



**THE *CONDOMINIUM ACT, 1998*
AND REGULATIONS**

DETAILED CHECKLISTS

**INCLUDES NEW AMENDMENTS TO THE ACT AND
REGULATIONS**

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New By-Laws Checklist

NOTE:

- This checklist is intended to be a useful and brief *summary* of the relevant requirements of the 2017/2018 amendments to the *Condominium Act, 1998* and its regulations. Accordingly, this checklist should be used as a general informational guide directing the reader to the relevant provisions of the *Condominium Act, 1998* and the regulations which should be read in conjunction with this checklist.
- At the time this checklist was completed, the prescribed forms had not been released by the Minister.
- This checklist outlines the new by-laws that condominium corporations can consider passing in light of the changes to the *Condominium Act, 1998*. The required vote for certain, but not all of the new by-laws, will be reduced.

Part A: New By-Laws Permitted Under the Act:

- to establish a period of time within which a corporation shall update its record of owners and mortgagees¹
- to govern the methods permitted for holding a vote - by a show of hands or for holding a recorded vote - and the procedure for holding the vote, including permitting a recorded vote to be submitted to the corporation by mail²
- to govern any matter relating to the obligations of the parties with respect to property, assets, facilities or services that are subject to a shared facilities agreement³

Part B: New By-Laws Permitted Under the Regulations:

- to specify what constitutes a “core record”⁴
- to add more information in a periodic information certificate, an information certificate update or a new owner information certificate⁵

¹ Section 56(1)(b.1)

² Section 56(1)(c.1)

³ Section 56(1.1)

⁴ O. Reg. 48/01, Section 1, paragraph 10, Subsection 14 (0.1)(a)

- to specify a more frequent time period to send periodic information certificates⁶
- to specify the time period in which information certificate updates must be sent after a change in the information occurs⁷
- to specify any additional information that a person who is running as a candidate for a director position is required to disclose⁸
- to specify the time period in which a person who is considered for appointment on the board is required to disclose the required candidate information⁹
- to require a person who is a candidate in an election for directors to disclose the required candidate information in writing¹⁰
- to specify any additional information that a person who is a candidate in an election for directors is required to disclose with respect to convictions for offences¹¹
- to specify additional information regarding conflict of interest that a person who is a candidate in an election for directors is required to disclose¹²
- to specify a time period for the submission of the director disclosure¹³
- to specify the material that the board must place before a meeting of owners¹⁴
- to specify the manner to provide the material that the board must place before a meeting of owners¹⁵
- to specify the manner that an individual may request the board to add material to a notice of meeting of owners¹⁶
- to specify any additional materials to be included in a preliminary notice with respect to a meeting of owners¹⁷
- to specify any additional materials to be included in a notice of meeting of owners¹⁸
- to govern the manner in which an owner or a mortgagee may be present at a meeting of owners or represented by proxy¹⁹

⁵ O. Reg. 48/01, Sections 11.1, 11.2, 11.3, Subsection 14 (0.1)(b)

⁶ O. Reg. 48/01, Subsection 14(0.1)(c)

⁷ O. Reg. 48/01, Subsection 14(0.1)(d)

⁸ O. Reg. 48/01, Subsection 14(0.1)(e)

⁹ O. Reg. 48/01, Subsection 14 (0.1)(f)

¹⁰ O. Reg. 48/01, Subsection 14 (0.1)(g)

¹¹ O. Reg. 48/01, Subsection 14 (0.1)(h)

¹² O. Reg. 48/01, Subsection 14 (0.1)(i)

¹³ O. Reg. 48/01, Subsection 14(0.1)(j)

¹⁴ O. Reg. 48/01, Subsection 14(0.1)(k)

¹⁵ O. Reg. 48/01, Subsection 14(0.1)(l)

¹⁶ O. Reg. 48/01, Subsection 14(0.1)(m)

¹⁷ O. Reg. 48/01, Subsection 14(0.1)(n)

¹⁸ Reg. 48/01, Subsection 14(0.1)(o)

¹⁹ O. Reg. 48/01, Subsection 14(0.1)(p)

- to specify the method of electronic communication that the board may, by resolution, decide the corporation may use for the purposes of communicating with the unit owners²⁰
- to specify what portion of a ballot or proxy form that identifies a specific unit or owner in the corporation does not constitute a record that is exempt from disclosure²¹
- to amend the provision deeming that an owner is not required to identify himself or herself when casting a vote²²

Part C: Voting Thresholds

The vote threshold to confirm the following by-laws has been reduced to a majority of the votes cast at a meeting of owners:

- all of the new by-laws permitted under the regulations²³
 - by-laws specifying additional records that the corporation is required to keep²⁴
 - by-laws specifying the period of retention for certain records²⁵
 - by-laws specifying voting by telephonic or electronic means²⁶
-

²⁰ O. Reg. 48/01, Subsection 14(0.1)(q)

²¹ O. Reg. 48/01, Subsection 14(0.1)(r)

²² O. Reg. 48/01, Subsection 14.1(3)

²³ O. Reg. 48/01, Subsection 14(2)(d)

²⁴ O. Reg. 48/01, Subsection 14(2)(b)

²⁵ O. Reg. 48/01, Subsection 14(2)(c)

²⁶ O. Reg. 48/01, Subsection 14(2)(a)



Information Certificates Checklist

NOTE:

- This checklist is intended to be a useful and brief *summary* of the relevant requirements of the 2017/2018 amendments to the *Condominium Act, 1998* and its regulations. Accordingly, this checklist should be used as a general informational guide directing the reader to the relevant provisions of the *Condominium Act, 1998* and the regulations which should be read in conjunction with this checklist.
- At the time this checklist was completed, the prescribed forms had not been released by the minister.

Part A: Periodic Information Certificates (“PIC”)¹

Service: to be sent twice per fiscal year:

- Within **60 days** of the end of the first fiscal quarter
- Within **60 days** of the end of the third fiscal quarter

Information to be included:

- Name and address for service of condominium manager(s)
- Statement of address, email or fax number that the corporation has authorized for the delivery of material to the corporation
- Statement of email address for communications regarding requests for records
- State present or past directors that; i) are in any legal action with the corporation; ii) were a party to any legal action that resulted in judgment against the corporation or the person and the judgment is outstanding; iii) have not paid common expenses for 60 days or more; iv) have not completed the required directors training
- Number of leased units

¹ See s. 11.1, 11.5 of *Regulation 48/01* as amended (“*Reg. 48/01*”).

- Statement of the financial implication for the judgments and legal actions against the corporation
- Maximum insurance deductible chargeable including a description of the deductible clause and the provisions of any deductible by-law with a warning to owners of their potential liability for the insurance deductible
- A copy of all disclosure obligations made by directors under Regulation 11.10
- A statement whether the corporation has passed a Standard Unit by-law and the number of the by-law
- A copy of the corporation's current year's budget with amendments
- A statement whether the corporation's current budget may result in a surplus or deficit and specifying the amount of either
- Reserve fund details stating; i) balance of reserve fund; ii) balance in the reserve fund at the beginning of the current year; iii) amount of contributions to reserve fund in current fiscal year; iv) anticipated expenditures to be made out of reserve fund in current fiscal year; v) current plans if any to increase the reserve fund
- A statement of any claims made under the *Ontario New Home Warranty's Plan Act*
- A statement of whether the corporation has failed to pay the condominium authority levy
- A copy of an order made against the corporation or director for failing to pay the condominium authority levy
- Any other information required by a corporation's by-law

Part B: Information Certificate Update ("ICU")²

Service:

- Within 30 days of:**
 - changes to the address for service of the corporation, directors, officers, or manager
 - changes to address, email or fax number of the corporation for record requests and other purposes
 - changes to insurance or deductible
 - insurance policy termination as soon as reasonably possible

² See s. 11.2, 11. 5 of *Reg. 48/01*.

- Within 5 days of:**
 - loss of board quorum – state number of vacancies, the existing directors, request to owners for those intending to be candidates to notify the corporation in writing.

Part C: New Owner Information Certificate (“NOIC”)³

Service:

- Within 30 days of notifying the corporation of their ownership

Shall contain:

- A copy of the most recent periodic information certificate
- A copy of the most recent information certificate update, if any

PLEASE NOTE:

- Condominium corporations can pass by-laws to require that a PIC or ICU be sent on a more frequent basis;
- A copy of the most recent PIC and any ICU is to be made available at the AGM;
- The most recent PIC and ICU **must** be sent with the NOIC;
- Corporations are **NOT** obligated to send out the information certificates for any fiscal year if:
 - A turnover meeting has already been held; and,
 - Each year the owners of at least 80% of the units (includes parking units) consent not to receive information certificates.

³ See s. 11.3, 11. 5 of *Reg. 48/01*.



Owners' Meetings Checklist

NOTE:

- This checklist is intended to be a useful and brief *summary* of the relevant requirements of the 2017/2018 amendments to the *Condominium Act, 1998* and its regulations. Accordingly, this checklist should be used as a general informational guide directing the reader to the relevant provisions of the *Condominium Act, 1998* and the regulations which should be read in conjunction with this checklist.
- At the time this checklist was completed, the prescribed forms had not been released by the minister.
- In many places, the regulations provide that a condominium corporation's by-laws may alter the condominium corporation's notice obligations with respect to meetings of owners. Accordingly, a user of this checklist should also refer to his or her particular condominium's by-laws.

Part A: Is a Preliminary Notice of Meeting Required?

1. If the meeting of owners is called solely because the Board has lost quorum, then a Preliminary Notice of Meeting is NOT required.¹
2. If the meeting of owners is held before December 11, 2017, then a Preliminary Notice of Meeting is NOT required.²
3. If the meeting of owners is held on or after December 11, 2017, but the Notice of Meeting was sent *before* November 1, 2017, then a Preliminary Notice of Meeting is NOT required.³

In all other cases (i.e. most meetings held on or after December 11, 2017), a Preliminary Notice of Meeting will be required, and it must adhere to a prescribed (standard) form.⁴

¹ O.Reg. 48/01, s.12.2(5).

² O.Reg. 48/01, s.12.2(6).

³ O.Reg. 48/01, s.12.2(6).

⁴ O.Reg. 48/01, s.12.2(4).

Part B: Notice of Meeting

1. If the meeting of owners was called by an owner because the Board has lost quorum, then there are special rules for the Notice of Meeting and you should refer directly to Part "C" of this checklist.⁵
2. The Notice of Meeting must, at the very least, include: the place, date, and hour, and nature of business. It must also be accompanied by a copy of the proposed changes, if any, to the governing documents, a copy of any owner's requisition, and all other materials required under the *Act*.⁶
3. If the meeting is to elect one or more directors, the Notice of Meeting must also include the name and address of each individual who responded to the call for particulars of Board candidates.⁷
4. If the Notice of Meeting is sent after November 1, 2017 for a meeting of owners that is to take place on or after December 11, 2017, then it must adhere to the new prescribed form and include new prescribed materials.⁸

⁵ O.Reg. 48/01, s.12.8(3)). Skip to "Part C: Calling a Meeting of Owners to Fill a Vacancy on the Board".

⁶ *Act*, s.47(7).

⁷ *Act*, s.28(2)-(3). Note that s.28(3), regarding an owner-occupied position, will be amended sometime after November 1, 2017.

⁸ O.Reg. 28/01, s. 12.8(2), s.12.8(4).

Part C: Calling a Meeting of Owners Where the Board Has Lost Quorum

1. An owner may call a meeting to fill a vacancy on the Board if there are no remaining directors, or if the Board has lost quorum and the remaining directors do not call a meeting within 15 days of losing quorum.⁹
2. An owner cannot call a meeting to restore quorum on the Board if he or she previously received a valid Notice of Meeting to call such a meeting.¹⁰
3. The Notice of Meeting must comply with a prescribed standard form specific to this situation.¹¹
4. The owner who calls the meeting may serve the Notice of Meeting, using a copy of the list of owners that the owner is entitled to obtain from the condominium corporation.¹²
5. The permitted methods of service¹³ of the Notice of Meeting are a restatement of the generally permitted methods of service on owners (see “Part D: Service (Generally)”).
6. The meeting to restore quorum on the Board must be held within 30 days of calling the meeting.¹⁴

⁹ Act, s.34(5); O.Reg. 48/01, s.11.11(1)(a).

¹⁰ O.Reg. 48/01, s.11.11(1)(b).

¹¹ O.Reg. 48/01, s.11.11(2).

¹² O.Reg. 48/01, s.11.11(3)(b); Act, ss. 46.1, 55(3).

¹³ O.Reg. 48/01, s.11.11(3).

¹⁴ O.Reg. 48/01, s.11.11(4).

Part D: Service (Generally)

A Notice of Meeting or Preliminary Notice of Meeting may, generally, be served in the following ways:¹⁵

1. Service is required on owners and mortgagees who have provided their name and address for service. In order to be entitled to receive notice, mortgagees must have the right to vote in place of the owner under the terms of the mortgage.¹⁶
2. Required service on an owner must be effected by at least one of the following: personal delivery; pre-paid mail at owner's address in the corporation's records; fax/e-mail with prior written owner agreement; or delivery at the unit or unit mailbox by prepaid mail, courier, or direct deposit *unless* the owner has specifically provided prior written notice against mailbox delivery.¹⁷
3. Service on a mortgagee is the same, except there is no option to deliver the notice at the unit or unit mailbox.¹⁸
4. The agreement to communicate by fax/e-mail must be recorded in the corporation's records,¹⁹ and be in one of the following two forms:

- written agreement in English or French, in the prescribed form, setting out the name of the owner/mortgagee in the corporation's records, a statement of a method of electronic communication as approved by Board resolution, and a statement indicating that service under s.54 of the *Act* is sufficient by such electronic communication method,²⁰

OR

- electronic agreement IF such electronic communication method is approved by Board resolution, and the corporation's record of the agreement as submitted in writing by the owner/mortgagee includes: (i) the name of the owner/mortgagee, and (ii) a statement that service under s.54 of the *Act* is sufficient by such electronic communication method.²¹

¹⁵ *Act*, s.54.

¹⁶ *Act*, ss.45(4), 46.1(3), 47(1)(d)-(e), 47(5), 54. Consider also: O.Reg. 48/01, s.12.3 (corporation's record maintenance obligations under s.46.1 of the *Act*); s.12.4 (transition re owner's address for service); s.12.5(1)-(4) (identification of mortgaged unit); and s.12.5(5) and 12.6 (transition re mortgagee's address for service).

¹⁷ *Act*, ss.47(4) and (6), 46.1(3)(d); O.Reg. 48/01, s.12.7(4).

¹⁸ *Act*, ss.47(5)-(6), 46.1(3)(e).

¹⁹ *Act*, s.46.1(3)(d)-(e).

²⁰ *Act*, s.47(6)(a); O.Reg. 48/01, s.12.7(1).

²¹ *Act*, s.47(6)(b); O.Reg. 48/01, s.12.7(2)-(3).

Part E: Quorum for Meetings of Owners

Annual General Meetings, Turnover Meetings and Meetings to Elect a Director or Appoint an Auditor (Lower 15% threshold after two failed attempts at 25%)

1. Quorum for the first and second attempts to hold a turnover meeting, an annual general meeting, a meeting to elect a director, or appoint an auditor, is 25% of the voting units in the corporation.²²
2. If the 25% quorum threshold is not met after two attempts, then the meeting of owners may be held with a quorum of 15% of the voting units in all subsequent attempts, unless the condominium has passed a by-law after November 1, 2017 prohibiting the use of this lower quorum.²³
3. For a meeting of owners to elect a director or appoint an auditor, a transition period between November 1, 2017 and December 10, 2017 applies.²⁴

Most Other Meetings of Owners, including meetings to remove a director and remove an auditor (25% on all attempts)

1. Quorum is fixed at 25% of the voting units in the corporation for most other meetings of owners,²⁵ including meetings of owners to remove a director or an auditor.²⁶
2. For a meeting of owners called by the declarant-appointed first board pursuant to s. 42(6) of the *Act*, quorum for the election of directors is 25% of the voting units in the corporation that are NOT owned by the declarant.²⁷

²² *Act*, s.50(1.1); O.Reg. 48/01, s.12.9(1).

²³ *Act*, s.50(1.1) and (1.2).

²⁴ O.Reg. 48/01, s.12.9(3).

²⁵ *Act*, s.50(1).

²⁶ O.Reg. 48/01, s.12.9(2).

²⁷ *Act*, s.42(9).

Part F: Materials for Meetings of Owners

1. The Board must place all materials that the *Act*, the regulations, and the corporation's by-laws require before a meeting of owners.²⁸
2. For AGMs, this includes the most recent PIC and any ICUs sent after the most recent PIC (see Information Certificate checklist).²⁹ The PIC and the ICUs need not be included in the Notice of Meeting, however, at least one copy of such materials must be made available for examination at the meeting.³⁰
3. For meetings held after the transitional period where the meeting is to elect one or more directors, the required disclosures from Board candidates must be presented orally at the meeting, or in such other manner as may be prescribed in the corporation's by-laws.³¹

Part G: Owner "Submissions"

A unit owner (with the support of other unit owners, as described below) **can now make "submissions" to the Board for the addition of material to the Notice of Meeting.**

A board **MUST** include in the Notice of Meeting any material contained in a submission, any record contained or described in the submission, or any addition to the business presented in the meeting, IF the following 6 criteria are met:³²

1. The submission is made by those owners who, at the time the Board receives the submission, own at least 15 % of the units as appearing in the corporation's record of owners and mortgagees.³³
2. The submission is in English or French.³⁴
3. The submission is in the prescribed form (there will be a mandatory prescribed form for making a submission, which has not been published as of the date of this checklist).³⁵
4. The submission is made to the Board before the deadline that is set out in the Preliminary Notice of Meeting.³⁶
5. The submission is properly served on the corporation.³⁷
6. The submission is not contrary to the *Act* or regulations.³⁸

²⁸ *Act*, s.45(5); O.Reg. 48/01, s.12.1(1)(a).

²⁹ O.Reg. 48/01, s.12.1(1)(b).

³⁰ O.Reg. 48/01, s.12.1(2)(a).

³¹ O.Reg. 48/01, ss. 11.2(2)(c)(ii), 11.6(5), s.11.6(7), 12.1(2)(b), s.12.1(2)(c).

³² O.Reg. 48/01, s. 12.8(1)(a).

³³ O.Reg. 48/01, ss. 12.8(1)(a)(i).

³⁴ O.Reg. 48/01, s. 12.8(1)(a)(ii).

³⁵ O.Reg. 48/01, s. 12.8(1)(a)(ii).

³⁶ O.Reg. 48/01, s. 12.8(1)(a) (iii).

³⁷ O.Reg. 48/01, s. 12.8(1)(a) (iii). The permitted method of service of a submission is the same method by which owners may request a record of the corporation.

Part H: 7-Point Timeline for Calling and Holding a Meeting of Owners

1. "Record date" for the Preliminary Notice of Meeting: The list of owners and mortgagees who are entitled to receive the Preliminary Notice of Meeting are those owners and mortgagees that are on the list **5 days** before the Preliminary Notice of Meeting is sent.³⁹
2. The Preliminary Notice of Meeting must be sent at least **20 days** before the Notice of Meeting is sent.⁴⁰
3. The earliest possible deadline for owner "submissions" is at least **15 days** after the Preliminary Notice of Meeting has been sent.⁴¹
4. "Record date" for the Notice of Meeting: The list of owners and mortgagees who are entitled to receive the Notice of Meeting are those owners and mortgagees that are on the list **20 days** before the day of the meeting.⁴²
5. The latest possible deadline for owner "submissions" is at least **1 day** before the Notice of Meeting is sent.⁴³
6. The Notice of Meeting must be sent at least **15 days** before the day of the meeting.⁴⁴
NOTE: A corporation's governing documents may specify that service via regular mail is deemed to be received by the owner after the date that the notice is mailed. If this occurs, then the additional days for deemed service must be added to the 15 days. Fine & Deo also suggests, out of an abundance of caution, that the corporation send its Notice of Meeting at least 15 "clear" days before the day of the meeting. This means that you do not count the day of mailing/service nor the day of the meeting in your calculation of the 15 days.
7. The day of the meeting must be at least **15 days** after the effective date of service of the Notice of Meeting.

³⁸ O.Reg. 48/01, s. 12.8(1)(a) (iv).

³⁹ Act, s.47(3).

⁴⁰ Act, s.47(1)(c).

⁴¹ I.e. for individuals to submit board candidate and for owners to submit materials to be included with the Notice of Meeting (see: Act, s.45.1(1)(a), (b), and (2); O.Reg. 48/01, s.12.2(1); O. Reg 48/01, s. 12.8(1)(a)(iii)). Owners may submit their names as candidates for election to the Board, as well as a proposed auditor and any other material that an owner may wish to have included in the Notice of Meeting.

⁴² Act, s.47(2).

⁴³ O.Reg. 48/01, s.12.2(1)(b).

⁴⁴ Act, s.47(1)(b).



Performance Auditing and Construction Deficiencies Checklist

NOTE:

- This checklist is intended to be a useful and brief *summary* of the relevant requirements of the amendments to the *Condominium Act, 1998* and to the regulations. Accordingly, this checklist should be used as a general informational guide directing the reader to the relevant provisions of the *Condominium Act, 1998* and the regulations which should be read in conjunction with this checklist.
- At the time this checklist was completed, the prescribed forms had not yet been released by the minister

Common Elements Performance Auditing and Resolving Construction Deficiencies (the First Two Years after registration):

- Turnover: ensure that all documents required under the *Condominium Act, 1998*, as amended, are provided within the specified time frame¹;
- Turnover Failures or Refusals: consider immediate steps to address turnover failures to ensure that the auditing process can be completed properly and without delay or prejudice to the condominium²;
- Appoint a qualified Performance Auditor per the requirements of the *Act*³;
- After Turnover, but within 12 months' of registration of declaration, complete a Documents Audit of all corporation documents in management's possession, and identify any that may have limitation period implications;
- Between 6 months and 10 months following registration of declaration: conduct the corporation's Performance Audit⁴;
- Before 11 months after registration of declaration: delivery to corporation of performance auditor's draft report for board review (time and circumstances permitting);

¹ Section 43(4)(a)-(g) and section 43 (5)(a)-(m) of the *Act*

² Sections 43(8)- (9) of the *Act* and O. Reg. 48/01, section 12(4)

³ Section 44(1) of the *Act*

⁴ Section 44(2) of the *Act* (see note 5, below)

- Before the end of the 11th month following the registration of the corporation's declaration and description: Performance auditor to deliver the corporation's 1st Year Performance Audit report to the condominium corporation and file that final report with Tarion as notification of 1 Year warranty claims⁵;
- 1st Board Meeting after filing 1st Year Performance Audit ("PA"):
 - appoint a "deficiencies resolution" designate from the board (or committee of 2 or 3 board members) to be the board's liaison with outside parties for purposes of resolving deficiency issues and warranty claims;
 - consider hiring a consultant, apart from the property manager, with experience and expertise to manage this process for the corporation;
- Map out and diarize (with sufficient reminders in advance) all Tarion Bulletin 49 milestones;
- Formulate a strategy for resolving specific, important issues;
- As soon as effectively possible (e.g. within 3 – 6 months after filing the 1st Year PA with Tarion): meet with the Performance Auditor to coordinate strategy and require a supplementary report (to the original 1st year PA) that provides the corporation with the following:
 - (i) an assessment of the items reported in the 1st Year PA that are particularly important to the corporation (i.e. a top 10 list of items/issues of magnitude);
 - (ii) a cost analysis of the costs associated (e.g. costs to repair) with the issues identified in the 1st Year PA generally, and the costs associated with remedying the major issues of magnitude;
 - (iii) the auditor's initial assessment/opinion on "warrantability" (i.e. chances that Tarion will grant warranty coverage), particularly on the larger issues of magnitude [Note: this supplementary report will need to be updated prior to "Conciliation"];
- Consider and complete any Issue specific investigations and reports that may need to be obtained in order to support or establish warranty claims;
- No later than 23 months from registration of declaration (11 months from delivery of 1st Year PA): coordinate delivery from performance auditor of draft 2nd Year Audit Update for board review and approval;
- 24 months (or earlier) from registration of declaration (12 months (or earlier) from delivery of 1st Year PA): performance auditor delivers 2nd Year Audit Update to Tarion as notification of 2 Year warranty claims.

⁵ Sections 44(4)-(10) of the *Act* - **Note:** amendments to the *Act* will amend the time frame for the conducting of the 1st Year Performance Audit and the delivery and filing of the Performance Audit so that those steps will need to be completed before the first anniversary of the date of registration of the declaration and description.



Records Requests Checklist

NOTE:

- This checklist is intended to be a useful and brief *summary* of the relevant requirements of the 2017/2018 amendments to the *Condominium Act, 1998* and its regulations. Accordingly, this checklist should be used as a general informational guide directing the reader to the relevant provisions of the *Condominium Act, 1998* and the regulations which should be read in conjunction with this checklist.
- At the time this checklist was completed, the prescribed forms had not been released by the minister.

YOU HAVE RECEIVED A REQUEST TO EXAMINE THE CONDOMINIUM CORPORATION'S RECORDS

WHAT DO YOU DO?

Part A: Questions To Be Asked To Determine The Validity Of The Request

1. Is the request in English or French? Yes No ¹
2. Is the request in the proper form? Yes No ²
3. Is the request made by a unit owner, a purchaser, a mortgagee of a unit or by an agent of one of them duly authorized in writing? Yes No ³
4. Is the request made by a condominium management provider or a condominium manager? Yes ⁴ No
5. Is the request made to examine "records"? Yes No ⁵

¹ See s. 13.3(3) – (6) of *Regulation 48/01* as amended ("*Reg. 48/01*"). If no, the request is invalid

² See s. 13.3(3) of *Reg. 48/01*. If no, the request is invalid

³ If no, the request is invalid

⁴ If yes, see sections 13.12 of the *Reg. 48/01*

6. If the record existed but has been lost or destroyed, did the condominium corporation retain the record for the required amount of time? Yes No ⁶
7. Has the condominium corporation retained the record in the proper form and at the proper location? Yes No ⁷
8. Is the request to examine a “core record”? Yes ⁸ No ⁹
9. What is the purpose of the request? Is the request solely related to the owner, purchaser or mortgagee’s interest as an owner, purchaser or mortgagee, as the case may be, having regard to the purposes of the *Act*?¹⁰ Yes No ¹¹
10. Is the request to examine records relating to employees of the condominium corporation other than contracts for employment between any of the employees and the condominium corporation? Yes ¹² No
11. Is the request to examine records relating to employees of the condominium corporation other than contracts for employment between any of the employees and the condominium corporation? Yes ¹³ No
12. Is the request to examine records relating to actual or contemplated litigation (as determined by the regulations) or insurance investigations involving the condominium corporation? Yes ¹⁴ No
13. Is the request to inspect a prescribed record pursuant to s. 55(4) the *Act* and s. 13.11(2) of Regulation 48/01 as amended? Yes ¹⁵ No

⁵ See s. 13.1(1) of *Reg 48/01* for a list of what is considered to be a record of the condominium corporation - If no, the request is invalid

⁶ See s. 13.1(2) – (6) of *Reg 48/01* for record retention time requirements

⁷ See s. 13.2 of *Reg 48/01*

⁸ If yes, see sections 13.4, 13.6, 13.8 of *Reg. 48/01*

⁹ If no, see sections 13.5, 13.7, 13.8 of *Reg. 48/01*

¹⁰ NOTE: the condominium corporation may ask for the purpose of the request but a person making the request is not required to provide a statement of the purpose of the request. Furthermore, it appears that the condominium corporation may ask the requester to state and perhaps, even sign a statement that the request is solely related to the owner, purchaser or mortgagee’s interest as an owner, purchaser or mortgagee, as the case may be, having regard to the purposes of the *Act*. Also, the condominium corporation may be able to ask how the request relates to the purposes of the *Act*. The only applicable provision provides that the requester need not provide a statement of the purpose of the request

¹¹ If no, the request is invalid

¹² If yes, there is no right to examine such records

¹³ If yes, there is no right to examine such records

¹⁴ If yes, there is no right to examine such records unless the condominium corporation elects to permit such examination

¹⁵ If yes, then there is no right to examine unless the owner or mortgagee in respect of who the record relates has provided a consent re the record described in s. 13.11(2)(1).. See s. 13.11 (3) of *Reg. 48/01* Also, note that a condominium corporation may disclose a record described in s. 13.11(2).2 or .3 subject to certain exceptions as set out in s. 13.11(4) of *Reg. 48/01*

14. Is the request to examine records relating to specific units or unit owners?
NOTE: records relating to specific units or unit owners does not include records relating to persons in their capacity of directors or officers of the condominium corporation¹⁶ Yes ¹⁷ No
15. Is the request to examine records which the regulations provide are not examinable by right? These records are set out in s. 13.11 (2) of Regulation 48/01 but there are numerous exceptions set out in sections 13.11 (3), (4) and (5) which set out circumstances where the condominium corporation is permitted to disclose records otherwise prohibited from disclosure Yes ¹⁸ No
16. Does the condominium corporation have a reasonable excuse for not permitting the examination or copying of records? Yes ¹⁹ No

Part B: Steps To Be Taken After The Board Of Directors Has Determined The Validity Of The Request

1. Waiver Of Right

Has the requester and the condominium corporation signed the prescribed form that provides that condominium corporation will allow the requester to examine or to obtain a copy of such record(s) Yes No ²⁰

2. The Response

To be made to the requester:

- i. within 30 days of the request;
- ii. in English or French;
- iii. using the proper form;²¹
- iv. at the address for service or alternative method of communication given in the request for records.

¹⁶ S. 13.11(1) of *reg. 48/01*

¹⁷ If yes, there is no right to examine such records unless:

- The person requesting is an owner, purchaser or a mortgage of a unit or an agent duly authorized in writing and the records relate to the unit of the owner, the unit being purchased or the unit which is subject to the mortgage.
- The person requesting is an owner or an agent duly authorized in writing and the records relate to the owner
- The person requesting is an owner, purchaser or a mortgage of a unit or an agent duly authorized in writing and the request is to examine the record of owners and mortgagees which the condominium corporation is required to maintain pursuant to s. 46.1 of the *Act*.

¹⁸ If yes, then do the regulations permit a condominium corporation to permit examination of such records?

¹⁹ It is uncertain whether having a reasonable excuse will be a defence in a proceeding before the Tribunal (as opposed to a proceeding in Small Claims Court) A reasonable excuse *might* include if the unit owner is on a "fishing expedition", if the request puts the condominium corporation to a burdensome task in locating and/or assembling the documents, if the examination of the records would infringe on the privacy rights of others and time-consuming redaction would be required, if the request is unreasonable, if the request is frivolous, vexatious or, if the request is not in good faith. See *Lahrkamp v. Metropolitan Toronto Condominium Corporation No. 932 (2107)*.

²⁰ See section 13.9 of *Reg. 48/01*

²¹ See s. 13.3(6) of *Reg 48/01*

You must ensure that:

- i. the board's response contains, among other things:
 - (1) an index of the records that the requester has requested;²²
 - (2) the fee that the condominium corporation will charge for allowing such examination;²³
- ii. the requester has responded using the proper form or portion of the form together with payment of the fee payable for the request;²⁴

3. Is the request with respect to a core record? Yes ²⁵ No ²⁶
4. If the condominium corporation agrees to make available a document, has the condominium corporation delivered the accompanying document and information concerning identification of the record, redaction and the fee charged? Yes No ²⁷

Part C: Deemed Abandonment

1. Within 60 days of receiving the board's response, has the requester returned the requester's response and paid the fee, applied to the Tribunal? Yes No ²⁸
2. Within six months of the requester delivering the request to the condominium corporation, has the requester applied to the Tribunal? Yes No ²⁹

²² s. 13.3(7) of *Reg. 48/01*

²³ Sections 13.3 (7), (8) and (9) of *Reg. 48/01*

²⁴ Sections 13.3 (11) of *Reg. 48/01*

²⁵ If yes, see sections 13.4 and 13.6 of *Reg. 48/01*

²⁶ If no, see sections 13.5 and 13.7 of *Reg. 48/01*

²⁷ See sections 13.8 of *Reg. 48/01*

²⁸ If no, the request is deemed abandoned – s. 13.10(1) of *Reg. 48/01*

²⁹ If no, the request is deemed abandoned – s. 13.10(2) of *Reg. 48/01*



“A, B, C” Checklist for Requisitions

NOTE:

- This checklist is intended to be a useful and brief *summary* of the relevant requirements of the 2017/2018 amendments to the *Condominium Act, 1998* and its regulations. Accordingly, this checklist should be used as a general informational guide directing the reader to the relevant provisions of the *Condominium Act, 1998* and the regulations which should be read in conjunction with this checklist.
- At the time this checklist was completed, the prescribed forms had not been released by the minister.

Part A: Assess the Validity of the Requisition (Complete within 10 Days of Receipt)

1. Is the purpose of the requested meeting:

- (a) an information meeting at which no substantive vote shall be taken; **Yes** **No**
- (b) to hold a vote of owners to remove one or more directors; **Yes** **No**
- (c) to hold a vote of owners on a proposed rule under section 58 of the *Act*; **Yes** **No**
- (d) to hold a vote of owners on a proposed “modification” under section 97 of the *Act*, or, **Yes** **No**
- (e) to hold a vote of owners on a proposed termination upon substantial damage under section 123 of the *Act*? **Yes** **No**

If “no” to all of the above, then the requisition is invalid and go to Part “B”.¹

2. If “yes” to any of the above in #1, did the owners of at least 15% of the units, as listed in the corporation’s records, and who are less than 30 **Yes** **No** ²

¹ *Act*, s.46(4).

² If “no”, then requisition is invalid. *Act*, s.46(1). Go to Part “B”.

days in arrears of common expenses, make the requisition?

3. If “yes” to #2, is the requisition in the “prescribed form” (as of the date of this checklist, the prescribed form had not yet been published)? **Yes** **No** ³

4. If “yes” to #3, was the requisition delivered personally or by registered mail to the president or secretary of the board or deposited at the corporation’s address for service or by such other validly prescribed means of service? **Yes** **No** ⁴

5. If “yes” to #4, and if the purpose of the meeting is to remove the “reserved” director position, did at least 15% of the non-leased voting units, which are listed in the corporation’s records, and are less than 30 days in arrears of common expenses, make the requisition? **Yes** **No** ⁵

6. Should I go to Part “B” or go to Part “C”?

- If the requisition fails any of the 5 questions above, and if the requisition has not been withdrawn, then it is **invalid** => Go to Part “B”.⁶
- If the requisition passes all 5 questions, above, and if the requisition has not been withdrawn, then the requisition is **valid** => Skip Part “B” and go to Part “C”.
- If the requisition has been withdrawn, then no response and no meeting are required.⁷

Part B: Answer Back to the Invalid Requisition

1. In the case of an invalid requisition, the board shall respond to the requisitionists within 10 days at the requisitionists’ address for service stating that the board will **NOT** call and hold the meeting, and must state **why**, according to the board, the requisition is invalid.⁸

2. If the board responds, as in #1 above, then the requisitionists may, within 10 days, revise and re-submit the requisition (if this occurs, go to Part A: Determining the validity of the requisition).⁹

³ If “no”, then requisition is invalid. *Act*, s.46(5). Go to Part “B”.

⁴ If “no”, then requisition is invalid. *Act*, s.46(6). Go to Part “B”.

⁵ If no, the vote to remove the reserved director is struck from the agenda of the meeting. *Act*, s.46(2) and (3).

⁶ However, note that if a response to the invalid requisition is not provided within 10 days, the Board is deemed to have responded to the requisitionists indicating that the board will call and hold the requisitioned meeting, per the *Act*, s.46(10).

⁷ *Act*, s.46(8).

⁸ *Act*, s.46(7) and s. 46(9).

⁹ *Act*, s.46(13).

3. If the owners do not resubmit the requisition, as in #2 above, then the requisition is deemed to be abandoned unless the requisitionists apply to the Condominium Authority Tribunal for a resolution proceeding (or if the Condominium Authority Tribunal is not yet established for this purpose, to the Superior Court of Justice).¹⁰

Part C: Calling and Holding the Meeting of Owners for a Valid Requisition

1. In the case of a valid requisition (that has not been withdrawn), the board may add meeting business to AGM agenda (if requisitionists consent and if the AGM is scheduled to be held more than 50 days after the requisition is received), or else call and hold a meeting of owners (which could include adding the requisition to the AGM agenda) within 50 days of receiving the requisition.¹¹

Note: The preliminary notice of meeting will be due 37 days before the requisition meeting is held, and must therefore be sent out no later than 13 days after the valid requisition is received.

For more details on calling and holding a meeting of owners, please refer to Fine & Deo's "Owners' Meetings Checklist"

¹⁰ Act, s.46(15).

¹¹ Act, s.46(11).



Section 97 Checklist: Modifications Made By Corporation

NOTE:

- This checklist is intended to be a useful and brief *summary* of the relevant requirements of the 2017/2018 amendments to the *Condominium Act, 1998* and its regulations. Accordingly, this checklist should be used as a general informational guide directing the reader to the relevant provisions of the *Condominium Act, 1998* and the regulations which should be read in conjunction with this checklist.
- At the time this checklist was completed, the prescribed forms had not been released by the minister.

Part A: Is A Modification Being Made?¹

A “modification” includes:

- An addition, alteration or improvement to the common elements;
- Change in an asset of the corporation;
- Change in the services corporation provides to owners; or
- Combination of the above.

Part B: If Yes To 1 Or More Of The Above, Then Which Of The Following Apply?

(note: corporation’s solicitor and engineer should be contacted)

1. When work is deemed not to be a modification?²

(both must apply)

- If the corporation is obligated to repair or maintain the units, the common elements or the assets;
AND
- The materials are reasonably close in quality to the original as is appropriate, as determined in accordance with current construction standards.

¹ Section 97 (2)

² Section 97 (3)

2. Can the modification be made without notice to owners?³

(one of the following must apply)

- The modification is required to comply with general or special Act;
- The modification is required to comply with shared facilities agreement;
- The modification is required in board's opinion to ensure safety or security of person using property or assets;
- The modification is required in board's opinion to prevent imminent danger to property or assets;
- The estimated total cost is no more than the lesser of:
 - i. 3% of the annual budgeted common expenses; or,
 - ii. \$ 30,000.00.
- The Owners, on an objective basis, would not regard the modification as causing a material reduction or elimination of their use or enjoyment of their units, or the common elements or assets (if any), of the corporation; or
- The modification is for a prescribed purpose.

Part C: Approval of substantial modification⁴

A corporation shall not make a substantial modification unless a meeting of owners has been called and held and the owners owning at least 66 2/3% of the units vote in favour of the substantial modification.

1. What constitutes a substantial modification?⁵

(one of the following must apply)

- Is the total cost greater than 10% of annual budgeted common expenses (or the prescribed amount- (if any);
OR
- Did the board deem the modification substantial?

2. A modification may be made upon notice to owners if:⁶

- The modification cannot be made without notice; and,
- The modification is not a substantial modification.

³ Section 97 (5)

⁴ Section 97(7)

⁵ Section 97 (9)

⁶ Section 97 (6)

If **YES** to both above, then the modification notice (with prescribed requirements) must be sent to owners.

3. Corporation may proceed with modification if:

(one of the following must apply)

- No valid requisition is received within the 30 day time period;
- A valid requisition is received but there is no quorum at the meeting (1st attempt); or,
- Requisition meeting is held as quorum reached (1st attempt) and the owners have not voted against the proposed modification.



Section 98 Checklist: Modifications Made By Owners

NOTE:

- This checklist is intended to be a useful and brief *summary* of the relevant requirements of the 2017/2018 amendments to the *Condominium Act, 1998* and its regulations. Accordingly, this checklist should be used as a general informational guide directing the reader to the relevant provisions of the *Condominium Act, 1998* and the regulations which should be read in conjunction with this checklist.
- At the time this checklist was completed, the prescribed forms had not been released by the minister.

Part A: An Owner May Make A Modification¹ If:

- there is a resolution of the board approving the proposed modification;
- an agreement² has been entered into by the owner and the corporation that:
 - i. allocates the cost³ of the proposed modification between the corporation and the owner;
 - ii. sets out duties and responsibilities of the corporation and the owner, with respect to cost of repair, maintenance and insurance of the proposed modification; and,
 - iii. specifies who will have the ownership of the proposed modification to the common elements;⁴
- the applicability of section 97 has been assessed and satisfied, where applicable:⁵

Assessment of Section 97:

- Is the modification to the owner's exclusive use common element;

¹ Section 98 (2) - "modification": an addition, alteration or improvement to the common elements or the assets, if any, of the corporation that is not contrary to the *Act*, the declaration, the by-laws or the rules - 2015, c.28, Sched. 1, s.88

² Section 98(6)- the agreement binds the owner's unit and any easement or covenant (whether positive or negative), in the agreement shall run with the unit.

³ Section 98 (2) - "cost": the cost as determined in accordance with the regulations, if any – 2015, c.28, Sched. 1, s.88

⁴ O. Reg. 48/01, s. 25 (1)

⁵ Section 98 (1)(c) and (d) and Section 98 (3)

AND

- Is the board satisfied that the proposed modification:
(all must be satisfied)
- i. would not be regarded by other owners, as causing a material reduction or elimination of their use or enjoyment of their units or the common elements or assets (if any), of the corporation;
 - ii. will not give rise to any expense to the corporation;
 - iii. will not detract from the appearance of buildings on the property;
 - iv. will not affect the structural integrity of buildings on the property according to a certificate of an engineer⁶; and,
 - v. will not contravene the declaration, the by-laws, the rules or will not have an adverse effect on the rest of the common elements.⁷

If **YES** to both of the above, then the requirements of s. 97 are not an issue [s.98 (3)].

If either of the above are not satisfied, then the requirements of s.97 must be complied with prior to proceeding.

Part B: When Does A Modification Agreement Become Effective?⁸

- The above noted requirements (as applicable) are satisfied; and
- The modification agreement is duly executed and registered on title to the owner's unit.

Part C: What If There Is A Default Under The Modification Agreement?⁹

- The corporation may add the costs, charges, interest and expenses resulting from an owner's failure to comply with the agreement to the common expenses payable for the owner's unit, without specifying a time for payment by the owner.

Part D: Who May Enforce The Modification Agreement?¹⁰

- A party to the agreement;
- The owner or any subsequent owner of the unit; or
- The corporation and any of its successors and assigns.

⁶ only if the proposed modification involves a change to the structure of the buildings

⁷ O. Reg. 48/01, s. 25 (2)

⁸ Section 98(4)

⁹ Section 98(5)

¹⁰ Section 98(7)