

## WHAT CONDO DWELLERS ARE READING



# MAKING A SUCCESSFUL CAT SUBMISSION

The Condominium Authority Tribunal (CAT or Tribunal) is an online dispute resolution system intended to help resolve certain types of condominium-related disputes. The Condominium Authority of Ontario (CAO) is to be commended on creating a process to address condominium-related disputes without resorting to the court system. The process and system they have established balances the interests of opposing parties in an economical manner.

CONTINUED PAGE 6 ...

## FROM THE EDITOR .....

Our series on the Condominium Authority of Ontario (CAO) and Condominium Authority Tribunal (CAT) has struck a nerve.

We are hearing from condominium owners, directors and management about their involvement with and thoughts on these government bodies. In the coming months we will share with you articles and information provided to us.

This month, **Making a Successful CAT Submission** takes you through the entire process of dealing with the Tribunal by an owner seeking access to corporation records a condo board is reluctant to provide to them and their legal counsel.

We share with you the practical realities of this process, offer tips for success, and suggest where and how the Tribunal can improve.

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## SIT DOWN AND SHUT UP

### *Rules of Order for Effective Meetings*

There is a  
clear flow  
to how  
condo  
board  
meetings  
should be  
conducted.  
Boards that  
follow this  
established  
process  
have



shorter, more efficient meetings that produce in better decisions. Meetings conducted without following an established process may seem pointless and can drag on for hours without decisions being made. These meetings may seem to be a series of disputes over seemingly trivial matters.

There is an established way to conduct meetings to make them productive and effective. Robert's Rules of Order and Nathan's Company Meetings are the most well-known rules for most meetings.



### Meeting Chair

The President has the right to preside over board meetings although some prefer to task this to the condominium manager or another individual. Their primary duty is to enforce the rules of order. This includes ensuring the meeting is properly constituted – notice of the meeting has been

delivered to all directors and a quorum (minimum number in attendance to make the meeting legal) are present.

**CONTINUED PAGE 4 ...**



## ELECTIONS & MEETINGS

### SIT DOWN AND SHUT UP... CONTINUED FROM PAGE 3

Among larger groups the main purpose of the chair is to facilitate the meeting and to impartial. They do not bring up motions to be voted on but encourage others to do so. The small size of condo boards and way they function makes this impractical.

The chair should be prepared for each meeting. They should be aware of what is to be discussed, anticipate questions that may be raised and ensure relevant documents are available at the meeting. Serving as chair requires effective communication skills. They should always be listening and observing. An important skill is knowing the overall mood of the group.

Ignoring new ideas, shutting down dissenting views and demanding compliance to fabricated rules are not acceptable or standard practices.

#### Motions

Motions are how decisions are made at a board meeting. For condo board or owner meetings there are standard steps in moving a motion forward. An individual makes a motion. Someone "seconds" the motion signifying it is of importance to more than one individual. The chair then states the motion in clearly understood terms for all and what is to be voted on. A discussion ensues where merits of the motion are discussed before it is put to a vote. Once voted on, the chair announces the result and it is recorded in the minutes.

#### Agenda

The agenda or order of business for a condo board meeting is intended to provide direction and clarity. Before the meeting convenes attendees should have read the agenda and any supporting documents. Questions about these documents should be asked and answered prior to the meeting. If certain documents are required prior to a vote, these should be requested in advance of the

meeting.

The agenda determines priority of items. Changes to the agenda should only be by a vote as it changes this priority.

Allotting a maximum amount of time for each agenda item helps to keep the meeting on track and identifies the importance of any specific item. Items only requiring a vote or brief discussion should not be allotted unnecessary time.

The first item of business is to accept or **Approve Minutes** of the previous meeting. This makes the previous minutes part of the official record of the corporation. If there is a **Management Report** presented by the Condominium Manager, that is presented next. It brings directors current with corporation business. Next comes **Unfinished Business** which refers to business that has been started but not yet completed. **New Business** comes last and includes anything that doesn't fit elsewhere on the agenda.

#### Board Discussions



The purpose of a "board" is for each individual to bring their own point of view to an agenda item so that the group can agree on a course of action. This

CONTINUED PAGE 5 ....

## SIT DOWN AND SHUT UP... CONTINUED FROM PAGE 4

can be messy, contentious, and each person must be prepared to be outvoted. Conflict is part of the process and not to be avoided. Boards are most effective when this conflict is properly managed. This means facilitating open discussions with full participation. Disagreements should be presented respectfully. The chair is crucial during this time and should be prepared to take corrective action if a discussion gets too personal or heated.



The chair controls the flow of the meeting, discussions and tone. The general rule is that no individual speaks more

than twice on any one motion and that each time is limited to ten minutes. For condo boards, a limit of three minutes may be more practical. Within these parameters, each board member should be allowed to speak if they choose. Discussions should be kept

short and to the point. Once a matter is voted on, that matter is resolved and everyone should focus on the next agenda item.

Board meetings are how business of the corporation is conducted. Meeting minutes, official records of the corporation, serve as a legal record and method of informing owners of what decisions are made at these meetings. Following established rules and procedures for these meetings is to be encouraged.



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## MAKING A SUCCESSFUL CAT SUBMISSION... CONTINUED FROM PAGE 1

The Condominium Authority of Ontario (CAO) is celebrating its fifth year of operation. In this five-part series, **Toronto Condo News** looks at how CAO and the Condominium Authority Tribunal have impacted on condominium living and management, and present an inside-view of what it is like to appear before the Tribunal.

February 2022 - Fairness and Justice in Condominium Communities

March 2022 - What they Don't Want you to Know - Lurking behind their closed door

**April 2022 - Making a Successful CAT Submission**

May 2022 - Calling for the Expansion of CAT

June 2022 - Condo Disputes without CAT

The system, intended to be accessible to anyone with a legitimate issue, can be intimidating, challenging and time-consuming. It is not easy nor, perhaps, should it be.



When presenting a dispute before the Tribunal it can be helpful to understand the process, what is required and tips from those who have already been to the CAT. **Toronto Condo News** monitored one CAT submission to its final Tribunal Decision. We offer our insights along with tips and suggestions (bullet points within this article) to improve your likelihood of success.

The system generally presumes that both parties in a dispute are honest, sincere and seek a reasonable

resolution. When this is not the case, it helps to understand the process and how to proceed.

### Maintaining Records

Long before submitting a matter to the Tribunal, there should be a paper trail of documentation supporting your position. While it can be more convenient and productive to deal personally with people, there is a need for all matters to be documented. Should there be a future dispute in how a matter was handled or addressed, this documentation is necessary. Without supporting documentation, anyone can deny a conversation or event took place. It is always advisable for condo residents and management to prepare and provide documentation to the other party, even after a matter may have been addressed verbally, and retain a copy for their records. Condo directors should ensure all decisions, votes and funding matters are documented in meeting minutes.

### Balance of Power

Most matters before the Tribunal involve an owner, or resident, against their condominium corporation. While there are legitimate reasons for one party to utilize a lawyer, this creates an inherent unfairness.

CONTINUED PAGE 7 ....



## MAKING A SUCCESSFUL CAT SUBMISSION... CONTINUED FROM PAGE 6

It is more likely that a condominium corporation will choose to employ a lawyer as their representative. They can more easily do so by using corporation funds to support actions that may be proper or improper. As keeper of records, they alone are aware of what specific records exist and actually available for production.

corporations with a considerable advantage over an owner representing themselves. Where the condominium corporation wants to avoid producing documents or hide their own misdeeds, using a lawyer as their representative can be advantageous. They can use corporation funds to defend or misrepresent improper or even illegal actions.

### A lawyer's job is only to defend their client

**Robert Rotenberg**  
Criminal Lawyer/Author

The lawyer has one job and that is to defend their client. Their client can be correct in their position, failing to comply with the Condo Act, or acting illegally. The lawyer's job is to obtain the best possible outcome for their client.

This provides condominium

### The condominium corporation has greater financial risk when they choose to use legal counsel

The CAT does an admirable job of restoring balance by imposing a maximum cost of \$200 and a reluctance to pass along legal costs incurred by either side. The condominium corporation has greater financial risk when they choose to use legal counsel.

- The system is designed so that both parties can proceed without using a lawyer. Yet even Tribunal

### Timeline for the 3 stages of the CAT process

#### STAGE 1 Negotiation

**48**

Days on average to resolve



#### STAGE 2 Mediation

**88**

22 days in Stage 1 and 66 days in Stage 2



#### STAGE 3 Adjudication

**170**

Days on average including previous stages



#### Decision Release

**30**

Days approx. to release the decision



Source:  
Condominium Authority of Ontario

**CONTINUED PAGE 8 ....**

**MAKING A SUCCESSFUL CAT SUBMISSION... CONTINUED FROM PAGE 7**

members may advise an individual to consider use of legal counsel.

**Before Submitting to the Tribunal**

The Tribunal does not deal with what someone may feel or believe. Their focus is on compliance with the Condo Act and governing documents of the corporation. Before submitting to the Tribunal, ensure your position is supported by available documentation. Those relying on belief or faith are likely to be disappointed.

**Understand what the Condo Act or your governing documents say about the matter you intend to present to the Tribunal**

Understand what the Condo Act or your governing documents say about the matter you intend to present to the Tribunal.

Consider your communication skills. The Tribunal primarily operates through written online communications, document submissions and some virtual meetings or hearings. In written communications it is helpful to be articulate, concise, organized and clear. For virtual hearings, be comfortable with presenting in front of a Tribunal Member and whoever is representing the opposing side.

**Initial Submission**

The Applicant begins by making a written

submission explaining their reason(s) for going before the Tribunal.

- Submissions have a character limit. It is advisable to prepare submissions in your word processing application, then copy it to the online system. This avoids an incomplete or partial submission to inadvertently be posted.

The Tribunal must accept a submission before it is allowed to proceed. Once accepted, your submission will be heard or reviewed by the Tribunal. This occurs in three stages over a period that can be eight weeks or more.

**Stage 1 – Negotiation**

Both parties are encouraged to resolve the matter between themselves through written communication using the online dispute resolution system. Resolution at this stage, without involving a Tribunal Member, is the fastest and easiest solution. The matter remains private and confidential when resolved at this stage.

Resolution is only likely to occur when both parties are sincere in the effort. Frequently, this is not the case.

- Should neither party choose to participate in Negotiation for 30 days, the application is automatically closed UNLESS one party formally proceeds to Stage 2.

**Stage 2 – Mediation**

A CAT Mediator joins the case and attempts to help the parties come to a resolution. If resolution is not possible, the Tribunal Member will attempt to clarify

**CONTINUED PAGE 9 ....**



## MAKING A SUCCESSFUL CAT SUBMISSION... CONTINUED FROM PAGE 8

and possibly narrow the issues that are to be addressed.

- This stage includes an area for submitting documents using the online system. Some may choose to submit documents to support their case. This is premature since evidence does not yet appear to play a role in the proceedings. It can be prudent to avoid submitting documents unless specifically requested to do so or they are pertinent to what is currently being addressed. Premature disclosure of documents can be helpful to opposing parties in the dispute.
- A CAT Member may request information from both parties and provide a response deadline. It is advisable to provide the required response prior and as close to the response deadline as possible. This prevents opposing parties in the dispute from having time to read your response and modify their submission.
- A settlement agreement between the parties resolves the issues in dispute and closes the case. Contents of a settlement agreement are not available to the public. This can include issues of relevance to both parties even if beyond the authority of CAT, and occurs after all parties agree to a settlement offer. Should one party fail to abide by a settlement agreement, the other party can file another case with the Tribunal seeking a compliance order.
- A consent order is one that CAT makes with the agreement of all of the Parties. This typically resolves all issues in a dispute and will close the case. A Consent Order is a public document which can only include matters over which CAT has legal authority. Should one party fail to abide by the Consent Order, the other party can seek enforcement through the courts.

Since the CAT Mediator is attempting to obtain resolution, they are unlikely to review “evidence” placing either party in the wrong. They may not choose to inquire about statements or positions presented by one side that appear questionable. Mediation is about compromise.

- Information and communication during this stage remain confidential and cannot be used in Stage 3.

Should resolution not be possible, the applicant can move the case to Stage 3 – Tribunal Decision after receiving permission from the mediator.

- The Applicant has 15 days to move the case forward. If the case does not move forward, it is closed. Documents and messages shared Stage 1 - Negotiation and/or Stage 2 - Mediation remain private and confidential. Neither party can share or tell others about messages or documents received from others during these stages without permission of the other party unless required by law to a government organization or a court.

### Stage 3 – Tribunal Decision

A CAT Member joins the case. Parties are provided the opportunity to present their case. This includes sending messages, uploading documents or other evidence, and calling witnesses. The CAT Member considers the evidence and arguments submitted, and makes a final order. This closes the case. The final order is binding.

- Submissions during Stage 2 are not relevant during Stage 3. Either party may take a position

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## MAKING A SUCCESSFUL CAT SUBMISSION... CONTINUED FROM PAGE 9

that differs from what was stated on official CAO forms or earlier in the proceedings.

It is said that a good court, arbitration or mediation decision is one where neither party is satisfied. The Tribunal appears to have taken this to heart.

It is rare for a decision to award legal costs to either party. A condo board choosing to spend tens of thousands of dollars defending a position can be the loser even if they are successful. It can be smarter to resolve a dispute before significant legal fees are incurred.

The CAO Tribunal seems focused on the many personal interactions between condo boards and residents. They appear less inclined to address larger issues that can offer lasting improvements in condominium living, management and governance. One consequence of this is that a Tribunal Decision may have a different focus than what was addressed which is not evident from their published decision. The Tribunal can choose to focus on only those issues they choose to decide on. They can interpret submissions differently than submitted, ignore submitted information or remain silent on specific matters at their discretion.

- The final order provided by CAT is a public record. This can include any messages, documents or other material posted to the CAT system.

We look forward to a time when the CAO and CAT will address more significant best practices pertaining to reserve fund funding, fair and transparent condo elections, misuse of proxies, retention of electronic records and other matters that are more impactful.

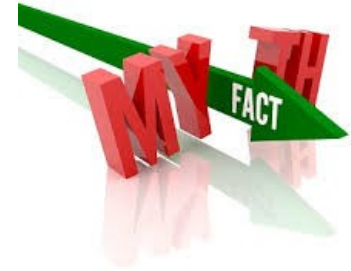
Condominium Authority of Ontario provides the following documents to aid in filing with the Tribunal:

- [The CAT Process](#)
- [CAT Rules, Policies and Guides](#)

This article was prepared while monitoring a Tribunal submission by one condo resident seeking access to corporation records. The entire process from requesting documents to receiving a Tribunal Decision took more than seven months.



# MINIMUM RESERVE FUND CONTRIBUTIONS



British Columbia will require developers and strata (condominium) corporations to contribute at least ten percent of their operating expenses to the reserve fund. This doubles the minimum requirement from five percent and is consistent with Ontario requirements.

While there is no definition of adequate funding, or a single approach given the differences in building construction, equipment and resident needs, it is clear that ten percent of operating expenses to the reserve fund is insufficient.

Developers, seeking to keep condo fees low so they can more easily sell units, tend to establish reserve fund contributions at an unsustainably low level. Once management is handed over to an owner-elected condo board, the board may undertake actions that result in further

underfunding, exhibit poor management or follow bad advice.

Reserve fund contributions should be sufficient to ensure funds are available for long-term repair and replacement of common elements. Over time this requires that condo fees be adequate for paying all operational costs PLUS an estimated 30 percent being directed to the reserve fund.

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## WHY PEOPLE DON'T PICK UP DOG POOP



The high-rise pet population continues to grow. Yet not everyone is a pet lover.

Reasons for this are diverse. Some are allergic to dogs, frustrated by barking, or have a fear of dogs. The single most reported issue and frustration is against pet owners not cleaning up after their pets. Studies have shown that pet owners pick up after their dogs only about 60 percent of the time, and that they often lie about this.

To address pet-related complaints some communities prohibit pets from the property. Less draconian measures include imposition of size restrictions, limiting the number of pets allowed in a unit, and prohibiting pets from entering or exiting through main doors.

Pet-friendly communities offer amenities and conveniences

inclusive of pet spa, outdoor walking space, washing tubs, bags for cleaning pet waste, and pet waste disposal receptacles.

Asking pet owners to take greater care of their pets without consequences is rarely effective. When individuals find they will be judged harshly or required to pay the clean-up cost for leaving behind poop, problems tend to disappear.

**CONTINUED PAGE 14....**

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## CONDO DIRECTOR IN ARREARS

Owing money to the condominium corporation does not disqualify someone from serving as a director, although the corporation's declaration or by-laws may prohibit this.

personal situation.

It is questionable that any community would want to have such a person so close to their finances and making decisions for the community.

The issue is one of integrity. Such an individual may not be suitable for serving as a condo director until such time as they have become current in all monies owed to the corporation.

A director delinquent in paying their condo fees may not be the best choice to serve. Can they separate their financial delinquency from the best interests of the community, and make good financial decisions when unable to do the same in their personal life? Any level of arrears puts into question their personal judgement and is in violation of their agreement to help sustain the community. Decisions impacting on condo finances including budgets, collections, major expenditures and condo fees may be unduly influenced by their



### WHY PEOPLE DON'T PICK-UP DOG POOP... CONTINUED FROM PAGE 13

Security cameras and pet DNA services can identify those failing to clean up after their pets, which allows the corporation to charge these individuals for clean-up and any damage caused.

Pet DNA services have been available for more than a decade. Owners provide a poop sample to a service. Any uncleaned poop is submitted to the service for matching to the pet. Condominium corporations have authority to revise their pet rules

so that all pets be registered with the service, at their cost, before being allowed to reside in a building.





# VIDEO DOORBELLS CONFLICT WITH RIGHT TO PRIVACY



Video doorbells, which incorporate video recordings along with audio and electronic notifications when anyone nears a door, are a growing concern in high-rise communities.

A video doorbell can record video and audio every time someone enters a hallway. It can be directed on another family's door monitoring comings and goings of residents and guests, and can record activities inside a suite when their door is open.

Video doorbells were created for use in single-family homes and never intended for high-rise communities. They monitor common areas and activities of neighbours thus their use is under control of the condo board. Video doorbells create a conflict between one person's desire for security and another person's desire for privacy.

Audio and video picked up by a video doorbell goes to an electronic device and is saved. It can be retransmitted, stolen (hacked) or posted on Facebook.

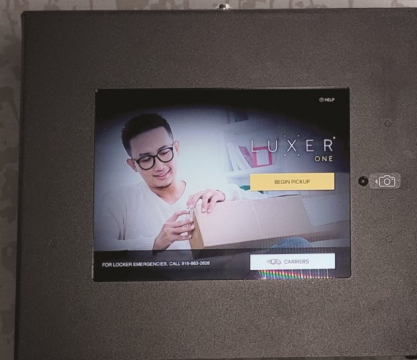
Condo boards can prohibit or control use of video doorbells before conflicts arise. Once installed, some owners may refuse to remove them, particularly when there are security concerns. If allowed, the board should establish guidelines for their use. It may be that all owners on a floor need to agree to allow them, or that they can only be used when there is no door on the opposite side of the hall. It may be impossible to point a video doorbell without also monitoring another's home and activities across the hall.

Video doorbells have become popular because of their effectiveness at protecting the home and personal property. Properly used, they can be an effective security precaution in communities where there are security concerns.



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# ECOMMERCE BOOM PUTS STRESS ON CONDO LOBBIES



The ecommerce boom places immense strain on staff and space in multi-unit residential buildings. Until recently peak package volumes occurred in December. Since Covid, there have been sustained package volumes beyond what most communities are designed to handle.

A May, 2021 study (Statista Research) shows that Canadian retail e-commerce grew by 6.5 percent in 2018, rising to 8.1 percent growth the following year. Growth since this time has been dramatically higher.

Buying habits are expected to continue their trend toward online shopping. A Canada Post survey finds that 93 percent of Canadians intend to maintain or increase their online spending after the pandemic. Much of the rise in ecommerce is attributed to younger generations. Millennial and Gen Z consumers account for one-

third of all online shopping and represent 35 percent of people who purchase more than 25 items online per year. Growing in popularity among these groups are online food purchases including meal kits and ready-to-eat food deliveries.

Increased deliveries have placed unexpected strain on staff and space in high-rise communities which is not expected to revert to pre-pandemic levels.

**CONTINUED PAGE 18 ....**

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outside  
the box

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## THE GARAGE DOOR DAMAGED MY CAR

The garage door closes on your vehicle as it enters. Who is responsible for the damage? Does the condominium corporation pay or is it the resident?

The condominium corporation has an obligation to repair and/or maintain its systems. If there has been a known problem with the garage door and it was not addressed, the corporation is likely responsible for damage to the vehicle. Perhaps a similar problem occurred to other vehicles and the corporation failed to fix the problem. This would constitute proof, or evidence, that the corporation failed to act.

If there is no proof the door was defective in its

operation prior to the incident, the corporation would have had no way to know there was a problem. The condominium corporation would not likely be liable for the damage.

Except when a condominium corporation had knowledge that the garage door is in need of maintenance or repair, it is most likely the resident who is responsible for repairing any damage to the motor vehicle.



### ECOMMERCE BOOM PUTS STRESS ON CONDO LOBBIES... CONTINUED FROM PAGE 17

Lobbies were never designed to handle current package volumes. Space and staffing shortages mean packages not being properly handled and delivered to residents in a timely manner.

"In staffed lobbies the concierge is typically responsible for granting access to the building for delivery drivers, accepting and signing for parcels, logging deliveries, storing them, and contacting the resident to pick up their package" explains Michael Trueman, President of [ParcelPort Solutions](#), a provider of intelligent locker systems for residential and commercial properties. "With each package taking up to ten minutes of time, there is now a continuous overflow of packages at concierge desks and in lobbies. This backlog creates security and fire code issues. For example, an overabundance of

cardboard boxes in lobbies and trash rooms can be a fire hazard."

The delivery and storage situation in unstaffed lobbies is worse with doorways and walkways blocked, and packages more easily stolen.

One way to resolve the problems of growing package deliveries is to reduce the time taken to handle each package and speed up resident retrieval. Condo management software and apps offer effective and economical solutions. Another approach is to eliminate the need for concierge staff to get involved in package deliveries by incorporating smart parcel lockers for secure package storage and resident retrieval.

## ELECTRONIC VOTING

### *Quorum and Proxies*

As the acceptance of electronic voting grows and is embraced by more communities, there can be confusion about quorum and proxies.

#### **Electronic voting is not a replacement for quorum**

Quorum refers to the number of owners representing a certain percentage of units in the condominium corporation who must be present for the meeting either in-person or by proxy.

Electronic voting can count towards quorum if it occurs at the meeting. Advance electronic voting, voting allowed prior to or after a meeting, does not count toward quorum.

Condominium Authority of Ontario's (CAO's) [Guide to Conducting Electronic Owners' Meetings](#) has information on advance voting and quorum.

#### Quorum Requirements

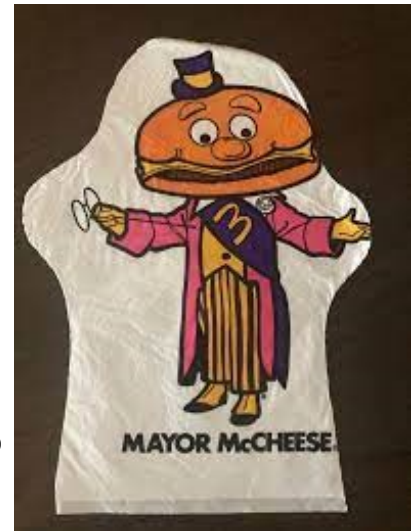
Quorum refers to the number

of owners representing a certain percentage of units in the condo corporation who must be present for the meeting

either in-person, by proxy or through telephonic or electronic attendance, or voting. If there is no quorum there can still be discussion on a matter, but no meeting or votes can take place.

The temporary amendments to the Condo Act

**CONTINUED PAGE 20 ....**



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## ELECTIONS & MEETINGS

### ELECTRONIC VOTING - Quorum and Proxies... CONTINUED FROM PAGE 19

allow for an owner who votes by telephonic or electronic means to be deemed as present either in-person or by proxy, and therefore can be counted towards quorum under section 50 (1) of the Condo Act. As only the requirement for a telephonic or electronic voting by-law has been suspended under temporary amendments, and given that section 52 (1) (b) (iii) of the Condo Act permits telephonic and electronic voting, the method to establish quorum can be determined by whether the unit owner connected to the meeting telephonically or electronically, or whether they submitted an advance electronic vote.

A common feature of most electronic voting platforms is the ability to vote before the meeting is held. Advanced voting allows for condo business to be conducted smoothly and safely during the pandemic. It also gives the condo board an understanding of whether they are likely to meet quorum requirements. Remember that early votes can only be used for and count towards quorum for items voted on and set out in the meeting agenda. Once the extended transition period is over, condo corporations must pass a by-law which details the manner by which an owner is deemed to be present if they wish to continue to have early voters count towards quorum.

For most owners' meetings (e.g., AGMs, turn-over meetings, and meetings to elect directors or appoint an auditor), quorum is reached when owners who own 25 percent of the units in the condo corporation are present.

If quorum is not reached on the first two attempts to hold an owners' meeting, quorum is reduced from 25 percent to 15 percent on any

subsequent attempts, unless specified otherwise in the condo corporation's by-laws.

#### Proxies are not required for meetings



Proxies are not mandated or required to be provided to owners. With advance, real time and telephone voting, proxies can be

eliminated.

#### Electronic voting encourages participation

Owners who would not attend a meeting or complete a proxy are likely to participate in electronic voting. Those who will attend meetings will continue to do so when electronic voting is utilized. Those unable to attend will benefit from the ability to vote online which results in greater engagement.

Thank you to [CondoVoter](#), which provides electronic voting to condominium corporations in compliance with Ontario's condominium laws, for their assistance with this article.





## EXTERNAL BUILDING SYSTEMS



The main obligations of a condo board are maintaining the structural health of the property and financial health of the corporation. Both are related and often in conflict since maintaining structural health requires money.

Directors should have a general understanding of external building systems so they can think critically about their building, evaluate advice from consultants and make good decisions.

The exterior of a building is comprised of the roof, walls, balconies, terraces, retaining walls, fences, windows, doors, sidewalks, driveways, garage and parking lot. Each system is affected by design, physical composition, age and location.

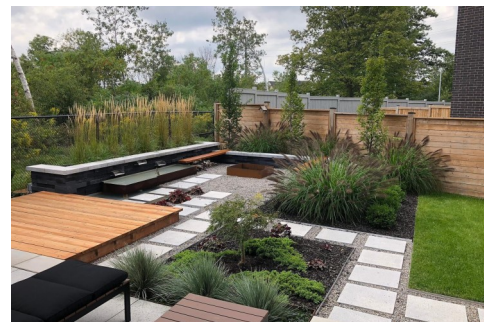
Roof and walls of a building, its façade, provide structural integrity. They create a waterproof envelope that determines energy efficiency and protects against the elements. The façade includes windows, gutters and other features working together to facilitate energy efficiency and protection against water infiltration.

Paved areas including walkways and sidewalks, along with landscaped and grass areas, should angle away from building structures to prevent water damage that can compromise structural integrity. Walking areas should be well maintained to help prevent tripping hazards which can cause injury and be a liability issue for the corporation. Repairing cracks and potholes on surfaces is necessary to ensure proper drainage and prevent water from going to where it can cause damage.

Any area connecting a building to the outside should receive regular attention to maintain structural integrity. This includes doors, windows and balconies. Doors and balcony railings must remain safe with proper waterproofing and routing of water runoff to prevent leaks and structural deterioration. Windows and doors should be maintained to prevent drafts and water infiltration. These measures help reduce rust, corrosion, mould and structural damage.

There is a delicate balance between a corporation's financial health and physical health of the property. Boards focused on cost control while ignoring deterioration, delaying repairs and maintenance can anticipate sudden and unexpected "emergency" expenses for which they are unprepared. The consequence is some combination of special assessment or loan to pay for these "emergency" expenses.

Boards should be as vigilant about the physical condition of their community as they are about its financial health. Yet construction, maintenance and upkeep are complicated to understand. Experts are needed to advise on what must be done to maintain building infrastructure.





## TIME TO PAY UP

Time is up for two condominium communities after years of financial mismanagement.

Guildwood Terrace (MTCC 1013 at 3233 Eglinton Ave. East) owners were recently informed they need to pay between \$25,000 and close to \$50,000 each to cover the \$12.5 million "building envelope" project that includes replacing all windows. Owners can choose to make a single lump-sum payment, annual payments or monthly payments.

At Twin Towers (MTCC 655 at 234 Albion Rd.) owners each had to pay a special assessment of about \$10,000. This is in addition to paying off a bank loan from about seven years ago to repair balconies.

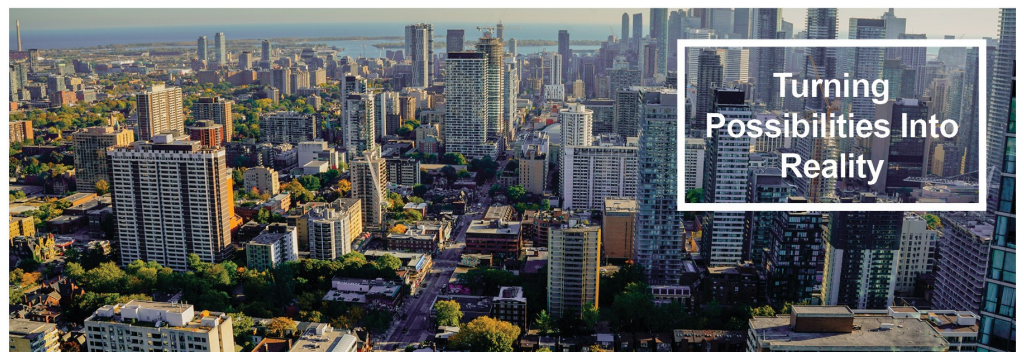
There is always a backlash from owners receiving a special assessment. Some residents complain they can't afford it. Older residents at Guildwood Terrace may not live long enough to appreciate the new windows. Many blame the current board for mismanagement.

A large special assessment arises only after years of financial mismanagement. Successive condo boards fail to increase monthly condo fees sufficiently to pay

ongoing operational expenses and set aside funds to pay for anticipated future repairs. Condo owners like lower condo fees which gives them more money to spend on restaurants, vacations and entertainment. Many hope to sell their condo before they are required to pay for known and worsening building infrastructure problems.

The problem begins with developers, seeking to keep condo fees low so they can more easily sell units, establishing reserve fund contributions at an

**CONTINUED PAGE 23 ....**



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## EXCESSIVE HEATING IN SUITES



Outside the temperature is a comfortable 23 C but your suite is way too hot. Why the discrepancy and how can internal temperatures be moderated?

Temperature discrepancies of a few degrees are common in high-rise buildings:

- On sunny days, the side of a building exposed to the sun can be warmer.
- Depending on your building's HVAC or heating system, warmer air can enter your suite even when the system is turned off. This can cause the internal temperature to deviate a few degrees from the thermostat setting.
- The middle portion of a building can draw heat from neighbouring suites.

Ensure your thermostat is working properly.  
Dropping the thermostat to a lower temperature

can offer a partial solution to cooling off the space. Window coverings can help prevent an interior from overheating from the sun and loss of heat during cooler periods.

When the temperature discrepancy is greater than a few degrees there can be a problem. Most buildings are heated by a central furnace. If it is failing to turn off and over-heating your suite, management should be informed. The furnace may require maintenance or repair. If walls are particularly warm there may be an electrical issue. This can cause a fire so should be checked out.

All heat has a source. If your suite is uncomfortably warm and no heat source is apparent, there could be a more serious problem that needs to be identified.

### TIME TO PAY UP... CONTINUED FROM PAGE 22

unrealistically low level. Once management is handed over to an owner-elected condo board, they may undertake further underfunding actions. They may poorly manage the building, follow bad advice, defer necessary maintenance and/or oppose increasing condo fees.

Reserve fund contributions should be sufficient to ensure funds are available for repair and replacement of common elements. This requires

paying for all operational costs PLUS an estimated 30 percent being directed to the reserve fund.

It is convenient and preferable for some to avoid paying to maintain their home and while hoping someone else will deal with problems and pay the bill. Eventually, the bill comes due. When that time comes, everyone involved bears responsibility – condo owners, the current condo board and past boards.







## LUNGS OF YOUR BUILDING

Our survival as people depends on our lungs, a crucial part of our respiratory system whose main job is to deliver fresh air to the body and remove waste gasses. The ventilation or HVAC system of a high-rise building functions in a similar way. Its purpose is to control the flow of fresh air into the building and remove stale air. The benefits of this system, and its proper maintenance, are crucial to our health.

Better ventilated buildings have fewer pathogens floating around. People are healthier and more alert. There is a reduced risk of contracting viruses from others. Poorly maintained ventilation systems are the cause of ailments, both minor and significant. When symptoms are experienced by 15 to 20 percent or more of building occupants, your community may be suffering from sick building syndrome. These are buildings where a significant number of people experience health problems or illnesses that appear related to how much time is spent in a specific building, and no illness or cause can be identified. Symptoms include unidentifiable odours; headaches, fatigue, rashes or other physical symptoms; flu-like symptoms; allergies; and eye or nasal irritation.

Ducts and vents throughout the building transport fresh air inside and stale air outside. Filters help keep recirculated air clean. Fan coils and heat pumps maintain proper indoor temperatures. There are motors to keep air flowing and systems to improve efficiency. Newer installations may have a software brain to control and optimize the system.

Components require regular maintenance and periodic replacement to keep all components functional. Supply systems and ducts require cleaning to prevent dirt, mould and other “undesirables” from blocking the system, growing and travelling throughout a building. This complex system works as a single unit to maintain proper air quality while keeping your home comfortable, clean and safe.

During the pandemic, poorly maintained ventilation systems are believed to have been a contributor to virus infection.



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# FIRE CODE COMPLIANCE - REQUIREMENTS



Fire safety plans are quickly outdated. Once prepared, they should be updated annually.

One concern is that lists of people requiring special assistance should be current. Plans should include names and locations of those with health conditions or disabilities requiring assistance. In the event of evacuation or fire, an outdated list means resources are wasted and deaths can result. Plans may require updating after building systems are changed or if renovations alter floor or room layouts.

Many high-rise building residents don't know what to do in the event of a fire. Some scramble out of their suite and head up or down to escape. Others remain inside waiting for instructions. Improper resident actions cause unnecessary injuries and death. A door's fire rating is compromised when decorations are attached or when mats, shoes or scooters are stored in the hallway. More deaths occur in corridors from flammable decorations on doors than from people remaining in their suite.

All doors should close and latch under their own power. When this is not the case a record should be made in a repair log and addressed. A fire department lock box should contain keys for accessing all doors in a building. A master key for all units is cheaper, faster and safer than storing individual keys for each unit.

An annual distribution of resident emergency instructions and responsibilities, along with a form to be submitted by those requiring assistance, is advisable. Supplement this with an information

campaign of notices in elevators and electronic communication. Residents should be informed of what life safety equipment is in their unit and fire safety requirements. Using the balcony as storage and resident hoarding are concerns.

Buildings are required to maintain records of tests to prove compliance with code requirements, and provide them to the Fire Department upon request. The Fire Department wants to know your community is working to avoid Fire Code violations. While high-rise communities do a reasonable job of completing annual life safety system tests, they can be less diligent at reporting on repairs required and completed to sprinkler systems, fire pumps, doors, generators and other fire safety systems. The Fire Code requires that these records be maintained for a minimum of two years. When requested, a fire inspector expects to receive all relevant information including that relating to sprinkler systems, fire pumps, doors and generators. Employee training session dates and materials, and resident communications, may also be requested.

When an infraction is identified Fire Code charges may be laid against building managers, board of directors, and possibly unit owners for in-suite infractions. Preventing fire code violations is easier and cheaper than defending against them.

Maintaining a fire safety plan is complicated and possibly beyond the capabilities of building employees. The best approach is to retain the services of a fire code consultant. They are familiar with code changes and avoiding liability while keeping people safe.

## DUMB THINGS HIGH-RISE RESIDENTS DO

### *Water Leaks*

Water leaks are part of high-rise living. Pipes, dishwashers, clothes washers and toilets leak at times. A resident may have attempted to hang a bathroom shelf and drilled into the water line.

Multi-family buildings are vulnerable to the risk of water on their building infrastructure, internal furnishings and personal possessions.

Rather than properly repair a leak, far too many leaking pipes have a bowl or cup below to try and “stop” the leak. Many water leaks have no noticeable cause, likely pinhole leaks in water pipes behind walls. A thinning portion of pipe springs a leak unnoticed for an extended period of time.

Even the smallest of leaks can drip down and cause damage to other units and common areas. Smart water metering products help communities protect, control and conserve water. They offer a system for monitoring water use and may include a remote automatic shutoff for the main line. Water sensors can be placed in high-risk locations near water sources to pinpoint the location of leaks or other water-related issues. A software application can allow management and residents to track water situations and act when issues are detected.

Water sub-metering, or suite metering, combined with moisture detection services ensure water problems are identified and addressed before they cause waste and serious damage. Building-wide solutions to prevent water leaks from worsening offer a more practical solution to the higher cost of damage and insurance caused by delayed response to water leaks.

## INSURANCE DEDUCTIBLES IMPACT ON RESERVE FUND BALANCES

The insurance crisis in condominium buildings is putting new pressure on reserve funds.

The unwritten rule is that an insurance loss claim is warranted when estimated at three times the deductible. Risking an insurance premium or deductible increase to save \$40,000, assuming a \$50,000 deductible, was considered bad business. With deductibles now reaching \$250,000, this logic can be less compelling or harder to justify.

Reserve funds pay for major repairs and replacement of common elements. They can be used to pay insurance deductibles for repairs to common elements, and an insurable loss if a claim is not filed. These reserve fund expenditures are not foreseeable so are never reflected in funding requirements. There is no way to predict the next flooding event, windstorm or fire.

Paying a large insurance deductible is devastating without millions of dollars in the reserve fund, and requires owners to contribute more to ensure the fund is not depleted. Funds to repair pipe leaks, replace damaged windows or replacement of an aging elevator system may not exist if used to pay an insurance deductible or related damage.

The minimum balance of a reserve fund should be an amount to ensure all foreseeable repairs and replacements can be maintained PLUS an amount to cover multiple insurance deductibles.

The reserve fund balance in an engineering report fails to include insurance deductibles and insurable losses when a claim is not filed. Perhaps it should.



## TEST YOUR KNOWLEDGE

### *Conflict of Interest and Governance*



The condo board president and relatives have investment units in the community, and he serves as listing agent for these units. As president, he hires and provides direction to contractors without informing owners of the expenditures. At a recent annual general meeting, nobody was made aware that one position was open for election and the sole candidate on the ballot won by acclamation. The condominium manager is quietly accepting of all this.

What in this scenario is acceptable practice and what is improper? Some of these issues are problematic for the community but not illegal. Others are clearly questionable.

The condominium manager is typically a contractor of the corporation and reports to the board. If there are concerns about how the president operates, the manager would bring these up privately in board meetings or private consultation in the form of advice or recommendations. Their public opposition to how the board chooses to operate is not an option and would likely result in termination of employment.

"Elections for directors are governed by the Condo Act and the corporation's by-law" explains Andrea Lusk of [Gardiner Miller Arnold LLP](#). "If they have provided notice of their intention to run for election,

candidates should be clearly listed in the Notice of Meeting, ballots and proxies provided by the corporation." A simpler approach would be for the

**CONTINUED PAGE 28 ....**



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## ALTERNATIVES TO CONDO LIVING

While condominium living remains the most popular form of home ownership in Toronto, co-ops and co-ownership offer a similar lifestyle.

When purchasing a condo, or condominium, you are a part-owner of a condo corporation. You own your unit, receive a deed, and share an interest in common elements with all corporation members.

This differs from purchasing a co-op which means owning shares in a private company that owns the building and provided with exclusive rights to occupy a specific unit. This may include exclusive use of a storage unit or parking space. One of the differences in co-op living is that potential owners are pre-screened by the board. A lower purchase price is likely. Financing may be more difficult to obtain or at a higher mortgage rate since the purchase is for shares in a building rather than ownership of a specific unit.

Co-ownership is a little different. It allows you to own a percentage of a building in areas where condominiums are not allowed. Your name goes on title for the building and you receive exclusive rights to a unit. Property taxes are paid as part of monthly maintenance fees as with a co-op. Heat and hydro costs are often included in monthly maintenance fees. Where the city will not allow older apartment buildings to be retrofitted and sold as condominiums, co-ownership allows buildings to be repurposed and sold to those who desire condominium living. Buyers typically purchase after seeing a retrofitted space rather than relying on building plans which can be changed prior to taking possession. The boards of co-ownerships may be required to approve new buyers.

Unlike condominiums, neither co-ops or co-ownerships require that a reserve fund be maintained.

### TEST YOUR KNOWLEDGE... CONTINUED FROM PAGE 27

board to elect another individual as president, or for owners to replace the individual when they are next up for election. The condominium manager should facilitate but not influence the outcome of an election so is likely blameless.

The assertion is that the condo board president has a conflict of interest. This is unlikely given the situation. It is common for owners to own multiple units, make some available for rental, and to act as their own agent.

Only the condo board, not the president, can hire

contractors, and only by a majority vote at a meeting once quorum has been established except in emergency situations. The condo board is generally not involved in the hiring of employees and typically delegates this responsibility to the condominium manager.

Serving as a director on the condo board is a responsibility not always understood by condo owners. Best practices may not always be observed and this is often to the detriment of the corporation. Correcting for this becomes an obligation of owners who bear the costs.



## UNRESPONSIVE CONDO BOARD

Our manager is not performing in terms of fulfilling promises to owners and the management company is getting involved in managing our Annual General Meeting (AGM).

During the last AGM, that was virtual, the condo lawyer was brought in to address various issues, and owners were allowed to ask questions – I was muted during my question.

Which clause in the Condominium Act can I refer to in writing the board about this conflict of interest behavior during the AGM by the boss of the property manager?

R. H.

### Response from Toronto Condo News

You have identified concerns about your condo board, management and legal counsel. Your concerns pertain to obligations of these parties to you and other owners.

The reality is that there is no obligation to respond to owners or residents as you desire.

The condominium manager reports to the board. It may be that your board is quite satisfied with management and their failure to respond to owners. If owners disagree, their power is in replacing directors by voting for others. A new board can choose to replace management, or to provide new instructions for how management responds to owner concerns.

The president of the condo board presides as chair at meetings including the Annual General Meeting (AGM). They can pass this responsibility to another including the condo lawyer. The agenda for the AGM is determined by the board and may not allow questions from those in attendance. As for muting owners, that is one of the reasons some boards prefer virtual meetings over in-person meetings.

With regard to promises that were made, I presume these were verbal promises. Unless in writing, there is little that can be done to prove they have been made and to ensure they are honoured.

The matters you bring up do not appear to rise to the level of “conflict of interest”.

While the actions you identify may be distasteful, not in accordance with best practices, and may lead to other problems, there is nothing in the Condo Act preventing boards from acting in these ways, or from owners re-electing directors that poorly manage or communicate with their community.

In short, you will not find anything in the Condo Act addressing the issues you have identified. If you do feel that the condominium manager is acting in an improper manner, the Condominium Management Regulatory Authority of Ontario (CMRAO) offers a mechanism for filing complaints - <https://cmrao.ca/condo-managers/complaints-process> - that will be reviewed, then acted upon if they feel your concerns are warranted.





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