

OHBA DRAFT RESPONSE TO CONDOMINIUM ACT CONSULTATIONS

Dear Members,

Below are the draft responses to the Ministry of Government and Consumer Services' Condominium Act consultation topics. OHBA has drafted this feedback to communicate the position of our association on these topics.

Topic 1: Interest rates

We appreciate the government's confirmation at the Feb 18th industry stakeholder session that the intent is not to employ penalty charges associated with cancelled projects. The industry recognizes the challenges associated with current interest rate formula and are open to discussing modifications to this calculation. OHBA maintains that a fair and reasonable approach is that deposits should be returned with interest earned through interest bearing trust accounts. It is important to note that increasing the return (as a guarantee) will ultimately be added to the cost of the project and find a home in the price of the unit.

Topic 2: Condo guide

OHBA recognizes that prospective condominium buyers require adequate disclosure of the details surrounding their purchase. The industry maintains the position that disclosure is an important part of making condominium purchases more accessible and transparent for all parties involved. OHBA supports the newly created [pre-construction information sheet for condominium purchasers](#).

Our industry is open to the inclusion of a condo guide. We want to ensure that the guide is read by purchasers. We believe the guide should be succinctly written as a 1-pager. The information could be split into two guides:

1. Dealing with preconstruction (pre-purchase information)
2. Living / owning a condo (post-purchase information)

The pre-construction guide should assertively recommend that purchasers have a lawyer review the purchase and sales agreement. The industry requests to see any draft documents that may be prepared in this regard. We would also be happy to assist in the preparation of these documents.

Topic 3: Procurement process

Greater disclosure and transparency measures with regards to procurement processes will provide consumers with greater financial certainty. OHBA acknowledges that specific aspects of procurement processes largely rest between condominium boards, corporations and owners, however any new process should not apply to the precondition board because they cannot impose contracts on future condominium boards.

Topic 4: Interim occupancy fees

To clarify, interim occupancy fees (IOF) are not arbitrarily calculated. IOF cover the bills; which include the following, but not limited to, carrying costs, security, front desk staff, cleaning, utilities, taxes, costs associated with common area expenses. IOF is made up of interest rate on the unit, municipal taxes and condominium fees established in the purchase and sales agreement. The interest rate is a component of the fees, and there have been concerns raised that developers should not be making money from IOF, but we confirm this is not the intent or practice of IOF's.

Topic 5: Charges added to an owner's common expenses (i.e. chargebacks)

OHBA maintains that chargebacks largely remain an area of dispute between condominium owners and condominium corporations. Changes to chargebacks should be aimed at providing greater disclosure and clarity to condominium purchasers which in turn, work to improve consumer confidence.

Topic 6: Reserve funds and reserve fund studies

Reserve Fund Studies (RFS) are calculated before a development goes to market. An RFS is to be completed by an RFS provider and included as party of the condominium fees. The reserve fund amount per unit is included in the purchase and sale agreement and agreed to by the purchaser upon signing the agreement. Any RFS changes prior to closing can trigger a material change in the agreement and nullify the purchase and sale agreement. With respect to the appropriate level of funding for a reserve fund – OHBA believes that simply raising the threshold based on the percentage of common expenses is arbitrary and there is not sufficient justification to raise this amount.

Topic 7: Mediation and arbitration

Mediation and arbitration processes under the CAT should be clearer for all parties. For instance, proper notification re: notice requirements, sharing of costs, selecting a mediator would be beneficial to those in disputes. OHBA continues to emphasize that developers should be involved in the CAT and that disputes should remain between condominium owners and condominium corporations.