

Request for Records Under The New Condo Act

By Sonja Hodis

As of November 1, 2017 there is a new process for owners, purchasers or mortgagees to request records under the Condominium Act, 1998 as amended ("Condo Act") and a new process condo corporations must follow when receiving a request for records. In addition to the new processes there are also new forms that must be used to make a request for records and to respond to a request for records. Requests for records must now be made in writing using the mandatory forms. Requesters are no longer required to provide the condominium corporation with a reason for their request.

While section 55 of the Condo Act as amended grants owners, purchasers or mortgagees the right to examine or obtain records, Ontario Regulation 48/01 sets out the new procedure. It also defines what type of records a corporation must keep in addition to those listed in section 55 of the Condo Act and the corporation's bylaws, the method by which corporations must keep records and for how long the records must be kept.

In terms of the new process for requesting records, the process can be divided into 3 steps.

Step 1 – Requesting Stage

The requester makes a request for records and completes the mandatory form entitled "Request for Records".

This form as well as others referred to in this article can be found at the link below:

https://www.ontario.ca/search/landregistration?openNav=forms&sort=desc&field=forms_act_tid=condominium.

You can also obtain a copy of this form on the Condo Authority of Ontario's website - www.condoauthorityontario.ca. The forms are fillable online or you can print them and fill them in by hand. You will need Adobe Reader 8 or higher to open the forms and fill them out online or to print them.

The requester serves the Request for Records on the condo corporation by mail or courier to the address for service of the condo corporation, condo manager or management provider or other person who manages the property or the address the Board by resolution has decided is the address for service. The Request for Records can also be served by depositing it in the mailbox at the address for service or by sending it by email or fax if the Board has passed a resolution allowing for this method of receiving a request.

Step 2 – Board’s Response

The condo corporation reviews the request and completes the mandatory form entitled “Board’s Response to Request for Records”. The Board must respond within 30 days. The Board delivers their response to the address for service or alternative method of communication as indicated by the requester in the Request for Records form.

In the response, the Board must specify for each record requested whether the record is a core or non-core record. The classification of the record as a core or non-core record will determine the costs that can be charged to the requester and the time in which the record must be produced. If the Board decides to refuse access to a record requested, the Board must include in its response a reason for the refusal and specify which part of section 55(3) of the Condo Act they are relying on to deny the request.

Core records include current versions of the declaration, bylaws, rules, shared facility agreements or mutual use agreements, and fiscal year budgets and amendments. Core records also include the most recent financial statements and auditors report, record of owners and mortgagees, information certificates sent or required to be sent to owners during the preceding 12 months, minutes of board meetings or owner’s meetings within the last 12 months, the most recent reserve fund study plan and any other records specified in the corporation’s bylaws as core records.

When it comes to charging fees, you can not charge a fee for core records if the requester is asking for the record in electronic format. If the requester is asking for a paper copy of a core record, the corporation can only charge printing fees to a maximum of 20 cents per page. If the record is not a core record the corporation may be able to charge a reasonable fee to reimburse the corporation for the actual labour and delivery costs that the corporation incurs to make the record available and photocopy charges that do not exceed 20 cents per page. If the corporation does not actually incur labour costs, they can not charge any fees for labour. Labour costs may include reviewing documents that need to be redacted.

Condo corporations should be aware that they must pay attention to the estimated amounts they list for fees associated with the request for records because they will not be able to actually charge more than the estimated cost plus 10%. If the actual costs incurred to provide access to the records is less than the estimated amount, the corporation must reimburse the requester the difference between the estimated and actual costs incurred.

If a requester agrees to receive core records in electronic format, the corporation is required to deliver the records within 30 days of receiving the Request for Records form.

Step 3 - Requester Response and Payment

The requester must complete the bottom portion of the Board's Response to Request for Records form under the heading "Confirmation" and return the completed form and payment to the condo corporation.

If the requester requests paper copies or an in person examination of core records, the condo corporation must provide the records within 7 days of the corporation receiving the requester's response along with payment of the estimated fee. Access to non-core records must be provided within 30 days of the corporation receiving the requester's response along with payment of the estimated fee.

Each record that the corporation makes available for examination or delivers must be accompanied by a separate written document that clearly identifies the record that is being made available or delivered and if any portion is redacted or removed. The statement must also include a written explanation as to why it has been redacted and what part of s. 55 of the Condo Act the corporation is relying on to justify the redaction. In addition, the corporation must make a written statement as to the actual costs to make the record available or delivered and the difference between the actual costs and the estimated costs set out in the Board's Response. If the actual cost is less, the corporation must pay the requester the difference. If the actual cost is more, the requester has 30 days to pay the difference which is capped at the estimated costs plus 10%.

If a requester does not return the response and pay the required fee or apply to the Condo Authority Tribunal (CAT) to resolve a matter in dispute concerning the records request within 60 days of receiving the Board's response, the request for records is deemed abandoned. The request for records is also deemed abandoned if the requester does not apply to CAT for a resolution of a matter in dispute concerning the records within 6 months of delivering the Request for Records.

If the requester and the corporation come to an agreement on the delivery and costs associated with the request that is different than prescribed in the Condo Act or the Regulation, both the requester and the condominium corporation must complete the form entitled "Waiver by Requester of Records".

Under the new provisions of the Condo Act, if the requester and the condominium corporation can not agree on the records which will be released for examination or copying and the costs associated therewith, the requester can no longer commence a small claims court action to compel the condominium corporation to deliver the records. Now, a requester must follow the procedures set out in the new provisions of the Condo Act. All records disputes will now be dealt with by the Condominium Authority Tribunal (CAT). The first step in this

process is for the requester to file an application with CAT. The initial stage is called "Negotiation". A \$25.00 fee is payable. During the negotiation stage, the parties will be provided with information to assist them to resolve the dispute on their own. If the parties are unable to resolve the dispute regarding records, the matter proceeds to the next stage. The next stage is called "Mediation". A \$50.00 fee is payable. CAT provides a mediator to help the parties resolve the dispute. If the mediation stage is not successful, the matter will proceed to the formal adjudication phase and an arbitrator will be assigned. A \$125.00 fee is charged for this stage. An arbitrator will make a decision regarding the dispute which is binding. The entire CAT process is an online process. You can access information about the CAT process at www.condoauthorityontario.ca

Condo corporations should be aware that the penalties for not providing records has increased from \$500 to \$5,000 under the new provisions of the Condo Act. Condo corporations should take requests for records seriously and should not deny requests unless they have a valid reason under the Condo Act to do so. Section 55 (4) of the Condo Act sets out the types of records that do not require disclosure. Section 13.11 of Ontario Regulation 48/01 further expands and defines the list of records that are not required to be disclosed.

While we are still in the infancy stage of this new process for requesting records and dealing with records disputes, I am encouraged that these new processes will standardize the request for records process which should make it easier for everyone to deal with records requests. The introduction of mandatory forms, standardization of the charges that can be levied and the automatic abandoning provisions will hopefully reduce many of the disputes we have seen in the past regarding records requests.



Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. She advises condominium boards and owners on their rights and responsibilities under the *Condominium Act, 1998* and other legislation that affects condominiums such as the Human Rights Code. She represents her clients at all levels of court, various Tribunals and in mediation/arbitration proceedings. Sonja has also gained recognition for creativity and tenacity in ground breaking human right caselaw in the condominium industry. Sonja can be reached at (705) 737-4403, sonja@hodislaw.com or you can visit her website at www.hodislaw.com or watch her videos at www.condoinmotion.com.

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