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## Real Property & Condominium Law

The lawyers and staff at Clifton Kok LLP provide experienced, practical and detailed legal assistance in relation to all real property transactions, including acquisitions (purchases), dispositions (sales) and financing, as well as in all matters relating to land use and development. We also possess extensive experience in regard to condominiums of all types (Standard, Phased, Common Elements, Vacant Land and Leasehold), working with developers from project conception and approval through to registration, unit sales and turnover, and providing guidance and support to condominium corporation directors, managers and unit owners in respect of all legal issues arising under the Condominium Act, 1998, including amalgamations, the drafting, interpretation and enforcement of governing documents, and the processing and enforcement of condominium liens.

## Corporate / Commercial Law

Clifton Kok LLP provides comprehensive corporate and commercial legal services for businesses of all types and sizes, meeting their diverse needs including business creation, restructuring, mergers and acquisitions, corporate governance and shareholders' rights, agreements, complex transactions and other matters. We also assist not-for-profit corporations with incorporation and governance matters and have experience incorporating charitable corporations.

## Estates Law

Clifton Kok LLP provides practical and effective legal services in relation to a broad range of Estates Law areas. This includes the preparation of wills, codicils and powers of attorney, as well as assisting with related and various estate planning and administration issues.

## Advocacy, Litigation Support & Dispute Resolution

The legal team at Clifton Kok LLP provide a comprehensive assistance in a restricted range of legal proceedings and litigation. Depending on the case, a licensed paralegal or lawyer will assist in all matters before the Small Claims Court of Ontario, with Provincial Offense Act matters before the Ontario Court of Justice, and in a variety of administrative tribunal hearings, including the Landlord and Tenant Board and the Condominium Authority Tribunal (CAT). Major claims and other matters may be referred to counsel with more general or specialized litigation practices. Contact our lead licensed paralegal, Holly Bangay, for further information. Firm co-founder, Michael Clifton, can also serve as a mediator or arbitrator in disputes relating to condominium law that are currently outside of the jurisdiction of the CAT.

*CK Legal's Condo Guru commentaries are provided for general information only relating to Ontario condominium law. They are not intended as legal advice. Anyone wanting or requiring legal advice or assistance relating to any aspect of condominium law should contact competent and qualified legal counsel, including the lawyers at CK LLP. Find us at [www.cklegal.ca](http://www.cklegal.ca).*

## Another New Proxy Form

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It wasn't so long ago that the first new forms were issued pursuant to the changes recently made to the Condominium Act, 1998. Amongst the first of them was a new proxy form. Complaints were instant. It was complicated, incorrectly formatted, and contained instructions that really only further confused issues relating to how it could be used. Well, the government has heard those complaints, and a new proxy form was recently issued that almost, but not entirely, corrects every problem. Here are the key changes:

- 1 FORMAT:** The new form is more streamlined than the previous version. Instead of including a load of sections to fill in that might not be needed at every meeting, there are four options listed that the person granting the proxy can select from that relate to the purposes for which proxies can be used (other than quorum), as follows:

<input type="checkbox"/> <b>Section 1.</b> Voting to elect candidates to vacant positions on the board that all owners may vote for:
<input type="checkbox"/> <b>Section 2.</b> Voting to elect candidates to any vacant position on the board that only owners of owner-occupied units may vote for:
<input type="checkbox"/> <b>Section 3.</b> Voting for specific matters:
<input type="checkbox"/> <b>Section 4.</b> Voting for removal of directors and election of substitutes:

When one is selected, other entry spaces and instructions appear under that heading. It is possible to select any 1, 2, 3 or 4 of these options, or none of them, making the form more neat, brief and precise.

- 2 FORMATTING:** In the previous version of the proxy form, numbering formats were inconsistent and misplaced. Now the form simply lets you indicate the order in which candidates should be voted for, which is how it always should have been.

- 3 INSTRUCTIONS:** Perhaps most importantly, the instructions on the form have changed. One of the bones of contention regarding proxies has been whether the proxy holder has the right to vote in any way the proxy holder wants, when the person granting the proxy has not filled in any specific instructions about how to vote. This was especially contentious in relation to elections, because although one of the previous sections of the Condominium Act, 1998, that was removed by the Protecting Condominium Owners Act, 2015, was the one that restricted proxy holders from casting votes for candidates who were not specifically named by the proxy granter in the proxy, the first new proxy form seemed to bring that restriction right back in. Now, the newest proxy form provides that if the proxy granter gives no other instructions, the proxy holder can vote however he or she likes, including in an election of directors.

This is accomplished by if the granter chooses the third out of the following three options that are now listed at the top of the proxy form:

Please check only one of the three boxes below:

- The proxy is not authorized to vote on my (our) behalf with respect to any matter at the meeting, including matters of routine procedure.  
**Instruction for person filling out this form:** Check this box if you are appointing the proxy only to count towards quorum. If this box is checked, then the rest of the form should not be filled out.
- The proxy may vote on my (our) behalf only with respect to matters of routine procedure at the meeting, and no other matters, as I (we) could do if personally present at the meeting.  
**Instruction for person filling out this form:** If this box is checked, then the rest of the form should not be filled out.
- The proxy may nominate candidates or may vote on my (our) behalf with respect to all matters that may come before the meeting, subject to any instructions set out below, as I (we) could do if personally present at the meeting.  
**Instruction for person filling out this form:** If this box is checked and you do not provide instructions with respect to any part of the rest of this form, you are giving your proxy the authority to nominate any candidates or vote in any manner with respect to that part of the form, as you could do if you were personally present at the meeting.

The first option means the proxy holder cannot vote at the meeting, although he or she will count toward quorum for the meeting. The second option means the proxy holder can vote at the meeting, but only on matters of routine procedure (such as whether or not to appoint a chair of the meeting, amend the agenda, take a coffee break or adjourn). The third option is the interesting one. It states that the proxy can nominate candidates and vote however he or she likes, provided there are no clear instructions to the contrary within the balance of the proxy form. And with that fell swoop, the contention is ended.

Well, it ought to be, anyway. But, in fact, there are some situations that the proxy form doesn't appear to contemplate or help with. One of those is where the proxy granter does not list a sufficient number of candidates to fill all of the positions available.

A case could arise, for example, where there are two positions available for election, and the proxy granter fills in only one name on the form. Can the proxy holder vote however he or she likes for the second position? The way the proxy instructions are set out, the answer is a resounding 'no'. Unfortunately, this will not always render a fair result. For example, what if just one person had put her name forward to be a candidate in time for the notice of meeting to be sent out? Hers might be the only name that was available for the owner granting the proxy to insert in the form prior to the meeting. Then, presumably, at the meeting one or more people might step forward to be nominated from the floor. Because the proxy granter had filled in one name, the proxy holder would be disallowed from voting for any of the new candidates to fill the second available spot on the board. If a sufficient number of owners attend solely by proxy, this could render nominees from the floor unelectable.

There really seems to be no good reason that the form could not have been drafted in a way that would allow a proxy holder to vote for both pre-selected candidates and candidates nominated from the floor in circumstances like those.