



CONDO ACT CHEAT SHEET

DIGITAL EDITION



**PULVER
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THE GO-TO IN CONDO LAW



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CONDO ACT CHEAT SHEET

3

POST TURN OVER CHECKLIST

VOTING THRESHOLDS

4

5

CHANGES TO THE COMMON ELEMENTS

MAINTENANCE & REPAIR
FLOW CHART

6

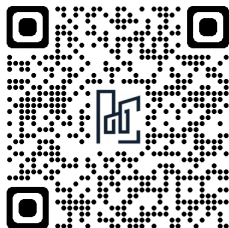
7

QUESTIONS & ANSWERS

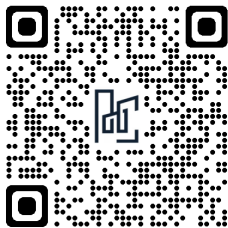


GO-TO RESOURCES

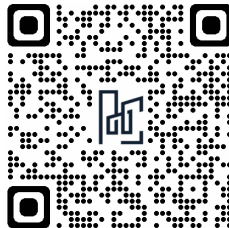
ONT. REG. 48/01











CONDOMINIUM ACT



CONDO CASE
LAW DATABASE



POST TURNOVER CHECKLIST

CONSTRUCTION DEFICIENCIES	
STEP 1 	First Anniversary of Registration
	<p>To make a warranty claim under the one year warranty, the corporation must submit a First-Year Common Elements Claim Form or a Performance Audit to Tarion with a Performance Audit Tracking Summary by midnight of the <u>first anniversary of registration</u>.</p>
STEP 2 	Second Anniversary of Registration
	<p>To make a warranty claim under the two year warranty, the corporation must submit a Second-Year Common Elements Claim Form or a Second-Year Performance Audit with a Performance Audit Tracking Summary to Tarion by midnight of the <u>second anniversary of registration</u>.</p>
STEP 3 	Builder's Initial Repair Period
	<p>The builder has until the end of <u>18 months from the first anniversary of registration</u> to resolve all warranted items listed on the First-Year and Second-Year Common Elements Claim Forms or Performance Audits.</p>
STEP 4 	Request Conciliation
	<p>The corporation must submit a request for conciliation within <u>60 days following the end of the builder's repair period</u> (i.e., within 60 days after 18 months from the first anniversary of registration), if the builder does not resolve all items covered by the warranty.</p>
STEP 5 	Builder's Pre-Conciliation Repair Period
	<p>The builder has <u>90 days from the date the corporation requests conciliation</u> to repair or resolve all of the outstanding claim items that are covered by warranty.</p>
STEP 6 	Conciliation
	<p>Tarion will conduct conciliation between <u>90 and 150 days after the corporation submits its request for conciliation</u>. After conciliation, Tarion will issue a Warranty Assessment Report, which will set out Tarion's position on all the conciliated items.</p>
STEP 7 	Builder's Post-Conciliation Repair Period
	<p>If the Warranty Assessment Report indicates that an item is covered by warranty, the builder has a final <u>90 days from the report date</u> to repair or resolve it.</p>
STEP 8 	Tarion Settles Claim
	<p>If the builder does not resolve items that are covered by warranty within <u>90 days of the report date</u>, Tarion will settle these items directly with the corporation.</p>

FIRST-YEAR BUDGET DEFICIT
Section 75 of the Condo Act
<p>The corporation must compare the audited financial statements for the first fiscal year to the first-year budget prepared by the developer to determine whether there is a budget short fall for which the developer is accountable.</p> <p>If there is a short fall, the corporation must notify the developer of the same in writing within 30 days of the corporation receiving the audited financial statements for the first fiscal year.</p>

TERMINATION OF AGREEMENTS
Section 113 of the Condo Act
<p>Within 12 months of the corporation's turnover meeting, the corporation can apply for a court order terminating or amending a <u>mutual use agreement</u> if (a) the disclosure statement did not clearly and adequately disclose the provisions of the agreement, and (b) the agreement produces a result that is oppressive or unconscionably prejudicial to the corporation.</p>
Section 111 of the Condo Act
<p>After the turnover meeting, the board can terminate any <u>management agreement</u> entered into prior to the turnover by resolution on 60 days' notice.</p>
Section 112 of the Condo Act
<p>After the turnover meeting, the board can terminate a <u>contract for the supply of goods, services or facilities</u> entered into prior to the turnover by way of a resolution passed within 12 months of turnover.</p>

VOTING THRESHOLDS

REQUISITION MEETINGS

- **Purpose:** To vote on the removal and replacement of one or more named board members.
- **Voting Threshold:** The owners of 50% + 1 of the voting units at the corporation must vote in favour of removal at the meeting for each removal vote to succeed.
- **Section of the Act:** Section 46.

- **Purpose:** To vote against a proposed rule.
- **Voting Threshold:** For the proposed rule to be defeated, the majority of owners of voting units in attendance at the meeting must vote against the proposed rule at the meeting.
- **Sections of the Act:** Sections 46 and 58.

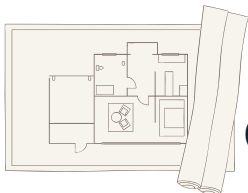
- **Purpose:** To vote against a proposed change.
- **Voting Threshold:** For the proposed change to be defeated, the majority of owners of voting units in attendance at the meeting must vote against the proposed change at the meeting.
- **Sections of the Act:** Sections 46 and 97.

- **Purpose:** To discuss a proposed amendment to a declaration and/or description.
- **Consent Thresholds:**
 - 90% of the owners of all units at the corporation must consent to the proposed amendment in writing at or after the meeting if the amendment deals with (a) common interests, (b) common expenses, (c) the exclusive use common elements, and/or (d) repair and/or maintenance.
 - In all other cases, 80% of the owners of all units at the corporation must consent to the proposed amendment in writing at or after the meeting.
- **Section of the Act:** Section 107.

- **Purpose:** Vote to approve a proposed by-law.
- **Voting Thresholds:**
 - The majority of owners of voting units in attendance at the meeting must vote in favour of the proposed by-law at the meeting if the by-law pertains to one of the matters listed in Section 14.(0.1) of Ontario Regulation 48/01.
 - In all other cases, the owners of 50% + 1 of the voting units at the corporation must vote in favour of the by-law at the meeting for the vote to succeed.
- **Sections of the Act & Regulations:**
 - Sections 21, 27, 28, 31, 36, 38, 50, 52, 55, 56, 57, 59, 69, and 99.
 - Section 14.(0.1) of Ontario Regulation 48/01.

- **Purpose:** Vote approve a substantial change.
- **Voting Threshold:** The owners of 662/3 of the voting units at the corporation must vote in favour of the substantial change at the meeting for the vote to succeed.
- **Section of the Act:** Section 97.

SPECIAL MEETINGS OF OWNERS



CHANGES TO THE COMMON ELEMENTS

CHANGES MADE BY CORPORATIONS

Section 97 of the Condo Act

Board Resolution Sufficient

Section 97(2)

A corporation may, by board resolution and without notice to owners, make a change to the corporation's common elements, assets or the services that are provided to owners if the change is:

- required by a mutual use agreement;
- required by law;
- required for safety reasons; or
- estimated cost in any given month no more than the greater of \$1,000 and 1% of the corporation's budgeted common expenses for the fiscal year.

To determine whether work undertaken by a corporation will constitute a "change" for which Section 97 of the Condo Act applies, use the four-part test set out at Paragraph 90 of *Harvey v. Elgin Condominium Corporation No. 3*, 2013 ONSC 1273?



CHANGES MADE BY OWNERS

Section 98 of the Act

Under Section 98 of the Condo Act, an owner is only permitted to make an addition, alteration or improvement to the common elements (a "change") if the following preconditions are satisfied:

1. the board must approve the change by way of a board resolution;
2. an agreement between the owner and the board must be entered into and registered on title to the owner's unit and said agreement must apportion responsibility and liability for repairing, maintaining and insuring the change as between the owner and the corporation; and
3. a copy of the agreement must be distributed to owners and the requirements of Section 97 of the Condo Act must be satisfied as if the change had been proposed by the corporation if the change (a) pertains to a portion of the common elements over which the owner does not have exclusive use, (b) will adversely affect other units, (c) will detract from the appearance of the property and/or (d) will cost the corporation money.

Notice to Owners Required

Section 97(3)

If a change to a corporation's common elements, assets or the services that are provided to owners is estimated cost more than 1% of the corporation's budgeted common expenses for the fiscal year but less than 10% of the corporation's budgeted common expenses for the fiscal year the corporation must send out a notice to owners that (a) describes the change, (b) contains a statement of the estimated cost, (c) specifies how the corporation intends to pay for the change, (d) specifies that owners have a right to requisition a meeting within 30 days of receiving the notice, and (e) includes copies of Sections 46 and 97 of the Condo Act.

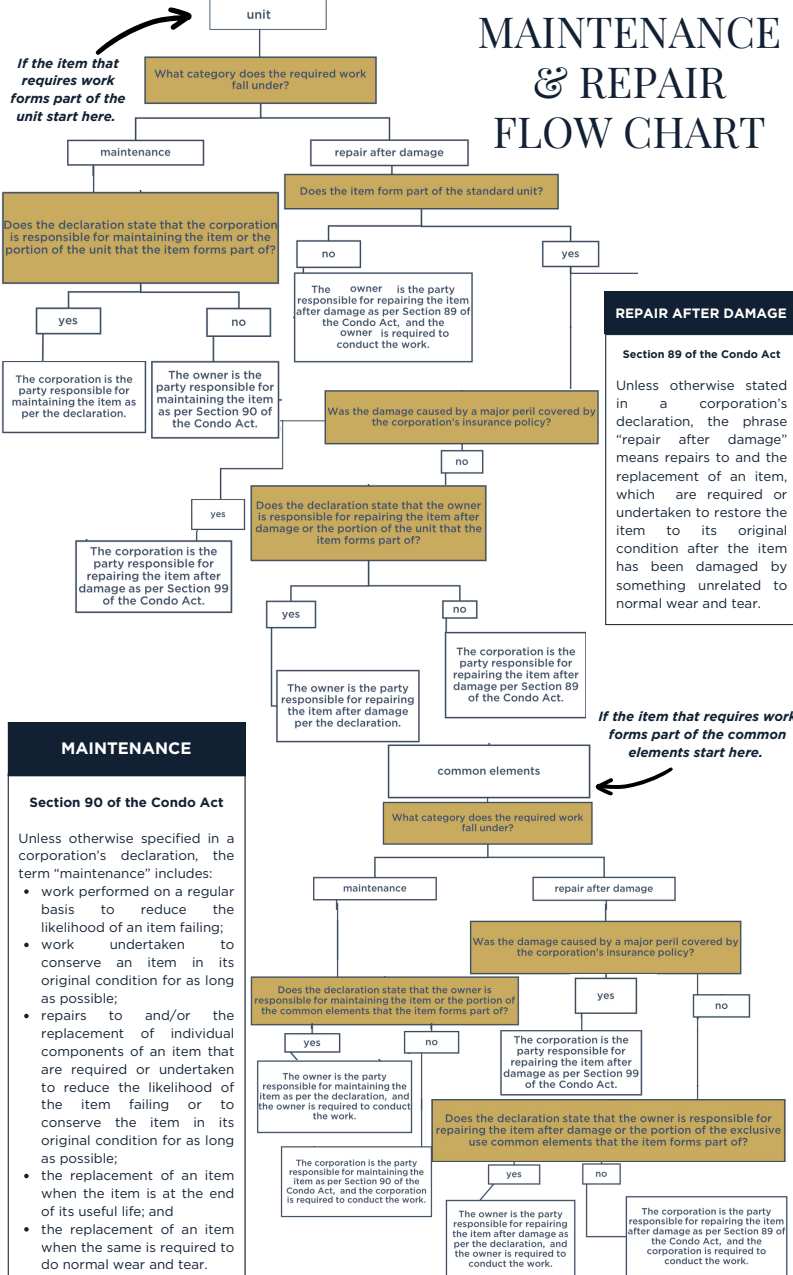
Once the required notice is sent, the corporation can only proceed with the change if the owners do not requisition a meeting within 30 days of receiving the notice, or if the owners do requisition a meeting within 30 days of receiving the notice, if the majority of owners of voting units in attendance at the meeting do not vote against the change at the meeting.

Owner Approval Required

Section 97(4)

If a change to a corporation's common elements, assets or the services that are provided to owners is estimated cost 10% or more of the corporation's budgeted common expenses for the fiscal year or if the board elects to treat a change as substantial, the owners who own at least two thirds (2/3) of the voting units at the corporation must vote in favour of the change at a meeting of owners called for the purpose of voting on the same in order for the change to proceed.

MAINTENANCE & REPAIR FLOW CHART



If the item that requires work forms part of the unit start here.

REPAIR AFTER DAMAGE

Section 89 of the Condo Act

Unless otherwise stated in a corporation's declaration, the phrase "repair after damage" means repairs to and the replacement of an item, which are required or undertaken to restore the item to its original condition after the item has been damaged by something unrelated to normal wear and tear.

MAINTENANCE

Section 90 of the Condo Act

Unless otherwise specified in a corporation's declaration, the term "maintenance" includes:

- work performed on a regular basis to reduce the likelihood of an item failing;
- work undertaken to conserve an item in its original condition for as long as possible;
- repairs to and/or the replacement of individual components of an item that are required or undertaken to reduce the likelihood of the item failing or to conserve the item in its original condition for as long as possible;
- the replacement of an item when the item is at the end of its useful life; and
- the replacement of an item when the same is required to do normal wear and tear.

If the item that requires work forms part of the common elements start here.

QUESTIONS & ANSWERS

What disputes does the CAT have jurisdiction over?

The CAT has jurisdiction over disputes regarding the following subject matters:

- condominium records,
- unreasonable nuisances, annoyances or disruptions caused by: noise, odour, smoke, vapour, light and/or vibrations,
- provisions in a condominium's declaration, by-laws or rules that prohibit, restrict, or otherwise govern: pets, animals, parking, storage, motor vehicles, nuisances, annoyances, and/or disruptions, and
- indemnification provisions in a condominium's declaration, by-laws or rules, which are related to a dispute falling within the CAT's jurisdiction.

Does a corporation need to amend its declaration if the corporation wants to install sub-meters to measure the electricity consumed by each unit and charge the unit owners back for the cost of the same?

Short Answer: No.

The *Energy Consumer Protection Act, 2010*, S.O. 2010, c. 8 (the "ECPA") provides that if sub-meters are installed to measure electricity consumed by individual condominium units, the sub-metering provider can bill the individual unit owners for the costs associated with the electricity consumed by their units and the same takes priority over any provision in a corporation's declaration that provides otherwise. Thus, based upon the ECPA, a corporation is permitted to sub-meter unit for electricity consumption and there is no need for the corporation to amend its declaration as long as (a) the corporation complies with Section 97 of the Condo Act, and (b) the sub-meter service provider directly bills the unit owners for cost of the electricity consumed by their units.

What is the difference between a rule and a policy?

Under Section 58 of the Condo Act, rules are created to promote the safety, security and/or welfare of the owners as well as the property and assets of the corporation, and to prevent the unreasonable interference with the use and enjoyment of the units, common elements or assets of the corporation. Polices on the other hand, are written procedures that are intended to guide the corporation on procedural matters as to ensure consistency and continuity. Rules are enforceable under the Condo Act, but polices are not. Furthermore, corporations must provide owners with notice in advance of new rules coming into force, whereas notice to owners is not required for polices.

What is the purpose of a standard unit by-law?

A standard unit by-law lists what components of a unit form part of the "standard unit" for which a condominium is required to maintain insurance and repair after damage caused by an insurable loss. A standard unit by-law does not alter unit boundaries nor does it alter the obligation to maintain a unit.

On what basis can a board deny an owner's request to conduct an alteration, addition or improvement to the common elements?

There is nothing in the Condo Act that limits the scope of a board's discretion when assessing an owner's request under Section 98 of the Condo Act. As stated in the case of *Metropolitan Toronto Condominium Corp. No. 985 v. Vanduzer*, 2010 ONSC 900 a board can deny an owner's request under Section 98 of the Condo Act for any reason including safety concerns, aesthetic reasons, or reasons relating to the market value of the property.



Scan/click here to check out the case.

Can a corporation rely on its general borrowing by-law to borrow funds to finance an unanticipated project or operating deficit?

Short Answer: No.

Section 56(3) of the Condo Act prohibits a corporation from borrowing money to fund an expenditure not listed in its current fiscal year budget, unless the owners have approved a borrowing by-law that specifically authorizes the corporation to borrow funds for said purpose. This requirement was stated in the case of *York Condominium Corp. No. 42 v. Hashmi*, 2007 CarswellOnt 3309, where the following three principles were articulated:

1. Any borrowing by a corporation requires authorization in the form of a borrowing by-law.
2. A corporation can borrow funds to finance an expenditure included in its current fiscal year budget, provided that the expenditure is authorized by way of a general borrowing by-law.
3. A specific borrowing by-law is required if the funds are required to finance an expenditure not included the corporation's current fiscal year budget.



**PULVER
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THE GO-TO IN CONDO LAW

Pulver on Condos is a boutique condominium law firm that provides specialized legal services to condominium corporations and unit owners throughout Ontario. We provide our clients with timely and cost-effective legal solutions and practical implementation strategies, which enable our clients to prevent disputes, manage costs, and foster harmonious communities.

We are the go-to in condo law.

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