



## Why keep records?

As any condominium grows, directors, property managers and other professionals will come and go. The records, however, remain. Records provide new board members with valuable insight into the past operation of the condominium, giving much needed consistency and reliability. It is important that the records represent an accurate account of the affairs of the condominium, and are carefully preserved.

Records also serve an important information function for unit owners. Often the only information provided to a unit owner is at the annual general meeting, as the day-to-day operation of a condominium is the responsibility of a board. To that end, the *Condominium Act, 1998*, permits a unit owner wide access to a condominium's records. An underlying policy of the *Condominium Act, 1998*, is to make the affairs and dealings of the condominium an "open book", via the records. The courts have consistently held that unit owners should be given broad and liberal access to the records.

## Adequate Records

Pursuant to section 55(1) of the *Condominium Act, 1998*, the condominium must keep adequate records. Although "adequate" is not defined in the Act, the courts have stated that the records must be adequate to permit the condominium to fulfill its duties. At a minimum, the condominium must keep the following records:

- The declaration, description, by-laws and rules;
- Financial records; including: bank statements, cancelled cheques, deposit slips, and audited financial statements, for the previous six years;
- Minute book of owners' and directors' meetings, including notices and proxies;
- Records relating to specific units, owners and leased units, including notices of addresses for service and leases;
- Performance audits;
- Reserve fund studies;
- Agreements entered into by the condominium; including: employment agreements, management agreements, and landscaping contracts; and,
- All materials required to be turned over at the turnover meeting, such as the seal, building plans, insurance policies, warranties and guarantees, and proof of Tarion enrolment.

The list is not exhaustive and condominiums will often maintain an extensive list of further documents.

The length of time that each record must be kept varies. Proxies used at an owners' meeting must be kept for 90 days. Status certificates must be kept for 10 years. All financial records must be kept for at least 6 years, subject to lengthier requirements of the provincial or federal taxing authorities. That said, it is recommended that a condominium maintain all of its records, indefinitely.

## Access to the records by owners and others

A unit owner, purchaser or mortgagee of a unit may examine the records of a condominium upon written request and providing reasonable notice. Some commentators suggest that a condominium is obliged to allow the examination only where it is clearly for some purpose "reasonably related to the purposes of the Act". With respect, this interpretation is contrary to the overarching policy of the Act, being that a condominium should operate as an "open book". The request should only be denied where the purpose is clearly for some activity unrelated to the Act, such as a marketing program or independent business activity. Upon a reasonable request, a condominium should produce the records for examination.



Despite the broad right to access the condominium's records, there are records which cannot be produced for examination, including:

- (a) employee records, except for contracts of employment;
- (b) actual or pending litigation or insurance investigations;
- (c) specific unit or owner records, except by the affected unit owner, purchaser or mortgagee.

A board should also ensure that all information regarding specific unit owners, employees or litigation is blacked out, or made otherwise illegible, in the minutes provided.

In addition to rights of examination, the *Condominium Act, 1998*, provides the person examining the records with a right to request copies of the records. Upon a reasonable request, the condominium must provide the copies, but it may charge a reasonable fee for labour and copying charges.

### **Failure or refusal to allow examination or copies**

If a condominium refuses to either allow an owner to examine records or provide copies upon request, an owner may request that the condominium pay \$500.00 as a penalty for its failure. If the condominium continues to refuse, an owner may obtain an order from the Small Claims Court requiring the condominium to produce the records for examination.

The condominium should be operated as an "open book" with owners given broad and liberal access to the condominium's records, subject to the noted exceptions. Where a board fails to grant such broad and liberal access, they may find themselves entangled in costly litigation, and everyone loses.

For more information, please contact our condominium practice group chair:

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