

# Let's Talk Condo...

Winter 2004

Pages 195-198

## ANNOUNCEMENTS

### New legislation:

The new Limitations Act came into force on January 1, 2004. The basic time period to commence most legal actions is now 2 years.

If your corporation has any potential claims, speak to your solicitors to make sure that you do not run out of time.

New privacy legislation dealing with the collection and use of personal information came into force on January 1, 2004. See page 197 to see what steps to take to ensure your corporation complies.

### Directors' courses:

Mark your calendars for CCI's basic level directors' course which begins on Wednesday February 18 and runs through to March 31 and the advanced level director's course which runs from April 14 through to May 5th. Visit [www.cci-toronto.org](http://www.cci-toronto.org) or call (416) 491-6216 for more information.

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## WHO LIVES IN YOUR CONDO?



by

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One of the problems that condominium corporations frequently face is trying to determine who lives in the condominium units that make up the condominium corporation.

At the time that a condominium corporation is first created, the developer is required to turnover to the condominium corporation a Register of all owners and mortgage lenders who have notified the condominium corporation of their ownership interest, or their right to vote and their addresses for service.

After that, it is the condominium corporation's obligation to maintain this Register. Notwithstanding, that the condominium corporation is obligated to maintain the Register, it is the responsibility of the unit owners and those mortgagees who wish to be notified of any meetings and any votes which may be taking place, to advise the condominium corporation's property management and/or the directors of their ownership or mortgage interests in the property and addresses for service.

Under the *Condominium Act* if a unit owner or mortgagee does not notify the condominium corporation, then the corporation has no obligation to advise them of meetings.

If a unit owner falls into arrears of common expenses and the condominium corporation does not know who the owner is or the owner's address for service, then the unit owner may find that a lien has been registered against his or her unit because the unit owner did not get the corporation's notices that the common expenses were in arrears.

It is not the condominium corporation's obligation to chase down the registered owners of units and ensure that its record of owners and mortgagees is accurate. It is the responsibility of each unit owner and mortgagee to make sure that the condominium corporation has the correct ownership and address information.

When a lawyer completes a purchase transaction on behalf of a unit owner and/or a mortgage lender, it is his or her responsibility to ensure that proper notification of the ownership and the mortgage is delivered to the condominium corporation.

The *Condominium Act* also requires that any unit owner who rents his or her unit notify the corporation that the unit is rented and deliver his or her address for service, as well as a Form 5.

All corporations should consider including an information sheet for both owners and tenants with the status certificates issued to prospective purchasers and request that the new owners complete them and return them to the corporation.

# DIRECTORS AND OWNERS RIGHTS AND RESPONSIBILITIES



by

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**T**he challenge for Board members is trying to establish and maintain a healthy community. In order to accomplish this, it is essential that both the unit owners and the directors 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 the ideal standard to which condominiums could aspire and are goal-based.

Board members may want to consider whether to adopt some of the following principles, which we have modified to suit our Canadian counterparts, in the hopes that the adoption will work in raising awareness, building consensus and promoting involvement in the condominium community.

## Unit owners' rights:

1. A responsive and competent condominium corporation.
2. Honest, fair and responsive treatment by directors and managers.
3. To participate 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 book and records.
5. Prudent assessment of fees.
6. To live in a community where the property is maintained according to established standards.
7. To receive copies of all condominium documentation (the declaration, by-laws and rules).

## Directors' rights:

1. To expect owners to meet their financial obligations to the community.
2. To expect residents to know and comply with the *Condominium Act*, the declaration, the by-laws and the rules of the community and stay informed.
3. Respectful and honest treatment from residents.
4. Directors meetings conducted in a positive and constructive atmosphere.
5. To receive support and constructive input from owners and non-owner residents.
6. Personal privacy at home and during leisure time in the community.
7. To take advantage of educational opportunities that are directly related to their responsibilities and as approved by the corporation.

## Unit owners' responsibilities:

1. To comply with the *Condominium Act* and the condominium documentation.
2. To maintain their units in accordance with the *Condominium Act* and the condominium documentation.
3. To treat the directors honestly and with respect.
4. To vote at owners meetings.
5. To pay common expenses on time.
6. To provide current contact information to ensure that the corporation's records are up to date.
7. To ensure that those living in their unit (tenants, residents or guests) comply with the *Condominium Act* and the condominium documentation.

## Directors' responsibilities:

1. To fulfill their duties in accordance with the *Condominium Act* and exercise discretion in a manner that they reasonably believe to be in the best interests of the community.
2. To exercise sound business judgment and follow established management practices.
3. To balance the needs and obligations of the community as a whole with those of individual unit owners and residents.
4. To understand the condominium documentation and become educated with the *Condominium Act* and manage the condominium corporation accordingly.
5. To establish committees or use other methods to obtain input from owners and non-owner residents.
6. To conduct open, fair and well-publicized elections for the directors.
7. To welcome and educate new residents of the community, owners and non-owner residents alike.
8. To encourage input from residents on issues affecting them personally and the community as a whole.
9. To encourage events that foster neighbourliness and a sense of community.
10. To conduct business in a transparent manner when feasible and appropriate.
11. To allow unit owners access to appropriate records when requested.
12. To collect all monies due from owners.

## QUICK TIP

Hydro rates in Ontario will be going up. Now is the time to start planning on how your corporation can take steps to conserve energy. Consider sub-metering, installing high efficiency light bulbs, lowering the temperature a few degrees in the summer and increasing the temperature a few degrees in the winter. You may want to seek the advice of an energy consultant.

# NEW PRIVACY LEGISLATION - ARE YOU READY?



by  
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**A**s of January 1, 2004 the Federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA") applies to most organizations that engage in commercial activities. The legislation deals with the collection and use of personal information. It applies to management companies but it is unclear whether it applies to condominium corporations. Nevertheless, we believe that condominium corporations should follow the guidelines whether or not they have to comply with the new privacy legislation and should work with management and their solicitors to develop privacy policies that ensure compliance with PIPEDA.

PIPEDA extends protection to personal information. It regulates the collection, use and disclosure of personal information. All corporations will, at a minimum, have information about unit owners and residents.

What does your corporation have to do to comply? PIPEDA has ten (10) guiding principles. Generally speaking, observing the ten (10) principles under PIPEDA will help you, whether a condominium corporation or management company, meet your obligations. The following, although primarily written with reference to condominium corporations, applies equally to management companies:

1 - *Accountability*. All organizations in Canada are responsible for personal information under their control and must designate a privacy compliance officer who is responsible to ensure compliance.

2 - *Identifying Purposes*. Your corporation should undertake an internal audit to determine what information it obtains and the purposes for which personal information is collected. Condominium corporations should identify what information it collects as required by the Condominium Act, and what information is not required but may still be collected such as telephone numbers and emergency contacts.

3 - *Consent*. The focus of the legislation is informed consent of an individual as to the collection, use, and disclosure of personal information about him or her. You should consider whether there has been implied consent, such as an employee choosing to give information about his or her family for purposes of a benefit plan. You may want to require a specific signed consent about the

purposes, uses and permissions to disclose to third parties information about him or her.

4 - *Limiting Collection*. You should ensure that your corporation is collecting personal information only as necessary to achieve the purposes identified by the internal audit.

5 - *Limiting Use, Disclosure and Retention*. Your corporation may not use or disclose information for purposes other than those for which it was collected unless the individual about whom the information has been collected consents or if required by a statute such as the Condominium Act or other legal requirements. A corporation may then keep the personal information only as long as necessary for the fulfillment of the stated purposes.

6 - *Accuracy*. There is a duty to ensure that the information kept about people is accurate, complete and up to date for the purposes for which it is required.

7 - *Safeguards*. There is a duty to protect personal information within your corporation's control as appropriate to the sensitivity of the information. Your internal audit should look at your security methods such as locked fire-proof cabinets, software firewalls and restricting access to personal information to only those employees or directors who have a need to know. The corporation should also obtain confidentiality covenants from third party service providers.

8 - *Openness*. There is a duty to make information readily available to individuals about your privacy policy and practices related to personal information. You may want develop standard forms for distribution to residents and owners that disclose your privacy policy. You may also want to post your policy in the management office.

9 - *Individual Access*. There is a requirement to comply with the requests of individuals as to the existence, use and disclosure of information about him or her, to allow them to challenge the accuracy and completeness of the information and have it amended if necessary. There are some statutory exceptions that remove the person's access to his or her file, for such matters as documents prepared for litigation. All files should be prepared with an expectation that the subject person may ask, and be entitled, to see the contents of his or her file.

10 - *Challenging Compliance*. There is a duty to satisfy the foregoing principles and to be ready to address challenges to your compliance regime through the Compliance Officer.

There is no one solution for privacy compliance that will apply equally to all corporations. It is a good idea to speak to your solicitor to ensure that you are complying with your obligations under the new privacy legislation.

All of the information in *Let's Talk Condo* is of a general nature for information purposes only, and is not intended to represent a definitive opinion of MILLER THOMSON LLP on any particular matter. Although we make every effort to ensure that the information contained in our newsletter is accurate and up-to-date, the reader should not act upon it without obtaining appropriate professional advice and assistance.

*Let's Talk Condo* is published quarterly by the full service law firm of MILLER THOMSON LLP. By practising within a full service firm, we are able to match the diverse legal needs of today's condominium corporations with the tremendous depth of legal resources offered by MILLER THOMSON LLP's lawyers in other areas of the law including municipal and planning work, employment, labour and human relations, construction contracts and deficiencies, human rights matters, insurance matters and civil litigation.

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## QUICK TIP

Don't forget to keep your lawyers advised of changes in contact information, such as the names of board members, managers, fax numbers, email and mailing addresses.

### Canadian Condominium Institute

Membership in CCI has its benefits for condominium corporations and residents.

- Condominium courses and seminars
- Complimentary subscriptions to magazines
- Resource center for publications
- Access to certified experts and directories



For information on this independent, non-profit organization, contact:

Canadian Condominium Institute, Toronto Chapter  
2175 Sheppard Ave. E., Suite 310, Toronto, ON M2J 1W8  
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### Association of Condominium Managers of Ontario

ACMO provides:

- formal education (R.C.M. designation);
- ACMO 2000 certification program for management firms;
- networking and marketing opportunities.

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We have offices in Toronto, Markham and the Waterloo Region to better serve your needs.

In addition to our condominium expertise, our firm has experts in all legal areas including employment, construction, planning, insurance and environmental law, all of whom are available to support our clients' needs in an informative, timely and cost-effective manner.

**We welcome your questions, comments and suggestions.  
Please contact any of the Members of our Practice Group at 416.595.8500**