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**Re: OHBA, BILD & RESCON's Response to Condominium Act Consultations**

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Below are the draft responses to the Ministry of Government and Consumer Services' Condominium Act consultation topics. Our industry associations have drafted this feedback to communicate the position of our collective associations on these topics.

**Topic 1: Interest rates**

We appreciate the government's confirmation at the Feb 18<sup>th</sup> industry stakeholder session that the intent of changes to the deposit interest rate is not to employ penalty charges associated with cancelled projects. The industry associations recognize the challenges associated with the current interest rate formula and recognize the government's intent to modify this legislative calculation.

At our February 18<sup>th</sup> consultation we also discussed, the right of purchasers who terminated their purchase agreements because the interim occupancy date had exceeded the outside occupancy date, to receive interest on those returned deposits. At our meeting there were a few preliminary examples of the types of interest rates that we could use for this scenario and cancelled condominiums, but this requires further discussion before the government makes any changes. We believe if the government is going to make changes in this area that it should equate in some equitable way to the actual interest that could be earned by lawyers holding deposits as escrow agents.

**Topic 2: Condo guide**

The industry associations recognize that prospective condominium buyers require adequate disclosure of the details surrounding their purchase. The industry associations maintain the position that disclosure is a critically important part of making condominium purchases and living environment more accessible and transparent for all parties involved. The industry associations support the newly created Tarion pre-construction information sheet for condominium purchasers.



Our industry is open to the inclusion of a one-page, plain language condo guide that is provided to prospective purchasers with the purchase and sales agreements that provides key information to consumers. This basic disclosure document would provide important FAQs, while directing consumers to the CAO website for further information, so as not to inundate consumers with an overload of information.

A condo guide would include pertinent information of how the pre-construction process functions and also describes how condominium environment is governed and managed, especially after following the building being registered and the builder handing off to the new condominium management. We also want to ensure that the guide is actually read by purchasers. We believe the pre-construction portion of the guide should be succinctly written in plain language as a 1-pager.

The information could be split into two separate sections:

1. A 1-pager dealing with the details of preconstruction (pre-purchase information) i.e. 10 day cooling off, interim occupancy;
2. A link to a website to download more detailed information on living in/owning a condo (post-purchase information) i.e. condo fees, reserve funds.

The pre-construction guide should assertively recommend that purchasers have a lawyer review the purchase and sales agreement. If it is printed in a booklet, then that would be helpful as well, but the government should be concerned about information overload at the point of sale, because at some point or level, purchasers will feel inundated with this information, and it will have the opposite of the intended effect. The industry respectfully requests to see any draft documents that may be prepared in this regard and 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. The industry associations acknowledge 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**

Interim-occupancy fees (IOFs) cover the bills, which include the following, but not limited to, carrying costs, security, front desk staff, cleaning, utilities, taxes and costs associated with common area expenses. IOFs are made up of interest rate on the unit, (based on the prescribed rate of interest charged on the unpaid balance of the purchase price of the unit) municipal taxes and condominium fees established in the purchase and sales agreement. Further information in the pre-construction sheet will help educate consumers on the purpose of IOFs and how they relate to the maintenance operations of the condominium.



IOF's are intended to reflect a flow through of costs that are legitimately incurred during the purchaser's interim-occupancy period, and the declarant is not making any money or profit from said occupancy fees. Put simple, IOFs are not arbitrarily calculated.

There have been concerns raised that developers should not be making money from IOFs, but we confirm this is not the intent or practice of IOFs and we confirm that all of the reserve fund component of the IOFs should be paid to the condominium corporation.

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

The industry groups maintain 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 funds are used to pay for major repairs and replacements to a condominium's common elements. A reserve fund is separate from a condominium's operating budget, which is affected by property management practices. A portion of the owner's monthly common expenses fee is deposited into the reserve fund every month. The reserve fund is intended to ensure that the corporation has enough money to pay for future common element repairs.

The intent of a reserve fund study is to determine how much money needs to be in the fund to ensure the repairs can be paid when required in the future. The reserve fund study must be prepared by a specialist, like an engineer or architect. The board of directors approves the study, then informs owners of the results of the study and any impact on monthly common expense fees.

Reserve fund studies include both a physical building assessment and a financial plan. The study will address details such as:

- All parts of the building the corporation will have to repair or replace (common elements)
- Estimates as to when the repair or replacement of a component is expected to occur
- Estimates of the amount of each expenditure in each year
- Any underlying assumptions
- A recommended reserve fund contribution amount
- A recommended increase in reserve fund contributions for the following three fiscal years. Engineers can include more than one scenario for these projected increases.

It is important to note that the reserve fund study is only a guide and is based on assumptions and information available at the time it is prepared. It represents educated guesses on amounts and dates for the work that will need to be done in the future.



These projections may end up being different, depending on what happens in the future. For instance:

- Poor maintenance decisions by property management or the board of directors can result in a condominium having to replace components earlier than expected.
- Emergency repairs or replacements.
- Unpredictable external market forces drive up labour and material costs beyond estimates.

A condominium's declarant (typically the builder) estimates the amount of fees that will be required before the condominium starts operation. These fees include both operating and reserve fund contributions. Since this estimate is often prepared years before the first year of condominium incorporation, it is difficult for the declarant to predict, with perfect accuracy, the maintenance fee. It is only after the condominium begins operation that owners learn precisely how much it costs to operate. The declarant's estimate of the predicted maintenance fee is based on numerous assumptions and projections, which may differ from how the board of directors or property management choose to operate and maintain the building.

The reserve fund should be used specifically to fund capital repairs to a condominium's common elements. The reserve fund balance will fluctuate from year-to-year. After planned expenditures for major projects drive the fund's balance down, it must be replenished. This is usually forecast in the study and not a cause for concern. However, any year during which the reserve fund balance is particularly low will be a critical year because the corporation may not have the ability to pay for unexpected repairs or replacements.

It should be noted that the first year reserve fund is guaranteed by the builder as per legislation.

#### **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.

The industry associations continue to emphasize that disputes should primarily remain between condominium owners and condominium corporations, but there are certain circumstances where developers should be permitted to be involved in the CAT.