



**Ontario**  
Home Builders'  
Association

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May 12, 2015

Honourable David Orazietti  
Ministry of Government and Consumer Services  
6<sup>th</sup> Floor, Mowat Block  
900 Bay Street  
Toronto, ON M7A 1L2

Dear Hon. David Orazietti,

Ministry of Government and Consumer Service (MGCS) staff provided a presentation to OHBA members with expertise in condominium law on April 21, 2015. The Condominium Act governs all condo purchases throughout Ontario from small townhouse projects in Thunder Bay to large condominium towers in Toronto. Therefore, all of OHBA's 31 local associations are impacted by any changes to this legislation. The presentation by MGCS staff was the first Ministerial briefing to industry since the Condo Act review was announced in June 2012. Up to this point, all major public stakeholder consultation was performed through a private firm (Public Policy Forum); including the drafting of recommendations for future Condominium Act reform. OHBA members and staff participated in all aspects of the review that we were invited to. Based on information provided to us in that meeting this letter provides a response to some of the draft Ministry recommendations that OHBA members found notable.

OHBA voiced concern to the Ministry based on the drafting of those recommendations when they were initially released due to the negative impact of some of those proposals on condominium process and impact on affordability. In addition we were concerned that a private third party had unusually significant control over writing recommendations which could provide the main policy direction for legislative and regulatory changes.

The meeting on April 21 only added to our concerns as the Ministry has now added significant new proposals that were not previously discussed throughout the three-year review. Some of the policy proposals have been tabled with little justification or rationale. Other proposals essentially create blanket legislative prohibitions while proposing that exemptions to the prohibitions will be established after the legislation has passed through regulation without defining what that regulatory process will look like.

We are encouraged that the Ministry has stated its intent to establish exemptions to these blanket prohibitions such as the new proposed prohibitions against the sale or leaseback of units, property. It should be noted that to date OHBA recommendations, including those that would provide additional consumer protection for existing unit owners by extending the 10-day cooling off period have not been reflected (to our knowledge) in the proposed legislation or even reflected in any of the consultation documents.

Although OHBA is concerned with many of the proposed changes to the *Condominium Act*, there are two notable proposals that are alarming as they have not been considered or raised in publicly available consultation documents. First is the "no waiver of condo corporation remedies" which according to the slide

deck presented that day, this new proposal “prohibits developers from contracting out of remedies a corporation may have against them.” In fact, this proposal essentially limits normal contract rights between two consenting parties. Under the *Ontario New Home Warranties Act* developers are *already* prohibited from contracting out of remedies related to Tarion. This is a new and significant proposal that was not mentioned in any of the public review documents published by the Public Policy Forum. In addition, at no public session OHBA is aware of was this item raised as a concern.

The second new proposal which is a ‘new’ item not part of previous PPF consultation documents is related to a new monetary remedy for purchasers who do not receive an updated disclosure statement. Here, the Ministry is again proposing a significant change to the Condominium Act on a concept that was never proposed in any of the consultation recommendations. It is unclear how this new remedy relates to Tarion and existing remedies already contained in the Act. In addition, there has been no forum for legal experts from our industry to properly understand and comment on this new proposal. In both new proposals, there appears to be no recognition of the Tarion Warranty process and how these two new proposals will affect that process. OHBA believes that the Tarion Warranty process is the appropriate avenue for disputes between the builder, condo owners and the condominium corporation related to building code issues and warrantable items in the condominium.

The Ministry has also not commented on how the new Act would be transitioned for condominiums under construction or pre-construction. OHBA expects that transition provisions will mirror those found in the *Condominium Act, 1998* by stating that any unit or proposed unit sold by the declarant to an at-arms-length unit purchaser for valuable consideration prior to the date that the new legislation is proclaimed in force, then the entire condominium project will be grandfathered under the provisions of the former legislation. We also expect that any new legislative provision will only come into force after the regulatory amendments defining exclusions have been passed.

OHBA and other stakeholders have worked through a lengthy and time consuming process to modernize the Condominium Act. There is a balance to be achieved and our industry is prepared to produce improved consumer disclosure so consumers are equipped to understand their obligations when purchasing a condominium.

We agree with this government’s goal stated in the Premier’s mandate letter for the Minister to “address the needs of the fast-growing condominium community and support the long-term sustainability of condominium living.” Based on the materials and discussion on April 21<sup>st</sup> OHBA continues to have concerns on how this very sophisticated piece of legislation governing billions of dollars of consumer and business transactions across the Ontario can be updated without destabilizing condominium sector for both new and existing condo owners.

If and when the legislation is presented in the Legislative Assembly, OHBA will participate in the legislative process, and provide appropriate industry input and analysis on the Act, along with the necessary transitional and regulatory items that will need to be resolved before the Act can come into force.

Respectfully,



Joe Vaccaro  
Chief Executive Officer  
Ontario Home Builders’ Association