

# Condo Q&A: Water damage to units a complex problem

## Board, individuals have different layers of responsibility

BY ROBERT NOCE, EDMONTON JOURNAL AUGUST 17, 2012

**Q:** Does any provincial or federal regulatory department or agency require a condominium complex to have its financial statements audited or reviewed by an accounting firm? Do we have to hire an accountant?

**A:** The Canada Revenue Agency (CRA) has been conducting countrywide audits on condominium corporations, focusing on income-generating activities such as leasing cellphone tower space, unused property and parking spaces. They have occasionally concluded that these activities preclude the condominium corporation from maintaining its non-profit status. In such cases, a condominium corporation's entire income would be considered "for profit."

**Helpful Hint:** Condominium corporations should hire a professional, such as an accountant, to ensure that their filing requirements are satisfied.

**Q:** Over the past few years, many units in our condo complex have started having foundation problems due to the ground shifting. Mine has suffered the most damage in the upper two floors. Since the board-appointed engineer inspected my unit and found it not in danger of collapsing, they won't address the damages. My unit needs renovation, but it does not make sense for me to get the work done unless the foundation is stabilized.

**A:** If, as you say, a number of units have the same problem, there is strength in numbers to encourage the board to take active steps to rectify the foundation problems, assuming that the foundation is the responsibility of the condominium corporation. If the board is ignoring its legal responsibility to maintain and/or repair condominium corporation property, the owners can take the corporation to court and get an order directing them to take proper care of the property. Court applications are expensive and time-consuming. However, given the fact that your unit may be the most expensive asset you own, taking legal steps may be worth your effort.

**Q:** I own a condominium that recently sustained water damage and leakage due to a neighbouring unit's negligence. The occupants left the water running, which flooded their unit and mine. Who is responsible for repairing the damage?

**A:** Generally, the condominium corporation has the obligation to maintain the common property, and each owner has the obligation to maintain his or her own unit. If an owner fails to maintain his unit, he is responsible for damages to both other units and common property.

The condominium corporation must obtain insurance to cover damage to both the unit and the common property caused by major perils. Owners also have the responsibility to insure the personal property within their unit. In your case, you could make the argument that your neighbour's failure to turn off the

tap constitutes a failure to maintain their unit.

**Helpful Hint:** Insurance and water-related issues are complicated. If you feel that the condominium corporation has not acted within the law, then you should hire legal counsel to get an opinion as to whether or not the corporation must cover additional losses.

**Q:** Our condo board is planning an expensive cosmetic renovation of the building interior. Most of the owners agree that there are more pressing issues that ought to be dealt with first. Our reserve fund is average, so the directors will borrow money from it for the project, and impose a special levy next year to bring the reserve fund up again. Is there anything the owners can do to put the brakes on this project?

**A:** First, you should determine whether or not your board is complying with the law relating to reserve funds. There are specific provisions under the Condominium Property Act and Regulations that deal with taking money from the reserve fund. Second, there is a provision under the Condominium Property Act that gives owners the ability to provide direction to the board. This would require a formal vote of the owners at a general meeting. On the other hand, it's important to remember that improvements to your building add value to your unit.

**Q:** Your article with respect to Special Resolutions made it clear that any bylaw amendment requires at least 75 per cent of the owners and unit factors. Could you clarify what is required to direct the board to do certain things? My understanding is that the owners can pass motions at a general meeting with at least 25 per cent of them in attendance. Is this correct?

**A:** The Condominium Property Act makes it clear that the owners can pass a resolution at a general meeting that provides direction to the board. To convene a general meeting, you will need to meet the requirements of quorum as set out in your bylaws. If the threshold is low, then a small group of owners can wield a significant amount of power.

**Q:** What steps can we take as a condominium corporation to force the back payment of condo fee arrears? We do not have the resources for a prolonged legal battle, but we cannot simply allow this to continue until the unit is sold.

**A:** First, file a caveat on the title. The caveat will provide the owner with notice that they are in arrears. Second, write a letter to the owner's mortgage company asking them to pay; most banks will. Every owner should read their mortgage agreement and realize that if they do not pay their condo fees, they are in breach of their mortgage, which could trigger foreclosure proceedings against the owner by the bank.

If neither the caveat nor the letter to the bank result in a positive reply, then another alternative is to wait until this unit is sold and collect your money. If you need the money now, then retain a lawyer to begin foreclosure proceedings against the owner. The good news about the foreclosure process is that the condominium corporation may get most of its legal costs back.

*Robert Noce, Q.C. is a partner with Miller Thomson LLP in Edmonton. He welcomes your questions at [condos@edmontonjournal.com](mailto: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.*

© Copyright (c) The Edmonton Journal