

# Let's Talk Condo...

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## ONTARIO'S CONDOMINIUM LAW EXPERTS

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## TIME TO REVIEW YOUR RULES



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Condominium corporations are governed by the *Condominium Act, 1998* and the corporation's declaration, by-laws, and rules.

Since the *Condominium Act* became effective in May, 2001, most corporations have been taking steps to review and update their by-laws. Many articles have been written about the importance of doing this, especially the Operating, Standard Unit and Mediation and Arbitration by-laws. However, not enough focus has been placed on updating the rules.

Every board of directors has a duty to take all reasonable steps to enforce the provisions of the *Condominium Act*, the declaration, by-laws and rules. It is easier to implement new rules under the *Condominium Act* than it is to pass new by-laws or amend a declaration. If properly drafted, rules are as enforceable as the by-laws and declaration. As a result, the review and update of rules should be on every board's agenda.

Many condominium corporations have not taken the time to do this and are operating with rules that have been in place since the registration of the condominium corporation. This will be problematic when a corporation tries to deal with situations not contemplated by those rules.

Several recent court cases and arbitration decisions highlight this problem.

A recent court decision found that the installation of a hot tub on an exclusive use common element did not constitute an improvement, alteration or addition that required compliance with section 98 of the *Condominium Act*. The owner installed the hot tub on the exclusive use common elements after he had sought permission from the board of directors and permission had not been given. The corporation did not have a rule regulating or prohibiting the installation of hot tubs. It relied instead on the requirements of section 98 to seek the removal of the hot tub.

Section 98 prohibits an owner from making an addition, alteration or improvement to the common elements without prior board approval and without entering into an agreement with the corporation. This agreement must be registered on title to the unit and must set out the owner's responsibilities with respect to the addition, alteration or improvement. The court found that the unit owner did not need the approval of the corporation pursuant to section 98 since the installation of a hot tub did not meet the dictionary definition of addition, alteration or improvement. If the rules contained a prohibition on hot tubs without the prior written approval of the board, the owner would have been required to comply with the rule. The corporation then would have been able to

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take steps to regulate or prohibit the installation. This case illustrates how important it is for corporations to pass rules that prohibit the placement or installation of anything on exclusive use common elements (except for seasonal furniture), without the prior written approval of the board of directors.

There are several other new rules that corporations should consider approving. Increasingly, boards of directors are dealing with unit owners who are disruptive and harassing. Corporations should consider implementing anti-harassment rules to give the board the necessary tools to deal with these situations when they occur. Another rule that corporations should consider implementing is one that sets out emergency procedures to be followed when situations arise that require prompt action by the condominium corporation to protect

the property and requires the co-operation of a unit owner. An emergency procedures rule should provide that if the corporation is required to carry out the unit owner's responsibilities to deal with the emergency situation, where the owner is unavailable or unwilling to do so, the costs incurred by the corporation will be recoverable from the unit owner.

Finally, rules should be reviewed and revised if necessary to ensure that all costs incurred by the corporation to enforce the rules are deemed to be common expenses payable by the unit.

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## THE STANDARD UNIT BY-LAW – WHAT IS IT AND WHAT DOES IT ACCOMPLISH?



by  
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The *Condominium Act, 1998* requires that all condominium corporations insure the unit and the common elements, subject to what is set out below.

All condominiums registered after May 2001 should have received from the developer a schedule defining the standard unit. For condominium corporations registered before May 2001, the *Condominium Act* permits them to enact a Standard Unit By-law. The standard unit schedule or by-law is designed to establish what items the corporation's insurance will be responsible to repair when damage is caused by an insured risk.

It is important that condominium corporations recognize that the schedules being given to them by developers are really just the "feature sheet" that was appended to purchasers' agreements of purchase and sale. In our opinion most of these are not adequate to serve as standard unit schedules. Condominium corporations that have

received these schedules as part of the developer turnover documents should review them carefully to determine whether what is listed in the schedule is appropriately part of a standard unit schedule. If the corporation is unable to do this, the list should be reviewed by the corporation's legal counsel. Typically flooring, light fixtures, appliances and countertops should not be part of the standard unit.

### IMPROVEMENTS AND THE STANDARD UNIT BY-LAW

An improvement 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/schedule, anything that is NOT listed as part of the standard unit.

It is important to know what constitutes an improvement because of the corporation's obligation to insure the units. For condominium corporations registered after May 5, 2001, the *Condominium Act* states that improvements made to a unit are not the corporation's obligation to insure and repair after damage. For condominium corporations created before May 5, 2001 that have not enacted a standard unit by-law, improvements are changes made to a unit, which were in place before the registration of the

declaration and the description. These are the corporation's responsibility to insure after damage. Improvements made after registration are the unit owners' responsibility to insure.

A standard unit includes only those items which are listed as forming part of the unit in the schedule or the by-law. Anything which is **NOT** included in the list, such as kitchen countertops, appliances, wall coverings or floor coverings, will be treated as improvements. That would mean that if a fire or a flood occurred, the excluded items would not be covered by the corporation's insurance policy. The unit owner must insure these items. The responsibility for

repair, if the damage is not caused by an insured risk, and depending on who caused the damage, may be the unit owner's.

#### WHAT TO DO RIGHT NOW

We encourage corporations to review the standard unit schedules delivered to them by developers to determine if they are adequate or if a proper standard unit by-law should be enacted. For all corporations registered before May 5, 2001, we encourage them to pass standard unit by-laws and make owners aware of their obligations to insure those items that are the owners' responsibilities.

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## HUMAN RIGHTS COMPLAINTS – ARE YOU PREPARED?



by  
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The affairs of a condominium corporation are regulated by the *Condominium Act, 1998*, the declaration, the by-laws and the rules and all boards of directors have a duty to enforce them. The board, however, must be mindful of its obligations under Ontario's *Human Rights Code*.

The last few years have brought a number of noteworthy human rights decisions with respect to condominiums. Boards should be aware that these decisions exist and should be in touch with the corporation's legal counsel to ensure that it responds appropriately when a "situation" arises. An appropriate response from the board could avoid the matter being brought before a Human Rights Tribunal and could save the corporation, and therefore the unit owners, from paying a claimant a damage award.

The Québec Human Rights Tribunal recently awarded a \$10,000 settlement to a Québec woman, suffering from morbid obesity. She had made a request to her condominium board for a parking space located closer to the elevator. The woman had numerous health problems, used an oxygen tank and had a handicapped sticker on her car. She attempted to negotiate the relocation of her parking space with the board and another unit owner, a woman in her 60s, who had the parking space she wanted. This woman in her

60s had a dislocated shoulder and claimed she was handicapped and entitled to retain her parking space. Negotiations were unsuccessful and the board was put in the difficult position of balancing the interests and needs of both owners. The dispute turned "ugly" and the woman requesting the better located parking space to accommodate her disability, brought the matter before the Québec Human Rights Tribunal.

The Tribunal found that during the five-year-long dispute over the parking space, the conduct of the board and the complainant's neighbours was insulting and degrading to the complainant and that she had been discriminated against based on her disability. The Tribunal awarded the woman \$10,000 in damages along with the preferred parking space.

This decision highlights the importance of how a board handles a matter involving human rights issues and how the board's initial response greatly impacts the corporation's chance of success, if the matter is later brought before the Human Rights Tribunal.

To assist a board in dealing with requests for accommodation from unit owners and other issues involving human rights, we suggest every condominium corporation discuss and adopt a policy statement which acknowledges the application of the Human Rights Code to condominiums and sets out a complaints procedure. A recent decision of the Ontario Human Rights Tribunal involving a condominium corporation's duty to accommodate a man in a wheelchair,

not only awarded \$12,000 in damages to the man for injury to dignity, feelings and self-respect, but the condominium corporation was also ordered to develop a human rights policy and complaints procedure. Condominium corporations are best equipped to avoid paying high costs for damages by developing this policy voluntarily and ensuring the corporation's complaints procedure is followed consistently.

If a board is faced with a request from a resident for

accommodation based on a disability or other human rights criteria and an exception is made with respect to enforcement of the corporation's declaration or rules, the board should keep detailed notes of the particular circumstances so enforcement of the same provision can be justified against others who do not require accommodation.

Finally, we recommend that condominium corporations review their rules and amend any which may indirectly result in discrimination against a person or a group.

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