



A Guide for Licensees:
Records Management for
Condo Managers

www.cmrao.ca | info@cmrao.ca

**CMRAO**
Condominium Management
Regulatory Authority of Ontario

Table of Contents

Introduction..... 1

The Importance of Condominium Record-Keeping..... 2

Record Management Responsibilities for Condo Corporations..... 3

How Condo Management Supports Records Management..... 4

Ethical Obligations Related to Record-Keeping and Other Documentation..... 5

How the Legal and Ethical Obligations Related to Condo Management Records Are Enforced in Ontario..... 9

Appendix: Select Excerpts from Legislation and Regulations..... 10



Introduction

Condo management duties regarding documents and records are addressed under section 54 of the *Condominium Management Services Act, 2015* (CMSA) and are further described under sections 34 and 35 of the General Regulation (O. Reg 123/17). This guide serves as a helpful resource outlining the legal and ethical obligations of licensed condominium managers and management companies¹ regarding documents and records.

The CMRAO is providing this document for your information and reference. It is a guide to understanding legislation and is not intended to be a substitute for legal advice. Please see the relevant sections of the *Condominium Act, 1998* (Condo Act), and the CMSA for additional information. In the event of a conflict between this guide and the legislation, the legislation prevails.

¹Companies refers to companies that hold a Condominium Management Provider Licence.





The Importance of Condominium Record-Keeping

Creating, maintaining, and accessing records is an essential function in any business or organization. In the condominium industry, records enable accountability on multiple levels:

- accountability of the board of directors to owners, mortgagees, and potential buyers
- accountability between condo management and their clients
- accountability between condo management and the CMRAO

The CMSA and the Condo Act include provisions regarding mandatory records, access to records, privacy, transfer, and retention periods.

Condo corporations must be able to demonstrate compliance with legal requirements, and licensees need to assist and guide corporations in the appropriate record-keeping practices. Condo corporations and licensees need to demonstrate that legal and ethical obligations are met when audited or faced with a challenge such as a complaint or legal concerns.

Record Management Responsibilities for Condo Corporations

Condo corporations (through the corporation's board of directors) are responsible for complying with legal obligations related to the production, maintenance, and access to records, as outlined in [section 55 of the Condo Act](#). Although the board often directs the condo manager or management companies to maintain corporation records, the board retains responsibility for the content of by-laws, policies, and directions documented in records.

Condo boards are responsible for:

- Adhering to by-laws and policies related to records such as mandatory records and the period of retention for specific records
- Transferring appropriate condo corporation records to the condo manager or management company if specified in an agreement to receive management services
- Articulating condo management's responsibilities regarding corporation records in the management contract
- Maintaining oversight of the delivery of management services related to the creation, maintenance, and access to records
- Adhering to legislated processes for responding to requests for records, including the application of appropriate fees for access to records
- Handling complaints regarding the access to and accuracy/quality of records
- Ensuring the appropriate and lawful redaction of records for the protection of private and confidential information



Although boards are ultimately responsible for the items listed, boards also rely on management to assist with these processes.

How Condo Management Supports Records Management

The role of licensees in relation to records management includes:

1. Creating and maintaining records (if contracted) on behalf of condo corporations,
2. Ensuring that the creation and maintenance of records complies with legal and ethical obligations,
3. Supporting and guiding condo corporations to comply with legal requirements relating to record-keeping, and
4. Transferring condo corporation records needed for condo management.

Each of these is discussed further below.

1. Creating and maintaining records:

Condo corporations often entrust their condo management with their records management system. The condo manager or management company may be contracted to produce, collect, transfer, and provide access to records as required in law and corporation by-laws. If contracted to do so, condo management has an obligation to ensure records are accurate, comprehensive, and produced in a timely fashion. They must ensure records are accessible, manage requests for access, and protect confidential information.

2. Ensuring that the creation and maintenance of records complies with legal and ethical obligations:

Licensees need to be aware of legal and ethical obligations pertaining to records under O. Reg. 3/18 Code of Ethics. Some obligations specify management records be created and maintained, for example, management service contracts. Other provisions deal with ethical obligations that would benefit from documentation to demonstrate compliance with obligations, should this be challenged through a complaint or legal action.

Ethical Obligations Related to Record-Keeping and Other Documentation

Ethical Obligations from O. Reg. 3/18 Code of Ethics	Examples of how this may relate to condo records management for condo management licensees
<p>Fairness, honesty, integrity</p> <p><u>Section 3:</u> A licensee shall treat every person that the licensee deals with while offering or providing condominium management services fairly, honestly and with integrity.</p> <p><u>Section 4:</u> In offering or providing condominium management services, a licensee shall endeavour to treat all persons equally, without discrimination or harassment and to provide reasonable accommodation for persons with disabilities.</p> <p>Conscientious and competent service</p> <p><u>Section 5:</u> In providing condominium management services, a licensee shall provide conscientious, courteous and responsive service and demonstrate reasonable knowledge, skill, judgment and competence.</p>	<p>Licensees may sense when a relationship with an owner, resident, or a board member will escalate. Although not a statutory requirement, a condo manager should retain records that demonstrate the nature and content of communications. This may take the form of emails or other communication to document the issue.</p>
<p>Current documents</p> <p><u>Section 6:</u> A licensee shall ensure that forms and documents used by the licensee in offering or providing condominium management services are current.</p>	<p>Licensed condo managers should retain copies of forms that include dates when the forms were used. This enables comparison against different versions of forms issued by the Government of Ontario.</p>
<p>Business records</p> <p><u>Section 7:</u> In addition to the records under the Act and regulations, a licensee shall make and keep all records that the licensee reasonably requires for providing condominium services.</p>	<p>Besides the records associated with condominiums and property management, licensees must understand the record-keeping requirements for the purposes of providing condominium services (for example, financial statements and human resources documentation).</p> <p>The CMRAO may inquire into these types of records if they:</p> <ul style="list-style-type: none"> • adversely impact the provision of condominium management services; • demonstrate the failure of licensees to be financially responsible; or • demonstrate that a licensee cannot provide condominium management services in accordance with the law, and with integrity and honesty.

<p>No misrepresentation of licence</p> <p><u>Section 9</u>: No licensee shall misrepresent to any person the type of, class of or conditions on the licensee’s licence.</p> <p>Error, misrepresentation, fraud, etc.</p> <p><u>Section 10</u>: In offering or providing condominium management services, a licensee shall use the licensee’s best efforts to prevent error, misrepresentation, fraud or any unethical practice.</p>	<p>It is advisable for condo management licensees to retain documents associated with the offer of their services, such as proposals, quotes, advertisements, and presentations about their services, in addition to their qualifications to prevent any misrepresentation of their services.</p>
<p>Engaging and informing the client</p> <p><u>Section 12</u>: A licensee shall keep a client informed in a timely manner of,</p> <p>(a) all significant steps that the licensee takes in the course of providing condominium management services; and</p> <p>(b) information about the condition of the property or assets, if any, of the client if the licensee has a contractual obligation to manage, maintain, repair or protect the property or those assets.</p> <p>Contract re: property or client’s assets</p> <p><u>Section 16 (1)</u>: A licensee who has a contractual obligation to manage, maintain, repair or protect the property or the assets, if any, of a client shall be diligent in executing these obligations.</p> <p><u>Section 16 (2)</u>: A licensee shall not exaggerate or misrepresent material facts to a client concerning the property or the assets, if any, of the client or conceal such facts from a client.</p>	<p>Condo management companies and condo managers should review the board’s expectations and timelines in terms of reporting mechanisms related to records. Condo managers should also ensure compliance with timeframes required under regulation.</p> <p>Records of decisions and directions from the board should be documented through meeting minutes or emails. If verbal direction is provided, condo managers are advised to create a record of the direction in the minutes of the following board meeting.</p> <p>Condo managers should consider a standardized approach to reporting on property issues. Reporting should include objective observations of the conditions, an analysis that covers opinions about root causes, options, and associated costs for remediation and recommendations.</p> <p>Condo managers should retain any reports, comments, and advice about conditions or deficiencies of property or assets.</p>

3. Supporting and guiding corporations:

Condo managers must ensure directors have accurate and timely information to support board decisions and compliance with legal obligations. In exercising this role, condo managers should be aware of sections 6 and 17 of The Code of Ethics regulation under the CMSA (O. Reg 3/18), which requires licensees to work within the limits of their education, experience, and competence, and not discourage directors from seeking external assistance when required (for example, legal counsel). Condo management licensees should consider the following practices:

- Providing appropriate resources available to a corporation's board of directors to orient the board to their role and legal obligations specific to record-keeping.
- Assessing record-keeping practices against legal requirements and reporting findings to the board (particularly when taking on a new client).

Code of Ethics

In addition to the records required under the CMSA and regulations, a licensee shall make and keep all records that the licensee reasonably requires for the purpose of providing condominium management services (section 7).



4. Transferring condo corporation records

Section 54 of the CMSA requires that “Subject to the regulations ... every licensee that provides condominium management services to a client shall immediately transfer to the client all documents and records relating to the client upon termination of any contract for the condominium management services provided.”

Section 35 of the General Regulation (O. reg 123/17) then expands on section 54 of the CMSA and states that licensees are required to transfer documents and records to their client **no later than 15 days upon termination of a management contract**. If a document or record does not exist at the time that the contract is terminated, licensees shall create, copy, and transfer the record to the client no later than 30 days after termination of the contract.

Licensees should also consider their ethical obligation to act in the best interest of their clients. Ideally, there should be a smooth transition from one manager to the next. It is common for boards to instruct the outgoing management company to transfer records directly to the incoming management company.

While the General Regulation gives licensees 15 days to transfer records upon termination of a contract, it is often reasonable for this process to begin before the contract is officially terminated. It may also be considered a professional courtesy among licensed condominium managers and management companies to transfer documents and records sooner than the legislated 15-day requirement.

Also note that the CMSA allows licensees to make and retain a copy of a document or record if required for purposes relating to the contract for condominium management services. However, licensees shall not retain any documents or records relating to the client as a means of pressuring the client to fulfill contractual obligations to the licensee.

Professional courtesy:

A general practice of professional behaviour extended between members of the same profession



Quick tips for licensees:

- Transfer documents and records to the client no later than 15 days after the termination of a contract.
- If a document or record does not exist at the time of termination, you are required to create, copy, and transfer the record to the client within 30 days of termination.
- If instructed by the client, transfer documents and records directly to the incoming manager/management company.
- In the interest of the client and as a professional courtesy to other licensees, aim for a smooth transition to the incoming manager/management company.



How the Legal and Ethical Obligations Related to Condo Management Records Are Enforced in Ontario

Together, the CMRAO and the Condominium Authority of Ontario (CAO) promote compliance with the legal and regulatory requirements for matters related to record-keeping for condominium corporations as set out in the CMSA and the Condo Act, respectively.



The CMRAO enforces the legal and ethical obligations of licensees, using education to pre-empt issues from arising. The CMRAO also handles complaints against licensees and, in some instances, may use a discipline procedure or initiate prosecution of a licensee through the court system.



The CAO provides information and tools to help condo communities learn about and resolve issues. The CAO also provides records-related dispute resolution for owners and condo corporations through its online tribunal, the Condominium Authority Tribunal (CAT).

When considering a complaint about a licensee's actions related to records, the CMRAO may consider the following criteria in determining an appropriate course of action:

1. The legal and ethical requirements to create, maintain, secure, transfer, or give access to a record.
2. Whether a record would reasonably be expected to be created or maintained to provide condo management services in the particular circumstances.
3. The nature of any direction provided by the condo board of directors about records.
4. The presence and quality of advice and information provided by the licensee in supporting the board's deliberations and decisions about records.
5. Timeliness, due diligence, quality, and completeness of the transfer of records and any extenuating circumstances that impede efforts.
6. Contractual requirements between the corporation and management.



Appendix: Select Excerpts from Legislation and Regulations

Condominium Management Services Act, 2015

Duty re: records

54 (1) Subject to the regulations and subsection (2), every licensee that provides condominium management services to a client shall immediately transfer to the client all documents and records relating to the client upon termination of any contract for the condominium management services provided.

Copies

(2) Subject to the regulations, a licensee may make and retain a copy of a document or record mentioned in subsection (1) if the licensee requires the copy for purposes relating to the contract or such other purposes as are prescribed.

No pressuring

(3) No licensee shall retain anything that the licensee is required to transfer to a client under subsection (1) as a means of pressuring the client to fulfil contractual obligations to the licensee.

False information

55 (1) No licensee shall falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document related to the licensee's providing of condominium management services.

Furnishing information

(2) No licensee shall furnish, or induce or counsel another person to furnish, any information or documents related to the licensee's providing of condominium management services if the information or documents are false or deceptive.

Same, assisting

(3) No licensee shall assist in furnishing, or induce or counsel another person to assist in furnishing, any information or documents related to the licensee's providing of condominium management services if the licensee knows that the information or documents are false or deceptive.

O. Reg. 123/17: GENERAL (Regulation to the Condominium Management Services Act, 2015)

Transfer of records

35. (1) A licensee that is required to transfer documents and records to a client under subsection 54 (1) of the Act shall do so, subject to subsection (2) of this section no later than 15 days after the termination of the contract described in subsection 54 (1) of the Act.

(2) If a document or record that a licensee is required to transfer to a client under subsection 54 (1) of the Act does not exist at the time the contract described in that subsection is terminated and the contract requires the licensee to create the document or record, the licensee shall create it, copy it and transfer it to the client no later than 30 days after the termination of the contract.

(3) A licensee shall take reasonable measures to keep copies that it makes and retains under subsection 54 (2) of the Act secure.

(4) A licensee shall not use or disclose a copy of a document or record that relates to a client under a contract described in subsection 54 (1) of the Act and that it makes and retains under subsection 54 (2) of the Act except if,

(a) it is necessary to do so to,

- (i) fulfil any obligations of the contract with the client,
- (ii) prove the licensee has fulfilled the obligations of the contract with the client,
- (iii) comply with a requirement of the Act or the regulations, or
- (iv) comply with a request of the registrar made pursuant to the Act or the regulations; or

(b) the person to whom the information in the document or record relates consents to the use or disclosure, as the case may be.

O. Reg. 3/18: CODE OF ETHICS AND DISCIPLINE AND APPEALS COMMITTEES (Regulation to the Condominium Management Services Act, 2015)

Current documents

6. A licensee shall ensure that forms and documents used by the licensee in offering or providing condominium management services are current.

Services from others

17. (1) A licensee shall not provide services to a client and shall advise a client to obtain services from another person if the licensee is not able to provide the services with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the services.

(2) A licensee shall not discourage a client from seeking a particular kind of service if the licensee is not able to provide the service with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the service.

Condominium Act, 1998

Records

55. (1) The corporation shall keep adequate records, including the following records:

1. The financial records of the corporation.
2. A minute book containing the minutes of owners' meetings and the minutes of board meetings.
3. A copy of the declaration, by-laws and rules.
- 3.1 The returns and notices that it has filed with the Registrar under Part II.1.
4. All lists, items, records and other documents mentioned in subsections 43 (4) and (5).
5. The report described in subsection 44 (8) that the corporation receives from the person who conducts a performance audit.
6. The records required under subsection 46.1 (3) and 83 (3).
7. A record of all reserve fund studies and all plans to increase the reserve fund under subsection 94 (8).
8. A copy of all agreements entered into by or on behalf of the corporation.
9. The report that the corporation receives from an inspector in accordance with subsection 130 (5).
10. All instruments appointing a proxy or ballots for a meeting of owners that are submitted at the meeting.
11. All other records, if any, that are prescribed.
12. Any additional records specified in the by-laws of the corporation.

O. Reg. 48/01: GENERAL (Regulation to the Condominium Act, 1998)

Records

13.1 (1) The following records of a corporation are prescribed for the purpose of paragraph 11 of subsection 55 (1) of the Act:

1. A copy of the status certificates that the corporation has issued under section 76 of the Act.
2. A record of the statements and information provided to the board or the corporation under sections 11.6 and 11.10 of this Regulation for the purposes of clauses 29 (1) (f) and 29 (2) (f) of the Act.
3. All material and records provided to or obtained by the corporation under section 11.8.
4. Records that relate to employees of the corporation and that the corporation creates or receives.
5. Records that relate to actual or contemplated litigation and that the corporation creates or receives.
6. Records that relate to claims under an insurance policy in relation to the corporation and that the corporation creates or receives, including insurance investigations involving the corporation.
7. Records that relate to specific units or owners and that the corporation creates or receives.



8. A copy of all existing and expired warranties and guarantees that the corporation receives and that relate to the property or to any real or personal property that the corporation owns or that is the subject of an agreement mentioned in section 113 or subsection 154 (5) of the Act entered into by or on behalf of the corporation.
9. All reports and opinions of an architect, engineer, or other person whose profession lends credibility to the report or opinion, that the corporation receives and that relate to physical features of the property or of any real or personal property that the corporation owns or that is the subject of an agreement mentioned in section 113 or subsection 154 (5) of the Act entered into by or on behalf of the corporation.
10. All drawings and plans that the corporation receives and that relate to physical features of the property or of any real or personal property that the corporation owns or that is the subject of an agreement mentioned in section 113 or subsection 154 (5) of the Act entered into by or on behalf of the corporation.
11. All reports and opinions of an appraiser that the corporation receives and that relate to the property or to any real or personal property that the corporation owns or that is the subject of an agreement mentioned in section 113 or subsection 154 (5) of the Act entered into by or on behalf of the corporation.
12. Records that relate to a right, title, interest, encumbrance or demand of any kind affecting land in relation to the corporation, but not including the interest of an owner in the owner's unit or common interest, and that the corporation creates or receives.
13. Records that relate to an addition, alteration or improvement to the common elements, a change in the assets of the corporation or a change in a service that the corporation provides to the owners under section 97 or 98 of the Act and that the corporation creates or receives.

Note: On the day section 88 of Schedule 1 to the Protecting Condominium Owners Act, 2015 comes into force, paragraph 13 of subsection 13.1 (1) of the Regulation is revoked and the following substituted: (See: O. Reg. 180/17, s. 17 (2))

13 Records that relate to a modification under section 97 or 98 of the Act and that the corporation creates or receives.

13.1 Records that relate to the installation of an electric vehicle charging system carried out in accordance with section 24.3 or with sections 24.4 to 24.6 and that the corporation creates or receives.

14. All instruments appointing a proxy for a meeting of owners that are delivered to the corporation before the meeting if required or permitted by the by-laws.
15. A record of all recorded votes described in subclause 52 (1) (b) (iii) of the Act for a meeting of owners that are submitted at the meeting.
16. A copy of all agreements mentioned in paragraph 8 of subsection 55 (1) of the Act that have expired.
17. A copy of all insurance policies that the corporation has obtained and maintains.
18. A copy of all insurance policies that the corporation has obtained and that have expired.
19. A copy of all redacted versions of a record described in subsection 55 (1) of the Act or any of paragraphs 1 to 18 of this subsection.

Acknowledgements

The CMRAO would like to thank the following individuals from the condo management sector for their feedback in the development of this document:

- Brian Horlick
- Chris Jaglowitz
- Murray Johnson
- Michael Kalisperas
- Denise Lash
- Dean McCabe
- Audrey McGuire



Meeting standards. Creating trust. Building confidence.

www.cmrao.ca | info@cmrao.ca



CMRAO
© CMRAO 2018