

Let's Talk Condo...

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Announcements:

Go to www.mondocondo.com to view MondoCondo TV episodes currently running on TvTropolis at 9:30 Saturday mornings.

Mark Your Calendar:

The 11th Annual CCI/ACMO Condominium Conference will be held on Friday, November 2nd and Saturday, November 3rd, 2007 at the Doubletree International Plaza Hotel in Toronto.

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**ONTARIO'S LEADING
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SHARED FACILITIES MANAGEMENT



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Good management is very important to ensure the smooth running of a condominium corporation. Its importance should never be overlooked.

The Board of directors should review proposed management contracts to ensure that the terms provide for the level of services that are expected and protect the rights of both the condominium and management.

One aspect that is sometimes overlooked when negotiating management contracts is the shared facilities. Many corporations share facilities such as recreational amenities, roads and services. The operation, maintenance, repair, replacement and management of shared facilities are often governed by shared facilities agreements, also known as reciprocal or cost sharing agreements. These agreements establish the mechanisms by which decisions are made respecting the shared facilities and the how the costs associated with them are to be shared between the corporations. Decisions are usually

made by a shared facilities committee made up of board members from the individual corporations. This committee usually has the authority, to retain professional management for the shared facilities.

Most condominiums that have the same management company for their buildings have the same management company for the shared facilities. The manager may have a contract with each corporation for management services but no separate contract for the shared facilities. In some cases these contracts do not include a fee for managing the shared facilities, because the manager was receiving fees for managing all of the corporations or because it was built in to the fees for the individual buildings.

If one of the corporations decides to hire a different management company problems can arise.

1. Is the manager still expected to manage the shared facilities?
2. If not, who will manage the shared facilities?
3. If no separate shared facilities management contract exists, does the shared facilities committee need to retain separate management for the shared facilities?

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We are pleased to announce that the 2nd edition of "The Condominium Act: A User's Manual", authored by Audrey Loeb, is now available from Carswell Publishing. To obtain a copy, please call: (416) 609-3800 or 1-800-387-5164, E-mail orders at carswell.orders@thomson.com; ISBN: 0-459-24273-3; \$75.00

4. If the current management company had no separate contract and was therefore not charging a separate fee for the management of the shared facilities and continues in this role, is the management company entitled to a fee?

Termination of the management of the shared facilities may be another problem if there is no written contract setting out the parties' rights and obligations in that

regard. It may be one of the corporations does not want the current manager to continue managing the facilities. Or it may be that the manager that does not want to continue managing the facilities without being separately compensated for it. To avoid these problems there should always be a separate contract for the management of shared facilities.

EXPECTATIONS FOR INDIVIDUAL DIRECTORS



by
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In our practice it is not uncommon for board members and unit owners to complain about the conduct of their colleagues or representatives on the Board of Directors. We have tried to compile a guide for board members which we hope will be a useful tool for those who are struggling with defining the responsibilities of the members of their Boards of Directors.

Members of the Board of Directors of a condominium corporation are responsible for the management and administration of the affairs of the condominium corporation as prescribed by the *Condominium Act*, 1998 and the declaration, by-laws and rules of the condominium corporation.

Board Members, in carrying out their duties, should be committed to the following principles:

- Loyalty to the Board of Directors;
- Exercise duties honestly, in good faith, and in the best interests of the condominium corporation;
- Represent the interests of the unit owners and the

condominium corporation as a whole and not any individual constituency;

- Respect the responsibilities that have been delegated by the Board to the Manager and avoid interfering with the Manager's responsibilities;
- Work positively, cooperatively, and respectfully with other Directors, the Manager and staff;
- Understand and comply with the provisions of the *Condominium Act*, and the declaration, by-laws and rules of the condominium corporation;
- Understand and comply with the provisions of the *Condominium Act* and the corporation's by-laws regarding confidentiality and conflict of interest;
- Support the decisions of the Board once they have been made and refrain from discussing divisions of opinion outside the boardroom;
- Become more educated and informed about the operations of the condominium corporation and the key issues that affect the unit owners, the condominium corporation and management;
- Act in a way that enhances the confidence and trust of others in the Board of Directors, the unit owners, management and staff.
- Fulfillment of Board member responsibilities requires an average commitment of 5-8 hours per month. Board member's participation should include:
 - Attending each regularly scheduled Board meeting and maintain an attendance record of at least 75%.

When unable to attend a meeting, advise the Chair through the management office.

- Being prepared for meetings.
- Applying skills and knowledge to actively participate in discussions and deliberations.

Board members should always:

- Recognize and respect that other Board members have differing opinions.

- Respect and consider the opinions expressed by fellow Board members.
- Treat other Board members, management and staff with courtesy and respect.
- Be willing to engage in constructive dialogue with the Board Chair on matters of participation and contribution.

CORRECTION, FALL 2006 : GST

In my article about GST in non-residential or mixed residential-commercial condominiums, published in our Fall 2006 Newsletter, I stated that some condominium corporations might be collecting GST twice. I have been contacted by some people who have suggested that the double payment of GST, is not a common practice and even though a condominium corporation may be registered for GST purposes it is not

necessarily double charging GST by including it as a component of the monthly common expenses and then collecting again on the common expense amount collected. I apologize for this. No condominium corporation should take any steps with respect to GST de-registration without consulting with its auditors.

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THE CONDO SHOW



by
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On November 10-12, 2006 at the Metro Convention Centre Toronto, MondoCondo brought learning to life by organizing the first ever Toronto Condo Show. Visitors to the show had the opportunity to see first hand the latest in design trends, products and services, to listen to experts speak on topical issues, and to see some of the latest and most innovative projects being brought to market by developers. The Toronto Condo Show marked the first time that an event style show geared specifically to the needs and interests of the condominium community as a whole had been held.

There is no doubt that Toronto's condominium market is growing up quickly. And as it does, it is not only board members and service providers that need to be educated. Our industry has developed extremely successful programmes over the years geared for professionals and directors of condominium corporations. It is time, however, to address the needs of condo owners who will benefit from understanding the condominium lifestyle. This will in turn, result in more cohesive communities which can only promote a greater understanding and better relations between owners, developers, directors and property managers.

Planning for next years show is already underway for October 19, 20 and 21, 2007 at the Metro Convention Centre. For details visit www.Torontocondoshow.com

SUBMETERING AGREEMENTS

Sub-metering and utility billing service agreements are complicated and may have certain provisions which lead to unintended outcomes which could cost a corporation more money than expected. We are currently working with various players in the condominium and electricity industries to develop an acceptable agreement that adequately protects the interests of condominium corporations and their owners. Corporations should consult with their lawyers before entering into any such agreements.

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Your lawyers should be part of your team and not an obstacle to it. At Miller Thomson, our goal is to help your team reach its goals by offering experience, insight, creative and practical thinking and maximum value. This is how we have become Ontario's leading condominium practice group.

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LOOKING AT LAW FROM YOUR PERSPECTIVE

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