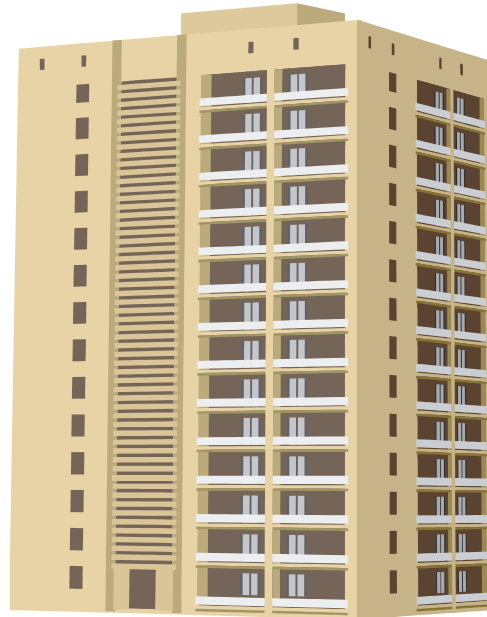


COLLECTED ARTICLES OF DENISE LASH



These articles are provided as an information service to our clients and are a summary of current legal issues. These articles are not meant as legal opinions and readers are cautioned not to act on information provided in this book without seeking specific legal advice with respect to their unique circumstances. Miller Thomson LLP uses your contact information to send you information on legal topics that may be of interest to you. It does not share your personal information outside the firm, except with subcontractors who have agreed to abide by its privacy policy and other rules.

No portion of this book shall be reproduced without the express written consent of the author.

INDEX

- GOOD CONDO MANAGEMENT VITAL, COUNCIL HEAD SAYS
- INSPECTION OF RECORDS & ACCESS TO UNITS

Alterations

- COMMUNITY STANDARDS FOR CHANGES TO UNITS AND COMMON ELEMENTS WOULD BE WORTHWHILE
- PROCEDURES FOR MAKING CHANGES TO UNITS TO ENSURE THAT ARCHITECTURAL CONTROL IS MAINTAINED
- TIME FOR A FACELIFT?
- UNIFORMITY OF APPEARANCE

Alterations - Decorations

- BE PROACTIVE IN DEALING WITH HOLIDAY DECORATIONS

Board Meetings

- HAVING PROBLEMS WITH BOARD MEETINGS?

Board of Directors

- ASK AN EXPERT
- BOARD CAN REJECT OWNER'S SUGGESTIONS
- ASK AN EXPERT - RULES OF ORDER
- BOARD FOLLOWING NEW CONDO ACT RULES
- CAN I BECOME A DIRECTOR OF A CONDOMINIUM?
- CONDO DIRECTORS' AND OWNERS' RESPONSIBILITIES
- CONDOMINIUM ACT FURTHER DEFINES THE ROLE OF THE DIRECTOR
- DIRECTORS' AND OWNERS' RIGHTS AND RESPONSIBILITIES
- DIRECTORS' SKILLS
- DO YOU WANT TO BE ON THE BOARD OF DIRECTORS?
- GET ON BOARD
- PRESIDENT NEEDS GOOD QUALITIES TO LEAD BOARD OF DIRECTORS
- SKILL SET NEEDED TO BECOME CONDO DIRECTOR
- THE ROLE OF PRESIDENT
- USEFUL TIPS FOR CONDOMINIUM DIRECTORS
- WHO SHOULD DECIDE IF CONDO PRESIDENT IS TO BE PAID-ASK AN EXPERT

By-laws

- THE STANDARD UNIT BY-LAW - WHAT IS IT?
- UNDERSTANDING THE STANDARD UNIT BY-LAW

Communication

- CONDOMINIUM COMMUNICATION
- THE FOCUS SHOULD BE ON COMMUNITY
- PROMOTE COMMUNITY

Declarations - Amendments

- AMENDING THE DECLARATION AND DESCRIPTION

Enforcement

- BARBECUE MUST GO, IF THE RULES SAY THAT'S SO
- IT IS TIME FOR A CHANGE - A POSITIVE APPROACH TO ENFORCEMENT
- SOLVING CONDOMINIUM DISPUTES
- "UNDERGROUND NEWSLETTERS" LOSE CREDIBILITY WHEN RESIDENTS ARE KEPT INFORMED ON A CONTINUOUS BASIS
- BOARD COMMUNICATION

Maintenance & Repair

- FIVE SINGLE WOMEN

Management

- ASK THE PROS
- MANAGEMENT
- PROPERTY MANAGEMENT

Mould

- MOULD IN CONDOMINIUMS

Owners' Meetings

- ASK AN EXPERT VOTING - PARKING UNITS
- HOST OF CHANGES FOR OWNERS MEETINGS
- NEW PROCEDURES TO FOLLOW FOR MEETINGS
- OWNER'S MEETINGS AND THE CONDOMINIUM ACT 1998
- OWNERS VOTING RIGHTS
- PROXIES

Owners' Meetings - AGM

- HOW TO MANAGE OUT OF CONTROL ANNUAL MEETINGS

Owners' Meetings - Forms to Use

- NEW CONDO ACT PRODUCES BIT OF CONFUSION ON PROXY FORMS AND THEIR USE

Pets

- PET PEEVES

Reserve Fund

- FUNDING THE RESERVE FUND
- RESERVE FUND - HOW TO BREAK THE NEWS!
- RESERVE FUND INVESTMENTS
- PROACTIVE STEPS NEEDED TO PREVENT RISK OF FIRE OR INJURY

Safety - Security

- SECURITY PROVISIONS
- TENANTS MUST COMPLY WITH THE CONDO ACT
- UNIT OWNERS HAVE MANY WAYS TO CONTROL ACTIONS OF CONDO CORPORATION

Noise

- WHEN NOISY, TAKE ACTION



GOOD CONDO MANAGEMENT VITAL, COUNCIL HEAD SAYS



As a condominium lawyer, Denise Lash- of the firm Miller Thomson LLP - knows all about building mismanagement.

"It's so important to have good management" she says.

"And I have seen many instances in which (condominium) corporations have not had professional management."

It's not just the physical management of a building, that's important, she says. Sometimes, "managers were not familiar with the Condominium Act or they didn't know that there should be a certain amount of money in the reserve fund. The board (of directors) relies on the property manager to know these things - to have that experience".

Lash is the newly elected chair of the Condominium Management Standards Council - a group overseeing a program to improve condo management in Ontario. The council was established by the Association of Condominium Managers of Ontario.

The council is actively preparing itself for the August launch of ACMO 2000 certification, says Lash.

To get the certification, condo management firms must develop processes set out in a standards manual. Companies are then audited by the Business Development Bank of Canada to see if they have complied with the standards.

A company that gets this certification could then claim that it offers a "higher level of service".

Also, if a company that is certified later has a dispute with a client, ACMO will offer a resolution process.

Condo management companies interested in getting certified can contact ACMO at (905) 826-6890.

INSPECTION OF RECORDS & ACCESS TO UNITS



Owners of condominium units are often unclear as to what information they are entitled to get as owners and what rights the Condominium Corporation has to access their condominium unit. The Condominium Act covers both these situations.

The Inspection Of The Records Of The Corporation

As an owner you have the right to examine the records of your Condominium Corporation.

The Condominium Act states that you are entitled to view the records if you make a request in writing to the Corporation.

You are however required to examine the records at a "reasonable time" which means not at odd hours and with appropriate notice to management or the Board of Directors.

You are not entitled to ask for copies of items to be sent to you. The Condominium Act provides that if you want copies then you must inspect them first and then pay a reasonable fee to compensate the Corporation for labour and copying charges.

Your right to inspect the records is limited to information that is considered a "record" and there is certain information that owners cannot inspect and those items include:

- Records which relate to employees of the Corporation, except contracts of employment
- Records pertaining to litigation or insurance investigations with the Corporation
- Records relating to specific units or

owners - unless it pertains to the owner or purchaser of a unit examining the records.

Access To Units

Often times the Board of Directors or Management of a Condominium Corporation seek to carry out repairs or maintenance that requires access to a unit, some owners refuse to allow access to their units.

The Board and Management have certain rights to enter a unit where it is required. Section 19 of the Condominium Act, 1998, provides that "On giving reasonable notice, the corporation or a person authorized by the corporation may enter a unit or part of the common elements of which an owner has exclusive use at any reasonable time to perform the objects and duties of the corporation or to exercise the powers of the Corporation".

This section of the Act makes it clear that the Corporation or any person authorized by the Corporation, may enter the unit to perform objects and duties of the Corporation upon reasonable notice to the unit owner.

Two court decisions have assisted Corporations in determining the extent of the owners' obligations to provide access to their units. In the case of *York Condominium Corporation No. 336 v. Kan* (March 1986), the court found that the management of the condominium building must have access to all units in the case of emergencies and should not be denied access until the owners of a unit appears. The court noted that it is appropriate for the court to order that an owner deliver a key to the unit to the management. In addition, in *York Region Condominium Corporation No. 784 v. Aliabadi* (February 28, 2000), a warrant of committal for contempt of court was available against a unit owner who refused to comply with an order requiring that the corporation be permitted to enter the unit.

So remember - the Corporation, through its Board of Directors, or any person authorized by the Corporation, is entitled to have access to the unit, upon reasonable notice and that keys may be required from the unit owners to enable the Corporation to enter the unit if necessary.





**COMMUNITY
STANDARDS FOR
CHANGES TO UNITS
AND COMMON
ELEMENTS WOULD BE
WORTHWHILE**

Here is a typical condominium problem. A unit owner decides to affix a satellite dish on her balcony. Five days later the unit owner receives a registered letter from the property manager stating that the satellite dish has to be removed. The unit owner who has just spent \$800 on this state of the art satellite dish feels that

there is nothing wrong with having a satellite dish and ignores the letter.

The property manager continues to send letters and calls the unit owner. The unit owner continues to ignore.

The board of directors decides to hand this matter over the Corporation's lawyer.



The Corporation's lawyer sends a letter to the unit advising the unit owner that she is not in compliance with the Corporation's rules and must remove the

satellite dish and pay for legal fees. The lawyer warns the unit owner that failure to remove the dish could result in the Corporation taking further legal proceedings.

Should the lawyer have been involved? Could these steps have been avoided? Unit owners should always review the condominium documentation to determine whether an object can be placed on the common elements. In addition to reviewing the documentation, the unit owners should make inquiries with the property manager or the Board of Directors. Where there is no prohibition in the documents, it may be simply a matter of getting board approval and perhaps entering into some

form of agreement with the Corporation.

Section 98 of the Condominium Act sets out the requirements for board approval and the entering into and registration of an Agreement where there are alterations or changes to the Common Elements.

You can see how it would be worthwhile for Boards and property managers to establish community standards for changes to units and the common elements and communicate these standards to residents who will hopefully take note of what changes are permitted early on.



PROCEDURES FOR MAKING CHANGES TO UNITS TO ENSURE THAT ARCHITECTURAL CONTROL IS MAINTAINED

You have just purchased your condominium unit and want to decorate your balcony with flower boxes, a birdfeeder and outdoor carpeting. It takes you a few weeks to get everything in place. It looks perfect. You particularly like the hanging plants. Then you get a knock on the door. It is property management telling you to remove everything you have just spent weeks doing. The time and expense! What right does the property manager have to demand the removal of those items?

Too bad you didn't read your condominium documents more closely. Balconies are usually "exclusive use" common elements. That means that you have exclusive use of the balcony and no one else can use it. However, altering or placing items on the balcony is a separate matter which is governed by the Condominium Act and the condominium documents.

It may be just a matter of getting the Board of Directors approval prior to commencing any work on your balcony -

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

it may be contrary to the Ontario Building Code or municipal requirements - it may interfere with other residents, i.e. the birds, can be annoying to other residents, or there may be certain hazards created, i.e. winds may blow hanging plants off the balcony.

Check your documents to see what you have purchased. Determine what the exclusive use common elements and what the restrictions are. Check to see how your "unit" is defined. You may also find that you may not be able to do certain things within your "unit" boundaries. If you take proper steps proceeding to make any changes, you may find that you will not encounter any problems.



Often times, Condominium Corporations follow a set of procedures for making changes to a unit or common elements. These procedures may include entering into agreements with the Condominium Corporation to ensure that the changes made are properly maintained and installed, insured and assumed by any subsequent purchasers.

Remember - the purpose for following these procedures is to ensure that "architectural control" is maintained to enhance property values by imposing certain restrictions - these are done solely for the benefit of the residents of the condominium community.



Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

TIME FOR A FACELIFT?

Spring is now here. This is often the time when many condominium corporations are contemplating renovations. As more and more condominiums begin to age, the need for a major "facelift" becomes more apparent.

Aside from the major structural repairs and renovations, many corporations soon will be contemplating changing the overall design of their lobbies, perhaps changing and upgrading the carpeting and wallpaper, purchasing artwork or redecorating parts of the common areas.

IMPORTANT ISSUES

These changes are often viewed by the residents as important issues, which directly affect their sense of pride and ownership as well as the integrity of their investment. Board members that underestimate residents' responses often find themselves confronted with angry residents, accusations of abuse of power and sometimes, requisitions for their removal as board members.

The board of directors has the authority to utilize the corporation's reserve fund for the purposes of major repair and replacements, although if in addition to the renovation project there are additions, alterations or improvements to or renovation of the common elements, then the board must follow the steps provided in s.97 of the Condominium Act and should receive advice from legal counsel as to which provisions of the Act apply.

Even when a renovation project legally falls within the ambit of the

board's authority, however, the wise board will strive to involve the owners in the decision-making process.

An example of a plan of action developed by one corporation was to do the following:

1. The board appointed a committee of residents call the Design Committee. A board member chaired the committee and the other committee members were not board members.
2. The Design Committee met with the board to determine the nature of its mandate and to discuss and resolve the overall framework in which it is to approach its task.
3. The Design Committee held open meetings with the residents
4. The Design Committee met with the designers, contractors, property managers and others to begin work on assembling renovation proposals
5. The Design Committee assembled its recommendations and met with the board for board approval.
6. The Design Committee circulated an information memorandum to all owners and residents to describe the proposed work and presented an action chart showing the estimated timetable for completing the work at different phases. A meeting was sometimes held to discuss this and to get owners and residents' feedback.
7. The Design Committee recommended the final plan to the board and work began.

When it comes to renovation projects, boards would be wise to look beyond the technical legal requirements and strive to ensure that owners and residents are kept well informed and are given appropriate opportunities to participate in the renovation and improvements to their condominium.

UNIFORMITY OF APPEARANCE



Freedom of Expression - Condominium Living - do these two go hand in hand?

I remember back in July 1997, on Canada Day, a condominium unit owner decided to display a Canadian flag from his balcony.

A dispute arose between the owner and the board of directors of the condominium as to the owner's right to erect the flag. This dispute was the focus of much media attention at that time.

Nothing much has changed since then. In fact many Canadians are now feeling that it is more important than ever to support their country in light of today's political climate and showing support often means displaying flags,

banners or other such "patriotic" symbols.

In a free and democratic country, condominium unit owners, like freehold homeowners, have their basic right to freedom of expression. However, when one chooses to buy into a "community" certain limitations may be imposed upon this basic right.

Condominium living in and of itself brings with it the obligation to follow a set of community rules and standards with which owners must live by. In order for the majority of residents to enjoy a condominium lifestyle, a mechanism for governance must be established. This mechanism takes the form of the Condominium Act, 1998 - the declaration, by-laws and rules. The board of directors is given the responsibility of ensuring that the Condominium Act and condominium documentation are strictly complied with.

Placing items upon common elements, even if these common areas are

exclusively used by an owner, may be prohibited or restricted in some manner. Unfortunately a patriotic owner, or perhaps an owner enjoying the holiday spirit by stringing up lights or placing a wreath on an exterior door, may first have to establish that he or she has the right to do so.

So what's the benefit and why do condominium owners live by these imposed restrictions which prohibit the ability to freely express oneself?

Just imagine a high-rise condominium with balconies displaying signs, overhanging decorative tapestries of different colours, flower pots with dead plants, velvet portraits of Elvis...

Some items may be pleasant to look at and others may not be. After all beauty is in the eye of the beholder.

A condominium corporation which has strict controls over what is placed or displayed on the common elements by maintaining uniformity in appearance, may find a

noticeable difference in market values (i.e. higher values) of its units compared to a condominium with few controls.

Many condominium corporations have established design review committees, which develop policies to standardize the exterior appearance of a condominium. These policies are then incorporated into a manual and distributed to residents and are also included with status certificates to prospective purchasers.

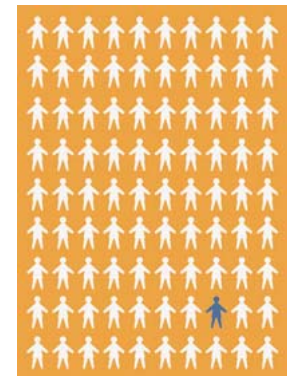
It is important, as part of the establishment of policies that there be a means of ensuring that these controls can be enforced against all owners in a fair and effective manner.

Since many condominium corporations have operated for years without these types of controls in place, it may not be easy to introduce. If a board of directors wishes to impose a system of review and controls, a meeting of owners should be called for the purpose of advising the

owners and seeking their input.

I believe that with the appropriate explanation and willingness on the part of all owners to enhance the value of their communities, a responsible control and review process can be created to operate effectively for the benefit of everyone.

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP





BE PROACTIVE IN DEALING WITH HOLIDAY DECORATIONS

The holidays are here and the celebrations begin. Condominium Corporations should now be planning ahead to deal with the important issues that arise during this time.

Ramadan, Hanukkah, Christmas, Kwanzaa and New Year's festivities. This is the time for celebration and a time, which can involve bringing the community together.

Board Members and management should be proactive in dealing with holiday decorations to make sure that a positive approach is taken rather than the pursuit of the "unauthorized alteration".

Corporations can develop policies and rules which would establish what decorations are permitted, where they can be located and for what period of time.

It is important for owners to feel that they have the freedom to celebrate their own religious holiday and boards must ensure that all residents are treated equally by either allowing holiday decorations for each religion or restricting the decorations to seasonal, non-religious items.

Initial Surveys

The process of establishing policies and rules may be something that will bring the residents together. Boards may choose to send initial surveys and then follow up with committees and information meetings. Approaching this in a positive way can add to the holiday spirit rather than introducing conflict and unpleasant feelings.

Let the owners decide what they want to see. It may be that they would permit Christmas trees and Hanukkah menorahs and the Board shouldn't ban those items if the residents do not object.

Setting a positive tone for the rule or policy is important and these rules should be fair and reasonable. For example, don't start off the

rule with "no Christmas lights shall be permitted after January 15th". Rather phrase the rules with "Christmas lights are permitted from December 1 to January 15th".

The Board may want to establish different policies for decorations located in the common areas of a building, for example a lobby, versus the exclusive use common element of a unit, such as a balcony.

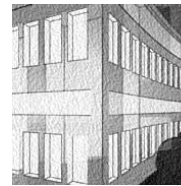
Start now rather than waiting. It may involve the initial work of setting policies and rules, but once implemented, this will benefit your community and will add to your joyous celebrations for the holiday.

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

MILLER THOMSON LLP

Barristers & Solicitors, Patent & Trade-Mark Agents

ONTARIO'S LEADING
CONDOMINIUM LAW
PRACTICE



In addition to our condominium expertise, our firm has experts in all areas including employment, construction, planning, insurance and environmental law. We have offices in Toronto, Markham and Waterloo-Wellington to better serve your needs.

John A. (Sandy) Kilgour
416.595.8501
skilgour@millerthomson.ca

Audrey M. Loeb
416.595.8196
aloeb@millerthomson.ca

Denise M. Lash
416.595.8513
dlash@millerthomson.ca

Warren D. Kleiner
416.595.8515
wkleiner@millerthomson.ca

Tina Flinders (Law Clerk)
416.595.8524
tflinder@millerthomson.ca

Patricia M. Conway (Litigation)
416.595.8507
pconway@millerthomson.ca

Call toll free: 1.888.762.5559 ext. 2968
or visit our website at www.millerthomson.com

HAVING PROBLEMS WITH BOARD MEETINGS?

Real Estate News, March 28, 2003

The Notice of Meeting and usually an Agenda is circulated to all members of the Board. So why is it, when it comes time for the Board Meeting, that the Board strays from the Agenda and debates other issues such as "Who said what?" Then the discussions go on and on, slowly deteriorating and heading in all sorts of directions.

Hours later, the Directors are worn out and the business of the Condominium Corporation has not been taken care of. Here are some tips:

- Keep the discussion focused. This is the responsibility of the Chairperson, typically the President.
- In order to steer the discussion in the right direction, the Chair should never present an issue, particularly a minor one, without a proposed solution. For example, if a resident approaches the Board about changing the existing rules to allow satellite dishes, the Chair should say: "The next item on the Agenda is a resident's request to allow satellite dishes. I recommend we revise the rules to allow small satellite dishes which are no greater than 18 inches. I have weighed the pros and cons and believe it is a positive change. Assuming the Board is in support of this change, I would like to circulate the new rule and see the response from the other residents. May I have a motion to approve my recommendation?" This may have saved 30 minutes.
- Board Meetings are for making decisions, not for beginning the decision making process or discussing minor issues, such as common expense arrears and compliance matters.
- Board Meetings should not be the place to micro manage the manager.

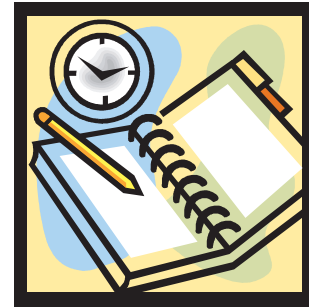


Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

- Board Meetings should be used to make decisions on important issues like funding reserve funds and planning for future expenditures.
 - Try to avoid conflicts by perhaps presenting the Agenda to the Directors in advance of the Notice and advise the Directors that they can add or remove topics within a certain time period prior to the meeting; e.g. Send the Agenda 15 days before the meeting and give Directors five days to send their changes. At the meeting, the Chair should ask if there has been any emergency which should be added to the Agenda. This process gives each Director two opportunities to add agenda items.
 - The Chair must give everyone the same amount of time to express his or her views. No one individual should be permitted to present a 30 minute monologue.
 - Set out procedures and stick to it. Write out the format of the meetings so that there is less frustration with the process and no accusations as to favouritism.
 - It is extremely important that personal attacks be ruled out of order in each instance. Name calling and interrupting is destructive.
 - Keep a structured meeting. Set your own rules or use Roberts Rules of Orders - or other parliamentary procedures. The goal is to have organized discussion.
- Remember that ideas need to be explained - not proclaimed. Advance the idea and convince the other Directors. Do your homework and discuss it. Then vote and get on with the important business of your Corporation.



Ask an Expert



Denise Lash is a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

BOARD CAN REJECT OWNER'S SUGGESTIONS

Q I have requested the following of our new (first) board of directors: post a schedule of tentative meeting dates and times; post the agenda for meetings 48 hours prior to the meeting; provide up to one hour of each meeting for residents to ask questions or make delegations to the board.

I have also requested that residents who wish to make a delegation provide a written outline of the delegation 24 hours prior to the meeting and that residents be provided the opportunity to address the board in private at the request of either the board or the residents.

I asked that minutes (approved and pending approval) of board meetings be posted after seven days and that a list of the various committees in the condominium be posted so that residents have an opportunity to join.

To date the board has refused all of the above.

Are they doing anything illegal and if so, what are my options?

A *We sent this question to Denise Lash, a condominium lawyer with Miller Thomson LLP, vice-president of the Canadian Condominium Institute's Toronto Chapter and chair of the Condominium Management Standards Council.*

Although your requests seem reasonable, the board of directors has the authority to decide whether to implement your recommendations and their refusal to do so, is not "illegal".

The processes of conducting board meetings may be contained in the bylaws for your corporation or may merely be established by the board of directors at their board meetings.

It is not uncommon for board members to keep information about board meetings confidential. There may be privileged or sensitive matters, which should not be disclosed to unit owners.

Owners, however, do have the right to inspect the records, which in turn include minutes from board meetings.

There is no requirement to post minutes of board meetings and there may be good reason not to in certain circumstances.

Check your bylaws to determine if the process it contains is being followed. Other than that you can only make recommendations to the board or think about running as a board member yourself at the next annual general meeting.

ASK AN EXPERT

Real Estate News
September 21, 2001
Modified September 14, 2004



Rules of Order

Q I am a new board member and I was quite disturbed after attending my first meeting. Everyone was shouting. We were there for 3 ½ hours and didn't get any business done. Is there anything we can do?

A *Lawyer Denise Lash of the law firm Miller Thomson LLP replies.*

The first thing to do when attending the first board meeting is to make it clear that a board meeting is a place for members to resolve old business and discuss new matters. Well how often does this happen? I have attended many board meetings that could be described in one word - chaos. So where do you go from here?

Procedure is key. Following "rules of order" such as Robert's Rules of Order - parliamentary procedure - will help you get through those meetings. These rules may be difficult to understand but they do contain the basic concepts that boards should follow:

- Follow the agenda.
- Discuss one subject at time.
- Give each board member a chance to speak.
- Speak only when recognized by the chair.
- Address questions and comments to the chair.
- Decide issues through motions, seconds and votes.

Start with procedure - you should see some very positive results.

Q We are putting together new by-laws that we will require under the new Condominium Act. The problem is that for these by-laws to become effective, we need a majority of the owners in the corporation to vote in favour. We can barely get 25 percent

of the owners out to our meetings. How can we get these by-laws passed?

By-laws

A *Condo Living asked lawyer Denise Lash of Miller Thomson LLP*

As you said, you'll need a majority of owners to vote in favour of the by-laws. The owners don't have to attend the meeting, but may give a "proxy" to someone to vote for them. Try calling the meeting and solicit as many proxies as you can. If at the meeting you find you don't have enough proxies, you may want to adjourn the meeting to another date and if your proxies refer to use an adjourned meeting then keep those proxies and attempt to get more proxies or more owners to attend the adjourned meeting.

Hopefully, with all that leg-work, you'll succeed in getting your new by-laws in place.

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

BOARD FOLLOWING NEW CONDO ACT RULES

Owner Occupied Director

Q At our annual general meeting last June, we elected three people to the board of directors. One of these positions was supposed to be for a director elected by the owner-occupiers only, and not the absentee owners.

The board did not do this, however, because the corporation's lawyer had told them that this requirement of the act has been postponed for two years. Is that correct?

A *We sent this and the next query to Denise Lash, a condominium lawyer with Miller Thomson. She chairs the public relations committee of the Canadian Condominium Institute's Toronto Chapter, as well as the Condominium Management Standards Council.*



Denise Lash

The Act now provides that where at least 15 percent of the units of a corporation are "owner-occupied units", no persons other than the owners of owner-occupied units may elect or remove a person from one of the positions on the board. This means that after May 5, 2001 (when the new Condominium Act was proclaimed), corporations are to designate one position on the board to be the director elected by owner-occupied units.

Most condominium corporations elect their directors on a rotation for three-year terms (three years is the maximum permitted under the Act). After May 5, 2001, any one of the existing director positions could be designated as elected by owner-occupiers. That means any one of the board positions coming up for election in 2001, 2002 or 2003

could be designated as representing owner-occupiers.

This does not mean that the requirement is "postponed"; the requirement has been fulfilled by the mere designation, and it is only the election that occurs at a later date.

Common Expense Surplus

Q For the past five years, the management company has overcharged owners for utilities at a rate of 10 to 15 percent a year. The surplus of \$40,000 to \$50,000 each year has not been taken off the next year's budget, nor has it gone into the reserve fund. Do they have the right to do this?

A The board of directors is given the responsibility of preparing the corporation's budget, usually with the assistance of professionals based on the performance over the previous year and anticipated future expenses.

If there is a surplus at the end of the year, the corporation is not permitted to refund the owners for this surplus. The surplus must be used for future common expenses or be put into the reserve fund for the corporation. This is clearly set out in Section 84(2) of the Act. It uses the term "future" common expenses and does not restrict the use of those funds to the following year's common expenses.

CAN I BECOME A DIRECTOR OF A CONDOMINIUM?

Are you considering running for the board of directors of your condominium corporation? If you are, here are some things to consider.



Let's start with the basics. Do you know what a condominium is? It is a form of ownership and not a particular type of building. Just glance through the ads in the newspapers to see that condominiums may be commercial condominiums, residential condominiums, live/work condominiums and resort-type condominiums. These may take the form of highrise buildings, loft-style warehouses, townhomes or detached homes.

Condominiums are governed by the Condominium Act, 1998 and the declaration, by-laws and rules of each condominium corporation. As a board member, your role is to act on behalf of the owners in controlling, managing and administering the common elements and the assets of the corporation. This is usually done by hiring professional property management companies to carry out the business of running the corporation with supervision from the Board of Directors.

What qualifications do you need to become a board member? The Condominium Act only states that you need to be a minimum of 18 years of age, not an undischarged bankrupt and not mentally incompetent. Every condominium corporation has its own set of by-laws and there may be additional qualifications noted in the by-law.

How do you become prepared for the job as director? Firstly it is important to have a basic understanding of the Condominium Act, and the condominium documentation for your corporation. It helps to attend seminars and courses offered by different organizations. A good place to start is the Canadian Condominium Institute, a non-profit corporation which offers basic and

advanced courses to directors. The Toronto Chapter of the Canadian Condominium Institute can be reached by contacting 416.491.7216 or check out their web site at www.ccitoronto.org.

Once you have a better understanding of the workings of the Condominium Act and the documentation, you will begin to understand that ensuring that the owners and residents comply with the Act and the documentation is essential in carrying out your duties as a board member.

Directors have to meet the standard of care set out in the Condominium Act and that means acting honestly and in good faith and "exercising the care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances".

The Condominium Act requires that corporations obtain directors and officers liability insurance. This insurance will protect directors in the event that a claim is brought against them personally. But remember that this type of policy will not cover those directors in instances in which that board member did not meet the standard of care as set out in the Condominium Act.

The Condominium Act goes even one step further by stating that if the board members rely on the report or the opinion of a lawyer, public accountant, engineer, appraiser or other person whose profession lends credibility to the report or opinion, then if there is a mistake the director will not be found liable for breach of a duty because that director relied in good faith upon that report or opinion.

All of that work and hopefully the rewards pay off. The challenge is to know what your responsibilities are as a director and to carry out those duties. The result may be a successful and well-run condominium corporation and a pleasant community to live in.

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

CONDO

DIRECTORS' AND

OWNERS'

RESPONSIBILITIES

In my previous report, I wrote about the "Bill of Rights and Responsibilities" that has been adopted by many Condominium Associations in the U.S. I covered the



Denise Lash

basic rights that both owners and corporations should strive for. This report outlines the "responsibilities" which may be used by condominium corporations as guidelines for promoting a healthy and harmonious community.

Unit Owners' Responsibilities

1. Comply with the Condominium Act and the condominium documentation.
2. Maintain their units in accordance with the Condominium Act and the condominium documentation.
3. Treat the directors' honestly and with respect.
4. Vote at owners' meetings.

5. Pay common expenses on time.
6. Provide current contact information to ensure that the Corporation's records are up to date.
7. Ensure that those who reside in their unit (eg. tenants and guests) comply with the Condominium Act and the Condominium Documentation.

Directors' Responsibility

1. Fulfill their duties in accordance with the Condominium Act and exercise discretion in a manner they reasonably believe to be in the best interests of the community.

2. Exercise sound business judgement and follow established management practices.
3. Balance the needs and obligations of the community as a whole with those of individual unit owners and residents.
4. Understand the condominium documentation and become educated with the Condominium Act and manage the condominium corporation accordingly.
5. Establish committees or use other methods to obtain input from owners and non-owner residents.
6. Conduct open, fair and well publicized elections for

the directors.

7. Welcome and educate new residents of the community - owners and non-owner residents alike.
8. Encourage input from residents on issues affecting them personally and the community as a whole.
9. Encourage events that foster neighbourliness and a sense of community.
10. Conduct business in a transparent manner when feasible and appropriate.
11. Allow unit owners access to appropriate records when requested.
12. Collect all monies due from owners.



Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

CONDOMINIUM ACT FURTHER DEFINES THE ROLE OF THE DIRECTOR

I often ask directors why they take on the role of director for their condominium corporation. The usual response is that they care about their community and want to ensure that they take an active role in seeing that their condominium is well run and maintained.

The problem, however, is when the Board of Directors is split in their decision making or where owners lose faith in the Board and question the Board's actions on a continuing basis.

Many directors when they take on the position of director may be unfamiliar with condominium living and the Condominium Act. What usually happens is that directors get on the job training by simply serving on the board over their term.

But what is the "standard of care" that directors must exercise?

The Condominium Act states that a director shall act honestly and in good faith and shall also "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances".

The Act also provides that directors shall not be found liable for a breach of duty if the directors rely in good faith on written financial statements of the corporation or a manager under a management agreement or rely on a report or an opinion of a lawyer, public accountant, engineer, appraiser or other person whose profession lends credibility to the report or opinion.

What this means is that directors should be seeking professional advice on legal issues, accounting/financial issues and engineering matters and not making decisions without getting the proper advice. Directors not acting in accordance with the Condominium Act may very well be held personally liable for any costs or damages that may result.

Even though the Act provides the "standard of care" that a director must exercise, can a Corporation limit the liability of the directors?

In the case decision of *Frontenac Condominium Corporation No. 7 and Sandu* (April 98), the condominium corporation brought an action for damages against former directors alleging that the previous directors were negligent for failing to properly maintain the common elements and for failing to pursue claims for defects.

This corporation had a by-law which limited the liability of the directors by stating in the by-law that directors would not be liable for any loss unless it happened through that director's own dishonest or fraudulent act.

The Court held that by-laws cannot be passed to limit or exclude liability.

Directors who are looking for information or courses on being a director may want to call the Toronto Chapter of the Canadian Condominium Institute at (416) 491.6216. CCI is a non-profit organization which assists members in the condominium industry through education, information and workshops.



BY DENISE LASH



DIRECTORS' AND OWNERS' RIGHTS AND RESPONSIBILITIES

In my previous Condominium Report, I outlined what unit owners are entitled to vote for and briefly touched upon directors' responsibilities.

Unit owners elect directors, and directors are then entrusted with the duties of operating the Condominium Corporation.

On a more general level, to establish and maintain a healthy community, it is essential that both the unit owners and the directors (as their elected leaders), abide by certain principles.

The Community Associations Institute in the U.S. has developed "Rights and Responsibilities for Better Communities" which serve to foster harmonious and responsive condominium communities. The principles are merely the ideal standard to which condominiums could aspire and are goal-based. Here are some of the basic principles which have been slightly modified.

Take a look and consider whether your condominium corporation wants to adopt these and work in raising awareness, building consensus and promoting involvement in your community.

Unit Owners' Rights

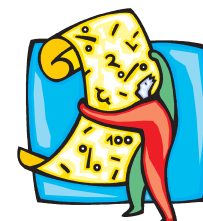
1. A responsive and competent Condominium Corporation.
2. Honest, fair and responsive treatment by directors and managers.
3. Participation in the governing of the condominium

by attending owners' meetings, serving on committees and standing for election for directors.

4. Access to the Corporation's books and records.
5. Prudent payment of fees and other assessments.
6. Live in a community where the property is maintained according to established standards.
7. Receive all condominium documentation (the Declaration, By-laws and Rules).

Directors' Rights

1. Expect owners to meet their financial obligations to the community.
2. Expect residents to know and comply with the Condominium Act, the Declaration, By-laws and rules of the community and stay informed.
3. Respectful and honest treatment from residents.
4. Conduct meetings in a positive and constructive atmosphere.
5. Receive support and constructive input from owners and non-owner residents.
6. Personal privacy at home and during leisure time in the community.
7. Take advantage of educational opportunities that are directly related to their responsibilities and as approved by the Corporation.



REAL ESTATE NEWS

NOVEMBER 7, 2003

Modified September 1, 2004

DI RECTORS' SKI LLS

Many condominium corporations are now in the process of calling annual general meetings for their condominium corporation. This is the time that the elections take place for new directors.

The directors are the "chosen ones" that are given the responsibility to conduct the affairs of the condominium corporation. The actions taken by these directors will directly impact upon the present and future well being of the condominium corporation.

Therefore, it is important to have directors that are knowledgeable and are concerned not only about the present status of the corporation but the future of their condominium community.

What skills should a director have?

Directors are subject to many demands. Even in most stable condominium corporations, directors may resign due to lack of interest, time or because others want to vote for their removal off the board. It is in a condominium corporation's best interest to encourage people with good leadership skills to join the board.

Communicative skills are important. A community with effective communication between the board and the owners will function more efficiently and generate more volunteer participation by the owners.

The director must understand the Condominium Act, the condominium documentation and must know when to seek professional advice or assistance. When is the appropriate time to contact the property manager, the insurance agent, the accountant, the engineer or the lawyer?

The director must work with other board members even where some personalities may conflict. All directors, however, must be acting in the best interest of the condominium community, be kept informed and called upon for information and feed back.

Once elected to the board, each director should be given a description of their roles, outlining their responsibilities. So, what should a corporation do to inform the owners as to the importance of electing "quality" directors?

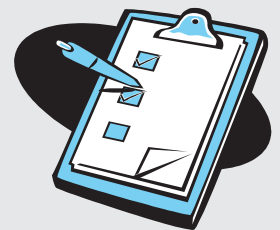
Prior to the annual general meeting, the present board of directors may want to call an informal owners meeting to discuss the role of the board and how the condominium corporation operates.

Here is a list of suggested topics to discuss:

- How the corporation functions and what the corporation means to each director
- The role of the board, committees and management in the operation of the condominium corporation
- How the board handles owner's questions, participation and support
- Describe the current tasks of the committees and the goals of the board

It is important to keep in mind that you will never have all owners support the actions of the board. The real challenge is to sustain a high level of owner/resident awareness and support.

New directors may have limited experience with sitting as a board member of a condominium corporation. So how do you educate your board members? One place to start is the Canadian Condominium Institute - Toronto Chapter. The Toronto Chapter offers seminars, directors courses and materials, all of which will further the education of any new board member. For further information call the Canadian Condominium Institute at (416) 491-6216.



Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

DO YOU WANT TO BE ON THE BOARD OF DIRECTORS?

Before considering running for the Board of Directors of your Condominium Corporation you should be aware that being a director is not an easy job. It involves making difficult decisions, which affect the day to day lives of owners and residents in a community. Directors deal with a wide range of matters relating to the general "business" of running a Condominium Corporation as well as organizing community and social activities.

Budget

When it comes to the financial well being of a condominium corporation, a director should be relying on those professionals with experience with condominium corporations. Directors should be looking to their property management company, their auditors, engineers and legal counsel in preparing their annual budget. Here are just a few items to consider before finalizing the budget.

1. You may want to gather input from unit owners, the board, committees and management as to what they want to see in their budget.
2. Mandatory Reserve Fund Studies means that the board has an obligation to carry out these studies and as part of the annual budget, to determine contributions to the Reserve Fund based upon those studies.
3. A new annual budget often means an increase in common expenses; That requires that an accurate budget be prepared.
4. Be straightforward and honest to the owners about why the expenses are the way they are.
5. Think about the future and plan for it in each budget you prepare.
6. Look for ways to save costs but do not sacrifice quality or the level of service without communicating this information to the owners.
7. Once the budget is prepared communicate the budget in an effective manner.

Committees

It is often a good idea for a board to form committees as a means of gathering input from the unit owners on various issues and to assist in open communication between the residents and board members.

When setting out to form committees, you should take into consideration the following:

1. Create committees and define their purpose.
2. Have ongoing communication between committee members and members of the board.
3. Listen to committee members opinions and suggestions.
4. Give the committee goals and objectives to reach.
5. Give the committee deadlines in which to meet those goals.
6. Make it clear that committees offer recommendations only.
7. Positive reinforcement works wonders - reward committee members for their efforts.

I have just outlined two matters to consider. For those directors who want more information on "being a director" the best place to start is with the Toronto Chapter of the Canadian Condominium Institute which offers courses, seminars and reading material to purchasers, owners, directors and professionals in the condominium field. For information contact 416.491.6216 or visit the website at www.ccitoronto.org.



Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

Real Estate News

*January 9, 2004
Modified
September 1,
2004*



Real Estate News

April 2, 2004

GET ON BOARD

At the Annual General Meeting, new directors are elected and often those directors have never served on the board of a condominium corporation.

The decisions that those directors make involve not only the day to day operations of running a condominium corporation but decisions which impact on the future well being of the condominium corporation.

New board members may struggle with their new responsibilities as board members.

Although many boards do promote courses and have seminars for directors, having an initial formal orientation and training is something that boards and managers may want to also consider implementing.

An innovative approach taken by some boards is to establish a special introductory meeting for approximately two hours for

those new board members to review and become familiar with the condominium documentation, to get an overview of current and pending projects along with an explanation as to how the board operates.

This is then followed up with a short fill-in-the-blank questionnaire which is submitted and discussed the following week at which time the new director then asks his or her own questions.

The questionnaire is used not as a test but as a learning tool for new board members to become aware of what is going on in their condominium corporation.

It is best to take that extra time upfront than expecting those board members to start right in on the business of the Corporation without any time to familiarize themselves with the process. Those boards who have done so, state that it works well in the long run.

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP



*Denise Lash is a lawyer
practising Real Estate &
Condominium Law with the
firm of Miller Thomson LLP*

Real Estate News

April 28, 1998

PRESIDENT NEEDS GOOD QUALITIES TO LEAD BOARD OF DIRECTORS

In my previous Condominium Report, I discussed the importance of choosing a knowledgeable Board of Directors. A well run corporation will benefit the owners and residents of a condominium community. So once elected, what does the Board of Directors do?

The by-laws of the Corporation will establish the general duties of the Board by which the Directors will conduct themselves. Once the Board is elected, the Directors will appoint from among themselves, the Officers of the Corporation. These are the positions of the president, vice-president, secretary and treasurer.

The President

The president's most important role is that of "leader" of the Board. As the leader, the president will carry out many governing tasks, such as conducting Board meetings and meetings of owners. As with any position on the Board, there is no formal education required to sit on the Board and most presidents will have "on the job training". Often times, the president will need the expertise of a professional or turn to educational sources. It is important that the president be aware of the Board's limitations and seek consultation or information when needed. Having the assistance of outside advisors does not mean the Board is not performing its function. Rather, getting the proper advice will serve the best interest of the Condominium Corporation.

These outside advisors include lawyers, insurance agents,

engineers, accountants and property managers, all of whom should be familiar with the Condominium Corporation and have the necessary expertise.

What makes a Good President?

- Confidence - ability to make decisions and stand by them
- Takes Charge - ability to make things happen. This includes dealing with unpleasant issues.
- Commitment and Impartiality - ability to place the interests of the Corporation ahead of any personal issues or gain.
- Trust - ability to gain the trust of other Board members and unit owners

"Respect Thy President"

The president will invest considerable time and energy in serving the board and the Condominium Corporation.

The president will not only conduct the business of the Condominium Corporation but will deal with the human emotions and expectations with each new issue facing the Corporation. The right person for the job will try to keep a level head at all times, difficult as it may be.

The role of the president is not for everyone and is a position, which requires the support of the other Board members. Once recognized by the unit owners that the president occupies an important place in their community and is supported by the unit owners as a whole, the role of president can become a very satisfying and rewarding position.

SKILL SET NEEDED TO BECOME CONDO DIRECTOR

If you are an owner of a condominium unit and have considered volunteering your services by offering to stand as a candidate for director at the next Annual General Meeting - be prepared.

Being a director of a condominium corporation is in most cases, a volunteer position that requires a great deal of time, energy and dedication.

The decisions that directors make, have a direct impact on the residents in the community. Many of the matters that directors will deal with involve the day to day operations of running a condominium corporation. Apart from the operations, one of the key responsibilities of a director is to consider and prepare for the future well being of the condominium corporation. That means taking the appropriate steps that in the best interests of the Corporation over the long term.

I have often been asked what skills are needed to become a director. In order to determine what skills are required - it is helpful to consider the common complaints from unit owners. Here are three complaints and the suggested skills that are required to deal with those problems.

1. We don't know what is going on in our Corporation - Communicative skills are very important. A community with effective communication with the residents will result in more volunteer participation and co-operation from the residents.
2. The directors are not following the proper procedures under the Condominium Act. Especially now with the new Condominium Act, which came into effect May 5, 2001, directors must understand the Act, the condominium documentation and in particular, must know when to seek professional advice or assistance.
3. All our directors do is fight amongst themselves. No business in being conducted - Each director must work with other board members even where some personalities conflict. By clearly defining each director's role and by having a President who takes charge at board meetings and controls the business of the meeting by placing the interest of the Corporation ahead of any personal interest or gains of the board members - the business of the Corporation can be carried out effectively.



Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

*Real Estate News
September 14, 2001
Modified September 1,
2004*

THE ROLE OF PRESIDENT



A couple of weeks ago, I participated in a seminar for the Toronto Chapter of the Canadian Condominium Institute on the topic of being a condominium president.

It was interesting to hear from the Presidents themselves, from the self-managed townhome corporation to highrise building with shared facilities and professional property management. Although each condominium corporation is unique and had a whole host of problems and challenges, the experiences described by the Presidents on their Boards of Directors were similar in many respects.

Even the professional minute taker, who gave her perspective on what it takes to run the annual general meeting effectively, gave some valuable insight into how Presidents should govern. Some very good comments she made were "stick to the business of the Corporation" - "let property management manage". And, "it is possible to get through the business of an Annual General Meeting in 17 minutes if you stick to the Agenda".

It is important to remember that the role of the president is that of "leader" of the board of directors. That involves conducting the board and owners meetings. While there is no formal training required to even become a director on the board of directors, it is essential that board members, especially the President, have the basic knowledge and become familiar with the Condominium Act and the condominium documentation and know when to seek professional advice for the Corporation.

There are various seminars and courses offered through the Canadian Condominium Institute and now a particular series of Seminars put on for Condominium Presidents.

Some Corporations are incorporating a "Code of Ethics" as part of their new by-law revisions to clearly spell out the qualifications and responsibilities of board members. So what are the qualities that make a good President?

Four qualities that are essential -

1. Confidence - ability to make decisions and stand by them
2. Taking charge - ability to make things happen - even the difficult, unpleasant issues
3. Commitment and Impartiality - ability to place the interests of the Corporation ahead of any personal issues or gain
4. Trust - ability to gain the trust of the other Board members and the unit owners

It is not often that we see Presidents that have all the above qualities - and often is tied into dedication and hard work.

The role of President is not for everyone and is especially difficult when the efforts of the President and the other board members are not appreciated by the residents. But it may be that one day those efforts are recognized and the residents voice their appreciation for the hard work and dedication of those individuals.

A fine example of this is a recent Annual General Meeting I attended on Sunday April 28, 2002. John Parr, President of YCC No. 229 a three high rise building corporation, announced his retirement from the Board of Directors after 11 years of serving as a board member. It was a very emotional experience for all of us who attended and he and his wife were honoured by all those present with applause and tears. His efforts were not going unnoticed and John will always be my idea of the "ideal" President.

By Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

USEFUL TIPS FOR CONDOMINIUM DIRECTORS

Being a director of a Condominium Corporation is a position which involves making difficult decisions affecting owners and residents in a Condominium Corporation. There are many issues which board members have to deal with ranging from the business of running a Condominium Corporation to organizing community activities.

Here is a sample of some matters that members of the board will be involved with.

Tips for Budgets

1. Gather information from unit owners, the board, the committees and management as to what they want to see in their budget.
2. Face Reality - the New Act is here - Mandatory Reserve Fund Studies - Board's obligations and liability issues for failing to act honestly and in good faith - prepare an accurate budget.
3. Yes, increase common expenses if you have to.
4. Explain to the owners by being straightforward and honest about why the expenses are the way they are.
5. Think about the future and plan for it in each budget you prepare.
6. Look for ways to save costs but do not sacrifice quality or the level of service without communicating this information to the owners.
7. Once the budget is prepared communicate the budget in an effective manner.

Form Committees

1. Create committees and define their purpose.
2. Ongoing communication between committee members and members of the board.
3. Listen to committee members opinions and suggestions.

4. Give the committee goals and objectives to reach.
5. Give the committee deadlines in which to meet those goals.
6. Make it clear that committees offer recommendations only.
7. Positive reinforcement works wonders - reward committee members for their efforts.

Rules and Enforcement

1. Create the rule but allow residents to have input.
2. Rules should be reasonable and specific.
3. Review your existing rules - create new ones if need and get rid of those rules which you don't need.
4. Rule violators - try to make the first contact informal - if possible.
5. You must enforce the rules - it is your duty.
6. Hold owners meetings on controversial rules.

Tips for Tenants, Children and Parking

1. Welcome your tenants - involve them in the condominium community.
2. Distribute a tenant's handbook.
3. Have special events for children.
4. Have children participate in organizing events.
5. Do you have to tow? Tow cars as a last resort.
6. Make sure that parking signs are visible.



**DENISE LASH IS A LAWYER
PRACTISING REAL ESTATE &
CONDOMINIUM LAW WITH THE FIRM
OF MILLER THOMSON LLP**

WHO SHOULD DECIDE IF CONDO PRESIDENT IS TO BE PAID?

ASK AN EXPERT

Q - I am an owner of an apartment in a small building with 19 other owners.

Our president has decided that his services on a corporation project where he acted as liaison with trades should be paid, and he submitted his \$3,000 bill to the board members. He is seeking payment for work he undertook as a volunteer. He never informed anyone that he expected to be paid. He could have very easily delegated some of the work to the numerous other qualified individuals in the corporation.

The board was against paying him and sent out a letter to all the shareholders outlining the reasons why. Board members believed paying would set a bad precedent, and they felt he was in a conflict of interest, being both hired help and the president to whom all outside

hired help reports. The board felt a voluntary contribution was appropriate since he undertook the work as a volunteer and, in an informal poll, most of the owners agreed they would make a contribution.

The proposal was presented at a meeting of the shareholders. The president had proxies, plus he voted. It was agreed at the meeting to pay his roommate's company (the roommate is also his boss) for time the president took to make calls and write some emails for the project while at the office. They called it a payment for "out of pocket expenses". But then the president requested the cheque be made out to his roommate, not the roommate's company. The auditor said this was not allowed (it is tax evasion) so the board refused.

He now wants payment directly to himself when the corporation's by-laws specifically prohibit any of the officers from remuneration for performing their duties. He said he wants to amend or suspend our by-laws to allow payment in this instance.

Who should decide if he should be paid? It is just the decision of the other elected officers? Was the board negligent in allowing the issue to be brought to the shareholders in

the first place?

A - *We sent this question to Denise Lash, condominium lawyer at Miller Thomson LLP and director and vice-president of the Toronto Chapter of the Canadian Condominium Institute.*

A condominium corporation can only pay a director if it is properly authorized to do so. Section 56(2) of the Condominium Act specifically provides that a by-law relating to the remuneration of directors shall fix the remuneration for a period not exceeding three years. This means that every three years a new by-law has to be passed to authorize payment to a director.

The Act does not specify any amounts but does require that this step be taken. By-laws are passed by the board of directors (that requires that a majority of the board members approve the by-law) and then the owners must confirm the by-law at an owners meeting. The by-law is only effective if a majority of all the units vote in favour of the by-law and then it is registered in the Land Registry Office.

If the director was not paid as a director but in a different capacity, that decision would only be authorized if presented to the board of directors and the board made that

decision to "hire" that director to do specific work. From your comments, it may be that the remaining directors may not have authorized the work.

The facts of this situation would have to be reviewed to determine whether the board authorized the work or not.

There may also be restrictions in the by-laws that would prevent the director from doing work beyond his/her capacity as a director.

Just because a director may benefit in some manner does not mean the director is not able to do so, as long as the proper procedures and steps are followed.

Section 40 of the Condominium Act refers to the disclosure by a director of interest and does provide information as to what disclosure has to be made and voting requirements for doing so depending upon the nature of the potential conflict of interest.



*Real Estate News
January 3, 2004*



THE STANDARD UNIT BY-LAW -

WHAT IS IT?

The new Condominium Act has introduced the concept of defining a "Standard Unit" and now allows condominium corporations to put into place a Standard Unit By-law.

What is this by-law and what does it accomplish?

The purpose of this new by-law is to determine the responsibility for insuring and repairing improvements after damage. The by-law sets out what an "improvement" is by referring to the "Standard Unit". This is important when damage occurs to the unit and repairs are required. The question then becomes who should repair that damage, who should pay for it and whose insurance if any, should cover the damage.

Improvements

What is an improvement? It is one of two things depending on when the Condominium Corporation was created. It is any alteration, change or upgrade to the base unit as originally sold by the developer or if there is a Standard Unit By-law anything that is not listed as part of the standard unit.

Why do we need to know what an improvement is? For Condominium Corporations registered after May 5, 2001, the Condominium Act states that Improvements to a unit

are not the Corporation's obligation to insure and repair after damage. For Condominium Corporations created before May 5, 2001, those improvements made to a unit, which were in place before the registration of the declaration and description, are the Corporation's responsibility to insure and repair after damage (improvements made after registration are the unit owner's responsibility), unless those Corporation's put into place a Standard Unit By-law. The Standard Unit By-law will

establish what constitutes a "Standard Unit". A standard unit includes only those items which are listed in the by-law as forming part of the unit. Anything which is not included in the list which may be such items as kitchen countertops, wall coverings or floor coverings will be treated as improvements. That would mean that if a fire or a flood occurred, those items would not be covered by the Corporation's insurance policy. The unit owner therefore must insure those items not included in the Standard Unit By-law. The responsibility for repair, regardless of who caused the damage would be the unit owner's.

What to Do Right Now

Corporations should now be taking steps to put into place Standard Unit By-laws and make owners aware of their obligations to insure those items which are their responsibility to insure.



By Denise Lash

*Real Estate News
January 18, 2002*



Standard Unit By-law

Condominium Corporations have been taking steps to update their by-laws since May 2001, but many Corporations have delayed preparing the Standard Unit by-law because of the uncertainty as to how to deal with this new concept of "Standard Unit" and the impact it may have on unit owners and their insurance coverage.

Our experience now is that many Corporations are more comfortable with passing additional insurance obligations on to the unit owners, after receiving information and recommendations from their insurers. Now is the time to start enacting Standard Unit by-laws.

We have intended to provide information in this article which will hopefully guide both managers and directors through the process of preparing a Standard Unit by-law and will outline some of the items to be considered before starting the process.

What is a Standard Unit

A "Standard Unit" is the term used to describe what items form part of the standard unit in a particular condominium corporation. There may be more than one "class" of a Standard Unit which will be separately defined as a separate class and treated differently when it comes time to preparing a Standard Unit by-law. Items which are not included in the definition of the Standard Unit, are considered to be improvements or upgrades made by the owner or a previous owner of the unit.

Purpose of the Standard Unit

The reason for establishing a Standard Unit is to clearly delineate those items covered under the Condominium Corporation's insurance policy and those items which are covered by the unit owner's insurance. Differentiating between the two enables claims to be properly allocated between each of the insurers which will often assist managers and boards in resolving disputes involving the responsibility for the repairs or the cost of the repairs when damage occurs.

The *Condominium Act, 1998*, requires a Corporation to obtain insurance coverage for both the units and the common elements. The Corporation's insurance obligation does not extend to improvements made by owners to the unit. For instance, a Corporation's insurance will usually cover the drywall, paint, and standard floor coverings, countertops and cupboards as they existed at the time of the original sale of the unit. The unit owner's insurance will cover any improvements or betterments made to the unit by the owner of the unit; these improvements may include upgraded floor coverings, renovated kitchens and bathrooms, or upgraded wall coverings such as wallpaper.

Corporations that have had numerous insurance claims may be faced with higher insurance premiums or may even have difficulty obtaining insurance coverage. Using the Standard Unit By-law to remove items from the definition of the Standard Unit and thereby shifting those items to the category of "improvements" may reduce the number of claims which may have in the past been the result of some abuse by unit owners who wanted that "brand new" carpeting or countertop.

What is an Improvement?

The definition of an improvement depends on whether the Condominium Corporation has a Standard Unit by-law. An improvement can be either:

- Any alteration, change or upgrade to the base unit as originally sold by the developer which includes changes made after the registration the declaration and description creating the condominium corporation.; or
- If there is a standard unit by-law, anything that is not listed as part of the standard unit.

Prior to the coming into force of the *Condominium Act, 1998*, everything installed by the developer before registration of the declaration and description creating the condominium corporation was considered to form part of the unit. As result, Condominium Corporations were responsible to insure and repair those items after damage. For these existing Corporations, the obligations to repair after damage and insure are the same as under the previous Condominium Act.

For Condominium Corporations created after May 5, 2001, the Standard Unit will be either:

- The standard unit described in a by-law made under the Act if the board corporation has passed a standard unit by-law; or
- The standard unit described in the schedule prepared by the Declarant setting out what constitutes a standard unit.

Most declarants of new condominiums provide a schedule setting out what constitutes a Standard Unit. The schedule usually consists of the developer's unit finish schedule attached to agreements of purchase and sale. Although provided in compliance with the Act, these schedules are often insufficient because they only mention the certain items and details included for marketing purposes but fail to list other items and details which are integral parts of the unit. For example, many schedules may not give sufficient details of interior doors, ceiling finishes, electrical systems, plumbing fixtures, etc...

Standard Unit by-laws should provide sufficient detail to determine the quality of the finishings included. Many by-laws will list brands and models of items or the grade. A common term that is used to describe a particular quality or grade is "builder's grade". Many buyers know what to expect when they buy a unit that is being sold with "quality wall-to-wall carpeting, builder's grade". But what does it really mean? Builder's grade refers to the typical quality or grade used by builder's at a particular time for a particular class or type of building. "Builder's grade" may differ for a modest building versus a luxury building.

Insurance adjusters typically rate anything beyond builder's grade finishes in a condominium unit (save true luxury condominium buildings) an improvement made by the owner. The following lists some of the finishes and components typically applicable to a non-high luxury unit:

- Builder's grade polyester or polypropylene carpet with an average pile density over 3/8 or 7/16 thick;
- Baseboard 2 1/2" or 3" high of common hardwood;
- Walls either 1/2" or 5/8" drywall, sometimes fire rated, and waterproof in the bathroom;
- Walls and trim painted with latex paint in a neutral colour;
- Where wall covering is provided, it should be specified whether it is vinyl, metallic, a builder's grade or premium quality;
- Where built-in cupboards and cabinetry exist, the size, nature and quality should be specified;
- Built-in appliances and fixtures need to be specified.

Typically, any part of the unit that surpasses the above standard can be considered an improvement. It is important to note that any feature of a unit not included in the definition of a "Standard Unit" will be considered an improvement to the unit even if the betterment was completed by a previous owner or even the developer.

The Standard Unit By-Law

This is a Corporation by-law that establishes what constitutes a Standard Unit in a given building. This by-law sets out a list of items that are included in the Standard Unit. Anything not listed in this by-law will be treated as an improvement - and therefore are items that ought to be insured by the unit-owner.

How is a Standard Unit By-Law Created?

Developers of condominiums registered under the *Condominium Act, 1998* are required to provide a schedule defining a Standard Unit within 30 days of the turn-over meeting where the first new condominium board is elected.

For Pre-existing condominiums, however, the task of preparing a Standard Unit by-law falls to the board of directors. Remember that everything that is not part of the Standard Unit becomes an improvement, and must be insured as such.

Insurance

The Condominium Act does not impose a penalty for existing Condominium Corporations that fail to pass a Standard Unit by-law; as such, it is not mandatory.

However, a well-defined line that separates Standard Units from improvements is essential for an insurance company to ensure that it is not on the hook for broader coverage than anticipated. It is also important for Condominium Corporations and owners to know exactly who is responsible for insuring what. In this regard, it is essential that owner's have adequate insurance to cover their improvements.

Another important issue is the insurance deductible. When an insurance claim is made in relation to damage to a unit, a deductible is usually payable. If the damage sustained is to improvements, the claim will be made under the unit owner's policy and the unit owner will be responsible for the deductible, not the Condominium Corporation. Deductibles on insurance coverage arranged by the Condominium Corporation are a common expense to be shared by all unit owners, unless:

- an owner or their tenant cause damage to the owner's unit; the owner may be responsible for the insurance deductible; or
- the Condominium Corporation passes a by-law that extends the circumstances when the deductible becomes a unit owner's responsibility where:
- the owner or the tenant cause damage to other units or the common elements; or
- if a genuine accident occurs where no one causes the damage.

Standard Unit v. Maintenance

The "Standard Unit" relates only to insurance and *repair after damage* obligations of the condominium corporation and the unit owners. Separate from the insurance obligations to repair after damage, is the obligation to maintain. The term "maintenance" includes repair and replacement due to normal wear and tear. The Standard Unit cannot be used to shift maintenance responsibilities from the Corporation to the owners or vice versa. The Condominium Corporation's Declaration and the *Condominium Act* ought to be reviewed to determine who maintains what. The Act states that the Corporation maintains the common elements, and the unit owner maintains the unit. A Corporation's declaration can alter those obligations, however, and owners would be wise to determine whether the obligations under the Act are determined differently.

The Preparation

The Act clearly states that the Standard Unit is "the standard unit described in a by-law ..." Essentially this means that the Standard Unit by-law should list those items that form part of the Standard Unit.

When listing the items included in the Standard Unit, it is important to include sufficient detail to identify what is included. For example it is better to indicate "1 1/2" painted wood baseboards" than "painted baseboards" and it is better to indicate "1 Luxury brand single lever bathroom tap fixture (with stopper control)" than "1 sink". Many Corporations prepare by-laws that omit several integral parts of the unit. Some of the items that are often forgotten include interior doors and hardware, closet and shelving details and lighting particulars, to list a few.

There are other Corporations who are approaching the preparation of the Standard Unit as a mechanism for shifting the obligation to insure more items within the unit boundaries to the unit owner by defining the Standard Unit as "bare bones" and removing such items such as floor coverings from the definition and making those items "improvements".

The following is a sample questionnaire that can be used to assist you in your task of creating a Standard Unit by-law for your Corporation and to help ensure that it complete.

QUESTIONNAIRE

RESIDENTIAL UNIT CLASS - STANDARD UNIT

GENERAL		Faucets	
Ceilings		Bathroom Accessories	
Baseboards		Exhaust fans	
Point grade on doors and walls		Medicine cabinet	
Threshold		<i>Laundry Room</i>	
Interior Doors		Cabinetry	
Exterior Doors of Unit		Faucet	
Windows		Venting for washer and dryer	
Walk-in closet and closets		Laundry Tub	
Hardware		ELECTRICAL AND LIGHTING	
KITCHEN		Outlets	
Cabinetry		Light switches	
Oven exhaust fan		Cable for stove and dryer	
Sink		TV Outlets	
Floor covering		Telephone outlets	
BATHROOMS AND LAUNDRY ROOM		Fixtures	
<i>Main Bathroom</i>		Wiring	
Cabinetry		Smoke detectors and CO detectors	
Counter top		Under save exterior pot lights	
Sinks		Fireplace	
Tubs and Toilets		Mantel	
Shower in ensuite		Heating	
Walls		Air conditioning	
Mirrors		Hot water tank	

Once the task of preparing the by-law has been completed and confirmed by the unit owners, the Corporation should then be providing all the unit owners with sufficient information, including a copy of the confirmed by-law, so that the unit owners are aware of their insurance obligations and obtain the appropriate coverage.

CONDOMINIUM COMMUNICATION

Effective Condominium Communication - Is it possible? Constant complaints - "The Board never tells us what they are doing" "We do not trust the Board members" "Let's get rid of the Board"... These are the words spoken by many owners living in condominiums. Why? Because owners may only be seeing the end result - increased common expenses without knowing the full extent of why? - perhaps mandatory Reserve Fund Studies require more contributions to the Reserve Fund or possibly utility increases.

These situations can sometime be avoided simply by knowing what approach to take. What should a Board do? Communicate Effectively.

Here are some tips:

1. Keep the owners informed on a regular basis - then the owners won't think that the Board has "something to hide".
2. Newsletters, websites, postings - foster that sense of community by organizing group events so that owners can get to know one another and the Board members.
3. Be careful with written communication where any owner is not in compliance with the Declaration, By-laws or Rules of the Corporation. It is best to

have contact with a resident first by phone or in person or if the letter is the first communication, it may be advisable to insert wording in that letter which is of more friendly in tone.

4. Listen to residents and keep an open mind - sometimes a Board can learn from the owners and get a different perspective. There may be suggestions made by owners which can be incorporated in to certain decisions made by the Board.
5. Don't be afraid of change - it may be the time to approach things differently and to work on changing those old rules or introducing new by-laws. Many Corporations are not taking steps to amend their Declarations to try and resolve long standing issues.
6. Try not to personalize matters and please, no personal attacks! Board members and owners sometimes focus on the person rather than on the issues. Learn to disagree and work through it. It may be that there will be a compromise.

Follow the tips and set your goals as Board Members by staying focused. You will see that the results will be a more knowledgeable group of owners and hopefully a more harmonious community.



Denise Lash is a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP



THE FOCUS SHOULD

BE ON COMMUNITY

Condominium Corporations are not just about buildings, rules or money. These Corporations are created for the purpose of helping people and building a strong and prosperous community.

Board members and property managers who are often times viewed as maintenance supervisors, rule enforcers, common expense collectors and meeting organizers really take on the role as leaders and teachers in the condominium community.

So where should board members and property managers focus their attention?

- Leadership - The first step in building a community is for the board to understand its "leadership role" and its importance. Board members are not only elected to hold meetings, to ensure that maintenance is carried out to the units and the common elements and to look after financial well being of the condominium. Board members become the leaders in the community and leadership means action! This requires setting out a plan for short term as well as long term goals.
- Relationships - This involves constant interaction between management, the board members and the residents, contractors and municipal officials. Board members change, so the interaction among as many people involved with the community assists in developing long term relationships where residents feel that "somebody cares". Time spent to nurture these relationships will pay big returns in the long run.

We know that often residents may not trust board members who are sometimes perceived as "condo commandos". If these residents are contacted early on by the manager of the board members, they will feel more involved and more interested in volunteering their time to

assist the board in a positive way. Being proactive at that point in time can only work toward establishing bonds between residents, the management and the board members.

- Education - There must be a commitment by the board and the manager to educate not only themselves but also the residents in their community. This commitment to education requires dedication and patience. Residents need to know how the community operates and what processes are in place when a resident has a concern.
- Equality - Everyone has a right to be heard. The board is entrusted by the residents to make certain decisions, however, it is important to hear and consider other points of view from the residents, even if such viewpoints are in the minority.
- Be Reasonable - The board has a duty to enforce the Condominium Act and the declaration, by-laws and rules. However, the board should also be questioning, on an ongoing basis whether the documentation is reasonable and makes sense. If it doesn't, the board should determine what can be done, if anything, to make it more reasonable.
- And lastly, say Thanks and Reward - It takes the teamwork of many dedicated volunteers to build a community. Rewarding those volunteers by publicizing their contributions in a newsletter or rewarding them at the Annual General Meeting will show that their actions were respected and appreciated. This will serve to motivate others to volunteer as well.

Lets not forget that condominiums are about people. The challenge is building a community that truly fulfills the needs of the residents.



Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

*Real Estate News
April 21, 2000*





Real Estate News

April 9, 1999

*Modified September 16,
2004*

PROMOTE

COMMUNITY

Remember what Dorothy said as she clicked her heels of her ruby red slippers trying to get back to Kansas? "There is no place like home. There is no place like home."

Isn't that a feeling most of use have when we think of our homes. So why is it that when it comes to condominiums this concept of home and community is often forgotten.

Sometimes property managers and lawyers view condominiums as strictly units and common elements governed by specific

legislation and rules which need to be enforced to have an effective and well run condominium corporation.

But what about this home/community feel and why is it important when it comes to condominiums?

It is important because once a resident begins to understand that their home is within a community they begin to understand the importance of enforcing the rules.

It is important because once an approach is taken by property management and the board of directors to promote a "communal feel" residents become more aware and interested in their community.

Unfortunately, there are instances where lawyers have to get involved to enforce compliance with the Condominium Act, the declaration and the rules.

Often times, when the lawyers are called in to resolve a problem, whether it is a pet issue, parking issue, unauthorized alteration or other problem, the comments from the

owner or tenant are "I didn't know". "No one told me."

In many instances the owner or tenant is really not aware of the existence of any restriction or rule until they hear from property management of the lawyer.

So what should be the approach taken by property management or the board of directors in enforcing the condominium documentation?

The goal is to gain enforcement - not to belittle the unit owner.

To achieve this, letters notifying owners or tenants of non-compliance should use words that are more personal and neighbourly. Call your first letter a "courtesy reminder". No more reference to "unit", call it a home. Refer to "community or neighbourhood" not complex or corporation. Unit owner should be called resident or homeowner. Tenants are residents, make them feel like they are part of the community.

Inform the owner about the process of enforcement and

why it is necessary. Discuss the violation and how it can affect property values. Explain that the board has a duty to preserve these values and the property for everyone's benefit.

For new purchaser's what about "Welcome Packets." Purchaser's will get a status certificate which their lawyer will review. Those purchasers most often will not even review the condominium documentation.

So how about a welcome letter? You should explain what the condominium documents are about and how things work in the community. Talk about the board and management and how that operates i.e. What to do when there is a complaint or concerns, what meetings are about.

The idea is to try and educate and promote community using lawyers only as a last resort in solving "people problems".



AMENDING THE DECLARATION AND DESCRIPTION

By Denise Lash

The Condominium Act, 1998 will not make it easier for corporations to amend declarations and descriptions. Boards of directors and property managers, who are often faced with trying to enforce wording in declarations that sometimes does not express the true wishes of the residents, will now have a means to change the wording to be consistent with what the community as a whole wants.

This may be a saving grace for "lot line" condominiums - the "freehold" type. Those boards commonly face problems with owners failing to properly maintain and repair their units, which include both building structures and yard areas. By amending the declaration, and perhaps the description, to provide that the corporation will maintain part of the unit or to redefine the boundaries of the unit, making the exterior building structure and the yard areas common elements, may give more control to the board and should assist in ensuring that the condominium complex is well maintained.

Reasons for Amending Declarations

These are some problems faced by condominium corporations that will provide reasons for amending declarations:

- No dogs or cats permitted, but now want to allow one cat or dog in a unit as long as those pets are not a nuisance.
- Lack of pet restrictions, but now want to restrict pets in units.
- Satellite dish prohibitions in condominiums, but now want to allow small-size satellite dishes.
- Lack of restrictions to ensure architectural controls.
- Lack of restrictions on unit tenancies that would help to avoid transient and unmonitored changes in occupancy of residential units.
- Ambiguous provisions in a declaration or description pertaining to the question of whether the corporation or the unit owner is responsible for maintenance and repair of particular building components.

The procedure for amending a declaration is provided for in new Section 107. Following the sale of all units by the declarant, or three years following registration of the declaration and description, whichever occurs first, the board of directors may approve a proposed amendment to the declaration if the board has held a meeting of owners to discuss the amendment. Owners of at least 90% of the units (no longer 100%) must consent in writing to the amendment with respect to certain changes, and only 80% with respect to other changes (see below). In either case, the consent of registered mortgagees is no longer required.

Consent of 90% of Owners

Amendments to the declaration that require the written consent of owners of 90% of the units relate to:

- Changing a unit owner's proportionate common interest and/or corresponding percentage contribution toward common expenses.
- Altering the boundaries and description of "exclusive use" common elements.
- Changing the current allocation of maintenance and repair obligations after damage between a unit owners and the corporation when the obligations are current referred to in the declaration.

Any other amendments to the declaration or description, including conditions or restrictions relating to the occupation and use of the units, leases and sales of the units and a statement specifying what is to be included in the common expenses of the corporation, will require written consent of the owners of 80% of the units.

As is the case presently, the amendment must be registered before it becomes effective, but cannot be registered until 30 days after notice of the amendment has been given to unit mortgagees recorded on the corporation's register. That is, a title search to determine all registered holders of mortgages against the units is no longer required, thereby significantly reducing the cost of amending the declaration.

The second procedure for amending a declaration is now found in new Section 109.

This is the same procedure under subsection 3(8) of the existing Condominium Act. It involves obtaining an order to amend the declaration or description if the corporation can demonstrate there is an error or inconsistency, or that the amendment is required in order to carry out the intent and purpose of the declaration or description.

New Method for Amending the Declaration

The new Section 110 now introduces a third and new method for amending the declaration or description where the error or inconsistency is apparent and unquestionable on the face of the declaration or description. For example, if the percentage of contributions toward common expenses for all units do not add up to 100% (i.e., an obvious calculation or typographical error) the director of titles at the Land Registry Office may grant the amendment. While notice of the application to the director of titles must be given to every owner and to any mortgagee listed on the corporation's register, the board of director is not required to call a meeting and the consent of unit owners is not required.

The new amendment provisions now create a more economical method of updating and amending inadequate, ambiguous and inappropriate provisions in the declaration by eliminating the requirement for 100% approval and consent of all unit owners and mortgagees. This was long overdue.



Toronto Star

March 6, 2004

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

BARBECUE MUST GO, IF THE RULES SAY THAT'S SO

Q - I have been given five days to remove my barbeue or the board is bringing in a corporate lawyer. I live on the first floor and have a patio and yard. When I bought the unit my salesperson told me I would be allowed to barbecue. I store my propane a distance from the building. Once of the board members has a propane barbecue, and they are doing nothing about that situation. It's a double standard!

A - *We sent this question to Denise Lash, a condominium lawyer with Miller Thomson, vice-president of the Canadian Condominium Institute's Toronto Chapter and chair of the Condominium Management Standards Council.*

If there are rules that prohibit barbecues, then the board has a duty to enforce the rules regardless of what the salesperson had indicated to you.

You may want to check with that salesperson to get an

explanation as to why you were advised that barbecues were permitted.

It may also be that at the time you purchased your unit, barbecues were allowed and the corporation has passed new rules.

Any rules that the corporation has in place should be enforced uniformly and consistently against all owners regardless of whether an owner is a director or not.

In your case, the fact that a director has not complied does not mean that you are entitled to have a barbecue, but it does mean that the board must take steps to enforce the rules against the board member as well.



IT IS TIME FOR A CHANGE - A POSITIVE APPROACH TO ENFORCEMENT



Every year the Association of Condominium Managers of Ontario and the Toronto Chapter of the Canadian Condominium Institute hold a joint conference to offer seminars to owners, directors, managers, real estate agents and other professionals which address those important issues facing condominium corporations today. The recent conference held this past November 2002, focused on "Building Better Communities".

Ellen Hirsch de Hann, an attorney from Tampa, Florida and past president of the Community Associations Institute in the United States, opened the conference as the keynote speaker with some delightful comments about the need for Board Members, property managers and lawyers to take different approaches to enforcement in condominium communities.

No matter what steps boards of directors and managers of a condominium take, you will always seem to have the challenge of dealing with those residents that don't comply with the restrictions imposed in the condominium documentation. The real challenge is how to deal with those individuals and get a positive result.

Here are some key points raised by Ellen, that Boards and management may find useful:

1. Review your corporation's rules - why start every rule with "NO" - Do they need to be updated to reflect the needs in your community? Is the language clear and concise? Will residents understand them.
2. Think creatively - the objective being mutual respect between the residents and board members. Encourage participation by the residents and maintain full disclosure and discourse with residents. Get residents involved in drafting the rules by establishing committees before formalizing the rules.
3. Help new residents by introducing them to condominium living. Invest the time by sitting down with new owners and explain their obligations as owners by reviewing the condominium documentation. Educate the residents (tenants included) if you can. Introduce the old "welcome wagon" concept. Assign a resident to be the "greeting resident".
4. Review your enforcement policies - Be consistent and uniform in enforcing any breach of the Declaration or the rules and enforce them in a timely fashion. Establish complaint procedures and verify complaints before accusing a resident.
5. Lastly, use the lawyer as a last resort. Sometimes all it takes is a different approach. Try changing your ways - see what happens.

**SOLVING
CONDOMINIUM
DISPUTES**

Getting lawyers involved in condominium disputes are common ways of solving problems - but they are not the only way - the Condominium Act now provides for Mediation and Arbitration - sometimes getting the same results with less conflict.

Parties, noise, beer bottles, graffiti - what are the remedies - charging owners for costs?, calling the police?, involving the lawyer? - many warning letters?

None of these options seem particularly attractive, especially when residents are trying to live in a community

and will be in close proximity for a long, long time. The Condominium Act now provides that disputes between owners and the Condominium Corporation be handled through the processes of Mediation and Arbitration.

What does this all mean? It means that internal disputes should be staying out of the courts and be dealt with internally by the Condominium Corporation. We know that Mediation and Arbitration are not always the best ways to deal with certain issues and that there have been bad experiences using these Alternative Dispute Resolution processes. But just think about the court processes and the result - Corporations do not always win and they can be time consuming and expensive.

The advantages of Mediation and Arbitration are that they are less confrontational, less demanding and more satisfying than going to court.

Here are two real-life examples of instances in which Mediation and Arbitration have been seen in action:

Highrise

Arbitration - Residents in one condominium complained about a swim team that had been granted the use of the corporation's swimming pool. The board has allowed this use based upon the condominium documentation. When the lawyer for the Corporation reviewed the documentation - the lawyer was of the opinion that the Board could not use the pool for such a purpose. The Board submitted this matter to arbitration and the arbitrator found that the documentation did not permit this use and that to allow the change of use of the pool, would require an owner's vote.

Townhome

Mediation - One family's basketball net occasionally

ended up in the street, which resulted in children playing in traffic and also in it sometimes tipping over. The Board was concerned about resident's safety and the hazards associated with the net, and decided that the net contravened the rules of the Corporation and had it removed. The family reported the net stolen and demanded that the police arrest members of the board. Mediation was scheduled and everyone agreed to how the net was to be used, maintained and stored.

Keep in mind that most people that are involved in disputes between residents and the Corporation, given the choice, would not want things to proceed to the courts with all those associated costs. Given the opportunity, most disputes can be resolved through means other than litigation, even those emotionally charged disputes.



Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP



Real Estate News

July 31, 1998

By Denise Lash

"UNDERGROUND NEWSLETTERS" LOSE CREDIBILITY WHEN RESIDENTS ARE KEPT INFORMED ON A CONTINUOUS BASIS

Consider this scenario: Lately the residents of PCC 007 have been receiving anonymous letters under their doors. The letters contain statements about the Board of Directors and the property manager, which include the following:

- The embezzlement of funds by the Board and the manager
- The granting of special privileges by the Board to the Board members
- General mismanagement of the Condominium Corporation

The Board and management know that the statements contained in the letters are false but do not know what course of action to take. What should the Board do? Ignore? Respond by a special mailing or meeting? Take revenge? - go to court?

One property management company did take a unit owner to court on this very issue. In *Marika Property Management Inc. V. Cappuccitti*, the Ontario Court (General Division) awarded the property management company \$93,500 in damages and costs against a unit owner for circulating a newsletter which had defamed the property management company.

Although one's first inclination is to go this route (if the party is known) or to find out who the culprit is and to respond directly to the accusations by circulating responses to the accusations with personal and direct information about the culprit, this may not be the best course of action to take. Many owners may simply disregard these types of letters but may begin to wonder whether the accusations are true if the Board responds in a forceful and direct manner.



However, ignoring the letters may lead owners to believe that a lack of response by the Board is an indication that the Board is hiding something.

Communication - Instead of attacking the culprit, or ignoring the letters altogether, a low key response either by written circulation or by calling a special meeting to discuss the general activities of the Board and the Corporation should achieve the best result. The response by the Board should be upbeat and should stress the importance of open and honest communication between the Board and the residents. There should be no mention of the anonymous letters.

Keeping residents informed on a continuous basis through newsletters, the posting of information, the circulation of information and/or the holding of special meetings will more than likely lead to the "underground newsletter" losing its credibility and to enhanced support for the Board by the residents.

BOARD COMMUNICATION

What is going on lately with condominium boards and residents? Meeting after meeting it seems as if tempers are flared, there is mistrust and hostility between the board and unit owners and there is the concern expressed by some residents that the board is not acting in the best interest of the owners.

What it usually comes down to is communication.

The common complaint is that the board is making decisions without informing the unit owners. Why is this happening? Is the board not doing a proper job?

Usually the board consists of unit owners in the building. This means that the board members have an interest in the welfare of their community just like the rest of the owners.

The board is elected and entrusted with the responsibility to run the business of the Condominium Corporation. This means doing what is best for the present and future unit owners in the condominium.

Sometimes there are

difficult decisions to be made such as terminating contracts that provide services to the corporation, where the board felt that it was in the best interests of the corporation to change or terminate a particular service.

The unit owners may have become accustomed to those services or individuals and may not want to see a change.

These decisions, however, are left to the board members who have been elected by the unit owners. Sometimes the unit owners do not approve of the decisions made by the board.

One such decision is the decision to increase

Real Estate News

August 28, 1998

Modified

*September 1,
2004*



By Denise Lash

common expenses. No one likes to see common expenses go up year after year.

When the need arises, however, the board may have to increase the monthly common expense fees.

The board may often have to increase common expenses because of insufficient funds in the reserve fund account.

We all know how owners may react when they are given notice of an increase to their monthly payments.

So should the owners be informed about every decision of the board? It would be difficult for the board to conduct the business of the Condominium Corporation if it were to advise the owners on every matter presented before the board and to get the owners input on all issues.

The board must ensure that, first and foremost, the business of the corporation is taken care of. Many issues require that decisions be made quickly with careful consideration as to what is in the best interest of the corporation as a whole.

What should the board do to communicate with the owners? It is often a good idea for the board to hold special information meetings, circulate newsletters or information bulletins to let the owners know what the board has been doing.

One of the most common complaints that I have heard is that the board does not communicate with the owners.

Often, if the board involves the owners on committees or does circulate information, the owners will feel that they are more involved in the decision making process and will hopefully work towards establishing a "stable" relationship between the board and the owners.

February 25, 2000

FIVE SINGLE WOMEN

That was the setting for last night's Annual General Meeting the five women board members divulged this information, hoping to get an eager male to serve on the Board of Directors. No male stepped forward and the five single women remained.

This meeting was quite interesting for several reasons. The Corporation is a "lot line" townhouse type of condominium where units consist of the front and rear yards as well as the building structure.

The Board of Directors has been self managing this Corporation for four years and had recently decided that it was time to hire a professional property management company and a condominium lawyer. The Board decided that it was time to rely upon professional advice, knowing that running a condominium corporation is time consuming and



requires expertise, especially with the New Condominium Act soon to be.

One of the main areas of confusion among the unit owners was maintenance and repair for responsibility. Since owners are responsible for the maintenance and repairs to their "unit" that means that the entire building structure and the yard areas are the owners' responsibility. Most of the owners at the meeting were not aware of this when they purchased their condominium unit and were quite upset about this. Many had purchased their townhouse because it was

a condominium and they wanted the typical benefits associated with condominium living - the corporation maintains. These owners are now responsible for painting the exterior of their townhouse, shovelling their snow and cutting their grass.

Another concern by the owners was their ability to make alterations to the exterior of their townhouse. This included storm doors, awnings, mailboxes, light fixtures and all sorts of items. The Board of Directors made it clear at the meeting that owners are not to do anything to their exterior without prior approval of the Board. This restriction and procedure was set out in this Corporation's Declaration. The Board stressed the importance of maintaining architectural control over the community to ensure that property values for their development would continue to appreciate in value.

What can one learn from this experience? If you are

in the process of purchasing a condominium, review your condominium documents prior to finalizing your Agreement of Purchase and Sale. Make sure you know what you are buying.

If you are a board member or a unit owner, it is time to review your documents to ensure that you know what your maintenance and repair responsibilities are and what alterations you can make to your unit or common elements.

Your Corporation may have prepared a maintenance and responsibilities chart which sets out the various maintenance items and lists who is responsible for the maintenance and repair of each of those items. Now is the time to familiarize yourself with your governing documents.

*Written by Denise Lash,
a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP*

Condominium Manager

Spring 1998

ASK THE PROS

Q - Recently, two police officers came to the condominium I manage and asked for my assistance in arresting a person living there. To avoid creating a disturbance, it was suggested that I should knock on the person's door and when it opens the police would take over. I agreed to do this and everything came off as planned. The arrested person is a tenant (not an owner) who had only lived in the unit for a short time. Also arrested were two others found in the unit. Afterwards, I became concerned about whether I handled this situation properly. I was not shown an arrest warrant or any other legal document by the police officers. It seemed at the time that I should cooperate with the police, but I also had no advice to go on. On the other hand, I have an obligation to the corporation, owners and tenants to make the right decision in their best interests. In addition, the obligation to myself is important so I do not find myself involved in a lawsuit as a result of my actions. There isn't much time to think in these situations and certainly no time to call a lawyer for advice.

Lastly, the arrested tenant knows who I am, where I am and that I assisted the police to get into the unit. I feel vulnerable. What if this tenant goes to jail on criminal charges and holds me responsible? I could be subjected to threats and/or physical violence.

What should a property manager do in these circumstances? What are the legal, moral and ethical considerations? I'm sure other managers would be concerned in similar situations and unsure of what to do. Can you give me some comprehensive advice?

Submitted by a condominium manager.

A - Your situation involving the arrest of an individual is not uncommon and similar questions such as yours with respect to search warrants are often asked by property managers and boards of directors of condominium corporations.

What are your obligations as a property manager when the police arrive?

Putting aside the moral and ethical considerations, your legal responsibilities are to ensure that you do not obstruct the police officers from carrying out their duties under the *Criminal Code*, and, at the same time, ensuring that the corporation's assets and common elements are maintained under the *Condominium Act*.

Ask to See Their Badges

Firstly, ask the police officers to identify themselves. If they are plainclothes officers, ask to see their badges.



Secondly, ask to see the warrant (whether an arrest warrant or a search warrant). The arrest warrant will name the individual the police are seeking to arrest and may also provide the address of the condominium unit. If the address is noted on the warrant, make sure the address is correct. Once the police officers have shown you the warrant, the officers should be granted access to the common elements.

What if the police officers do not have a warrant?

Section 495 of the *Criminal Code* allows for an officer to arrest a person without a warrant in certain situations, such as when an officer is apprehending someone in the commission of an offence, or when an officer has reasonable grounds to believe that the safety of a person or persons is at risk.

If the police officers have identified themselves and stated one of these grounds as their reason for requesting entry to the common elements, or it is apparent from the circumstances (as it may well be in the case of officers pursuing a person in the commission of an offence), you should grant the officers access to the common elements.

Why permit access to the common elements?

Pursuant to the *Criminal Code*, officers may use reasonable force to carry out an arrest. This would include breaking the locks to gain entry to the common elements. By permitting entry to the common elements, you are avoiding unnecessary repairs and expense.

Obstructing the Police

Further, if you do not allow the officers to enter the common elements, there is the possibility you may be charged with obstructing the police pursuant to section 129 of the *Criminal Code*.

By taking the steps noted above, you will have acted reasonably and in good faith, thereby minimizing any potential liability on your part. Section 142 of the *Courts of Justice Act* provides that a person is not liable for any act done in good faith in accordance with an order or process of a court in Ontario. If a property manager exceeds the bounds of his or her authority, however, protection under this section of the *Courts of Justice Act* may not be available.

What about access to the condominium unit?

Here is where you must draw the line and may be viewed as exceeding your authority, as a manager, if you provide access or take an active part in the arrest procedure. You would be wise to stay away from assisting the police officers in carrying out the arrest. The potential for liability exists in the event that a mistake or an improper arrest is made and you may be held liable by the unit owner or resident for any resulting loss or damage. It is reasonable to escort the police officers to the location of the unit, particularly if it is difficult to find. Thereafter, you should avoid participating in any kind of ruse designed to carry out the arrest or search, such as knocking on the door and requesting access to the unit for an otherwise legitimate purpose.

Should Not Use the Unit Key

If you know, or suspect, that the unit is occupied and the occupants do not appear to be willing to grant the officers access to the unit, you should not use (or provide to the police officers) a copy of the unit key that the owner may have left with property management to permit the officers to gain entry to the unit. Again, the police officers have the right to use reasonable force to gain entry to the unit to make an arrest or to conduct a search. This would include breaking the locks on the door, which may involve damage

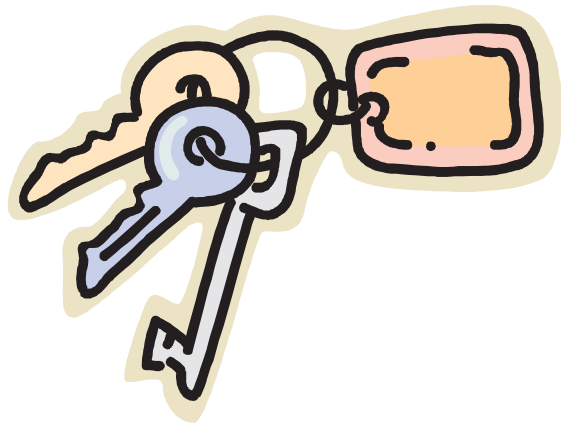
to the door or its frame. Although the corporation may have to bear the cost of any resulting repairs, it is likely better to incur these costs, on the rare occasions that these situations arise, than to risk exposure to liability for improperly assisting an arrest or search. The same reasoning holds true, even in cases when the unit is known to be vacant or unoccupied.

There is a competing school of thought, however, which contends that when it is known or reasonably suspected that the unit is vacant or unoccupied and the officers have made it clear that they intend to forcibly enter the unit in any event, the property manager can provide access to the unit rather than allowing needless damage to be incurred. You may have to exercise your judgment in determining the most reasonable course to follow in a given situation.

A property manager faces a difficult situation when confronted by police officers seeking access to the condominium common elements and the unit. The safest policy for the manager to adopt is to provide access to the common elements but to leave access to the unit to the police.



Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP



MANAGEMENT

How is a Condominium Corporation managed? Most often Condominium Corporations (unless self-managed by the Board of Directors) will hire a professional property manager to carry out the day to day management of the Corporation.

At the moment in Ontario, there is no requirement for the licensing of property managers and no set legal standards for governing property management.

So what should a Board of Directors look for in a property manager?

Experience And Knowledge

Does the property manager have experience with your particular type of community?

If your condominium a townhouse or high-rise structure?

Who are your residents? Are they first time homebuyers, empty nesters or other?

Some property managers may have developed a particular expertise with certain condominium communities.

What Services Are Provided In The Management Fee?

Review the management agreement. Is there a 60-day no cause

termination clause so, if the Board is not satisfied with the property manager, it can terminate the arrangement?

Does your Corporation need all those services?

Do you need a higher lever of service?

Ability To Communicate

Your property manager should be reporting to the Board of Directors. This means attending Board meetings and preparing reports to the Board.

The Board should discuss this requirement for reporting up front. Some Boards want to be more involved than others are and require more details and information than other Boards.

Owners should not feel that their requests or concerns are being ignored. Sometimes this means that the property manager must take proactive steps, such as informing owners about the Corporation's lien collection policy and prohibitions and restrictions in the Corporation's Declaration, By-laws and Rules before the problem occurs.

Reaction Time

Is your property manager quick to

react where a unit owner submits a late common expense payment? How does the property manager handle situations where an owner fails to comply with the Declaration, By-laws and Rules?

Knowledge Of Your Corporation's Documentation

Each Condominium Corporation is unique and prohibitions, restrictions and procedures may vary from one condominium to another.

Your property manager should have an understanding of the Condominium Act and your Corporation's Declaration, By-laws and Rules.

Knows When To Seek Professional Advice

Your property manager is not a lawyer, accountant or insurance agent and should know when to seek professional assistance.

Remember that directors represent all owners in making decisions. This means that the Board must evaluate what is in the best interests of all the owners. The Board must rest assured that when instructions are given that the property manager will carry them out and that when information is requested that it be provided to the Board. The key is to trust your property manager.



Real Estate News

November 20, 1998

Modified September 16,

2004

Written by Denise

Lash, a lawyer

practising Real Estate

& Condominium Law

with the firm of Miller

Thomson LLP

PROPERTY MANAGEMENT

When you purchase a condominium unit you will become an owner of a form of real estate and will also become an owner in a condominium corporation, which manages the affairs of the community that you are living in.

Your corporation will be run by the Board of Directors who will be elected on rotation by the owners at each Annual General Meeting.

Since the members of the Board of Directors are usually owners themselves and most often volunteer their time to run the corporation, the day to day affairs are usually managed by a property manager or management company.

I have seen time and time again, owners and Boards of Directors who are unhappy with the performance of a management company but fail to do anything about it. Sometimes, Boards are

under the impression that they are locked into their management agreement and have no choice but to stay with their current management.

This may not necessarily be the case. If the Board wants to change management, advice should be sought from the corporation's lawyer.

Code of Ethics

Many management companies are members of the Association of Condominium Managers of Ontario (ACMO) which has its own set of standards and a code of ethics for property managers. Directors can get information from this organization by calling (905) 826-6890. The Canadian Condominium Institute (CCI) may assist with information about condominium property management. You may call CCI at (416) 491.6216.

That is not to say that Boards should not give managers the opportunity to improve their performance in instances

where the Board has lost confidence in their management. Oftentimes Directors may not express their concerns to management. There should be an open line of communication. The Board should know what services it wants and make it clear to their manager. Complaints received by owners should be reviewed with management.

When interviewing new property managers, Directors should be addressing some of the following points:

What experience/knowledge does the manager have with condominiums?

What services are included in the management fee?

The manager's ability to communicate.

The reaction time to problems that are encountered.

The manager's knowledge of your condominium corporation's documentation.

The ability of the manager

to know when to seek professional advice.

A well run condominium corporation will only serve to preserve or increase the value of your condominium unit; this includes the successful management of the corporation and is the key to a healthy community.



Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

MOULD IN CONDOMINIUMS



*Written by Denise Lash, a lawyer
practising Real Estate &
Condominium Law with the firm of
Miller Thomson LLP*



Why is mould of concern to unit owners, property managers and directors of condominium corporations? The reason - lawsuits. In the US, there were approximately 11,000 lawsuits initiated in the first nine months of 2002. Media focus on such individuals as Erin Brokovich, "Mould Victim" and "Ed McMahon Settles Toxic Mould Lawsuit" and the public's perception that mould may be extremely harmful have resulted in property managers and board members looking at this issue very seriously.

There is the additional concern about the lack of insurance coverage. There is now a move in Canada to follow the same approach taken by insurers in the US State Farm, which insures nearly 4000 condominiums in Florida, plans to increase rates and has also excluded mould coverage under its policies. Corporations should be checking to see whether the Corporation and its directors are insured where mould is discovered. It may be that water damage claims, which result in mould, may be covered but may not be for situations in which mould is discovered during regular maintenance. In 2002, US insurance companies paid close to \$2.5 billion in mould-related claims (doubled from 2001).

What steps should be taken when mould is discovered?



- Treat it seriously.
- Get a qualified mould inspector to test the mould
- If a resident has complained of illness, advise them to see a doctor.
- Hire someone to evaluate and remedy the problem properly.
- Put the insurance company on notice and ask them to investigate.
- Put the developer or builder on notice and ask them to investigate.
- Follow the recommendations of the mould inspector.
- Keep detailed maintenance records - the key: did you take proper action? Did you act promptly and effectively?
- Once work is carried out, get something from the specialist indicating that moisture has been dried and that mould growth has been remedied.

What not to do?

Do not ignore the problem because of lack of funds. It may cost more in the end if there is the failure to take the appropriate steps; for example, many condominiums stay away from taking any action because of the fear of having to have a special assessment that would be passed on to owners.

Do not speculate about the cause of mould and advise management staff and board members not to say anything or write down anything - leave it to the professional contractor or engineer to determine the cause.

ASK AN EXPERT

Voting - Parking Units

Q - *In a condominium village of bungalows and low-rise apartments there are several corporations. What are the voting rights in corporation B of a bungalow owner in corporation A who has also bought a parking space in the low-rise building (corporation B)?*

Condo Living sent this question and the two that follow to Denise Lash, a lawyer with Miller Thomson LLP.

A - The Condominium Act provides that no owner shall vote in respect of a unit that is intended for parking or storage purposes. Your voting rights are therefore restricted to your residential bungalow unit. Your parking space, even if it is a separate unit, does not have any voting rights attached to it.

Q - *If an owner requests part of the records be mailed to them, does the Board of Directors have to send them out?*

A - The Condominium Act does not impose any obligation upon the condominium corporation to mail copies of the records to an individual requesting copies. The Act does specifically provide that an owner is entitled to inspect the records and that copies of the records shall be provided to the person examining them, if that person pays a reasonable fee for labour and copying charges.

If there is a request for mailing copies and the corporation chooses to do so, the corporation should require payment upfront for the costs of labour, copying and delivery from the person requesting copies before the corporation incurs the costs, since it has no obligation to mail those records to that individual. (The corporation may want to use a courier service as opposed to regular mail to avoid any dispute at a later date that the records were never provided.)

Q - *I am a director and we repeatedly have problems getting a quorum for our Annual General Meetings. We have in the past adjourned the meeting to another date, attempting to get a quorum. We are confused as to whether we need to document the first attempt.*

Adjourning Meetings

A - If an AGM is called and the meeting was not officially

constituted, because of a lack of quorum, another meeting would have to be called so that the business of the AGM could be presented at a meeting with the required quorum.

Though there are no specific provisions set out in the Condominium Act with respect to the recording of minutes, you may want to check your corporation's by-laws to determine if there are any additional requirements that are imposed on the board of directors.

It is recommended that there be some form of record, for example minutes, which record the initial attempt at calling an AGM for information purposes for those inspecting the records of the corporation.

The minutes would provide, the date, time and place of the meeting, a statement that a quorum was not present, with the scrutineers report attached, and a statement that proper notice was given. (Copy of the notice with proof of service may be attached to the minutes)

As of May 5, 2001, the quorum requirements for owners meetings, including the AGM, has been reduced to 25 percent of the units represented in person or by proxy from 33^{1/3} percent of the units.

Perhaps, when AGM time comes round again, the first attempt to hold your AGM will be successful.

The Toronto Star

October 13, 2001

Modified, September 1, 2004



October 13, 2001

HOST OF CHANGES FOR OWNERS MEETINGS

As at May 5, 2001, owners will find that there are a whole host of new changes to the procedures to be followed at an Annual General Meeting.

Here is a list of suggested steps to follow at the Registration Desk at the Annual General Meeting:

1. Prepare a list of owners who are on the records 20 days before the meeting (New owners cannot vote if they were not on the records and are not counted towards the quorum at the meeting).
2. Prepare a list of those owners who are in arrears thirty days before the meeting (if an owner pays the arrears on or before the meeting then they are entitled to vote and are counted towards quorum - they should pay by certified cheque, bank draft/money order or cash only).
3. Prepare an Owner-Occupied Unit Owner list (if at this meeting there is an election for the Owner-Occupied Director - this is a new board of director's position which has now been created under the new Act).
4. Review the proxy form - make sure where the proxy is for the voting or removal of a director, that it is filled out with the vote. If it is not, do not use the proxy form for voting for election or removal of directors, but only for general voting on other matters. Give the proxy holder a ballot for voting on general matters (not for the election or removal of a director).

5. If the proxy form has been completed, use the proxy form as a ballot for the election and/or removal of the directors and hand the proxy holder a separate colored ballot for voting on other general matters, for example confirming a by-law.
6. Unit owners who register in person should be given two ballots - one for the election or removal of the directors and one for general voting. If there is an Owner-Occupied Director to be elected at the meeting and also other directors then you will need to give a third ballot for the election or removal of the Owner-Occupied Director but only if the Unit owner is on the Owner-Occupied Unit List.

Example:

- (a) Owner-Occupied election or removal " Proxy is Green - use as a ballot for the owner occupied election - Those present who are Owner-Occupied Unit Owners get a Green Ballot.
- (b) Other directors election or removal " Proxy is Yellow - use as a ballot for the other director election - Those present get a Yellow Ballot.
- (c) Other voting - general matters " example: to confirm a by-law - Red Ballots given to proxy holders - Those present get a red ballot.



*Written by Denise Lash, a
lawyer practising Real Estate
& Condominium Law with the
firm of Miller Thomson LLP*

NEW PROCEDURES TO FOLLOW

FOR MEETINGS

By Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

The new Condominium Act 1998 has new procedures for holding owners meetings. What are some of the requirements?

1. Notice of Meeting

Notice of an owners' meeting must be sent at least 15 days prior to the meeting. This is a change from the old 10 days notice requirement.

2. Quorum

Under the old Condominium Act, owners representing 33^{1/3} per cent of the units must either attend the owners' meeting or complete a proxy form for the meeting in order for the meeting to be held.

The new Act reduces this quorum to 25 percent of the owners.

3. Proxies

The form of proxy is to be set out in the Regulations of the new Act. Separate proxies are to be used for each meeting. No general proxies (those used for more than one meeting) can be used.

When a proxy is to be used for the election of a director, the names must be set out on the form and the proxy must state whether there is a vote in favour or against that director.

4. Voting

Voting is still one vote per unit, but not for parking, locker or mechanical units.

The procedure for voting for directors has changed slightly by allowing owner-occupied unit owners to elect an owner occupant director where at least 15 percent of the units are owner-occupied.

Owners who are in arrears for 30 days or more prior to the meeting are not entitled to vote. This is the same as the current requirements. Under the new Act, however, an owner must also be listed on the records of the Corporation 20 days before the meeting to vote. If an owner failed to notify the Corporation after purchasing a unit as to their name and address, they will not be allowed to vote.

5. The Meetings

(a) Annual General Meetings

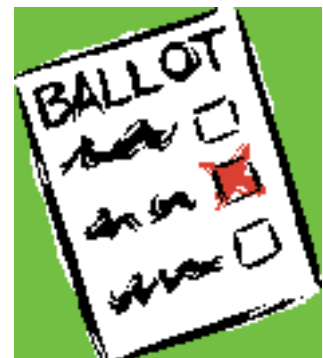
Annual General Meetings must be held within 6 months from the fiscal year end of the Corporation.

(b) Special Meetings

Under the new Act, Special Meetings of owners can be called by either the Board of Directors or owners. If the owners want to call a meeting, they will be required to obtain signatures on a requisition form of owners representing 15 percent or more of the units.

These owners must appear on the records and must not be in default of common expenses for more than 30 days prior to the meeting.

Once in receipt of the requisition by the Board of Directors, if the Board of Directors does not call and hold the meeting within 35 days, then any one of the owners who signed the requisition may call the meeting and hold the meeting within 45 days.



The Toronto Star

October 13, 2001

Modified September 1, 2004

OWNER'S MEETINGS AND THE CONDOMINIUM ACT 1998

Q The new Condominium Act, which was proclaimed on May 5th seems to set out all sorts of new procedures for condominium corporations to follow - there is so much to know - where do we start?

A You are right. The procedures for owners meetings have substantially changed and came into effect on May 5, 2001.

Here is a summary of some of those changes:

Annual General Meetings: Owners Meetings

AGM's must be held within 6 months from the fiscal year end of the corporation. So for example, if a corporation's fiscal year end is March 31st, it must hold the meeting prior to September 30th.

The quorum for owners meetings has been reduced to 25% of the unit owners (either present or by proxy), regardless of what is contained in a corporation's by-law. If a Corporation wants to keep the quorum at 33^{1/3} % (same as old Act), a new by-law must be passed to keep it at that percentage.

In order to be counted towards a quorum, unit owners must be on the corporation's records at least 20 days before the meeting and must also not be in arrears of their common expenses 30 days or more before the meeting. New owners (who never received notice) do not count towards the quorum and are not entitled to vote.

The time for delivering Notice of Meeting have changed from 12 days (10 clear) to 17 days (15 clear) counting the day notice is sent.

Who is entitled to get notice? Unit owners who are on records 20 days before the meeting and mortgagees who have notified the corporation in writing as to their right to vote.

Meeting Notices

How is the notice delivered?

As was the case under the old Act, delivery of the notice could be to the owner or mortgagee personally or prepaid mail at address for service on record.

What is new is delivery by fax or e-mail if the unit owner or mortgagee agrees in writing. Corporations may want to include a consent form with their Status Certificates to allow for this type of delivery.

Also, what is new is that corporations may deliver notice to an owner by deposit in a mailbox or slip it under the door if the owner's address on the records of Corporation is the same as the unit and the owner does not object to this manner of service.

Content of Notice

- PLACE, DATE, HOUR, NATURE OF BUSINESS
- COPIES OF DOCUMENTS FOR DISCUSSION
- COPY OF THE REQUISITION FORM, IF IT HAS BEEN CALLED AS A REQUISITIONED MEETING
- CLEAR DISCLOSURE/DETAILS OF MATTERS TO BE VOTED UPON. THE ACT CLARIFIES THAT UNLESS YOU HAVE SUFFICIENT DETAILS IN THE NOTICE, YOU WILL NOT BE ABLE TO VOTE ON THIS. **FOR EXAMPLE:** IF THE PURPOSE OF THE MEETING IS TO CONFIRM A BY-LAW, YOU WILL NEED TO INCLUDE A COPY OF THE BY-LAW WITH THE NOTICE. NAME AND ADDRESSES OF CANDIDATES WHO NOTIFIED THE CORPORATION AT LEAST 4 DAYS BEFORE THE NOTICE WAS SENT, IF THE ELECTION OF DIRECTORS IS ON THE AGENDA FOR THE MEETING.

Directors

What are the new procedures for electing and removing directors?

Each corporation if it has at least 15% owner occupied units, which most corporations do; it must designate one position on the board of directors as an *owner-occupied* position. For example, if you have three positions on the board of directors and your AGM is next month and one position is to be filled, it can be one at this AGM or the one next year or two years from the first available position to be the one designated for the owner-occupied position.

What is an *owner-occupied* position? It is a position that only owner-occupied unit owners can elect. What is an owner occupied unit? It is a unit, which has not been leased for at least 60 days before the notice of the meeting. It does not mean that the person elected needs to be an owner-occupier.

How will you know if the unit is owner-occupied? The Act now requires that owners leasing their units complete a summary of lease within 30 days of leasing the unit. If the corporation has not received a summary of lease or has not been provided with notice that the unit is leased, then it is an owner occupied unit. You will need a separate list of owner-occupied units so you know which units are which.

To vote for this *owner-occupied* director, you will need a separate vote. You should carry out that vote first because those persons who may not get in as the owner-occupied position may have notified the corporation that they would also stand as a non-owner occupied director.

You will need separate ballots for the election of the *owner-occupied*

OWNERS VOTING RIGHTS

*Real Estate News
October 10, 2003
Modified, September 20, 2004*

I attended a recent Annual General Meeting for a Condominium Corporation and an owner raised the following question. The Board of Directors seems to be making all the decisions on behalf of the owners. What are owners able to vote for?

Firstly, yes the directors are elected by the owners to make certain decisions and carry out their duties on behalf of the owners.

There are only certain matters which do require owners' approval and these are set out in the Condominium Act.

Here is a list of some of the more common matters, which require a vote, or consent of the owners:

1. Approval of the minutes of owners meetings
2. Appointment or Removal of an Auditor
3. Approval and/or amending By-laws
4. Amending a Declaration or Description
5. Amending or Repealing rules
6. Approval of a Substantial change in the services, assets or common elements
7. Election of directors

Owners can also requisition a meeting to vote for the following:

1. Removal and Election of directors to fill vacant positions created by the removal
2. Voting against a change proposed by the Corporation to a service, asset or common

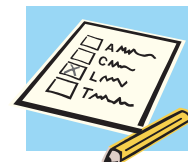
3. elements in which notice was given to the owners.
Approval of a rule which was proposed by the Corporation in which notice of the rule was given to the owners

Often times owners are under the impression that as owners they have the right to approve the budgets and financial statements of the Corporation. The Condominium Act is clear on this point and gives this authority to the directors of a Condominium Corporation without the requirement to have the owners' approval.

Just remember that the directors have been elected by the owners and these directors should be acting in the interests of the Corporation. The general operation of the Condominium Corporation is managed by the Board of Directors and the day to day management functions are usually carried out by property management for the Corporation.



*Written by Denise Lash, a lawyer
practising Real Estate &
Condominium Law with the firm of
Miller Thomson LLP*



PROXIES

By Denise Lash

I am part of a group of owners who recently requisitioned a meeting to remove the present Board of Directors. When our group attended the meeting we had a sufficient number of proxies to remove the board. However at the registration desk the property manager and the lawyer said that many of our proxies could not be used. We were not successful in removing the Board. I am confused and don't understand the rules. Can anyone help?

Answer: Oh my such confusion - May 5, 2001 - the new Act - new procedures - new forms - new rules! So where do we stand on Proxies? The Condominium Act 1998 - that is what the new Act is called - refers to proxy forms which MAY be used - those forms are in the regulations and that is the reason there is much confusion - any form goes - as long as it complies with the Act. So, how do we know if the form used complies with the Act?

Here are the basics:

- Only unit owners may sign a proxy. The unit owner signing the proxy must match the records of the Corporation. If at the registration desk at the meeting, the records do not match the name on the proxy, the proxy will not be able to be used - as an owner you want to ensure that the records of the Corporation are accurate - check with management to make sure.
- If there are joint owners, one owner can sign the proxy.
- If a unit owner attends and wishes to vote personally, the proxy is null and void.
- Proxies are kept as a record of the Corporation for 90 days after a meeting.
- Proxies must be for a particular meeting you cannot use the same proxy for more than one meeting.
- Anyone in arrears 30 days or more before the meeting cannot vote therefore if a unit owner signed a proxy and was in arrears 30 days or more - the proxy would not be able to be used.
- Proxies for the election or removal of directors must name the directors for and against whom the proxy is to vote - Herein lies the problem - What does that mean?
- It means that whether it is an Annual General

Meeting or at a requisitioned meeting to remove and re-elect a new board, any proxies used must list the names and be voted on the proxy form. Owners who signed the proxy must have completed the vote on the form - otherwise the proxy cannot be used for the election or removal of the directors at the meeting.

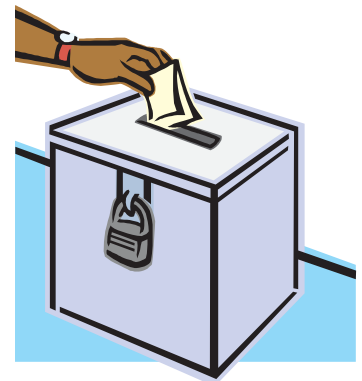
We recommend that the proxy for election or removal be deposited in a ballot box at the time of registration for the meeting or that by-laws be enacted to deal with the process of depositing the proxies before the meeting.

What happens if there are more names listed on the proxy than there are positions? Well, it depends upon what the proxy form says and whether there is a ranking of those positions. If the form states that if there are more names listed or voted than positions, then the vote will be counted in the order of those listed or ranked. If the form does not say what happens if more names are listed, then, the proxy will not be able to be used for the election or removal of the directors.

If one director's position is the new "owner-occupied" position - the proxy form must state so and the vote should be taken separately at the meeting. That means that the proxy form for the election or removal should separate the voting into two categories - voting for the owner-occupied director and voting for the other directors.

Remember that only unit owners that are "owner-occupied" unit owners may vote for that owner-occupied director's position - so we recommend using separate proxy forms for owner-occupied unit owners who vote for all the positions on the board of directors (which includes the owner-occupied position) and a separate proxy for the non-owner-occupied owners (leased units) who can only vote for other positions (not for the owner-occupied position).

That is just a summary of some of the key points to note when using proxy forms. Keep those things in mind next time you gather those proxies.



HOW TO MANAGE OUT OF CONTROL ANNUAL

MEETINGS

We all know that sometimes it is difficult for the Board of Directors to maintain control of the unit owners at the Annual General Meeting.

Often times there are certain "disruptive" residents who are quick to blame the Board for the problems the condominium is experiencing and rarely offer their own time or efforts to assist in bringing about a positive change. What should the Board do at the Annual General Meeting to make sure things don't get out of control?

Out Of Order Motions

The purpose of the Annual General Meeting is to carry out those matters listed on the Agenda. The election of the directors and the appointment of the auditor are standard items, which are voted upon by the owners annually. Other items may be added to the Agenda (which accompanies the notice to the owners of the Annual General Meeting), prior to the meeting.

When a unit owner proposes to make a motion for example to "reduce common expenses", "change management companies" or "employee new security guards", the chairperson at the meeting (usually the President) may rule this motion "Out of Order" and explain to the owners that the Board (which has been elected by the owners) is given the responsibility of making those types of decisions which involve the day to day affairs of the Corporation.



By Denise Lash

Real Estate

News

September 25,

1998

The chairperson may offer a further explanation to the owners, advising them that there are only certain matters which require the approval or vote of the owners.

These matters are clearly set out in the Condominium Act and the condominium documentation.

Follow A Formal Procedure

The chairperson is responsible for maintaining order. The most effective way is to follow formal corporate meeting procedures.

The chairperson should be familiar with Robert's Rules of Order or Wainsberg's Company Meetings.

The chairperson should be firm and in control of the meeting and advise owners when they are truly out of order at the meeting.

If an owner becomes unruly and "out of control", the chairperson may use the rules of procedures to expel an owner from the meeting.

If you anticipate problems prior to the meeting, which may involve threats or harm to certain individuals, you may choose, as a last resort to invite off-duty police or security officers to the meeting.

The mere presence of these individuals may assist in keeping the meeting under control.



NEW CONDO ACT PRODUCES BIT OF CONFUSION ON PROXY FORMS AND THEIR USE

Annual General Meetings are now coming up and board members and managers are starting to follow the new procedures under the Condominium Act.

One of the areas in which there seems to be a bit of confusion is the manner in which the proxy forms are used for the election of directors. The Act does not require that the form prescribed in the Regulations be used, however, it does require that the names of the candidates for whom the proxy is to vote be named on the proxy form.

Some Corporations are pre-printing their proxy forms to include the names of the candidates that have notified the Corporation at least four days before the notice of meeting goes out. Other Corporations are leaving blank spaces to be filled in by owners with the names of the candidates indicated on the notice of meeting form or any other candidate, which that owner wishes to nominate. Either way, the proxy form should still be valid if it is completed.

Once the proxy form is presented at the registration desk, it is our recommendation that the proxy form be used as a ballot and deposited at the registration desk. The proxy form must indicate which candidates are being voted for. If the form is left blank, the proxy holder cannot then use the proxy for election. If the proxy form also is a general voting proxy, the proxy holder should also be given a separate ballot to vote on any other issues presented at that meeting.

If nominations are then received from the floor at the meeting, the proxies cannot be used to support those candidates as there is no residual power in the proxy to do so, and the proxy had been deposited earlier at registration.



Real Estate News

June 22, 2001

Written by Denise

Lash, a lawyer

practising Real Estate

& Condominium Law

with the firm of Miller

Thomson LLP





PET PEEVES

We know that many people develop close relationships with their pets. When these people become condominium owners and become part of a condominium community, restrictions imposed

on pets and pet owners become highly charged and sensitive issues. The challenge for the Board of Directors of condominium corporations is to know how to deal with the residents whose opinions vary.

Restrictions may be contained in the Declaration and/or Rules of a condominium corporation. These restrictions often contain prohibitions on all or some types of pets, the number of pets allowed per unit, restrictions on the size and weight of a pet, the use of common areas by pets and obligations of pet owners.

In enforcing these restrictions, many condominium corporations find that a sensitive and friendly approach often does the trick. Communication is the primary method of achieving voluntary compliance. Here are some pointers:

1. Loose Pets - Peer pressure technique may work well. Post a notice or make a note in a newsletter containing information about the loose pet i.e. "On Saturday, August 30, 1999 at 2 p.m. some residents noticed a golden retriever wandering in front of units five and six. Is this your pet?"
2. Non-Resident Owners - It may take a special effort to contact non-resident owners, but well worth it. It

is important to ensure that these owners are aware of the rules and restrictions on pets. These owners should be providing copies of the condominium documentation to their tenants and may need to include pet restrictions in their leases with their tenants.

3. Speak Directly to the Pet Owner - Most residents want to be accepted as part of the community by the residents. Personal discussion of the problem may avoid an emotional response, which is often the result when a condominium corporation resorts to legal enforcement.

For some pet owners, the adjustment to a condominium lifestyle can be a source of problems. Those owners who have been used to letting their dogs out loose in their yards must now learn to adjust. Those habits are difficult to change. Some condominium corporations have created "Dog Runs" where common areas are fenced off and pets run free. This is a good option where there is unused space. Boards must look at what is best for the community as a whole - where both pet owners and non-pet owners interests are considered. The Board may need to review existing prohibitions and restrictions to determine whether changes need to be made.

Boards must be careful in exercising its authority in regulating pets, keeping in mind its objectives to establish and promote a community.



By Denise Lash

FUNDING THE RESERVE FUND

By Denise Lash

One of the important responsibilities of the board of directors in 2004 is to start putting into place plans for funding the reserve fund.

May 5, 2004 was the deadline for corporations to complete their reserve fund studies. If your corporation has to complete the study, focus your efforts on finalizing the study as quickly as possible.

Once the study is completed the board will then have to make sure that the fund is "adequate".

The Condominium Act provides that the board must ensure that the reserve fund is adequate within a 10 year period from the date of the completion

of the reserve fund study, unless the Corporation was registered on or after May 5, 2001, which would require that the fund be adequate within one year from the date of the study.

The key to having an adequate reserve fund is to come up with a plan for funding. The Condominium Act provides that the board is required to propose a funding plan within 120 days from receiving the completed reserve fund study.

After the board comes up with a plan then within 15 days of proposing a plan, the board is required to send out notice to the owners. This notice is "Form 15" which is the form set out in regulation 48/01 to the Condominium Act.

Once all those steps are carried out then the plan must be implemented within 30 days after sending the notice. The obligations do not stop after the first study

is completed. The Act requires that corporations carry out updates to the reserve fund study every three years.

Directors should also be aware the regulations set out which individuals can conduct reserve fund studies and also provides a list of those individuals who are not permitted to do reserve fund studies.

Also it is important to check that the person conducting the reserve fund study has the appropriate insurance coverage. These requirements are also set out in the regulations.

And lastly, directors should also be particularly careful with those expenditures made from the reserve fund.

Although the board has the authority to decide when funds should be used from the reserve fund, there are situations in which it may not be clear as to whether

certain expenditures should be made from the operating fund or the reserve fund.

When in doubt, board members should obtain a professional opinion. It is important that directors always keep in mind that as a board member, they may be personally liable for failure to carry out their duties and may not be covered under the corporation's directors and officer's liability insurance policy if such director knowingly fails to comply with the provisions in the Condominium Act.

Real Estate News

May 14, 2004



RESERVE FUND - HOW TO BREAK THE NEWS!

First we have had to deal with Utility increases and now the new challenge of Reserve Fund contributions.

One of the main items that Condominium Corporations have had to deal with post May 5, 2001 (the new Condominium Act), has been to determine when to carry out the Reserve Fund Study and to start planning for Reserve Fund contributions.

So, now the challenge begins. What are Boards to do now that they have been mandated to carry out Reserve Fund Studies and plans for funding? Boards will look to management for assistance in dealing with the planning and timing of carrying out the studies and proposing the plans and communicating in an effective way to the owners.

We know that it is in the best financial interest of the corporation to carefully plan for future repairs and replacements. But now the time has come, where many corporations have not planned ahead and the difficulty becomes convincing the owners to contribute to a fund for future repairs.

Many owners believe that contributing now somehow is costing them more money. The trick is to convince those owners of the need for proper planning of a reserve fund and the benefit of doing so. What the fund does is allows the corporation to spread out the expenses for major repairs and replacement over a longer period of time.

We have heard it before - "Why should I invest in something that may not need to be replaced for several

years and that would benefit future owners?"

Here is what you need to tell them:

1. The Condominium Act, 1998 requires that the study be done and that the plan for funding be established in accordance with the study.
2. The work will need to be done at some point in time and the money will have to be spent.
3. It distributes the contributions of the old and the new owners. Major items deteriorate over time. Although a roof will be placed when it is 20-25 years old, every owner who had the benefit of living under it should share in its replacement cost.
4. If you don't start contributing now - a large special assessment will be the result.
5. It enhances resale values.

When should boards start communicating? Now. Start early and call those information meetings well ahead of the completion of the Reserve Fund Study. Keep the owners apprised through the various stages and advise them as to the options available for funding. Hopefully, the owners will understand the necessity for proper Reserve Fund planning - with the Board and Management taking those proactive steps.



*Written by Denise Lash, a
lawyer practising Real Estate
& Condominium Law with the
firm of Miller Thomson LLP*



*Real Estate News
August 16, 2002*

Real Estate News

July 26, 2002

RESERVE FUND INVESTMENTS

When you live in a condominium part of your monthly maintenance fees are contributed to a special fund called the "reserve fund". This fund is required to be maintained and can only be used solely for the purpose of major repair and replacement of the common elements and assets of the corporation.

The Condominium Act requires that condominium corporations carry out a reserve fund study within one year for corporations created post May 5, 2001, and within three years from May 5, 2001, for existing condominium corporations.

There are restrictions not only on the use of monies in the reserve fund but also on where those funds can be invested. After the reserve fund study is carried out, the Board of Directors will complete a proposed plan for the future funding of the reserve fund and at that point will be able to start investing the reserve fund in appropriate investments.

The Condominium Act restricts the investment of reserve funds and provides for only investing in "eligible securities" which must be registered in the name of the Corporation or held in a segregated account under the name of the Corporation by a member of the Canadian Investment Dealers Association and insured by the Canadian Investor Protection Fund.

The Board is required to formulate an investment plan based upon the anticipated cash requirements set forth in the reserve fund study so that, for example, any laddered portfolio of eligible investment instruments will match the cash requirements of the Corporation without incurring a penalty on the principal value of the investment instrument, including the ability of the Board to dispose of or sell the investment instrument.

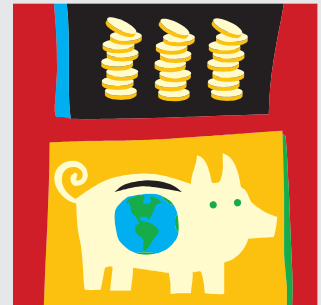
Eligible securities include a bond, debenture, guaranteed investment certificate, term deposit or similar instrument that is issued or guaranteed by the federal or provincial government, or that is issued by an institution in Ontario insured by the Canada Deposit Insurance Corporation.

Those condominium corporations which maintain healthy reserve funds and ensure that funds are properly invested, will have the benefit of having capital funds there to carry out a major repair or replacement of the common elements when needed and will distinguish itself from those of others who will not be prepared when those major repairs are required and the money is not there.

Purchasers, make sure you inquire about reserve funds before buying. You want to make sure that you don't move in and then are shocked to find out that the Board of Directors decides to special assess all the owners asking for payment which could be substantial, to carry out major repairs.



*Written by Denise Lash, a lawyer
practising Real Estate &
Condominium Law with the firm of
Miller Thomson LLP*



PROACTIVE STEPS NEEDED TO PREVENT RISK OF FIRE OR INJURY

The case of the *City of Toronto v. York Condominium Corporation No. 60* involving the installation of smoke detectors, now has condominium corporations developing rules and enforcing the installation and on-going maintenance of smoke detectors.

As a result of this court decision, condominium corporations are now expected to ensure that smoke detectors are installed in every dwelling unit and to exercise "due diligence". This may also extend to a condominium corporation responsibility to install carbon monoxide detectors in condominium units.



At the Golden Horseshoe Canadian Condominium Institute's "Condominium 2000" Conference, the Chief Fire Prevention Officer of the City of Burlington, Dave Cioruch, spoke about the fire hazards and risks associated with factory built insulated metal chimneys serving fireplace inserts and woodstoves in both highrise and townhouse condominium complexes. He advised that the problem is widespread throughout the province.

The Ontario Fire Marshall's Office, has been aware of the fire hazards associated with premature corrosion of these chimneys since 1991 and has issued a number of advisories and communiqué to the Fire Service in an effort to increase public awareness of the issue. Accelerated corrosion is the result of moisture that penetrates the casing of the chimney whereby it reacts with the chlorine molecules in the insulation thus creating an acid that attacks the stainless steel inner and outer shell of the chimney.

Dave Cioruch cautioned that condominium corporations must be aware of this safety concern and ensure that thorough annual inspections of these installations are conducted by qualified technicians to reduce the risk to occupants. These risks are twofold. Firstly, perforation of the exterior casing can create a fire risk to any combustible materials in close proximity to these chimneys which are designed and intended for reduced clearances to combustibles. Secondly, interior casing perforation as well as saturation of the insulation which could freeze in winter could result in interior collapse of the chimney thus creating a carbon monoxide concern within the dwelling unit that places residents at risk.

Mr. Cioruch also advised that boards of directors and property managers should be taking whatever steps are necessary to comply with the Ontario Fire Code when corrosion of these installations is encountered. He suggested four options when rectifying the problem:

- Have the chimney certified as safe for continuing use by a qualified contractor such as WETT Certified Technician (Wood Energy Technical Transfer Technician)
- If unsafe, remove the fireplace so that it is rendered totally inoperable
- Restore all components of the same manufacture to a safe condition
- Replace the wood-burning appliance and chimney with an approved gas installation

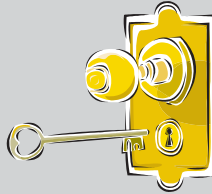
In light of the York Condominium Corporation No. 60 decision where both the condominium corporation and the unit owners were charged and found guilty under the Fire Marshall's Act for failure to install a smoke detector in the unit, condominium corporations and property managers should now be taking proactive steps to prevent the risk of fire or injury.

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

*Real Estate News
June 16, 2000
Modified September 1, 2004*



SECURITY PROVISIONS



One very important issue that the Board of Directors of a condominium corporation has to deal with is to determine what level of security is to be provided to the residents living in the condominium.

In new condominium corporations, the developer may have included in its sale documentation, the provision for a certain level of services and once the Corporation has been turned over to the owners, the new board of directors may choose to eliminate, reduce or increase the level of services provided to the residents.

The Condominium Act provides that the Board of Directors has the authority and the duty to govern the affairs of the Corporation. This authority extends to matters, which involve the safety and security of the residents. Even though in certain instances the owners maybe involved in the decision making (depending upon the nature of the change), the initial decision to change any of the services, rests with the Board of Directors.

Boards may consider entering into new security contracts

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

or terminating existing ones or they may choose to change the level of services that are provided to the condominium.

In deciding to terminate the services of a security company, certain factors that are often considered are the costs of the fees paid under the security contract and the effectiveness or "value" of the contract. In some cases security systems or methods that are used by Condominium Corporations may act as a deterrent but do not always guarantee complete safety.

Questions that are commonly posed by Boards are: What is adequate security for our Condominium Corporation? What security would have been needed to prevent theft, vandalism and ensure that residents live in a safe and secure community? At the heart of any decision being made by a Board, the Board will often ascertain what the security concerns are of the residents and try to determine what the best way to eliminate or minimize these concerns. Reports and incidents filed with property management will sometimes assist the Board in making decisions to implement or change systems that are in place.

Security matters will continue to be one of the major items to be dealt with by Boards of Directors. There is no doubt that what is deemed adequate security for one Condominium Corporation to the next. What is key is knowing what the unit owner's concerns are in order to determine what steps are needed to implement a system that works towards protecting the residents in the community.

TENANTS MUST COMPLY WITH THE CONDO ACT

Boards of Directors have often asked me as to how to restrict owners from renting their units. The common question is "Can a Corporation prohibit or restrict owners from having tenants in a residential unit?" The answer is NO. Any individual who purchases a unit has the right as an owner of that unit to rent the unit to a tenant if he or she chooses to do so.

Tenant must follow the same rules - The tenant, however, is obliged to act in the same manner as an owner by complying with the Condominium Act, the Declaration, the By-laws and the Rules of the condominium corporation.

If the tenant fails to abide by the condominium documentation, the matter may proceed to court, and the court could terminate the tenancy regardless of Landlord and Tenant laws.

Owner fails to pay common expenses - If an owner of a unit which is rented fails to pay common expenses on time, the condominium corporation can collect the common expenses from the tenants rent.

Owner's Obligations - The Condominium Act requires owners who rent their units to provide the condominium corporation with a copy of the lease or a summary of lease and the address of the owner to which notices can be sent

by the corporation. This will ensure that those owners are kept apprised of all meetings, budget changes (which will contain information as to increases or decreases in common expenses), new rules and other matters which may affect the owner's unit.

What Corporations can do - Once notification is provided to the corporation, the property manager or the board of directors will be able to deal with the tenant directly. Many condominium corporations have "tenant packages" that include information about services available in or near the condominium. They also include the condominium documentation. Informing tenants as to what their obligations are from the outset may reduce the likelihood of tenants breaching the condominium documentation merely on the basis that "they didn't know".

Developing leasing policies by introducing these into rules may be a means of monitoring the rentals in the condominium. The rules can include such things as obliging an owner to complete a "tenant information form" providing details as to the names and number of occupants in the unit.

Taking the initial steps to inform tenants and owners as to their rights and obligations, hopefully, will assist the corporation in maintaining a community enjoyed by all the residents, tenants and owners alike.



*Written by Denise Lash, a lawyer practising
Real Estate & Condominium Law with the
firm of Miller Thomson LLP*



UNIT OWNERS HAVE MANY WAYS TO CONTROL ACTIONS OF CONDO CORPORATION

The frustration of feeling powerless! What control does a unit owner have over the running of the Condominium Corporation?

The Board of Directors

The Board of Directors consists of the individuals who are elected by the unit owners to manage the affairs of the Corporation. The Board will often hire a property manager to look after the day to day operations of running the Condominium Corporation. Any unit owner - subject to directors qualifications specified in the Corporation's by-laws - may stand for election as a director and may also vote for a director. The election normally takes place during an annual general meeting unless a special meeting has been called.

If you are not content with the present Board of Directors of your Condominium Corporation and feel that a new Board would be an improvement to the present one, you may take steps to remove one or more of the directors. This can be done prior to the annual general meeting by calling a special meeting for the purpose of removing one or more of the directors from the Board and for the purpose of electing new directors.

Here is the process:

1. Requisition a meeting - You will need to obtain at least 15% of the owners' signatures on a requisition form and deliver the form (which must meet the requirements of s.46 of the *Condo Act*) to the president secretary or to the address for

service of the Corporation by personal delivery or registered mail. The directors must call and hold the meeting within 35 days of receipt of the requisition. If the Board of Directors does not call a meeting of the owners within the required time period, the req's may call a meeting and hold it within 45 days from the date the meeting was called.

2. At the meeting, the owners will vote in favour or against the removal of a director. If a director is removed, the owners will then vote to fill the vacancy of that director. The replacement director will remain as a director for the balance of the term of the director he or she replaces.

Inspect the Corporation's Records

If you are content with the Board of Directors but just want to understand and inquire as to how the Condominium Corporation is being run, you may do so by inspecting the records of the Corporation.

Upon reasonable notice to the Board of Directors, you will be entitled to look at the records of the Corporation. These records include minutes of the Board of Directors meetings but may not include documents that are confidential in nature.

Communication

As a unit owner you can still play an active role in your own condominium community by informing the Board of Directors as to your concerns and by joining a committee to assist the Board of Directors in coming to various decisions about your condominium.

Remember that communication is the key to an enjoyable condominium lifestyle.



Real Estate News

*Modified,
September 14,
2004*

Written by Denise Lash, a lawyer practising Real Estate & Condominium Law with the firm of Miller Thomson LLP

WHEN NOISY, TAKE ACTION!



You have had a long busy day at work. Your plans for this evening are going home to your condo, ordering some Thai food and watching The O.C. at 8:00 and The Apprentice at 9:00.

Everything is going quite smoothly. The food has now arrived and you grab the remote and are all ready to dig in to your Pad Thai - but then it happens...

What is that noise?

You put your ear to the wall and realize that it is coming from the unit next door, those people who moved in last week. You love listening to CD's but only when you choose to and not when you are forced to.

Sounds are part of our everyday lives and normally we don't think much about it. But when people live close together, that's when sound turns ugly and becomes "noise". Whether it is loud music or thumping upstairs- these types of issues are common place in condominium communities and are the source of many complaints by residents.

Noise created by other residents is usually governed by the rules of your Condominium Corporation. Many rules will refer to restrictions on causing a "nuisance" or disturbing the quiet enjoyment of other residents in the condominium.

Rules may address how late someone can hold a party in the party room. When it comes to stereos and televisions, how loud is too loud? Some rules may address this. Rules may also specify what common areas can be used for recreational activity. There are condominiums which prohibit musical instruments or may restrict the hours that music can be played.

The first place to start when noise becomes unbearable is to inform property management or the board of directors. The noise complaint should be investigated to ensure that the complaint is legitimate and to determine if there has been a breach of the rules. Property management and the board should also assess whether there is a problem with noise attenuation in the unit.

Dr. Gina Cody, President of Construction Control Inc., is an Engineer who is often called upon by Boards of Directors to assess noise complaints. The Ontario Building Code sets standards and level of compliance for the reduction of sound transmission between adjacent suites. Often times this is not enough to overcome the "noise" issue.



Metro News,
December 9,
2004

**Written by Denise
Lash, a lawyer
practising Real
Estate &
Condominium Law
with the firm of
Miller Thomson
LLP**

Dr. Cody suggests that the best way to approach any noise related problem is to determine the source and address the problem directly. There are sound absorption products that can be installed in the noise generating suite such as those that are commonly used in studios. However, the owners of the units may be reluctant to modify their units.

Dr. Cody also looks to the Canada Mortgage and Housing Corporation criteria for categorizing the acceptability of intrusive noise in residential occupancies. The criteria varies with the use of the specific area. For example, within a bedroom the acceptable level is 35 dB, in living and dining areas its 40 dB and for kitchen and bathrooms, 45 dB. The maximum allowed in outdoor recreation areas is 55 dB.

If the board and management are unable to resolve the problem, the municipality may get involved if the noise in the units exceed the acceptable levels provided for in municipal by-laws. In certain cases the local health department may be called upon if the noise subjects you to stress or lack of sleep.

It is also important to speak to the residents who are the "noise culprits"- something that is loud to one person may be normal to another. People work different hours, and have opinions as to what constitutes late hours. The neighbours may feel that it is within their rights as residents, to play their stereo at that hour and do not think that they are insensitive or intrusive. On the other hand, those who are subject to these unwanted sounds, may think that those neighbours are disrespectful of others.

Noise is a very difficult problem for boards and management to solve. Often it involves getting the residents involved to take action through compromise and hopefully through mediation.