

# Let's Talk Condo...

ONTARIO'S LEADING CONDOMINIUM LAW PRACTICE

Fall 2005  
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## ARE PETS ALLOWED?

### MARK YOUR CALENDARS:

#### The CCI-T/ACMO Joint Condominium Conference

Scheduled for November 4<sup>th</sup> & 5<sup>th</sup>, 2005.

Visit [www.condoconference.ca](http://www.condoconference.ca) for more information.

#### Mondo Condo Party

November 23, 2005

Visit [www.MondoCondoshow.com](http://www.MondoCondoshow.com)



by  
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Many condominium corporations restrict pets. Most have restrictions on the number of pets that can be kept in a unit. Some corporations have provisions in their declarations that ban certain pets outright, usually dogs and cats. Others have weight restrictions for dogs. For some corporations these restrictions are contained in the rules.

For many people, pets are a very emotional issue. Many residents have challenged provisions that restrict pets. The courts have generally upheld no pet provisions as well as number and weight restrictions. Most cases have dealt with situations where the restrictions are contained in the corporation's declaration.

A recent case is making waves through the condominium industry. On February 18, 2005, the Ontario Superior Court of Justice handed down its ruling in *215 Glenridge Ave. Ltd. Partnership v. Waddington*. In that case *Waddington* rented her unit from 215 Glenridge Ave. Ltd. Partnership. The landlord was seeking an order for the removal of *Waddington's* 2 cats. The condominium's rules provided that "no pet shall be permitted in the building".

A similar provision prohibiting pets was contained in the corporation's declaration.

Subsections 58 (1) (a) and (b) of the *Condominium Act* allow a corporation to make rules to promote the safety, security or welfare of the unit owners and the property and assets of the corporation or to prevent unreasonable interference with the use and enjoyment of the common elements, the units or the assets of the corporation. Rules must be reasonable and consistent with the Act, the corporation's declaration and by-laws.

Before we address how the court dealt with the declaration provision prohibiting pets, we first need to look at the relationship between the Act, declarations, by-laws and rules. There is a simple hierarchy in place. The Act is at the top of the hierarchy. A declaration cannot conflict with the Act, by-laws cannot conflict with the declaration or the Act, and the rules must be consistent with the Act, declaration and by-laws. Although the Act requires by-laws and rules to be reasonable, there is no such requirement for a declaration.

The Act allows a declaration to contain conditions or restrictions with respect to the occupation and use of the units or common elements. This is the basis under which declarations contain provisions prohibiting pets. Although reasonableness is not a requirement for declarations, the courts have generally found pet restrictions to be reasonable.

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# TEN COMMANDMENTS - FOR BOARD MEMBERS OF NEW CONDOMINIUMS



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1. Ensure that the developer delivers all the turnover documents that the *Condominium Act* says must be delivered;
2. In the first year after registration, carry out a performance audit on the building and file it with the builder and the Tarion Warranty Corporation within the first year after registration. In the second year after registration, if it is a Tarion covered building, have the performance audit updated to take advantage of the Corporation's two year building envelope and mechanical and electrical warranty;
3. In the first year after registration, carry out a Reserve Fund study and deliver a plan for contributions to the unit owners;
4. Before the end of the first year after the turnover meeting, review all contracts to which the Corporation is a party and determine which of them the Corporation wishes to continue or terminate;
5. When the financial audit is done after the end of the Corporation's first year, determine with the help of professionals, the amount of deficit if any that there was in relation to the developer's disclosure budget and seek its recovery;
6. Ensure that all significant contracts entered into by the Corporation are put out to tender and that bids for the work are received before any contracts are awarded;
7. Communicate with owners on a regular basis. Make sure the residents know what is happening in the building. Use websites, newsletters and town hall meetings as well as social gatherings to communicate and create a sense of community;
8. Hire professionals to assist you and call upon them. Do not assume that management knows all the answers. Management is hired to manage, not provide advice that should be given by the auditor, lawyer or engineer;
9. Recognize that costs increase and that good service is going to cost money. Condominium living was never intended for people who were unable to pay for services they might do themselves. The whole concept of condominium living in most corporations is that the residents pay someone else to do things they do not want to do;
10. A well maintained and cared for building will result in a happier community and much higher market values for the units.

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In the *Waddington* case, the court found that if a declaration contains conditions or restrictions with respect to the occupation and use of the units or common elements, a condominium corporation cannot enforce the restrictions if it goes beyond that which is permitted by the rules in subsection 58 (1). The declaration was found to be unenforceable. This decision is contrary to the Act. Whereas the Act states that rules must be consistent with the declaration and by-laws, this decision turns that upside down and requires a declaration to be consistent with what may be contained in the rules. It also indirectly imports a reasonableness requirement for declarations that contain conditions or restrictions with respect to the use

of the units and common elements where the Act contains no such requirement. This can have serious implications for condominiums that goes well beyond the issue of pet restrictions. In the writer's opinion, there is no basis for this finding and it is contrary to the many decisions that have upheld no pet provisions in declarations and the principle that reasonableness is not required in relation to a declaration.

Although the *Waddington* decision may stand with respect to the ability to ban pets in the rules, it is almost certain that the courts will have to consider the issue of such a restriction in a declaration in the near future and hopefully any impact of the decision in the *Waddington*

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# ACMO 2000 — RAISING THE STANDARDS FOR CONDOMINIUM PROPERTY MANAGEMENT



by  
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**O**ur condominium practice group is pleased to support ACMO and its initiatives in launching the ACMO 2000 certification program.

This certification program is similar to that of the International Standards Organization (ISO) which has developed measurable processes to predict levels of the quality of services offered to its clientele.

ACMO has continuously worked to promote education for the condominium management industry and has achieved good results with the registered condominium manager (RCM) program and condominium corporations have increasingly become aware of the importance of the RCM program and stipulate this as a

requirement for hiring property management.

Condominium corporations are now placing greater demands on management companies and those companies are being faced with new challenges in order to retain their clients. Companies are having to develop systems to ensure that they can meet the requirements and expectations of condominium corporations.

As of December 31, 2006, all ACMO corporate member companies will be required to be ACMO 2000 certified. The certification process will greatly assist management companies by assisting them to put into place those systems which will benefit both the companies and those clients that they provide services to.

ACMO continues to strive for higher professional standards for property managers and companies and this initiative will benefit the industry as a whole.

More information on ACMO 2000 will be presented at the ACMO/CCI conference on November 4th.

## MONDOCONDO

We all know the importance that education plays for condominium directors, property managers and other condominium professionals.

CCI and ACMO are constantly looking at new initiatives to promote education for the condominium industry.

The focus, however, is often not on the residents and purchasers of condominium units. It is these residents who sometimes lack the understanding of what it truly means to be part of a condominium community.

It is important to educate these residents and for those individuals to develop an understanding of the role that directors and property managers play in their condominiums. On November 23, 2005, an event will be held at the York Theatre in Toronto, to celebrate condominium life and to promote education for condominium owners. The event will also announce the MondoCondo television show, to be hosted by Denise Lash.

The event will attract the entire condominium industry including developers, interior designers, real estate agents, insurance and financial professionals, service providers, condominium professionals, governmental representatives and condominium celebrities.

More details as to tickets and sponsorship opportunities are provided on the website at [www.MondoCondoshow.com](http://www.MondoCondoshow.com) or phone, MondoCondo (attention: Lynn Morrovat) at 416.491.2886.

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case will be short lived.

If you live in a building or are considering moving into one where the declaration restricts pets, it is not advisable to assume that the provisions are void and unenforceable. Most condominium lawyers are of the view that the decision is simply wrong. It does not follow the precedents established by earlier decisions. Furthermore, provisions restricting or limiting pets give a strong indication as to the feelings of the owners and residents of the building. Condominiums are communities. Most animal lovers want to live in pet friendly communities and therefore move into buildings that allow pets. It is more appropriate moving into a condominium community that is pet friendly, rather than one that is not and fighting over whether pet restrictions are enforceable only to learn that they are and your pet is unwelcome.

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**Our Miller Thomson Group supports programmes which set high standards for property management companies. We congratulate ACMO with their initiative to implement the ACMO 2000 certification.**

We would also like to extend our congratulations to those companies that have completed the process:

Active Management Ltd.  
Brookfield Residential Services Ltd.  
Caber Management Services Inc.  
CLP Property Management Inc.  
Comsec Property Management  
Del Property Management Inc.  
Fengate Property Management Limited  
Larlyn Property Management Ltd.  
M.F. Property Management Ltd.  
Malvern Condominium Property Management  
Provincial Property Management Limited

**FOR PRACTICAL SOLUTIONS**



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