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This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

CONDOMINIUM MANAGEMENT SERVICES ACT, 2015

CODE OF ETHICS AND DISCIPLINE AND APPEALS COMMITTEES

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PART I
CODE OF ETHICS

DEFINITION

Definition

1. In this Part,

“property” has the same meaning as in the *Condominium Act, 1998*.

GENERAL OBLIGATIONS OF LICENSEES

Condominium managers

2. A condominium manager shall not do or omit to do anything that causes the condominium management provider employing the manager to contravene this Regulation.

Fairness, honesty, integrity

3. A licensee shall treat every person that the licensee deals with in the course of offering or providing condominium management services fairly, honestly and with integrity.

No discrimination or harassment, duty to accommodate

4. In offering or providing condominium management services, a licensee shall endeavour to treat all persons equally, without discrimination, harassment or violence and to provide reasonable accommodation for persons with disabilities.

Conscientious and competent service, etc.

5. In providing condominium management services, a licensee shall provide conscientious, courteous and responsive service and demonstrate reasonable knowledge, skill, judgment and competence.

Providing opinions, etc.

6. In providing condominium management services, a licensee shall demonstrate reasonable knowledge, skill, judgment and competence in providing opinions, advice or information in respect of the services and shall not provide an opinion or advice to any person unless the licensee has the necessary education or experience to provide that opinion or advice.

Current documents

7. A licensee shall ensure that forms and documents used by the licensee in offering or providing condominium management services are current.

Business records

8. In addition to the records required under the Act and regulations, a licensee shall make and keep all records that the licensee reasonably requires for the purpose of providing condominium management services.

Financial responsibility

9. A licensee shall be financially responsible in providing condominium management services.

No misrepresentation of licence

10. No licensee shall misrepresent to any person the type of, class of or conditions on the licensee's licence.

Error, misrepresentation, fraud, etc.

11. In offering or providing condominium management services, a licensee shall use the licensee's best efforts to prevent error, misrepresentation, fraud or any unethical practice.

Unprofessional conduct, etc.

12. A licensee shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a licensee.

Unreasonable interference

13. Except as permitted or required by law, a licensee shall not unreasonably interfere with the use and enjoyment of the common elements, the units or the assets, if any, of the client, by,

- (a) a client;
- (b) an owner;
- (c) an occupier;
- (d) an invitee, agent or employee of an owner or occupier; or
- (e) a director, invitee, agent or employee of a client.

PROTECTING CLIENTS' INTERESTS

Engaging and informing the client

14. A licensee shall keep a client informed of all significant steps that the licensee takes in the course of providing condominium management services.

Best interests

15. A licensee shall promote and protect the best interests of the licensee's clients.

Contract re property or client's assets

16. (1) A licensee who has a contractual obligation to manage, maintain, repair or protect the property or the assets, if any, of a client shall be diligent in executing these obligations.

(2) A licensee shall not exaggerate or misrepresent material facts to a client concerning the property or the assets, if any, of the client or conceal such facts from a client.

Services from others

17. (1) A licensee shall advise a client to obtain services from another person if the licensee is not able to provide the services with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the services.

(2) A licensee shall not discourage a client from seeking a particular kind of service if the licensee is not able to provide the service with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the service.

Fees and compensation

18. A licensee shall not indicate to any person, directly or indirectly, that remuneration or other costs are fixed or approved by the administrative authority, the registrar or any government authority.

Confidentiality

19. Except as is otherwise authorized or required by law, a licensee shall not disclose to a third party any confidential information without prior written consent of the person to whom the information relates.

PART II DISCIPLINE AND APPEALS COMMITTEES

COMPOSITION OF COMMITTEES

Composition and appointment of committees

20. (1) For the purposes of subsection 58 (3) of the Act, the discipline committee and appeals committee shall each consist of at least five members, at least one of whom has never been a licensee or a shareholder, officer, director or employee of a licensee or a former licensee.

(2) A person may be appointed under subsection 58 (3) of the Act as a member of both committees.

(3) A member of the board of the administrative authority shall not be appointed under subsection 58 (3) of the Act as a member of the discipline committee or the appeals committee.

(4) An appointment made under subsection 58 (3) of the Act expires at the end of,

- (a) the day specified in the appointment, if the appointment specifies an expiry day; or
- (b) the day before the third anniversary of the day the appointment took effect, if the appointment does not specify an expiry day.

(5) A member of the discipline committee or appeals committee is eligible for reappointment after the end of the member's term of office.

(6) If the term of office of a member of the discipline committee or appeals committee who has participated in a hearing expires before the hearing is completed or a decision is given, the term is deemed to continue, but only for the purpose of completing the hearing and participating in the decision and for no other purpose.

(7) The board of the administrative authority may at any time terminate, for cause, an appointment made under subsection 58 (3) of the Act.

(8) Subsection (6) does not apply to a member whose appointment is terminated for cause under subsection (7).

Chairs and vice-chairs

21. (1) The board of the administrative authority,

- (a) shall appoint, from among the members of the discipline committee, one member as chair of the committee; and
- (b) may appoint, from among the members of the discipline committee, one or more members as vice-chairs of the committee.

(2) The board of the administrative authority,

- (a) shall appoint, from among the members of the appeals committee, one member as chair of the committee; and
- (b) may appoint, from among the members of the appeals committee, one or more persons as vice-chairs of the committee.

(3) Subsections 20 (4) and (7) apply, with necessary modifications, to an appointment made under subsection (1) or (2).

(4) Subject to subsection (5), if the chair of a committee so requests or if the chair is absent or unable to act, the vice-chair may exercise and perform the powers and duties of the chair.

(5) If more than one vice-chair of the committee has been appointed, the following person may exercise and perform the powers and duties of the chair:

1. The vice-chair of the committee whom the chair specifies.
2. The vice-chair of the committee who has the greater experience as vice-chair if the chair does not specify a vice-chair under paragraph 1.

Oath or affirmation of office

22. Every person appointed under subsection 58 (3) of the Act as member of a committee and every person appointed under subsection 21 (1) or (2) of this Regulation as a chair or vice-chair of a committee shall, before beginning his or her duties, take and sign the following oath or affirmation in either English or French:

I solemnly swear (*affirm*) that I will faithfully, impartially and to the best of my skill and knowledge execute the duties of and that, except as I may be legally authorized or required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being

So help me God. (*Omit this line in an affirmation.*)

PROCEDURE OF DISCIPLINE COMMITTEE

Limitation

23. The registrar shall not refer a complaint to the discipline committee under paragraph 5 of subsection 57 (4) of the Act after the second anniversary of the day on which the facts on which the complaint is based first came to the knowledge of the registrar.

Panel

24. (1) When a matter is referred to the discipline committee, the chair of the committee shall assign a panel in accordance with this section to hear and determine the matter under subsection 58 (1) of the Act.

(2) The panel has all the jurisdiction and powers of the discipline committee with respect to hearing and determining the matter.

(3) Subject to subsection 4.2.1 (1) of the *Statutory Powers Procedure Act*, the panel must be composed of at least three members of the discipline committee.

- (4) If the panel is composed of three or more members of the discipline committee,
- (a) at least two of the members of the panel must be licensees or officers or directors of a licensed condominium management provider;
 - (b) at least one of the members of the panel must never have been a licensee or a shareholder, officer, director or employee of a licensed condominium management provider or of a former licensed condominium management provider;
 - (c) if a principal condominium manager is the subject of the proceeding, at least one of the licensees must be a principal condominium manager;
 - (d) if a condominium manager is the subject of the proceeding, at least one of the licensees must be a condominium manager; and
 - (e) if a condominium management provider is the subject of the proceeding, at least one of the licensees must be a condominium management provider or an officer or director of a condominium management provider.

Parties

25. The parties to a proceeding before the discipline committee are the licensee who is the subject of the proceeding, the administrative authority and any other person added as a party by the discipline committee.

Notice of hearing

26. Subject to section 6 of the *Statutory Powers Procedure Act*, the discipline committee shall give the parties to a proceeding at least 45 days notice of a hearing by the committee.

Disclosure of evidence

27. (1) A party who intends to tender evidence at a hearing before the discipline committee shall, not later than the date specified by subsection (3), disclose the following to every other party:

1. In the case of written or documentary evidence, a copy of the evidence.
2. In the case of oral evidence of a witness, the identity of the witness and a written statement containing the substance of the witness' anticipated oral evidence.
3. In the case of oral evidence of an expert, the identity of the expert and a copy of a written report signed by the expert containing the substance of the expert's anticipated oral evidence.

4. In the case of evidence that is not oral, written or documentary evidence, a written description of the evidence.

(2) A party who intends to tender written or documentary evidence, or other evidence that is not oral evidence, at a hearing before the discipline committee shall give every other party a reasonable opportunity to examine the original evidence before the hearing.

(3) The date mentioned in subsection (1) is,

- (a) in the case of evidence tendered by the administrative authority, the date that is 30 days before the date the hearing begins; and
- (b) in the case of evidence tendered by any other party, the date that is 15 days before the date the hearing begins.

Disclosure from closed hearing

28. If a hearing before the discipline committee is closed to the public, the committee may order that evidence given and submissions made at the hearing not be disclosed to any member of the public.

Notice of decision to complainant

29. If a proceeding before the discipline committee arises from a complaint by a person who is not a party to the proceeding, the committee shall send the person a copy of its final decision or order including the reasons, if any have been given, at the same time that it complies with section 18 of the *Statutory Powers Procedure Act*.

Notice of appeal rights

30. When the discipline committee sends a copy of its final decision or order to a party who participated in the proceeding, or the party's counsel or agent, under section 18 of the *Statutory Powers Procedure Act*, it shall also send a notice outlining the party's right to appeal under subsection 58 (5) of the Act and the procedures applicable to an appeal.

APPEALS

Commencement of appeals

31. (1) A party may commence an appeal under subsection 58 (5) of the Act by delivering the following to the appeals committee within 30 days after the discipline committee sends notice, under section 18 of the *Statutory Powers Procedure Act*, of the order being appealed:

1. A notice of appeal that,
 - i. identifies the appellant and the other parties to the appeal,

- ii. identifies the order being appealed,
 - iii. sets out the grounds for the appeal, and
 - iv. sets out the relief that is sought.
2. The fee for commencing the appeal, as set by the administrative authority under clause 30 (1) (b) of the Act, payable to the administrative authority.

(2) The appellant shall, within the 30-day period mentioned in subsection (1), deliver a copy of the notice of appeal mentioned in paragraph 1 of that subsection to the other parties to the appeal and to the discipline committee.

(3) When a party commences an appeal under subsection 58 (5) of the Act, the discipline committee shall, at the earliest practical opportunity, forward to the appeals committee the record compiled under section 20 of the *Statutory Powers Procedure Act*.

Panel

32. (1) The chair of the appeals committee shall assign a panel in accordance with this section to hear and determine an appeal to the committee under subsection 58 (5) of the Act.

(2) The panel has all the jurisdiction and powers of the appeals committee with respect to hearing and determining the appeal.

(3) Subject to subsection 4.2.1 (1) of the *Statutory Powers Procedure Act*, the panel must be composed of at least three members of the appeals committee.

(4) If the panel is composed of three or more members of the appeals committee,

- (a) at least two of the members of the panel must be licensees or officers or directors of a licensed condominium management provider;
- (b) at least one of the members of the panel must never have been a licensee or a shareholder, officer, director or employee of a licensed condominium management provider or of a former licensed condominium management provider;
- (c) if a principal condominium manager is the subject of the proceeding, at least one of the licensees must be a principal condominium manager;
- (d) if a condominium manager is the subject of the proceeding, at least one of the licensees must be a condominium manager; and

- (e) if a condominium management provider is the subject of the proceeding, at least one of the licensees must be a condominium management provider or an officer or director of a condominium management provider.

(5) A person who was a member of the panel of the discipline committee that made the order being appealed must not be assigned to the panel of the appeals committee that hears and determines the appeal.

Parties

33. The parties to a proceeding before the appeals committee are the appellant, the other persons who were parties to the proceeding before the discipline committee, and any other person added as a party by the appeals committee.

Proceedings

34. Sections 26 to 29 apply, with necessary modifications, to proceedings before the appeals committee.

**PART III
COMMENCEMENT**

Commencement

35.[Commencement].