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Licensing of Property Managers and Impact on Self Managed Condos and their Directors

By Sonja Hodis

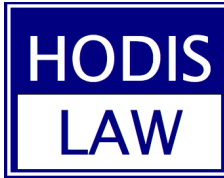
In addition to the changes to the Condominium Act, 1998, the Ontario Government has also introduced through Bill 106 new legislation that regulates and licenses property managers and those that provide condominium management services.

This new legislation is called the *Condominium Management Services Act* (CMS Act) and it creates a mandatory licensing system for condo managers and management providers, requires mandatory training and education and develops a code of ethics for condo managers and providers. The CMS Act is not yet in force as we are awaiting the implementation of the Regulations. The proposed Regulations for this new piece of legislation are currently out for public review and are targeted to be in force in July 2017.

One major aspect of the CMS Act that condo directors and self managed condos should be aware of is that it requires anyone that provides “condominium management services” to be licensed. The Act defines “condominium management services” as any of the following services provided to or on behalf of a condominium corporation:

1. Collecting or holding contributions to the common expenses or other amounts levied by, or payable to, the corporation.
2. Exercising delegated powers and duties of the corporation or its board of directors, including,
 - i. making payments to third parties on behalf of the corporation, or
 - ii. negotiating or entering into contracts on behalf of the corporation, or
 - iii. supervising employees or contractors hired or engaged by the corporation, but does not include an activity excluded by the regulations.

While condominiums can still be self managed without the need for a licensed manager, they will not be able to pay or provide rewards to an individual or company for condominium management services as defined in the legislation unless that person and/or company is licensed. Licensing requirements do not apply to people who only provide repair and maintenance services which would



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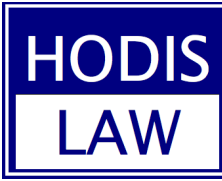
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include a cleaner, landscaper or superintendent. However, those people can not provide services other than repair and maintenance services and can not provide services listed in the definition of condominium management services.

The proposed Regulation appears to only exempt Directors, and not any other owners, from licensing requirements if they provide condominium management services to their condo provided they do not receive a fee or reward for doing so. The proposed Regulation does not appear to exempt any other person from licensing even if they do not charge a fee or obtain a reward for providing condominium management services. While directors can be compensated for their duties as a director without triggering the licensing requirements, if a director is carrying out the duties defined as condominium management services under the new legislation for payment or reward, they will require a license.

In smaller condominiums, it is not uncommon to have one of the directors or someone who lives and owns a unit in the condominium provide property management services to the condominium for a fee or in some cases for free. A lot of times this was necessitated by the fact that the condominium was too small to be able to obtain professional property management services from property management companies or the fees were too high for such a small condo. In some parts of Ontario, this was necessitated because no professional property management companies serviced the area. The new legislation will have an impact on how these self managed condos will continue to operate and in all likelihood will add additional responsibilities to the role of director with no compensation which may make it even harder to find people to fill this role or it will result in increased common expense fees as these condos will now have to pay for a licensed property manager to carry out these duties.

In summary, under the new legislation, the previous type of arrangements self managed condos had will no longer be permissible unless the individual providing the property management services becomes licensed. However, if a director wants to continue to provide condominium management services as defined in the CMS Act without a license they will have to do so for no fee or reward to avoid being captured by the licensing requirements under the new legislation. This new change to the legislation does not prevent condos from



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compensating directors by payment or reward for carrying out their duties as a director pursuant to a bylaw made under s. 56(1) (a) of the Condominium Act, 1998. However, condos that compensate their directors will have to be careful to make sure that the duties of a director do not get blurred with the duties defined as condominium management services under the CMS Act in order to comply with the new legislation.



Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. She advises condominium boards and owners on their rights and responsibilities under the *Condominium Act, 1998* and other legislation that affects condominiums such as the Human Rights Code. She represents her clients at all levels of court, various Tribunals and in mediation/arbitration proceedings. Sonja has also gained recognition for creativity and tenacity in ground breaking human right caselaw in the condominium industry. Sonja can be reached at (705) 737-4403, sonja@hodislaw.com or you can visit her website at www.hodislaw.com or watch her videos at www.condoinmotion.com.

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