnecessary. Clear directions of which contracts must be quoted on using sealed bids MUST be provided by the

regulations. Realistically this should be defined by either a monetary limit or defined by the type of contract signed (i.e. all CCDC contracts must be tendered using a sealed bid process).

Management

21. The condo management industry is unregulated, meaning anyone can call themselves a condo manager. The proposed Act would establish the Condominium Management Services Act, which would require both condominium managers and condominium management providers to hold licenses.
22. The Condominium Management Services Act would require licensees to have a written contract to provide condominium management services to a client.
23. The Condominium Management Services Act would establish a registrar to handle complaints about licensees. The registrar could issue a written warning, require a licensee to take further educational courses and revoke or suspend a license.

WB: *The Management profession has been seeking regulation to protect consumers for many years. The news that this step is being taken is a great step for protecting owners. The new Condominium Management Services Act will require education, compliance with ethical standards, and ultimately discipline procedures similar to other licensed professions.*

24. The Condominium Management Services Act would establish a discipline committee to hear cases concerning alleged code of ethics breaches. The committee would have the power to impose fines of up to \$25,000. Licensees would have the recourse to an appeals committee.
25. Individuals found guilty of offences under the Condominium Services Management Act could be slapped with a fine of up to \$50,000 and sentenced to up to two years less a day in jail. Management firms that committed offences under the Act could face a fine as high as \$250,000.

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