

Condos Q&A March 8

Board members must not share confidential information

BY ROBERT NOCE, EDMONTON JOURNAL MARCH 4, 2014

Q: Our condo board president is sharing everything about our meeting and board activities with her non-owner live-in partner. He has access to her computer, where she receives confidential information, and he answers questions for her. We believe that he authors many of her documents. How do we stop this?

A: Unless you can prove this, I would suggest that you stop dwelling on this issue. Board members are not allowed to share confidential information with any party. If they do, and the condominium corporation suffers a loss or is exposed to liability, then the individual board member may expose him or herself to personal liability. If they are acting in bad faith and breaching that level of confidence, the condominium corporation's director liability insurance may not cover the board member.

Helpful hint: It is important that people understand their role on the board, and it is helpful for the property manager or the condominium corporation's legal counsel to remind them of this from time to time.

Q: Our condo board is concerned about our tenants' young children playing on the common property, in laneways, parking areas and flower beds, which is dangerous and could lead to liability for the corporation if a child is injured. What is the condo board's liability insurance for, if not for this?

A: The condominium corporation has the authority to limit activity on its property, especially in laneways and parking areas. I am hopeful that the corporation has an area which has been designated for people to gather and for kids to play. The fact that the condominium corporation has insurance does not mean that it has to use it; the corporation still has to minimize its liability.

Helpful hint: Even with insurance, people need to act responsibly, and parents should keep their kids in a safe play area within the property.

Q: My understanding is that sitting on a condominium board is a volunteer position, yet I am told that sometimes board members get paid an honorarium. Is this appropriate? Does this need to be in the bylaws, or can a board just decide on its own?

A: The Condominium Property Act does not discuss this, so you need to review your bylaws. If your bylaws are silent and do not provide for any mechanism to pay an honorarium to board members, then board members cannot vote to pay themselves (or any one person on the board) an honorarium. There must be a provision in your bylaws to allow for honoraria to be paid, and set out the manner in which it is to be done.

Helpful hint: In general, I do not support paying board members, since it has the potential to cause more problems than benefits. If the bylaws allow it, just be sure to follow the correct process.

Q: I came home to my condominium unit to find water backing up from my sink. My insurance company says that it is the condominium corporation's duty to pay for the replacement to bring my condo back to its original standard, and that they would pay the difference for the cost of any upgrades. My condo sent a letter saying that their insurance will only cover costs over \$50,000. When I read the Condominium Property Act, it says the condo must have insurance, but it does not indicate the amount. What does this mean?

A: Insurance-related issues are complicated questions in Alberta condominium law, partly because the legislation creates uncertainty as to who is responsible for what, and what are the expectations of the parties. From your example, you are correct in that the condominium corporation's insurance company (I am assuming you live in a traditional, apartment-style condominium) must pay for the replacement to bring your condo unit back to its original standard, and that your own insurance will pay for the upgrades that you have in your unit. You were smart enough to get your own insurance. With respect to the condominium corporation only covering costs over \$50,000, I suspect this has something to do with their deductible. There may have been a significant number of claims, which now means that their deductible is so high that it may not be in their interest to use insurance. However, that does not diminish or remove the condominium corporation's liability. Helpful hint: In a situation like this, when there is \$50,000 at stake, it is time to retain a lawyer.

Robert Noce, Q.C. is a partner with Miller Thomson LLP in both the Edmonton and Calgary offices. He welcomes questions of approximately 100 words or less at condos@edmontonjournal.com. Answers are not intended as legal opinions; readers are cautioned not to act on the information provided without seeking legal advice on their unique circumstances. Follow [Noce on Twitter](#)

You're invited!

Robert Noce is hosting a seminar entitled **Don't Go Breakin' My Bylaws**. Topics will include possible changes to the Condominium Property Act and an update on cases from the courts. Open to everyone, designed for condominium corporations, board members, owners, property managers and others involved in the Alberta condominium market

When: Thursday, March 20, 11:30 a.m. — 1 p.m., presentation begins at noon. Includes lunch

Where: Chateau Louis Hotel & Conference Centre, 11727 Kingsway

Registration deadline: March 14

Contact: To register, contact Sarah Short, ph. 780-429-1751; fax 780-424-5866; email sshort@millerthomson.com

© Copyright (c) The Edmonton Journal