

The vast majority of the Stage 2 Solutions Report recommendations seem to hit the mark well with respect to helping build better condominium communities.



How Proposed Reforms Might (or Might Not) Help

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ONE OF THE FACTS made clear by Ontario's *Condominium Act* Review process is that our greatest collective failure in regard to condominiums has not been in relation to consumer protection or the technicalities of condominium creation, sale or management; our greatest failure has been the inability to create and nurture consistently positive condominium communities.

It is one thing to be a community – a group of people sharing space and values – but it is quite another to ensure that the experience of that community is positive both for the community itself and for each of its members.

Several factors go into building that kind of community, especially the key qualities of effective communication, willing collaboration and mutual respect. Without these features, communities can begin to feel more like cages, and may foment feelings of frustration and anger with the consequence of sometimes critical conflicts.

In reviewing the governance-related recommendations in the *Condominium Act* Review Stage 2 Solutions Report and related documents, the following themes emerge loud and clear as criticisms of Ontario's contemporary condominium communities:

- We don't share information well enough,
- We don't share power well enough,
- We don't listen well enough,
- We don't learn well enough,
- We don't participate well enough, and
- We don't respect each other enough.

The prominence of these themes in the Review reports is ultimately a quite damning statement about the extent to which condominium owners, boards,

managers and the professionals who work with them have made things worse than they ought to be.

Unfortunately, the fact is that for the most part, modification of legislation cannot ensure that these shortcomings are corrected. In fact, a number of the recommendations set out in the Solutions Report are things that condominiums already have the power and authority to do, if only they had the desire to do them willingly.

By way of example, amongst them are recommendations relating to

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creation, and retention of, and unit owner access to, corporation records, including:

a) Authorizing boards to pass bylaws expanding the kinds of records to be kept (this can already be done under subsections 56(1)(n) and (p) of the current Act);

b) establishing standardized request and response forms for unit owner access to record requests (each corporation can create its own by resolution, or the government could do this immediately by regulation);

c) requiring boards to provide reasons for refusing a request for records (this can currently be implemented voluntarily, by resolution, or made a requirement by bylaw); and

d) restricting fees for copies to just what is reasonable based on actual costs (did anyone making this recommendation bother to read subsection 55(6) of the current Act carefully?)

There are examples like these throughout the Solutions Report of things we ought to do and are able to do right now, but very often don't. So the question becomes, will making them the law make the difference? Probably not.

In fact, when you start to impose

strict rules, micro-manage and threaten punishments (for example, it is recommended to impose fines of up to \$5000 on boards that don't comply with the access to records rules) against people who already aren't willing to do what you are asking (even when what you are asking is right), you generally create greater resistance than compliance, or at least inspire feelings of dissonance, disharmony and oppression that ultimately undermine the peace and progress of the community. Strict rules and depen-

dence on punitive consequences to modify behaviour can also become unpleasant tools in the wrong hands, potentially exacerbating the already too rampant and erroneous "us-them" attitude between boards and unit owners that is damaging many condominium communities today.

But the news from the Solutions Report is not all negative. In fact, most of it is quite positive. The vast majority of its recommendations seem to hit the mark well with respect to helping build better condominium communities.

Effective Communication

For example, in regard to communication, along with encouraging already available "best practices" such as setting up corporation websites and "disseminating information to build community spirit" there and by email, social media, online chats or forums, and more traditional means such as notices, newsletters and bulletin board postings, the Solutions Report proposes that boards of directors should produce regular (i.e., quarterly) updates for unit owners on key information that normally appears in status certificates and also promptly inform them about any

deviation from the reserve fund plan.

There's nothing to find fault with in those recommendations. The risk remains open that, even with the imposition of quarterly report requirements, boards will not give adequate or sufficiently timely disclosure of all matters of interest to unit owners; however, the recommended measures, if implemented, should at least encourage the development of a culture of openness and accountability and provide adequate tools to both owners and boards to make this more likely. If treated seriously as a starting point, these recommendations alone could serve to transform communication within Ontario's condominium communities.

Willing Collaboration

With respect to the principle of collaboration, there are several recommendations designed to balance power fairly and responsibly within the community. These include:

a) Ensuring boards of directors are obligated to respond to requisitions for meetings in a timely manner and provide reasons for a refusal along with an opportunity for the requisitioning owners to correct any flaws;

b) Lowering the approval requirements to enact bylaws;

c) Varying quorum requirements for meetings to ensure business can be accomplished despite unit owner apathy; and

d) Requiring pre-notices of meetings that not only include a call for candidates but also a call for input into the meeting agenda.

These recommendations demonstrate sensitivity to the balancing act that is good governance, seeking to increase meaningful participation by unit owners and giving the board the ability to conduct the corporation's business when such participation is lacking.

Combined with the recommended educational measures set out in the report (i.e., courses for first-time directors and directors of self-managed condominiums, and the creation of a "statement of owners' and directors' rights and responsibilities") these recommendations may help direct owners and board members to be more concerned about

their communal obligations than just their private interests.

Mutual Respect

The third key factor for a positive community that was noted earlier, after communication and collaboration, is mutual respect. This factor is virtually immune to legislative implementation.

It is merely trite to acknowledge that respect is something earned and not enforced. Although the recommendations include implementing a Code of Ethics for condominium directors, it will be their actual convictions, and not merely their technical compliance with a code, that results in respect from the owners. Likewise, while the definition and exercise of some owners' rights are enhanced in the recommendations, owners who continue to use such rights for vindictive or otherwise frivolous purposes will not earn generous consideration from their board members or from other owners.

In the end, it is not going to be the law that creates a good community. A good community must be made by its members, and nurtured by their continuing commitment to their shared interests and values. Every person who is looking to legislative change to "make things right" for condominiums in Ontario, is looking in the wrong direction. For such people, looking into a mirror might be the most important recommendation of all. ♦



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