

Condo Questions: Roof repair comes down to common property

BY ROBERT NOCE, EDMONTON JOURNAL JUNE 4, 2015



Figuring out whether or not a condo roof is regarded as common property can help determine who is responsible for repair and maintenance.

Photograph by: John Lucas, Edmonton Journal

Q: Our board recently received an estimate to repair a unit with water damage through the interior of the garage ceiling, not the exterior roof. The homeowner had the roofer inspect the area and their recommendation was that the current roof is not sufficient for Alberta's winter weather, allowing snow to enter the garage and cause water condensation damage. The unit is in the original condition as at the time of purchase from the builder, and no deficiencies were identified to the board at the time of purchase. Is the condominium corporation responsible for repairing this unit?

A: I would have to review your bylaws and your condominium plan to determine who is responsible for the repair and maintenance of this particular garage. If these documents indicate that the condominium corporation is responsible (i.e., the roof is common property) for the repair and maintenance, then the answer is very simple: it will be the condominium corporation's responsibility to repair the roof.

Helpful Hint: Many owners feel that it is unfair for the condominium corporation to repair someone's unit. However, the issue of fairness is not relevant when determining whether or not it is the legal responsibility of the condominium corporation to repair and maintain a unit.

Q: I am the secretary of a 28-year-old condominium corporation. We generate a number of records each year including board minutes, financial expenditures, contracts, and owners' information. What should I do with all of these records? I would assume that all records that relate to policy or unit factors will be permanently retained. Am I correct?

A: The Condominium Property Act and the regulations do not provide any guidance on this issue. I am assuming that your bylaws provide no guidance either. Therefore, I would follow the general practice that many organizations follow with respect to document retention. You are not required to keep documents forever. Obviously, you want to keep documents/agreements to provide information with respect to ongoing relationships to protect the condominium corporation in possible litigation and ensure compliance with the law. You may want to consider developing a document retention policy that divides the document retention periods into three easy categories: permanent retention, seven- to 10-year retention, and one-year retention. The policy should also provide for periodic review and disposal of documents.

Helpful Hint: Document retention is a huge, yet important, undertaking. As condominium corporations get older, the issue of document retention becomes ever more significant.

Q: Can the condominium board decide on its own that there is no smoking in our building? We live in a small condo of 24 units and we are self-managed. We have a general meeting once a year where the seven-member board is elected. Can we enforce a no-smoking rule without having a general meeting to amend our bylaws?

A: A board cannot pass a rule at the board level that affects the rights of owners. The smoking prohibition requires an amendment to the bylaws. The owners of condominium corporations can pass a bylaw that prohibits smoking anywhere in the condominium building, including individual units and balconies. A bylaw amendment requires the support and approval of 75 per cent of the owners and unit factors.

Helpful Hint: In Alberta, boards can implement policies and rules to govern their condominium corporations. However, the policies and rules cannot take rights away from owners.

Q: I bought my condo three years ago, and am now experiencing heating problems. The heating in my unit is inadequate, and I have to use space heaters to make the temperature tolerable. Is the condo board required to rectify this situation?

A: From what you have said, there appears to be a problem with the heating and ventilation system in your building, which could be a bigger problem than simply your unit. I would have to review your condominium plan to confirm that the heating and ventilation are the responsibility of the condominium corporation. If my assumption is correct, and if there is a problem with the heating and ventilation system, it will be the responsibility of the condominium corporation to fix it. Some time ago, I acted for an owner who had ventilation issues in his unit, as cigarette smoke was entering his unit through the ventilation system as a result of the unit owner below him smoking. We were successful in court in requiring the condominium corporation to deal with this issue. It is an expensive process, but hiring a lawyer is something that you may want to explore.

Helpful Hint: The Condominium Property Act sets out the requirements of owners and condominium corporations. Your condominium plan also provides guidance as to who is responsible for the repair and maintenance of different parts of the condominium building.

Q: Our condominium corporation president recently received some correspondence addressed to him as president. He did not forward the letter to the rest of the board, but instead dealt with it on his own. He did so because he deemed it personal. Should the correspondence have been brought forward to the entire board?

A: Yes! A condominium corporation can only act through a resolution of the board. An individual board member cannot make decisions on their own that impact the condominium corporation. The fact that the letter was addressed to the president does not indicate that it was personal communication. Based on your facts, it is my opinion that the president erred in dealing with this on his own.

Helpful Hint: When a board member acts on his/her own without board approval, the board member runs the risk of exposing himself/herself to personal liability.

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