

## Summary of the Proposed General Regulation under the *Condominium Management Services Act, 2015*

### Notice

This is a summary of the key elements of the draft general regulation proposed to be made under the *Condominium Management Services Act, 2015*. This summary is intended to facilitate dialogue about the proposed regulation. You are encouraged to review the accompanying draft regulation, which contains details about the proposals not included in this summary. Should the decision be made to proceed with the proposals, the comments received during this consultation will be considered during the preparation of the final regulations.

The *Protecting Condominium Owners Act, 2015* (“PCOA”) received Royal Assent on December 3, 2015, marking the first overhaul of the province’s condo law in over 16 years. The PCOA makes substantial amendments to the *Condominium Act, 1998* (“Condominium Act”). It also enacts the *Condominium Management Services Act, 2015* (“CMSA”) which, once proclaimed into force, will regulate and provide for the licensing of condominium managers and condominium management providers in Ontario. This posting is about a draft regulation under the CMSA.

The Ministry of Government and Consumer Services has developed the first draft regulation to support the implementation of the CMSA. This posting makes the draft General Regulation available for public comment. The following is a plain-language summary of the draft General Regulation proposed under the CMSA focusing on two key areas:

- I. Licensing & Transition (for Condominium Managers & Management Providers)
- II. Regulation of Licensees

## I. LICENSING & TRANSITION

The Act requires both condominium managers and condominium management providers to be licensed in order to provide condominium management services.

### 1. Licensing for Condominium Managers

The proposed regulations set out a two-staged, or graduated, licensing process for condominium managers, with two classes of licences:

1. **Limited Licence:** An entry-level temporary licence with certain conditions and restrictions that allows the licensee to work as a condominium manager while

acquiring the experience required for a general licence. A limited licensee must work under the supervision of a general licensee.

2. **General Licence:** The licence required to work as a condominium manager without any restrictions or supervision specified in the regulation. This licence would recognize and confirm the licensee's professional competence through the completion of educational requirements and work experience.

A person seeking to become licensed as a general licensee would need to first obtain a limited licence. A limited licensee has a maximum of 5 years to complete the requirements and apply for a general licence, after which time they would have to re-apply for a limited licence and repeat any requirements obtained towards a general licence.

Note: Please see the "Transition" section below for an overview of the proposed licensing rules that would apply to condominium managers and condominium management providers with experience providing condominium management services as of the date the regulation would come into effect.

## 2. Limited Licence

### Application Requirements for a Limited Licence

- At least 18 years of age;
- Provide the registrar with the applicant's complete legal name (and an indication of the name in which the applicant requests to be licensed: either the applicant's complete legal name, part of the applicant's legal name, a name by which the applicant is commonly known or the business name registered under the *Business Names Act*);
- Completed application form;
- Accompanying fee that would be set by the administrative authority;
- Police record check (dated within the last 6 months); and
- Successful completion of the educational and examination requirements for a limited licence, if any, as specified by the Minister or registrar.

### Conditions of a Limited Licence

- A limited licensee must be supervised by a general licensee when providing condominium management services.
- The following activities need approval by the supervisor before execution:
  - Entering into contracts and agreements
  - Managing, controlling or disbursing general funds
- The following activities cannot be undertaken by a limited licensee:
  - Signing status certificates
  - Managing, controlling or disbursing the reserve fund account

## 3. General Licence

### Application Requirements for a General Licence

- Hold a limited licence;

- Provide the registrar with the applicant's complete legal name (and an indication of the name in which the applicant requests to be licensed: either the applicant's complete legal name, part of the applicant's legal name, a name by which the applicant is commonly known or the business name registered under the *Business Names Act*);
- Completed application form;
- Accompanying fee that would be set by the administrative authority;
- Police record check (dated within the last 6 months);
- Successful completion of the educational and examination requirements for a general licence, as specified by the Minister or registrar; and
- Completion of at least two years of work experience under the supervision of one or more general licensees, that meet the requirements established in the regulation (see below list for further details).

Required work experience to obtain a general licence:

- Plan and participate in a client's board of director meetings;
- Plan and participate in meetings of owners, including at least one annual general meeting;
- Participate in the preparation of a budget for a condominium corporation including a presentation of the budget to the client's board of directors;
- Interpret and present financial statements to the client's board of directors;
- Prepare and present reports to the client's board of directors; and
- Oversee the maintenance or repair of units, common elements or client's assets, if any.

#### **4. Licensing for Condominium Management Providers**

A corporation, partnership, sole proprietor, association or other organization or entity seeking to provide condominium management services in Ontario must apply for a condominium management provider licence. In addition to completing the application form and paying the fee, the applicant must designate a principal condominium manager ("PCM"). The PCM must hold a general licence and must have successfully completed educational requirements for a PCM, if any, as specified by the Minister or registrar.

#### **5. Supervision**

As limited licensees have little to no prior experience as a condominium manager, they must be supervised by a general licensee.

A general licensee who supervises a limited licensee must:

- Oversee the work of the licensee being supervised;
- Be responsible for the work that they approve on behalf of the licensee being supervised; and
- Be readily available, in person or remotely, to assist the licensee being supervised.

## 6. Educational Requirements

Condominium managers would be required to successfully complete certain educational requirements in order to be licenced.

Educational requirements for condominium managers would be specified by the Minister of Government and Consumer Services for the first three years following the Act and regulations coming into force, after which time the registrar appointed by the administrative authority could adopt the existing educational requirements or specify new or revised educational requirements, as appropriate.

If this proposal is adopted, the Minister is considering specifying the following educational requirements for condominium managers:

<b>Class of Licence</b>	<b>Minister-Specified Educational Requirements</b>
<b>Limited</b>	<b>No Required Education</b>
<b>General</b>	<b>Mandatory courses and exams</b> Must successfully complete all of the following courses and exams developed by the Association of Condominium Managers of Ontario (ACMO): <ol style="list-style-type: none"><li>1. Condominium Law;</li><li>2. Physical Building Management;</li><li>3. Financial Planning for Condominium Managers; and</li><li>4. Condominium Administration and Human Relations.</li></ol>

Note: Please see the “Transition” section below for an overview of the proposed rules for condominium managers who have previously completed the above-mentioned four courses developed by ACMO.

## 7. Equivalencies

The registrar would be authorized to recognize the prior successful completion of programs of study, training programs, internships, courses, tests and examinations of an applicant as equivalent to the specified educational requirements for a limited or general licensee.

The registrar may also recognize prior work experience of an applicant as equivalent to the specified educational requirements for a limited or general licensee.

## 8. Other Jurisdictions

The registrar may exempt applicants for a limited or general licence from the requirements for that licence if they hold or held an equivalent licence, registration or certification in a jurisdiction outside of Ontario (and may impose conditions on the exemption).

## 9. Expiration

A licence would expire:

- On the date listed on the licence; or
- When a condominium manager is no longer employed by a licensed condominium management provider or condominium corporation.\*

\*A licence could be reinstated if a condominium manager is subsequently employed by another condominium management provider or condominium corporation within 6 months after their previous employment ended.

## 10. Renewal

A licensee must apply for renewal of a licence within 30 days before its expiry.

Renewal requirements for a condominium manager and condominium management provider include:

- Completed application form
- Accompanying fee that would be set by the administrative authority.

To renew a limited or general licence, licensees would be required to complete continuing education training, if any, as specified by the Minister or registrar.

## 11. Exemptions

Specific individuals and entities would be exempt from licensing requirements when providing specified services to condominiums, including:

- Paralegals and lawyers
- Architects
- Public accountants
- Certified General Accountants
- Certified Management Accountants
- Chartered Accountants
- Engineers
- Insurance brokers
- Persons appointed as a receiver under the *Courts of Justice Act*
- Banks, loan and trust corporations, credit unions or caisses populaires
- Persons who conduct reserve fund studies under the Condominium Act
- Inspectors appointed under the Condominium Act
- Administrators appointed under the Condominium Act
- Directors of condominium corporations unless the director is also providing condominium management services and receiving compensation or reward for those services
- Persons who only provide repair and maintenance services to a condominium corporation, including landscaping and cleaning services.

Certain individuals would be exempt from licensing requirements, but only for the purposes of collecting or holding contributions to the common expenses, and only if the individual promptly after receiving the money, delivers the money to the

condominium corporation or a licensed condominium manager. Examples could include:

- Security guards
- Other individuals (for example, superintendents, office assistants, etc.) employed by a condominium management provider or a condominium corporation or who acts on behalf of a condominium corporation, if the individual has been authorized in writing to collect or hold those contributions.

## 12. Transition

Individuals and entities currently providing condominium management services would have 150 days after the Act comes into force to apply for a licence. During this 150-day period, these individuals and entities would be deemed to hold the applicable licence.

Those individuals or entities who apply for a licence within 150 days may continue to provide condominium management services until the registrar makes a final decision with respect to the applicant's licence application. The registrar would have discretion to grant an extension to the 150-day period for reasons of undue hardship.

Most obligations under the Act would apply to any person or entity who provides condominium management services upon the Act coming into force, even if the person or entity has not yet applied for or been granted a licence.

### Condominium managers

Individuals who are employed as a condominium manager and providing condominium management services on the day the Act comes into force (or within the previous 3 months) may apply for a:

- a. **Limited Licence** - if the applicant has **up to 2 years** of work experience as a condominium manager
- b. **Transitional General Licence** - if the applicant has **more than 2 years** of work experience as a condominium manager
- c. **General Licence** - if the applicant has **more than 2 years** of work experience as a condominium manager and:
  - Is a member in good standing with ACMO and has ACMO's Registered Condominium Manager (RCM) designation; or
  - Has successfully completed the four courses developed by ACMO, as listed above (see section 6 – Educational Requirements).

### Progression from Transitional General Licence to General Licence

A transitional general licence may be renewed for a maximum of 3 years, during which time the licensee must successfully complete the education required and apply for a general licence in order to qualify for that licence (see section 6 – Educational Requirements).

### Condominium Management Providers

Corporations, partnerships, sole proprietorships, associations or other organizations providing condominium management services on the day the Act and regulation come into force may apply for a condominium management provider licence.

During the transition period, condominium management providers may designate a transitional general licensee, a general licensee, or an applicant of either licence, as their Principal Condominium Manager (PCM).

#### **Discussion Questions**

- Is a graduated licensing system with restrictions on less experienced managers an appropriate model for condominium managers?
- Are the proposed restrictions on the activities of limited licensees appropriate? If not, what alternatives should be considered?
- What practical considerations apply to the requirement for general licensees to supervise limited licensees and approve some of their work?
- Is two years of work experience an appropriate threshold for a condominium manager to apply for a general licence?
- Are ACMO's RCM courses and exams appropriate as the educational requirement for applicants for a general licence in the short term as licensing requirements are getting off the ground?

## **II. REGULATION OF LICENSEES**

### **1. Certificate of Licence**

#### Content of Licence

The registrar would issue a certificate of licence to licensees that includes the following information:

- Name in which the licensee is licensed
- Licence number
- Expiration date of the licence
- Class of licence (*for condominium managers*)
- Name of principal condominium manager (*for condominium management providers*).

The registrar could include any additional information that the registrar considers appropriate, including conditions of a licence.

### Proof of Licence

While providing condominium management services, a licensee must carry the licence and, upon request of any person, produce it for inspection. A condominium management provider who is issued a certificate of licence must keep a paper form of it at its principal place of business as well as any other place that it carries on business.

## **2. Licensee Information**

### Address for Service

A licensee must maintain an Ontario address for service.

### Changes to Information

If there are any changes in the information the licensee provided to obtain a licence, the licensee must notify the registrar of the change in writing within 5 days.

If a licensee voluntarily ceases business or the licence is revoked, suspended or cancelled, the registrar may require the licensee to promptly return the certificate of licence to the registrar using a form of delivery that provides proof of delivery.

## **3. Employment**

### Multiple Employers

An individual licensee cannot be employed by more than one condominium management provider unless all condominium management providers consent in writing in a manner approved by the registrar.

### Employment by a condominium corporation

Except as prescribed by regulation, the Act requires condominium managers to be employed by a condominium management provider. The proposed regulation would exempt general licensees from this provision authorizing the general licensee to be employed directly by no more than three condominium corporations.

## **4. Disclosures**

### Conflict of Interest

The Act requires a licensee, who has an interest in a contract or transaction to which the client is or will be a party, to disclose the nature and extent of the interest to the client in writing.

For conflicts of interest that arise after the client enters into the contract or transaction, the proposed regulation would require a licensee to disclose such an interest to the client as soon as the licensee becomes aware of the interest.

For conflicts of interest that arise with respect to a proposed contract or transaction, the proposed regulation would prohibit the licensee from entering into the contract or transaction on behalf of the client unless the licensee has disclosed the interest to the client and has obtained written approval from the client to enter into the contract or transaction.



The licensee would be prohibited from being present for any discussions by the client regarding the matter to which the disclosed interest relates.

### Insurance

Before entering into a proposed contract with a client to provide condominium management services, the proposed regulations would require a licensee to disclose in the contract, in a clear, comprehensible and prominent manner, the type and amount of insurance coverage, if any, held by the condominium management provider and condominium manager.

If a licensee does not have any insurance coverage, the licensee must disclose that fact in the contract in a clear, comprehensible and prominent manner, before entering into a contract to provide condominium management services.

A licensee must notify the client within 14 days if the licensee's insurance coverage changes or ceases during the term of the contract.

## **5. Proxies**

Under the Act, a licensee cannot solicit proxies for a meeting of owners if the subject matter of the meeting includes: matters directly related to the licensee, the election or removal of at least one of the client's directors, or any other prescribed matter.

The proposed regulations would define "solicit" to mean petitioning for, or trying to directly obtain, a proxy for a meeting of owners but would not include:

- Collecting or holding proxies or providing a location to collect or hold proxies;
- Notifying or reminding owners or mortgagees to submit proxies if they are unable to attend a meeting of owners;
- Making information available on how to submit a proxy;
- Providing proxy forms as part of anything that a client gives to owners or mortgagees; or
- Providing proxy forms to owners or mortgagees on request.

## **6. Records**

### Record Retention

A licensee would be required to retain the following records for at least 6 years:

- Documentation related to the licensee's completion of educational and examination requirements and continuing education training
- Documentation related to a limited licensee's completion of the work experience required for a general licence
- Documentation related to the required supervision of a limited licensee
- Documentation related to the consent received by a licensee's employers allowing the licensee to work for multiple condominium management providers
- Documentation related to all disclosures that the licensee is required to make to a client under the Act or the regulations
- Employment records related to the employment of licensees by one or more condominium management providers

- Every contract that a licensee enters into with a condominium corporation, including related documentation
- Documentation related to the delegation of authority to an employee of the licensee to hold or collect money on behalf of a client condominium corporation
- Any other notice or record the licensee is required to keep under the Act or regulations.

#### Storage of Records

A licensee may only keep records at a dwelling if the licensee has received approval from the registrar to do so.

#### Transfer of Client Condominium Corporation Records

The Act requires a licensee to immediately transfer to the client all documents and records relating to the client upon termination of a contract for condominium management services.

The proposed regulations would require a licensee to transfer all documents and records relating to the client condominium corporation to the licensee's former client within 10 days. For documents and records that do not yet exist but the licensee is required to create under the contract for condominium management services, a licensee would have one month to create and transfer the records to the licensee's former client.

The Act authorizes a licensee to make and retain copies of documents and records for purposes relating to the contract. The proposed regulations would require the licensee to keep any copies secure and would allow a licensee to use or disclose those copies for limited purposes only:

- To fulfill or prove fulfillment of any obligations of the contract
- With the consent of the person to whom the information relates.

### **7. Public Information on Licensees**

The registrar would be required to make the following information available to the public without charge on the administrative authority's website and at least one other place the registrar considers appropriate:

- **Name of Licensee** – Complete legal name of licensee and, if different, the name in which the licensee is licensed
- **Licence Number and Date** – Licence number and expiration date
- **Individual or Entity** – Whether the licensee is a condominium management provider or condominium manager
- **Class of licence** – Whether a condominium manager holds a limited licence, a general licence, or a transitional general licence
- **Business Information for Condominium Management Provider** – Business address, email, telephone number and name of PCM
- **Business Information for Condominium Managers Employed by Condominium Management Providers** – Business address, email and telephone number of a condominium manager's employer(s)

- **Business Information for Condominium Managers Employed by Condominium Corporations** – Address for service of the licensee and name of condominium corporation that employs the licensee
- **Licence Conditions** – Description of any conditions that apply to a licensee’s licence
- **Proposals to Take Action** – Any proposals by the registrar to take action against a licensee, to apply conditions to a licence, to refuse to renew a licence, or to suspend or revoke a licence
- **Cancelled Licences** – Licences that the registrar has cancelled at the request of the licensee including the date of cancellation (*must be available for at least 2 years*)
- **Revoked Licences** – Name of licensees or former licensees where the registrar has refused to renew a licence or has revoked the licence (*must be available for at least 2 years*)
- **Suspended Licences** – Name of licensees with suspended licences (*must be available for 2 years after suspension*)
- **Offence (Charged)** – For every licensee, former licensee and director or officer of a condominium management provider who has been charged with an offence as a result of an information laid by an employee of the administrative authority: the Act that creates the offence, a description of the charge and the date on which the information was laid
- **Offence (Guilty)** – For every licensee, former licensee and director or officer of a condominium management provider who has been found guilty of an offence as a result of an information laid by an employee of the administrative authority: the Act that creates the offence, a description of the offence and a description of the disposition of the charge including any sentence imposed and any order to pay compensation or make restitution (*must be available for at least 5 years*)
- **Discipline Committee Order** – Name of licensee and contents of an order made by the Discipline Committee if it was determined that the licensee failed to comply with the Code of Ethics and if the licensee did not appeal the order (*must be available for at least 2 years*)
- **Appeals Committee Order** – Name of licensee and contents of an order made by the Appeals Committee if the licensee appealed the Discipline Committee order and the Appeals Committee upheld the Discipline Committee order or determined that the licensee failed to comply with the Code of Ethics (*must be available for at least 2 years*).

The registrar would have the discretion to make any other information available to the public if it would assist in protecting the public. However, financial information relating to a person or business that is reasonably expected to be kept confidential will not be made available to the public. The registrar would not be authorized to disclose the information described above in bulk except as required by law or to a law enforcement agency.

## 8. Complaints

Under the Act, if the registrar receives a complaint about a licensee, the registrar can request information in relation to the complaint from any licensee.

### Notice to Principal Condominium Manager

The proposed regulation would provide that if the registrar makes a written request for information from a condominium management provider or a condominium manager employed by a condominium management provider, the registrar would be required to provide a copy of the request to the condominium management provider's principal condominium manager.

### Notice of Action Taken

In handling complaints, the Act authorizes the registrar to do any of the following, as appropriate:

- Attempt to mediate or resolve the complaint;
- Give the licensee a warning;
- Require the licensee to take further educational courses;
- Refer the matter to the discipline committee;
- Refuse to licence an applicant;
- Suspend, revoke or add conditions to a licence;
- Refuse to renew a licence; or
- Take further action as is appropriate in accordance with the Act (e.g. refer a matter to investigation as a possible offence).

If the registrar takes any action under the Act in regards to a complaint against a licensee, the proposed regulation would require the registrar to give notice of the action to the licensee, the principal condominium manager of the licensee and/or the board of directors of an employer condominium corporation, if applicable.

### Obstruction Prohibited

A licensee would be prohibited from obstructing, interfering with or hindering any person from making a complaint to the registrar about a licensee.

A licensee would be prohibited from obstructing, interfering with or hindering any person from providing information to the registrar, the director, a condominium corporation, the board of a condominium corporation or a condominium management provider relating to the conduct of a licensee or the potential contravention or failure by any person to comply with the Act or the regulations.

### **Discussion Questions**

- Is the proposed approach to retention and transfer of client records by licensees practical and appropriate? What changes, if any, should be considered?
- Is the proposed list of information to be made public about licensees appropriate? What changes, if any, should be considered?
- What changes, if any, should be considered for the regulation of licensees?