SUPERIOR REGION CONDO NEWS

Canadian Condominium Institute | CCI | Institut canadien des condominiums

Northwestern Ontario Chapter

Spring 2023

IN THIS ISSUE

2022/2023

BOARD OF DIRECTORS

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Canadian Condominium Institute CCI Institut canadien des condominiums
Northwestern Ontario Chapter

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President's Message

Dear members,

Welcome to the Spring 2023 edition of the CCI Northwestern Ontario newsletter! I want to start off by thanking you for your support. These last couple of years have been challenging as things are slowly coming back to "normal". At CCI Northwestern we are mostly still continuing with virtual board meeting and events but we do have an upcoming in-person seminar in May that I am hoping to see strong participation.

Most recently in late November I attended the National Leader's Forum and various National Council meetings. National is working hard on various projects at both the provincial and National level. One of them in particular is the Ontario Director Certificate Program. The program includes eight Ontario-wide fundamental courses and upon completion the director will be awarded a director certificate. If you are interested in learning more about this new program, please reach out to our chapter administrator.

Our annual AGM was held in December and I am happy to announce two new board members joining our team. Adam Carswell from TD bank brings six years of experience from the bank industry and Seth Henoch from BFL Canada has been appointed the position of secretary. Seth brings nearly fifteen years of experience from the insurance industry. Welcome Adam and Seth to the board!

Our next upcoming education seminar will be hosted on March 22, 2023. It will be held virtually through Zoom and it will be about Section 98 agreements. This is a common issue within the industry and is very relevant to condominiums of all sizes. Please ensure to contact our chapter administrator or your property mangers to register for this event.

On a final note, I want to let you know that we are always looking for ideas for content, seminars, events, etc. If you even have an idea, wanted to write an article, or are interested in a topic to be presented please contact us and let us know about the idea.

Until next time, stay warm and I look forward to seeing you at the upcoming seminars.

Derek Tycholas

President, CCI Northwestern Ontario Chapter

CONDO ADVISER

How much noise is too much noise in a condo?

by Rod Escayola | October 31, 2022

Noise complaints in condos are complicated and difficult to resolve. The cause and origin of the noise is often difficult to demonstrate and, perhaps more importantly, the level of noise that one is expected to have to tolerate is a very subjective question.

In a recent case, the Condo Tribunal rule on an age old question: How much noise is too much noise in a condo?

Facts of the case

For the last 4 years or so, the condo corporation kept receiving noise complaints about unreasonable noise coming from a specific unit, mostly in the form of loud music/television as well as banging noises between 10pm and 7am. The noise complaints were detailed, specific and often sent at the same time as the noise disruption was taking place. This disruption caused stress, anxiety, sleep loss and inconvenience to the neighbour filing these complaints.

The owner was repeatedly advised of the complaints, the impact of this noise on neighbours and of his obligation to comply with governing documents and stop this unreasonable nuisance.

The noisy neighbour denied making these noises and submitted that some of these complaints dealt with periods of time during which he was either sleeping or not even home. Interestingly, as is often the case, he argued that the building was known for having noise issues and that he too heard noises and complained about it.

Expert reports

Each side submitted engineering reports, which reached different conclusions on whether the building met the current standards for buffering noise transmission between units. Both reports concluded that it was impossible to fully eliminate noise transmission between the units (although some mitigation was possible).

Governing Documents

Both the declaration and rules of this corporation were clear: a unit owner is not permitted to create a noise or nuisance which may disturb, or unreasonably interfere with, the comfort or quiet enjoyment of the units or common elements by other owners.

Decision

Despite the contradictory evidence, the Condo Tribunal concluded that the owner in question was in fact causing the noise and that, as such, he was in breach of the governing documents. The fact that he too could hear noise from other units did not take away from the fact that he was responsible for the nuisance he was causing by playing his TV or music too loudly, especially after hours.

How much noise is too much noise in a condo?

While the CAT concluded that this owner was causing noise, the question still remained whether such noise was "unreasonably interfering" with the use and enjoyment by others of their units or common elements and whether the noise he was causing disturbed the comfort or quiet enjoyment that others were reasonably entitled to expect.

Condo owners are entitled to some level of quietness but not to absolute silence. So, how much noise is too much noise? The CAT answered this question as follows:

> [27] In any condominium where walls are shared, some noise transmission between units is to be expected. However, in this case, the evidence demonstrates an ongoing pattern of loud noise emanating from Mr. Franklin's unit during hours when a reasonable unit owner would expect relative quiet from their neighbours. Although not limited to these times, most of the complaints take issue with the noise coming from Mr. Franklin's unit during the early mornings (before 7am), late evening (often after 10pm) and overnight when people are typically asleep. In this case, the time of the noise matters. Noise which may be tolerable or expected during the day, may be intolerable and a nuisance in the overnight hours when people are asleep. In this case, the evidence shows that the noise, which is often being made at night is, in many instances, loud enough to disturb the sleep of Ms. Borges and her children and thus is disturbing her quiet enjoyment of her unit.

Based on the above, the CAT concluded that Mr. Franklin did breach the corporation's governing documents and ordered him to refrain from making these noises and from creating a nuisance which may interfere with other owner' quiet use and enjoyment of their units.

Stated otherwise, the CAT basically ordered him to turn his TV and music down when others are entitled and expected to be sleeping...

Important CAT Decision Respecting Emotional Support Animals

by James Davidson | December 3, 2021

Our readers will be aware that Service Animals, including Emotional Support Animals (ESAs), must be permitted (in Ontario) despite any "No Animals" provision in the condominium's governing documents. But this raises an important question: **What sort of conditions can a condominium corporation properly impose on a permitted ESA?**

A recent decision of the CAT, in the case of ***Martis v. Peel Condominium Corporation No. 253***, in my view provides some excellent guidance on this question.
The essential facts of the case are as follows: PCC 253 had passed a "No Pets" Rule. As confirmed by a doctor's note, one of the residents in the condominium needed an ESA (a support dog). PCC 253 was prepared to permit an ESA, so long as the animal did not exceed 25 pounds. The CAT decided that this was a reasonable condition for the condominium corporation to impose, particularly in light of evidence that other residents in the condominium had a fear of dogs (and a resulting need to avoid large dogs). Here's what the CAT said:

> **I accept the testimony of the PCC 253 witnesses that there are those in the PCC 253 who have a Code-related need to avoid dogs. I find that Mr. Martis has not demonstrated that he needs a dog which weighs more than 25 pounds. I understand that he has a strong preference for the dog he has chosen but as the OHRC Ableism Policy makes clear, PCC 253 is obliged to accommodate his need; they are not obliged to accommodate his preference. In the circumstances of this case, I find that PCC 253 has offered a reasonable accommodation in setting a weight limit of 25 pounds on an ESA for Mr. Martis.**

To me, the important "takeaways" from the case are as follows:

- Although ESAs must be permitted (accommodated), it is proper for the condominium corporation to impose reasonable conditions. For instance, a weight limit may (in many cases) be perfectly proper – particularly if there are other residents in the condominium who have a proven fear of animals. Other conditions may make sense as well.

- In my view, it would be wise to include the conditions in a "Service Animal Rule". We have a good template. In our view, such a Rule is worth considering in every case.

- Finally, I was interested to note that the condominium corporation (in the Martis case) has a "No Pets Rule". The point is that a "No Pets Rule" may now be enforceable! Previous law has indicated that a "No Pets" provision (to be enforceable) must be in the Declaration. But again, this may be evolving. That said, I suggest that, if you are considering a "No Pets" provision, you may wish to consider seeking legal advice on the issue.

DAVIDSON HOULE ALLEN LLP
CONDOMINIUM LAW

The right to an emotional support animal in housing

by Safia Lakhani | August 25, 2022

Despite the positive impact emotional support animals have on the lives of their humans, keeping them in certain housing situations, like condominiums and no-pet residences, can be an uphill battle.

Human rights legislation across the country guarantees freedom from discrimination and harassment in housing. In most provinces, human rights laws are considered "quasi-constitutional" in status; that is to say, they take precedence over most other legislation, and cannot be waived by private contracts. However, the treatment of individuals requiring the assistance of emotional support animals, or ESAs, appears to vary across jurisdictions and, further, may depend on whether the party in question lives in a condominium.

Emotional support animals

Unlike service animals, who are trained to perform specific tasks, the function of emotional support animals is widely acknowledged to be therapeutic; that is, to provide comfort to their owner potentially alleviating the symptoms of mental health disabilities. While service animals are afforded legislative protection in many jurisdictions, including BC and Ontario, ESAs are not officially recognized in any provincial legislation. This means that an individual's ability to live with an ESA may be conditional on their ability to demonstrate that the ESA is a necessary accommodation within the meaning of the applicable human rights laws. However, as discussed below, the analysis of accommodation, as it relates to ESAs, is variable depending on jurisdiction and the type of housing.

Human rights accommodations

Some jurisdictions recognize a universal right to live with pets. Under Ontario's Residential Tenancies Act, for instance, any provision purporting to prevent tenants from living with their pets is void. By contrast, there is no protection for tenants with pets in BC or Alberta, where landlords may include pet clauses in their leases. However, any lease or rental policy prohibiting pets must align with the applicable human rights laws of the province. Most human rights legislation recognizes a duty, on the part of housing providers, to accommodate residents with disabilities to the point of undue hardship. Undue hardship is typically measured exclusively with respect to cost and health and safety. Unless a housing provider can demonstrate that the accommodation is so costly that it will result in significant financial hardship or will pose a threat to the health and safety of others, the accommodation must be granted. Ontario's Human Rights Commission has established the need to ensure respect for dignity, individualization, and integration and full participation in determining appropriate accommodations. Similar guidance exists in other jurisdictions.

Dogs make great emotional support animals. Credit: Richard Brutyo / Unsplash

Accommodation analysis

How does this analysis apply to ESAs in the context of housing? First, tenancy laws do not apply in the context of condominiums, which operate according to separate legislation. Regardless, where a resident demonstrates a disability-related need to reside with an ESA, the landlord has a duty to accommodate that need to the point of undue hardship. However, a review of decisions involving ESAs in condominiums suggests that individuals requiring ESAs in that setting may have an uphill battle.

In a 2015 decision, the Ontario courts considered whether a condominium resident could continue to reside with her therapy dog, though he exceeded the 25 lb weight restriction contained in the condominium's rules. Despite evidence that the dog assisted the owner with "stress and past abuse", including trauma, and was preferable to medication, the court found that that owner had not established that she had a disability, within the meaning of the Human Rights Code, and accordingly, ruled against her (there were additional credibility issues in this case, but the court's ruling on disability was a separate matter).

In a similar case in BC, the Human Rights Tribunal sided

with a condominium strata that refused to waive their no pet by-law in favour of a 67-year old adult living with mental and physical disabilities, who had provided medical evidence that his ESA "would greatly improve his chances of fully managing the symptoms of this illness" and, further, a recommendation by his physician that he live with an ESA to "alleviate persistent symptoms of his disorder." There, the strata stated that "while a legally designated service dog would be exempt from the by-law [...] this would not apply in your case."

The court agreed that the evidence provided was insufficient to support the request. In both cases, there appears to have been some question about whether the medical evidence clearly established the existence of a disability requiring treatment, and whether an ESA could, in fact, provide it. Condominium residents face an additional challenge where the 'no pet' rule is enshrined in the corporation's founding documents.

In Ontario, condominiums are governed by a declaration which sets out the corporation's address, the proportionate interests and expenses for each unit, identification of common elements, and identification of unit boundaries. The declaration can also impose additional restrictions on owners with respect to their behaviour within their units and the common elements, including the provision of a no pet clause. Because the Declaration is viewed as "vital to the integrity and title acquired by a unit owner," declarations containing a 'no pet' clause are difficult to override.

In 2003, the Ontario courts considered the case of a 'no pet' condominium in which the unit owner gave evidence that losing the dog would adversely affect her mental health. While the court accepted that evidence, it concluded, nonetheless, that the 'no pet' provision should stand because the unit owner had not demonstrated she could 'not live without the ESA'.

Conclusion

Human rights legislation is intended to offer protections to individuals who may require specific accommodations in order to live and work in society. In some cases, this may include the need for assistance by an ESA In this writer's opinion, the above decisions suggest the need for a broader, more purposive approach to understanding the function of ESAs- one that upholds and recognizes the dignity and participation of participants in the accommodation process- in all housing, including condominiums.

Ontario Extends Virtual Meeting Provisions for Co-ops and Non-Profits

by Hunter Stone | August 26, 2022

The Government of Ontario has further amended the Co-operative Corporations Act, Ontario Not-for-Profit Corporations Act and Condominium Act, 1998, by permitting electronic meetings until September 30, 2023. The extension means that organizations governed by these statues can enjoy the benefits of meeting virtually for another year. Even if the by-laws or rules of the corporation do not provide for electronic meetings, the further amendment allows them.

Initially instituted to meet gathering limits imposed to help stop the spread of COVID-19, organizations have experienced the ongoing advantages of hosting meetings online. See our earlier blog from 2020 when the option first came to Ontario. Now, many organizations are having hybrid meetings, a mix between in-person and virtual participants, that have worked to boost community involvement regardless of participants' comfort with gathering or mobility needs.

While these measures remain temporary for now, we're pleased that the Government of Ontario has extended the provisions once again and look forward to hearing from clients who continue to benefit from them.

To record on Zoom or not – that is the question

by Maggie Fleming | August 16, 2022

In March 2020, many organizations moved their annual general meetings (AGMs) and board meetings to the internet using platforms like Zoom. Lots of these meetings have stayed online, and for good reason – it's a way to involve people previously unable to attend and offers an accessible option for those that are not comfortable attending in-person. For some organizations, pressing the "record" button has become a regular practice. The stated reason often being for minute taking. But recording, and keeping those recordings, is not without its legal issues.

A recent Condominium Authority Tribunal (CAT) case deals with such a recording, specifically the audio recording of an annual general meeting. In this case, King v. York Region Condominium Corporation No. 692, 2022 ONCAT 80 (CanLII), a condo owner requested draft minutes in relation to three separate AGMs, as well as the audio recording of the most recent AGM. The condo owner's intention was to use the draft minutes and recordings to show that there had been "unauthorized changes, deletions and/or additions to the draft and signed minutes". Ultimately, the CAT determined that the condo owner was not entitled to access the recording, because the owner did not have a right under s.55 of the Condominium Act to obtain a copy of the records.

While the condo owner was denied access based on the Condominium Act alone, an interesting point is made in the body of the decision. The condo corporation insisted that the recordings were used solely for minute takers to review later to draft the AGM minutes, and stated that the recordings did not form part of the records of the condo corporation. This is important because, if the recording did form part of the corporation's records, an owner would be entitled to obtain a copy of them for review. Unfortunately, because the CAT determined that the owner didn't have a right to request the recording under the Act, the issue regarding whether the recording forms part of the corporation's record was not addressed. The CAT did however mention that:

"An owner does have a legitimate interest in the management of the corporation and is entitled to records in order to understand how decisions are made and to ensure that decisions are made according to the duties and obligations set out in the Act. But this case is not about that."

In this way, the CAT does not rule out the possibility of recordings forming part of the records of a corporation, at least in the case of condos. It would be very difficult for a corporation to argue that a recording does not form part of the corporation's records if the recordings have been stored long after minute-takers have finalized the meeting minutes. This leaves open the possibility that video recordings of meetings could be accessible to owners, members, or other interested parties.

Privacy issues are also at play when organizations keep recordings of their meetings on file. Under federal privacy legislation, individuals have the right to access all personal information that an organization holds about them. This could include opinions and comments about the individual at a directors' meeting. As such, corporations should be wary of keeping recordings of meetings on file, as they may be the subject of an access request down the line.

One way for a corporation to avoid this issue is to implement a policy that meetings will be recorded for minute-verification only, and that all recordings will be deleted within a stated number of days following the meeting. Better yet, a corporation could refrain from recording entirely and rely on minute-taking instead.

Minutes are not only required by law under corporate statutes but also crucial as a record of an organization's decision-making. Minutes should not, however, be a record of everything that was said at a meeting. Minute-taking involves the careful art of summarizing the main points from a discussion, depersonalizing them, and documenting the motions and decisions that flow from that discussion. None of this requires a recording; it just requires a little preparation by the note-taker and a lot of attentive listening at the meeting. There are many excellent online resources on minute-taking, and we can also provide some pointers at your request.

CONDO ADVISER

Who decides whether the condo auditor is to attend the AGM?

by: Rod Escayola | October 4, 2022

Most condo corporations have their auditor attend the AGM to present the audit and answer any questions on same. Other corporations don't and, instead, have a director or manager present the audit report. In this blog post we explore all questions related to auditors including whether the auditor is required to be present at the AGM and who decides whether the auditor is invited to attend the AGM.

Does every corporation need an auditor?

The Condo Act requires the appointment of an auditor on an annual basis.

One of the very few exceptions to this is if your condo consists of less than 25 units and, as of the date of the owners meeting, all of the owners have consented in writing to dispense of the audit until the next AGM. This dispense is required on an annual basis. So, if you have 25 units or more, you require an auditor.

Job of the auditor

Each year, the corporation prepares its financial statements to be presented to the owners at the AGM. This is usually done with the manager's assistance. The job of the auditor is to examine these financial statements on behalf of the owners and to make an annual report on them. Both the financial statements and the auditor's report must be presented to the owners at the AGM.

In the context of their examinations, auditors have a right to access, at all times, all records, documents, accounts and vouchers of the corporation and are entitled to require any necessary information or explanation from directors, officers, employees or the manager of the corporation.

Ultimately, the auditor has to include in their report any statement that they consider necessary if the corporation's

financial statements are not in accordance with the requirements of the Condo Act or if the financial statements do not present fairly, in all material respects, the financial position of the corporation. The auditor must also report on whether the operations out of the reserve fund fairly present the information contained in the reserve fund study.

Who appoints the auditor?

Auditors are not appointed by the board or by management. Auditors are appointed by and for the owners. This is done at each annual general meeting. The auditor holds that office until the close of the next annual general meeting – or stated otherwise, the board cannot remove them before the term is up.

There are instances where the courts are called to appoint an auditor. That usually takes place when an auditor has not been appointed by the owners for whatever reason.

Removal of an auditor

Since the auditor is appointed by owners, only owners can remove an auditor before the end of their term. However, a strict process must be followed when such removal is contemplated. This process includes giving the auditor at least 30 days notice before the meeting where a vote will take place to remove them. The auditor has a statutory right to make written representations to the corporation on their proposed removal. They also have the right to be present and address the owners.

Do note that this strict process only applies when owners

intend on removing an auditor before the end of their term (the end of the following AGM). It does not apply when the owners are selecting a new auditor at an AGM.

The auditor must be independent

It is crucial for an auditor to be (and to be seen) as independent. For this reason, the Condo Act is clear: the auditor cannot be a director, officer, employee or a manager of the corporation. They can also not be an employer, employee or partner of any of these. It is interesting to note that the Condo Act does not disqualify an owner from acting as an auditor... I find that quite odd and suspect that an auditor would not act in this capacity if they were an owner of the corporation.

Finally, the auditor cannot have an interests in a contract to which the corporation is a party.

Must the auditor be present at the AGM?

Ultimately, the auditor has a statutory right to attend a meeting of owners and to be heard on any part of the business of the meeting that concerns the auditor. For that reason, the corporation has an obligation to give the auditor notice of all meetings of owners and of all other communications relating to the meetings that owners are entitled to receive.
Having said that, the Condo Act does not require the auditor to be present. What is required is that the auditor be granted the possibility to attend and speak to the owners.
Who decides whether the auditor is to attend the AGM?

There are three entities entitled to request the auditor's presence at the AGM:

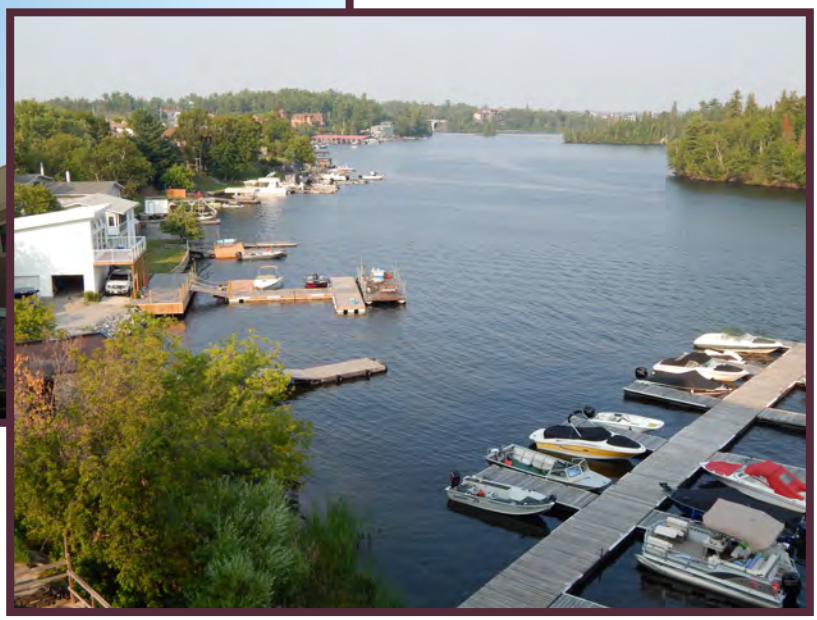
- **The auditor**
  As stated in the section above, the auditor has a right to attend an owners meeting. No one can prevent them from being present.

- **The corporation**
  The corporation can require the auditor to be present. This is, in fact, done in the vast majority of cases. If the corporation wants the auditor to attend, they must provide them with at least 5 days notice. In such case, the auditor must attend. Naturally, it makes more sense to give them much more notice to ensure they are available. In most cases, you want to schedule your AGM in consultation with the auditor to make sure they are available.

- **The owners**
  Any owner (even just a single one) may require the auditor (or a former auditor) to be present at a meeting of owners for the purpose of answering questions concerning the basis of the auditor's opinion in the auditor's report. This is an important right as the auditor is appointed by and for the owners. It is therefore not up to the board (or management) to decide whether to invite the auditor. A single owner can make that request by sending a written notice to the auditor and to the corporation. The notice must go out at least 5 days before the meeting. Again, to make sure the auditor is available, owners are best to send their notice with ample notice (don't wait for 5 days before the meeting).

At the meeting of owners, the auditor shall answer all inquiries concerning the basis upon which the person formed the opinion in their report.

As indicated on a few occasions already, ultimately, the auditor is appointed by and for the owners. They are an independent third-party watchdog whose job it is to ensure that the financial statements presented to the owners reflect, in all materiality, the financial position of the corporation. They should be given free and full access to the corporation's records/information; they should be candid and open towards the owners and they have a right to attend and a duty to answer questions relevant to their office.



CCI-NWO - 2022-2023 Membership List

CCI-NWO has 42 condominium memberships representing a total of 1707 units.

Condo #	Name	# of Units
1	The Carriage House	22
2	Varsity Square	48
3	Guildwood Park	70
4	Guildwood Park	40
5	Waverley Park Towers	151
6	Guildwood Park	40
7	McVicar Estates	54
8	Glengowan Place	54
9	Parkwest Meadows I & II	54
10	Maplecrest Tower	98
12	Parkwest Meadows III	50
13	Victoria Park	35
14	Parkview Condo	17
15	Boulevard Park Place	72
16	Leland Court	13
17	Signature Court	36
18	Parkwest Manor 1	31
19	Harbourview Terrace I	67
20	King Arthur Suites	36
22	Parkwest Manor II	31
25	Harbourview Terrace II	35
26	Brookside Place	24
28	Banting Place	48
29	Brookside Manor	48
31	Fanshaw Place	36
33	Marina Park Place	29
38	Hilldale Gardens	38
39	Silver Harbour Estates	29
40	Foxborough Greens	26
41	Pinecrest Manor	32
42	Fanshaw Place II	30
48	Mariday Suites	32
50	Lakeview Suites	24
51	Superior Lofts	14
52	Allure Building	51
54	Terravista Townhomes	18
55	Terravista Condos	30
56	Aurora Building	48
58	Hillcrest Neighbour Village	19
60	Hillcrest Neighbour Village II	15
61	Fountain Hill	24
KCC #		
10	Island View	38

MEMBERS - CATEGORIES

LEGAL

Cheadles	622-6821
Common Ground Condo Law - Gareth Stackhouse	416-467-5712

FINANCIAL INSTITUTION

Condominium Financial	647-250-7260
Toronto Dominion Bank	807-355-3807

ACCOUNTING

LCPS Professional Corporation	623-0600

CONSTRUCTION / CLEANING / SECURITY

North-West Electric	345-7475
Apex Security	344-8491
First General – Thunder Bay	623-1276

PROPERTY MANAGEMENT / REAL ESTATE

Mirabelli Real Estate Corp.	346-5690
Synergy Property Mgmt, Inc.	620-8999
ReMax First Choice Realty	344-5700
Mario Tegola, ReMax First Choice Realty	473-7206
Vince Mirabelli, ReMax First Choice Realty	474-1765
Alexander Mirabelli, ReMax First Choice Realty	629-4410
Christine Lannon, Royal LePage Lannon Realty	620-3217
Kelsey Belluz, ReMax Generations	472-9292

INSURANCE

BFL Canada	204-396-7384

UPCOMING SEMINAR

CCI Northwestern Ontario is excited to announce an upcoming Seminar,
Section 98 Agreements -
Ensuring Compliance with the Condominium Act,
that will be held on March 22, 2023 starting at 4:00pm until 6:00pm.

Nancy Houle from Davidson Houle Allen LLP will be discussing the statutory requirement of having a Section 98 Agreement registered when a unit owner proposes alterations, additions or improvements to the common elements. The presentation will cover the legal requirements regarding the content of a Section 98 Agreement and the Condominium Corporation's duty to act reasonably when enacting Section 98 Agreements.

THIS EVENT WILL BE HOSTED VIRTUALLY THROUGH ZOOM!

SAVE THE DATE - MAY 6, 2023

CCI Northwestern Ontario is excited to announce an upcoming two part in person Seminar:
Part 1: Budget, Audit & Financial Statement Fundamentals
Part 2: Condominium Financing

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