

Condominium Management Services Act, 2015

PART I INTERPRETATION

Interpretation

1 (1) In this Act,

“administrative agreement” means the agreement described in subsection 3 (1);
 (“accord d’application”)

“administrative authority” means the corporation that the Lieutenant Governor in Council has designated as such under subsection 2 (1); (“organisme d’application”)

“client” means a condominium corporation to which a condominium management provider or a condominium manager provides condominium management services; (“client”)

“common expenses” has the same meaning as in the *Condominium Act, 1998*; (“dépenses communes”)

“condominium corporation” means a “corporation” as defined in the *Condominium Act, 1998*; (“association condominiale”)

“condominium management provider” means a corporation, partnership, sole proprietor, association or other organization or entity that, on behalf of others and for compensation or reward or the expectation of such, provides condominium management services or holds himself, herself or itself out as such; (“fournisseur de services de gestion de condominiums”)

“condominium management services” means any of the following services provided to or on behalf of a condominium corporation:

1. Collecting or holding contributions to the common expenses or other amounts levied by, or payable to, the corporation.
2. Exercising delegated powers and duties of the corporation or its board of directors, including,

- i. making payments to third parties on behalf of the corporation,
- ii. negotiating or entering into contracts on behalf of the corporation, or
- iii. supervising employees or contractors hired or engaged by the corporation,

but does not include an activity excluded by the regulations; (“services de gestion de condominiums”)

“condominium manager” means an individual who has the prescribed qualifications to be licensed as a condominium manager under this Act and who provides condominium management services to,

- (a) a client on behalf of a condominium management provider, or
- (b) a client directly, if authorized by a regulation made for the purposes of subsection 51 (3); (“gestionnaire de condominiums”)

“delegated provisions” means the provisions of this Act and the regulations for which the administration is delegated to the administrative authority under subsection 2 (2); (“dispositions déléguées”)

“employ” means to employ, appoint, authorize or otherwise arrange to have another person act on one’s behalf, including as an independent contractor; (“employer”)

“equity share” means, in respect of a corporation, a share of a class or series of shares of a corporation that carries a voting right either under all circumstances or under circumstances that have occurred and are continuing; (“action participante”)

“inspector” means the registrar or an inspector appointed under subsection 59 (2); (“inspecteur”)

“investigator” means an investigator appointed under subsection 61 (1); (“enquêteur”)

“licensee” means a condominium management provider or condominium manager who is licensed under this Act; (“titulaire de permis”, see also “agrée”)

“Minister” means the Minister of Government and Consumer Services or whatever other member of the Executive Council to whom the responsibility for the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“officer” includes,

- (a) the chair and any vice-chair of the board of directors, the president and any vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager and assistant general manager of a corporation,
- (b) a partner or general manager and assistant general manager of a partnership, and
- (c) any other individual designated as an officer by by-law or resolution of an organization or any other individual who performs functions normally performed by an individual occupying such office; (“dirigeant”)

“owner” has the same meaning as in the *Condominium Act, 1998*; (“propriétaire”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“principal condominium manager” means the principal condominium manager designated under section 49; (“gestionnaire principal”)

“purchaser of a unit” has the same meaning as in the *Condominium Act, 1998*; (“acquéreur d’une partie privative”)

“regulations” means regulations made under this Act; (“règlements”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or whatever other tribunal is prescribed; (“Tribunal”)

“unit” has the same meaning as in the *Condominium Act, 1998*. (“partie privative”)

Associated persons

(2) For purposes of this Act, one person is associated with another person in any of the following circumstances:

1. One person is a corporation of which the other person is an officer or director.
2. One person is a partnership of which the other person is a partner.
3. Both persons are partners of the same partnership.
4. One person is a corporation that is controlled directly or indirectly by the other person.
5. Both persons are corporations and one corporation is controlled directly or indirectly by the same person who controls directly or indirectly the other corporation.
6. Both persons are members of the same voting trust relating to shares of a corporation.
7. Both persons are associated within the meaning of paragraphs 1 to 6 with the same person.

PART II ADMINISTRATION

DELEGATION

Designation of administrative authority

2 (1) The Lieutenant Governor in Council may, by regulation designate a not-for-profit corporation without share capital incorporated under the laws of Ontario as the administrative authority for the purposes of this Act.

Delegation of administration

(2) If the Lieutenant Governor in Council designates a corporation as the administrative authority, the administration of all provisions of this Act and the regulations, except for this Part and Part VII, is delegated to the authority and the authority shall carry out the administration of the delegated provisions.

Administrative agreement

3 (1) The Lieutenant Governor in Council shall not designate a corporation under subsection 2 (1) as the administrative authority until the Minister and the corporation have entered into an agreement to be known as the administrative agreement.

Contents

(2) The administrative agreement shall include, at a minimum, terms related to the following matters with respect to the administrative authority:

1. The governance of the authority.
2. All matters that the Minister considers necessary for the authority to carry out the administration of the delegated provisions.
3. The maintenance by the authority of adequate insurance against liability arising out of the carrying out of its powers and duties under this Act or the regulations.

Compliance with operating principle

(3) The administrative agreement shall require the administrative authority to comply with the principle of promoting the protection of the public interest.

Amendment by Minister

(4) Subject to section 9, the Minister may unilaterally amend the administrative agreement, after giving the administrative authority the notice that the Minister considers reasonable in the circumstances.

Policy directions

4 (1) Subject to section 9, the Minister may issue policy directions to the administrative authority related to its powers and duties under this Act or the regulations, after giving the authority the notice that the Minister considers reasonable in the circumstances.

Part of the administrative agreement

(2) The policy directions are deemed to form part of the administrative agreement.

Compliance

(3) The administrative authority shall comply with the policy directions and shall implement measures to do so.

Compliance by administrative authority

5 In carrying out its powers and duties under this Act or the regulations, the administrative authority shall comply with the administrative agreement, this Act, the regulations and other applicable law.

Review

6 (1) The Minister may,

(a) require that policy, legislative or regulatory reviews related to the powers and duties of the administrative authority under this Act, the regulations or the administrative agreement be carried out,

(i) by or on behalf of the authority, or

(ii) by a person or entity specified by the Minister; or

(b) require that reviews of the administrative authority, of its operations, or of both, including, without limitation, performance, governance, accountability and financial reviews, be carried out,

(i) by or on behalf of the authority, or

(ii) by a person or entity specified by the Minister.

Access to records

(2) If a review is carried out by a person or entity specified by the Minister, the administrative authority shall give the person or entity specified by the Minister and the employees of the person or entity access to all records and other information required to conduct the review.

Conflict

7 In the event of conflict, this Act and the regulations prevail over,

(a) the administrative agreement;

(b) the *Corporations Act*, the *Corporations Information Act* or a regulation made under either of those Acts;

Note: On the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force, clause 7 (b) of the Act is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”. (See: 2015, c. 28, Sched. 2, s. 79 (1); 2017, c. 20, Sched. 8, s. 147)

(c) the administrative authority’s constating documents, by-laws and resolutions.

Section Amendments with date in force (d/m/y)

Revocation of designation

8 (1) The Lieutenant Governor in Council may, by regulation, revoke the designation of the administrative authority if the Lieutenant Governor in Council considers it advisable to do so in the public interest.

Revocation for non-compliance

(2) The Lieutenant Governor in Council may, by regulation, revoke the designation of the administrative authority if,

- (a) the authority has failed to comply with this Act, the regulations, other applicable law or the administrative agreement;
- (b) the Minister has allowed the authority the opportunity of remedying its default within a specified time period that the Minister considers reasonable in the circumstances; and
- (c) the authority has not remedied its default to the Minister's satisfaction within the specified time period mentioned in clause (b) and the Minister has so advised the Lieutenant Governor in Council.

Same, no restriction on subs. (1)

(3) Nothing in subsection (2) restricts the ability of the Lieutenant Governor in Council to act under subsection (1).

Revocation on request

(4) The Lieutenant Governor in Council may, by regulation, revoke the designation of the administrative authority on the terms that the Lieutenant Governor in Council considers advisable in the public interest if the authority requests the revocation.

Transition

(5) If the Lieutenant Governor in Council revokes the designation of the administrative authority under this section, the Lieutenant Governor in Council may, by regulation, provide for any transitional matter necessary for the effective implementation of the revocation.

Condition precedent for exercise of certain powers

9 The Minister may exercise a power under subsection 3 (4), 4 (1) or 25 (1) only if the Minister is of the opinion that it is advisable to exercise the power in the public interest because at least one of the following conditions is satisfied:

1. The exercise of the power is necessary to prevent serious harm to the interests of the public, condominium corporations, owners or purchasers, mortgagees or occupiers of units.
2. An event of force majeure has occurred.
3. The administrative authority is insolvent.
4. The number of members of the board of directors of the administrative authority is insufficient for a quorum.

ADMINISTRATIVE AUTHORITY

Criteria and directives re board members

10 (1) The Minister may, by order,

- (a) establish competency criteria for members of the board of directors of the administrative authority; and
- (b) make rules about the nomination of members, the appointment or election process, the length of their terms and whether they may be reappointed or re-elected.

Competency criteria

(2) A person is qualified to be appointed or elected to the board of directors only if he or she meets any competency criteria established under clause (1) (a).

Conflict

(3) In the event of conflict, an order made under subsection (1) prevails over a by-law or resolution of the administrative authority.

Board appointments

11 (1) The Minister may appoint one or more members to the board of directors of the administrative authority for a term specified in the appointment.

Majority

(2) The number of members appointed by the Minister shall not form a majority of the board of directors.

Composition

- (3) The members appointed by the Minister may include,
- (a) representatives of the public, consumer groups, government organizations, condominium corporations, owners or those owners or occupiers who occupy units for residential purposes; and
 - (b) representatives of other interests as the Minister determines.

Change in number of directors

12 The Minister may, by order, increase or decrease the number of members of the board of directors of the administrative authority.

Appointment of chair

13 The Minister may appoint a chair from among the members of the board of directors of the administrative authority.

Public access to corporate by-laws

14 (1) The administrative authority shall make its corporate by-laws available for public inspection,

- (a) within the time and manner specified in the administrative agreement; or
- (b) within 10 days after the by-laws are made by the board of directors, if no time is specified in the administrative agreement.

Access to compensation information

(2) The administrative authority shall make available to the public the prescribed information relating to the compensation for members of its board of directors or officers or employees of the authority and relating to any other payments that it makes or is required to make to them, and shall do so in the prescribed manner.

Processes and procedures

(3) The administrative authority shall follow the prescribed processes and procedures with respect to providing access to the public to records of the authority and with respect to managing personal information contained in those records.

Employees

15 (1) Subject to the administrative agreement, the administrative authority may employ or retain the services of any qualified person to carry out any of its powers and duties under this Act or the regulations.

Not Crown employees

(2) The following persons are not employees of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained under subsection (1).
2. Members, officers and agents of the administrative authority.
3. Members of the board of directors of the administrative authority, including those appointed by the Minister.

Not Crown agency

16 (1) Despite the *Crown Agency Act*, the administrative authority is not an agent of the Crown for any purpose and shall not hold itself out as such.

Same

(2) The following persons are not agents of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained by the administrative authority.
2. Members, officers and agents of the administrative authority.
3. Members of the board of directors of the administrative authority, including those appointed by the Minister.

No personal liability, Crown employee

17 (1) No action or other proceeding shall be instituted against an employee of the Crown for an act done in good faith in the execution or intended execution of a duty under this Act or the regulations or for an alleged neglect or default in the execution in good faith of the duty.

Tort by Crown employee

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by an employee of the Crown to which it would otherwise be subject.

No Crown liability

18 (1) No cause of action arises against the Crown as a direct or indirect result of any act or omission that a person who is not an employee or agent of the Crown takes or makes in the execution or intended execution of any of the person's powers or duties under this Act or the regulations.

No proceeding

(2) No action or other proceeding for damages, including but not limited to a proceeding for a remedy in contract, restitution, tort or trust, shall be instituted against the Crown in connection with any cause of action described in subsection (1).

Indemnification of the Crown

19 The administrative authority shall indemnify the Crown, in accordance with the administrative agreement, in respect of damages and costs incurred by the Crown for any act or omission of the authority or its members, officers, directors, employees or agents in the execution or intended execution of their powers and duties under this Act, the regulations or the administrative agreement.

No personal liability, board members and others

20 (1) No action or other proceeding shall be instituted against a person mentioned in subsection (2), for an act done in good faith in the execution or intended execution of any of the person's powers or duties under this Act or the regulations or for an alleged neglect or default in the execution in good faith of that power or duty.

Same

(2) Subsection (1) applies to,

- (a) members of the board of directors of the administrative authority;
- (b) persons who perform functions under this Act or the regulations as employees, agents or officers of the administrative authority or as persons whose services it retains;
- (c) members of committees of the administrative authority who perform functions under this Act or the regulations; and
- (d) individuals who perform functions under this Act or the regulations.

Liability of administrative authority

(3) Subsection (1) does not relieve the administrative authority of liability to which it would otherwise be subject.

Not public money

21 (1) The money that the administrative authority collects in carrying out its powers and duties under this Act or the regulations is not public money within the meaning of the *Financial Administration Act*.

Same

(2) The administrative authority may use the money described in subsection (1) to carry out activities in accordance with its objects, subject to subsection 24 (2) and any restrictions in this Part.

Audit

22 (1) The Auditor General appointed under the *Auditor General Act* may conduct an audit of the administrative authority, other than an audit required under the *Corporations Act*.

Note: On the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force, subsection 22 (1) of the Act is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”. (See: 2015, c. 28, Sched. 2, s. 79 (2); 2017, c. 20, Sched. 8, s. 147)

Access to records and information

(2) If the Auditor General conducts an audit under subsection (1), the administrative authority shall give the Auditor General and employees of the Auditor General access to all records and other information required to conduct the audit.

Section Amendments with date in force (d/m/y)

Reports

23 (1) The board of directors of the administrative authority shall report to the Minister on its activities and financial affairs as they relate to this Act and the administrative agreement.

Form and contents

(2) The report shall be in a form acceptable to the Minister and shall provide the information that the Minister requires.

Time for reports

(3) The board of directors of the administrative authority shall prepare the report for each year and at the other times that the Minister specifies.

Tabling

(4) The Minister shall submit each report prepared under this section to the Lieutenant Governor in Council and shall,

- (a) lay the report before the Assembly if it is in session; or
- (b) deposit the report with the Clerk of the Assembly if the Assembly is not in session.

Disclosure by board

(5) The board of the administrative authority,

- (a) may give a copy of the report to other persons before the Minister complies with subsection (4); and
- (b) shall publish the report on its website when the Minister has complied with subsection (4).

POWERS AND DUTIES OF ADMINISTRATIVE AUTHORITY

Additional powers

24 (1) The administrative authority may carry out other activities in accordance with its objects or purposes, subject to subsection (2).

Commercial activities

(2) The administrative authority shall not engage in commercial activity through a person or entity that is related to the authority.

Change to objects or purposes

25 (1) Subject to section 9, the Minister may require that the administrative authority make a specified change to its objects or purposes.

Minister's approval required

(2) The administrative authority shall not make any changes to its objects or purposes unless the Minister's written approval is obtained in advance.

Right to use French

26 (1) A person has the right to communicate in French with, and to receive available services in French from, the administrative authority.

Definition

(2) In subsection (1),

“service” means any service or procedure that is provided to the public by the administrative authority in carrying out its powers and duties under this Act or the regulations and includes,

- (a) responding to inquiries from members of the public, and
- (b) any other communications for the purpose of providing the service or procedure.

Board's duty

(3) The board of directors of the administrative authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

Limitation

(4) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

Advisory councils, advisory process

27 The Minister may require the administrative authority to,

- (a) establish one or more advisory councils;
- (b) include, as members of an advisory council, representatives of owners, representatives of occupiers of units, other representatives of the condominium sector and other persons as the Minister determines; or
- (c) undertake an advisory process in which it seeks advice from one or both of the public and persons with experience or knowledge relating to this Act.

Duty to inform Minister

28 The administrative authority shall promptly inform and advise the Minister with respect to,

- (a) any material fact that could affect the authority's ability to perform its duties under this Act or the regulations; or
- (b) any urgent or critical matter that is likely to require action by the Minister to ensure that the administration of the delegated provisions is carried out properly.

Advice of administrative authority

29 (1) The administrative authority shall advise or report to the Minister on any matter that the Minister refers to it and that relates to this Act or the administration of the delegated provisions.

Same

(2) The administrative authority may suggest to the Minister amendments to Ontario legislation that it considers would,

- (a) further the purpose of this Act; or
- (b) assist the authority in carrying out its powers and duties under this Act or the regulations.

Forms and fees

30 (1) The administrative authority may,

- (a) establish forms related to the administration of the delegated provisions;
- (b) in accordance with processes and criteria established by the administrative authority and approved by the Minister, set and collect fees, costs or other charges related to the administration of the delegated provisions; and
- (c) make rules governing the payment of the fees, costs and charges described in clause (b).

Setting fees

(2) In setting the fees, costs and charges described in clause (1) (b), the administrative authority may specify their amounts or the method for determining the amounts.

Publication of fee schedule

(3) The administrative authority,

- (a) shall publish the fees, costs and charges, the processes and criteria and the rules on its website and in any other way described in the administrative agreement; and
- (b) may publish them in any other format that the administrative authority considers advisable.

MISCELLANEOUS

Director

31 (1) Subject to subsection (2), the following person or body shall appoint a director for the purposes of this Act and may appoint a maximum of two deputy directors:

1. The board of the administrative authority.
2. The Minister, if there is no administrative authority.

Director cannot be registrar

(2) A person appointed as the registrar or a deputy registrar under subsection 32 (1) shall not be appointed as the director or a deputy director under subsection (1).

Deputy director, duties

(3) A deputy director shall perform the duties that the director assigns and shall act as director in the director's absence.

If more than one deputy director

(4) If more than one deputy director is appointed, only one deputy director may act as the director under subsection (3) at any one time.

Registrar

32 (1) Subject to subsection (2), the following person or body shall appoint a registrar for the purposes of this Act and may appoint a maximum of two deputy registrars:

1. The board of the administrative authority.
2. The Minister, if there is no administrative authority.

Registrar cannot be director

(2) A person appointed as the director or a deputy director under subsection 31 (1) shall not be appointed as the registrar or a deputy registrar under subsection (1).

Powers and duties of registrar

(3) The registrar shall exercise the powers and perform the duties imposed on him or her under this Act.

Same, deputy registrar

(4) A deputy registrar shall perform the duties that the registrar assigns and shall act as the registrar in the registrar's absence.

If more than one deputy registrar

(5) If more than one deputy registrar is appointed, only one deputy registrar may act as the registrar under subsection (4) at any one time.

Offences, administrative authority

33 (1) If the administrative authority knowingly contravenes this Act or the regulations, the authority is guilty of an offence and on conviction is liable to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues.

Individuals

(2) A director, officer, employee or agent of the administrative authority who knowingly contravenes this Act or the regulations is guilty of an offence.

Directors and officers

(3) A director or officer of the administrative authority is guilty of an offence if the person,

- (a) knowingly causes, authorizes, permits or participates in the commission by the authority of an offence mentioned in subsection (1); or
- (b) fails to take reasonable care to prevent the authority from committing an offence mentioned in subsection (1).

Penalty

(4) A person who is convicted of an offence under subsection (2) or (3) is liable to a fine of not more than \$25,000 for each day or part of a day on which the offence occurs or continues.