

Regulation proposals to improve information and strengthen protections for Ontarians buying a unit in a new or pre-construction condominium (condo) project

1. Introduction

The Ministry of Government and Consumer Services (the ministry) is seeking feedback on proposed regulation changes to address condo cancellations that would provide better information and strengthen protections for Ontarians buying a unit in a new or pre-construction condo project. Regulations are being proposed under the Condominium Act, 1998 (Condo Act), the New Home Construction Licensing Act, 2017 (Licensing Act) and the Ontario New Home Warranties Plan Act (Warranties Act).

How to Provide Feedback

You may provide feedback to the ministry by emailing us at NewHomes@Ontario.ca or ONCONDO@ontario.ca or using the Regulatory Registry. You may also use this document to provide feedback and respond to the questions below. Please send a copy of it to us with your completed responses. If using this document to submit feedback, please enter your contact information below.

Contact Information

Organization Name (If Applicable):	
Key Contact Name:	
Position/Role of Key Contact Name:	
Key Contact Email:	
Key Contact Phone Number:	

2. Proposed changes to an interest rate calculation under the Condominium Act, 1998

Background

Circumstances Where Purchasers Are Entitled to Receive Interest

Under the [Condominium Act, 1998](#) (Condo Act) there are various circumstances in which purchasers are entitled to receive interest, at a prescribed rate,¹ from developers on the buyer's deposits and other payments for the purchase of a pre-construction or new condo property, as set out in the Condo Act. For example:

¹ This rate is set out in a regulation under the Condo Act. Specifically, the rate is set out in ss. 19(2)-(3) of [O. Reg. 48/01](#) (General Regulation).

- **When an agreement of purchase and sale is terminated** and if that agreement provides that the purchaser is entitled to a return of money paid under the agreement upon termination. This would include, for example, when a condo project is cancelled and the agreement provides that the purchaser is entitled in that case to receive their deposit back.
- **When a purchaser rescinds the agreement of purchase and sale** in accordance with certain provisions of the Condo Act (for example, there is a material change in the disclosure statement).
- **When the deed to the proposed unit is delivered to the purchaser** (i.e., when the property formally becomes the property of the purchaser), or, otherwise, when the proposed unit is available for possession or occupancy.

Interest Rate Calculation under the Condo Act

Currently, the General Regulation (O. Reg. 48/01) under the Condo Act prescribes the interest rate calculation in the above-noted circumstances as **2 per cent per annum below the “bank rate”** as of certain times of the year. At this rate, currently purchasers would not be entitled to receive any amount of interest on their deposits/payments.

The General Regulation defines “bank rate” as the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short-term advances to members of the Canadian Payments Association (e.g., major Canadian banks).

The definition of “bank rate” in the General Regulation aligns with the definition of the bank rate established and used by the Bank of Canada. The bank rate was first referenced in the regulations under a prior version of the Condo Act in 1992² and set out in the General Regulation under the Condo Act in 2001.

Prior to the 2000’s, the Bank of Canada used the bank rate as its key interest rate or “policy interest rate” (i.e., the interest rate that, according to the Bank of Canada, it uses as “the starting point for setting many of the interest rates in the economy that matter for Canadians”³).

In the early 2000’s, the Bank of Canada started using a different policy interest rate – the target for the overnight rate. The target for the overnight rate is the interest rate the Bank of Canada wants financial institutions that make certain loans to each other for one day in the overnight market to charge one another on those loans.⁴ Typically, the target for the overnight rate is approximately ¼ percent below the bank rate.⁵

The ministry is now proposing amendments to the current interest rate calculation in the General Regulation under the Condo Act because:

² See O. Reg. 148/92.

³ See <https://www.bankofcanada.ca/2021/04/understanding-policy-interest-rate/>.

⁴ For more information about the Bank of Canada interest rates, you may wish the Bank of Canada’s website here: <https://www.bankofcanada.ca/2021/04/understanding-policy-interest-rate/>.

⁵ See <https://www.bankofcanada.ca/2022/03/fad-press-release-2022-03-02/>.

1. The Bank of Canada has modernized its ‘policy interest rate’ to be the target for the overnight rate; and
2. The current prescribed interest rate results in purchasers receiving zero interest on their deposits/payments:
 - The bank rate established by the Bank of Canada is 0.75% as of March 23, 2022 – 2% = 0%. Purchasers would have received interest on their deposits in the past, when the bank rate was greater than 2%.

Proposal

The ministry is now seeking input on a draft regulation that would change subsections 19(2) and (3) of the General Regulation under the Condo Act to:

1. replace all references to the “bank rate” with references to the “policy interest rate” set by the Bank of Canada, i.e., the target for the overnight rate; and
2. remove the “minus 2 per cent per annum” portion of the interest rate calculation.

In February 2020, the ministry conducted consultations with key condo stakeholders and the public on potentially changing the interest rate calculation. The ministry considered the feedback from that consultation in developing this proposal.

Current Regulation	Proposed New Draft Regulation
<p>19 (2) In subsection (3), “bank rate” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short-term advances to members of the Canadian Payments Association.</p>	<p>19(2) In subsection (3), “policy interest rate” means the target for the overnight rate established by the Bank of Canada.</p>
<p>19 (3) The prescribed rate of interest for the purpose of subsections 73 (3), 74 (9) and 82 (1), (5) and (7) of the Act shall be,</p> <p>(a) for the period from April 1 to September 30 of each year, 2 per cent per annum below the bank rate at the end of March 31 of that year; and</p> <p>(b) for the period from October 1 of each year to March 31 in the following year, 2 per cent per annum below the bank rate at the end of September 30 immediately before that October. (emphasis added)</p>	<p>19 (3) The prescribed rate of interest for the purposes of subsections 73 (3), 74 (9) and 82 (1), (5) and (7) of the Act shall be,</p> <p>(a) for the period from April 1 to September 30 of each year, the policy interest rate at the end of March 31 of that year; and</p> <p>(b) for the period from October 1 of each year to March 31 in the following year, the policy interest rate at the end of September 30 immediately before that October. (emphasis added)</p>

Discussion Questions

We invite you to provide feedback on the above proposal. In addition to providing general feedback, please respond to the following questions:

1. Do you think the proposed changes to the interest rate calculation under the Condo Act are appropriate? Why/why not?
2. The draft regulation could, if approved, be implemented in different ways. For example, the new interest rate could apply (depending or not on the circumstances requiring the interest payment):
 - Immediately, i.e., to interest payments required on or after the day the new rate takes effect, even if a transaction was entered into or a deposit/payment was made/received/credited before the new rate takes effect.
 - Only to deposits/payments made/received/credited on or after a certain date.

Do you have any recommendations for how the draft regulation should be implemented? What are some of the key considerations for implementation (e.g., with respect to developer financing, ease of administration, perceptions of fairness)?

3. What amount of time do you think is sufficient to allow the sector to prepare for these potential changes?
4. Is there anything else you wish to note with respect to this proposal?

Feedback:

3. Amending the Regulations under the Licensing Act to require the Condominium Information Sheet be provided with new residential condo purchases, and other housekeeping items

Background

In October 2019, [Tarion announced](#) that a Condominium Information Sheet (Condo Info Sheet) must be completed and form part of every purchase agreement for a new residential unit in a standard or phased condo corporation. The purpose of the Condo Info Sheet is to highlight risks and considerations associated with buying a new residential condo unit.

Tarion required the Condo Info Sheet to be used in all condo projects where the first arm's-length purchase agreement for the project (or a phase of the project) was signed on or after January 1, 2020.

On February 1, 2021, the Home Construction Regulatory Authority (HCRA) became the regulator of builders and vendors of new homes and has taken over responsibility for the Condo Info sheet, among other things.

The purpose of the ministry's proposed regulation is to establish the Condo Info Sheet's use by vendors as a regulatory requirement to reinforce administrative/enforcement action that may be taken against vendors who do not comply with the requirement.

The ministry is also proposing to make changes to other regulations under the Licensing Act to clarify requirements for licensed builders and vendors and to require the HCRA to publicly post its corporate by-laws in the same timeframe required for other administrative authorities.

Proposal

The ministry is proposing amendments to regulations to address condo cancellations by providing more information and stronger protections for Ontarians buying a unit in a new and pre-construction condo project, including the following:

- Amending the Addenda to Agreements Between Vendors and Purchasers Regulation to make the Condominium Information Sheet a requirement for vendors of new homes to provide to purchasers as part of the purchase agreement for new and pre-construction condos and make the Regulation a Minister's Regulation.
- Amending the Delegation of Regulation-Making Authorities Regulation to delegate, from the Lieutenant Governor in Council (LGIC) to the Minister, the authority to make the Addenda to Agreements Between Vendors and Purchasers Regulation a Minister's Regulation.

The ministry is also proposing minor complementary and administrative amendments to certain regulations, including the following:

- Amending the General Regulation (an LGIC Regulation) to prescribe the time within which the HCRA must publicly post its corporate by-laws.
- Amending the Applications for Licences Regulation (a Minister’s Regulation) to:
 - Add in tax compliance provisions related to s. 38(1)(f) of the Licensing Act. This amendment is necessary for s. 38(1)(f) to take effect.
 - Include the Condominium Act, 1998, as well as regulations under that Act and under the Building Code Act and Warranties Act, as specified legislation that, if contravened by an applicant or licensee as a result of their activities, may provide grounds for the HCRA’s registrar to deny the applicant a licence or to suspend/revoke a licence.

In addition, the ministry is seeking feedback on potential future regulatory proposals under the Licensing Act that could:

- Permit on the registrar’s request, or require, developers to disclose information to the registrar regarding price adjustments to a purchase agreement.
- Restrict vendors from selling or transferring, or offering to sell or transfer, a new home for a specified period of time after a purchase agreement has been terminated.

Discussion Questions

We invite you to provide feedback on the above proposal. In addition to providing general feedback, please respond to the following questions:

1. Are there any concerns with making the Condominium Info Sheet a regulatory requirement under the Licensing Act?
2. Should the Condominium Info Sheet be a requirement for both pre-construction condo units as well as those new condo units where the description has been registered? (Note: completion of an Addendum is required for all new condo purchases, both pre-construction and where the description has been registered).
3. Do you agree with a potential future regulatory proposal that would with permit, or require, developers to disclose information to the regulator regarding increases to the purchase price of a new home?
 - a) Should the disclosure of information to the registrar regarding price increases be required only if the registrar asks for it?
 - b) Should the disclosure of information to the registrar be required in all circumstances where a price increase occurs, or only in instances where the increase goes beyond the adjustments outlined in the purchase agreement (for example, new costs that were not stipulated in the purchase agreement)?

(Note: for a new condo purchase, section 8 and schedule B of the Addendum establish criteria regarding adjustments to purchase price.)

4. Do you agree with a potential future regulatory proposal to restrict vendors from selling or transferring, or offering to sell or transfer, a new home for a specified period after a purchase agreement has been terminated?
- a) What do you expect the benefits or risks of this proposal to be?
 - b) What amount of time should be specified for the purposes of the restriction?
 - c) Are there any terminated agreements that this restriction should not apply to? If so, which ones? For example, should the restriction apply to purchase agreements terminated by purchasers, or purchase agreements terminated by vendors through no fault of the purchaser?
 - d) What would happen in instances where sales occurred in phases?
 - e) In your opinion, is this likely to lead to more cancellations or might it achieve the goal of less cancellations?

Feedback:

4. Clarifying and improving information on the Ontario Builder Directory about condo cancellations

Background

As the regulator of builders and vendors of new homes under the New Home Construction Licensing Act, 2017, the Home Construction Regulatory Authority (HCRA) is responsible for the Ontario Builder Directory (the builder directory).

The directory contains information about licensed builders and vendors, including the names of directors or officers, and other licensing information.

The directory also includes information about homes that are enrolled or qualify for enrolment in the warranty plan, the claims histories of builders and vendors, and anything

else that is prescribed in the regulations. This information must be provided by Tarion to the Registrar of the HCRA under section 5.6 of the Warranties Act and regulations.

Tarion also currently provides some information about condominium projects to the HCRA to publish on the builder directory.

Proposal

The ministry is proposing regulatory amendments to address condo cancellations by specifying additional information about condominium projects that Tarion must provide for the builder directory. This would include improved information about cancellations, such as the number of terminated purchase agreements and the reasons for the termination provided by the vendor. The proposed regulatory amendments would also clarify Tarion's authority to request information from vendors of new homes regarding their condo projects.

These amendments would provide greater transparency for condo purchasers and respond to a recommendation made by the Standing Committee on Public Accounts in its February 2021 report. The Regulatory Registry includes a detailed copy of the draft proposed changes to the [General Regulation](#).

The following is a summary of the key features of the changes:

- Tarion's Registrar would be required to provide the following information to the HCRA to be published on the builder directory:

Information related to a condo project of a vendor that includes all of the following,

- i. The current status of the vendor's project,
 - ii. The number of condo units that are residential dwellings in the vendor's project.
 - iii. The number of purchase agreements terminated by the vendor for a reason that the vendor asserts was permitted under the agreement and was unrelated to any fault of the purchaser.
 - iv. The reason for the termination of the purchase agreement provided by the vendor if the agreement is an agreement referred to above.
- The information about condo projects to be published on the directory would only apply to standard condo. It would not apply to common elements condos or vacant land condos.
 - Tarion's Registrar would not be required to provide the information above if, before the day the changes comes into force, the Registrar confirms that at least one condo unit that is a residential dwelling in the project has been enrolled in the warranty plan.
 - Tarion's Registrar would be permitted to require vendors of new homes to provide to it, the following:

- any information mentioned above about condo projects that would be published on the builder directory, and
- information related to a condo project of a vendor who was a party to a purchase agreement that was terminated, including:
 - i. a copy of the terminated agreement,
 - ii. a copy of any written notice the vendor sent to the purchaser that provided notice to the purchaser of the termination of the agreement, and
 - iii. any other information relevant to the terminated agreement, including the circumstances under which the agreement was terminated.
- Permitting Tarion’s Registrar to specify the form, manner, and time that vendors, builders or other prescribed persons must disclose information about condo projects to the Registrar.
- These changes are proposed to come into force on the later of July 1, 2022 and the day the regulation is filed.

Discussion Questions

We invite you to provide feedback on the above proposal. In addition to providing general feedback, please respond to the following questions:

1. Do you think the proposed information about condo projects that would need to be published on the builder directory is appropriate? Why/why not?
2. Where a condo project has been entirely cancelled, and therefore no units were built, should the number of residential units in the project be listed on the directory as zero, not applicable, or something else? Please provide your reasoning.
3. Do you agree with the proposal to include the number of agreements that were terminated in a project even if the project is still in progress or completed (that is, where the project was continued despite the vendor having terminated some or all of the initial agreements)? Why/why not?
4. Is there any other information about a vendor’s prior and current condo projects that should be published on the builder directory in order to better inform consumers who are considering the purchase of a new condo?

Feedback:

5. Next Steps

Thank you for your time and attention to these regulatory proposals. Your input is important, and the ministry will be taking all feedback into consideration.

Please submit feedback to NewHomes@Ontario.ca or ONCONDO@ontario.ca before the closing date specified on the Regulatory Registry.