Superior Region Condo News

SPRING 2017

Canadian Condominium Institute
Institut canadien des condominiums
Northwestern Ontario Chapter

IN THIS ISSUE:

CCI MEMBERS $65, NON-MEMBERS $95

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Northwestern Ontario Chapter

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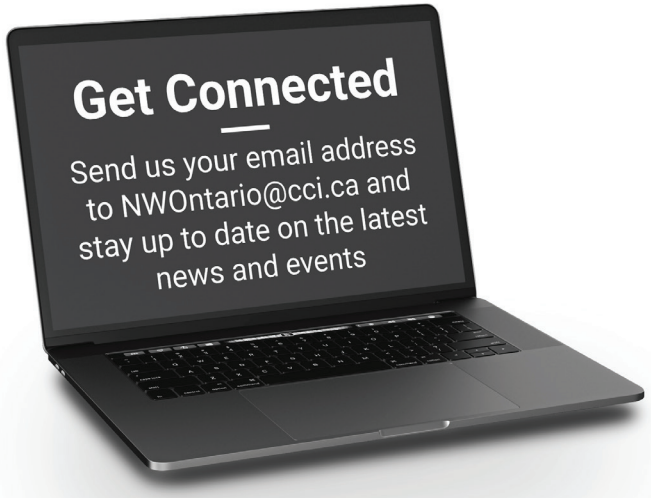


Presidents Message

By Dan Kelly, President CCI NWO

As we head through the year and out of winter it is apparent from our board meeting agendas that our's is a busy chapter. All facets of our NWO organization have work on the go and looming overhead is the topic of changes to the legislation in Ontario.

So to bring you up to date on our recent past and what to look forward to for the rest of the year please note the following:

I begin with some congratulatory comments. Firstly, to Doug Forbes,LLB on his appointment as National President. We look forward to your leadership on the many important matters now facing CCI.

Similarly, we congratulate all of CCI in celebration of its 35th Anniversary as Canada's only National Condominium Organization. Just think of the hours of work that has gone into getting us this far. Thanks to all who have made it possible.

As mentioned, the Proposed Regulatory Changes under the Condominium Act, 1998 were just issued. Public comment is due by the end of March. Although this timeframe is very short, representatives of both the national and local bodies have indicated they will be responding.

In conjunction with that you will note that our spring seminar topic is CONDO LAW -What You Need to Know About Bill 106. This very timely presentation will be given by Mr. Armand Conant, an expert in this field. You will not want to miss this important topic so register now.

While on the topic of education, I want to thank Jim McKenzie for the terrific job he did in presenting at our fall seminar titled "Condo Insurance-What you need to know". His insight into this complex matter was certainly well received by the large audience that attended.

While education of our membership continues to be the focal point of our activities it is encouraging to note the high-caliber presenters we are able to attract which translates into large turnouts of participants.

With respect to our commitment to National, I report that Doug Shanks and I attended the Fall Leadership Forum in Collingwood in October. This semi-annual, national conference reviewed all matters of current concern to CCI with committee meetings covering all areas of governance. The next Forum will be held in June in Fredericton and as you may have heard our NWO Chapter is hard at work planning for Fall, 2017 when Thunder Bay will host this 3 day event for the first time.

As I mentioned above, there's a lot going on at CCI -NWO. A lot for you, our membership, to take advantage of. Do your part and support out seminar programs. You'll be glad you did.

CONDO LAW: WHAT YOU NEED TO KNOW WHEN LAWS GOES INTO EFFECT ON JULY 1, 2017. BILL 106, REGULATIONS FOR THE REFORMS TO CONDOMINIUM ACT AND LICENSING OF MANAGERS. ARE YOU READY?

DATE:
Saturday, April 22, 2017

LOCATION:
St. Joseph's Heritage
Georgian Room
63 Carrie St, Thunder Bay ON

TIME:
9:00 am - 1:00 pm
Registration starts @ 8:30 am

SPONSORED BY:
Steen Property Management Inc.

ENROLLMENT FEE:
$75.00
Fee includes coffee, tea and snacks.
CCI membership is not required for this seminar

SPEAKER:
Armand Conant, B.Eng., LL.B., D.E.S.S. (Sorbonne)

Armand G.R. Conant, B.Eng., LL.B, D.E.S.S. (Sorbonne). Armand heads up the condominium law department of law firm of Shibley Righton LLP and represents numerous condominium corporations across Ontario. Armand resides in Toronto, where he also serves on the Board of Directors and is Chair of the Legislative Committee which has completed and submitted an extensive legislative brief to the Ontario government with recommendations for changes to the Condominium Act, 1998 (the "Act"). Armand has also been appointed as one the four Founding/First Directors of the newly Created Condominium Authority of Ontario.

Contact nwontario@cci.ca for more info
or call Lori at 807-345-5963 between 9 am and 12 noon

Seating is limited – register early

Advertise Your Annual General Meeting

A CONDO COMMUNICATION EXPERT OFFERS TIPS ON HOW TO CAMPAIGN FOR QUORUM

By Sue Langlois

First published on REMI Newtork Condo Business web newsletter

The annual general meeting (AGM) at a condo corporation is a big deal. It's the one time of year when the board of directors meets with the rest of the residents, explains what went on in the past year, answers questions, possibly elects some new members and, if all goes well, ends with all participants feeling satisfied and secure in the knowledge that their investment is in good hands. Keeping residents informed and educated about all facets of life in their condominium is the best way to save time, save money, and increase property value.

Does that sound familiar? If not, it should. The problem is, although the AGM is so important, many condo residents seem to be either unaware of its existence, or indifferent to its impact. This can be changed! It's possible to run an AGM worthy of the minute taker's time and see an informed and responsible constituency of condo residents come forth to participate. All it takes is a little thought and effort to campaign for the desired result.

THE MESSAGE

The first step in any communication campaign is to set goals. In the case of the AGM, your primary goal is simply convince the resident to "spend a couple of hours of their time at the AGM instead of somewhere else? This information is critical and, unfortunately, is almost always overlooked by condo boards and their busy management teams.

Start by making a list of reasons for residents to attend:

- It's your biggest investment — take care of it and have a say.
- Come out and meet your neighbors.
- It's expensive to reschedule an AGM if quorum is not met.
- If you have any questions, now is the time to ask them.
- Your vote counts!

In addition, consider offering some definitions for words such as quorum and proxy. It's important not to assume that the audience is familiar with all terms.

Last but certainly not least, be sure to share the date and time of the AGM.

THE MEDIUM

In condos, the usual methods of communication are email and/or text messaging, notice board, door-to-door and, for the social media crowd, even Twitter is an option.

Then comes the content itself. If the condominium has a digital notice board that includes a content manager/service provider, use this as a starting point. The AGM "ads" designed for the digital notice boards can often be slightly modified and used as a PDF or image file to be included in the manager's email blast. That means the email will be less text-laden and focus instead on visuals, which have a much better impact. (Not to mention it's less work for the manager!)
Tip: Keep messages in the series similar but with differently coloured backgrounds so that the audience will recognize the theme.

THE CAMPAIGN

Post a notice for residents to save the date as many as three months out. **Ask residents to save the date.**

In the three weeks leading up to the AGM, the campaign should kick into high gear. Select a notice to post on bulletin boards, and switch it up with a different one every few days.

Email a new campaign notice every couple of days. To get a higher email open rate, embed an image rather than including it as an attachment that requires the audience to take a further step. **Email is great to remind residents of the date and time of the AGM.**

Aside from the original "save the date" email, send out an AGM reminder notice (complete with the location, date and time) a number of times before leading up to the meeting.

Social media pundits claim that, statistically, the best times to tweet are 8 a.m., 12:30 p.m. and 7 p.m. Simply tweet each item three times a day. It's possible to use a scheduling tool such as Hootsuite to help with this.If possible, keep a copy of all notices on the condominium's website, and provide a link to the site where residents can go to get more information.

After the AGM is over, it's important to post the results of any elections, update residents on decisions and other business, and thank all who attended, either in person or by proxy. The number one thing that residents want to know is what's going on, so be sure to feed their curiosity. Keep them in the loop and coming back for more at next year's AGM.

Sue Langlois is the founder/CEO of Diginotice, a digital notice board communication service. Sue was recently elected to the CCI-Toronto board of directors and serves on the communication committees for both CCI-Toronto and CCI-National. She contributed the Communications chapter of CCI-T's Board of Directors' Tips, Tools and Techniques. Sue can be reached at sue@digi-notice.com.

The Oppression Remedy and the Condominium Act

By Doug Shanks and Mark Doble

In August of 2016, the Ontario Superior Court of Justice rendered a decision instructive for both condominium developers and condo owners in a case known as Toronto Standard Condominium Corp. No. 2130 v. York Bremner Developments Ltd., 2016 ONSC 5393.

In June of 2006, York Bremner Developments Limited ("YBDL") began developing what is now known as Maple Leaf Square—a property which includes the Air Canada Centre, a hotel, bars, restaurants, offices and condominiums.

As part of its development obligations, YBDL created the condominium corporation TSCC 2130 in December of 2010 by registering a declaration on title. By March of 2011, transfers of title for the condo units from YBDL to the unit owners was complete, and later that spring, a "turnover meeting" passed formal control of TSCC 2130 from the developer, YBDL, to the unit owners.

In most condominium developments, this process of transferring control from the developer to the owners is routine, but nevertheless may give rise to non-obvious legal issues. In particular, after a condo corporation is created by a developer, the developer remains in control of the corporation—free to enter into agreements and function nearly as any corporation might—while, at the same time, a change in control from the developer to the unit owners is imminent. As such, the Condominium Act provides protections for the benefit of unit owners from bargains entered into by the developer prior to the change in control.

Nearing completion of the development of Maple Leaf Square, a shared use agreement was entered into by the developer on behalf of the condominium corporation, TSCC 2130, and before the turnover meeting. This agreement was intended to govern the "integrated, logical, and orderly use, operation, and maintenance" of the many common areas of Maple Leaf Square. Of particular importance, however, was that the parties to this agreement consisted only

of TSCC 2130 and various shell corporations either owned or controlled by YBDM and its co-owners. In other words, the opportunity for abuse was palpable.

Particularly, the shared use agreement created by YBDM provided for Cadillac Fairview Corporation Limited ("CFCL"), a co-owner of YBDM, to act as the Common Facilities Manager ("CFM") responsible for the maintenance and operation of the common areas of MLS. However, there were many deficiencies with respect to this shared use agreement. In particular, as stated in paragraph 38 of the decision, "There [was] no owners' committee to instruct the CFM. There [was] no regular reporting by the CFM to the component owners on operations of the shared facilities. There [was] no process for owners' feedback to be provided to the CFM on ordinary course operational or policy matters. The CFM [was] given complete authority in respect to the matters under its charge in the [shared use agreement]. [And] it [was] entitled to a fee for its services of 10% of the gross amount invoiced to each component owner inclusive of HST."

Accordingly, Justice Myers of the Ontario Superior Court of Justice stated at paragraph 102 of the judgment that "CFCL was not a neutral or a fiduciary to TSCC 2130", then presented a key issue in this case: "when will an agreement that contemplates an interested manager result in oppression?".

In answering this question, Justice Myers recounted the Supreme Court of Canada's description of the oppression remedy in the context of the Canada Business Corporations Act in a decision known as BCE Inc., Re, 2008 SCC 69 (S.C.C.), and asserted that the "oppression remedy protects a party's reasonable expectations." Furthermore, Justice Myers stated at paragraph 106 of the judgment that "TSCC 2130 had a reasonable expectation that the YBDL and CFCL would deal with it lawfully, in good faith, as an equal owner sharing its property, and in accordance with the terms of the constating documents of the condominium corporation." These reasonable expectations, however, were not met, and the shared use agreement TSCC 2130 entered into before the change of control resulted in "oppression of the post-turnover corporation's rights". In particular, the "conflicted CFM used its unbalanced contractual terms, coupled with non-disclosure, and heavy-handed self-dealing to favour YBDL (and itself as co-owner of YBDL) instead of ensuring the fairness and reasonableness of the allocations of shared costs."

As a result, Justice Myers granted TSCC 2130 a remedy it sought; namely, that the shared use agreement be amended so as to permit TSCC 2130 the ability to terminate the CFM without cause on 60 days' notice. TSCC 2130 had no immediate plans for removing the current CFM; however, the amendment will sure level out the balance of power in future negotiations between TSCC 2130 and the other parties to the shared use agreement.

This case, TSCC 2130 v. YBDL, is instructive to both developers and owners: developers must be sure that any agreements entered into by the corporation before change of control to the owners is not oppressive to the future condo corporation, and owners now have a more clearly defined route for dealing with oppressive contracts that were entered into before taking control.

Doug Shanks is a business lawyer and senior partner in Thunder Bay at Cheadles LLP who practices condominium law in Ontario. He advises condominium boards and owners of their rights and obligations under laws affecting condominiums and their owners. Mark Doble is articling student at Cheadles LLP and was instrumental in preparing this article.

This article is provided for legal information only, and is not legal advice. Legal advice should be obtained with respect to specific fact situations.

The Importance of Good Meeting Minutes

By Marko Lindhe

A cornerstone of a well-functioning condominium board is regular meetings. These gatherings bring together a diverse group of individuals to make crucial decisions on managing and spending millions of dollars of other people's money — choices that affect their community's quality of life and day-to-day operations.

The responsibility is enormous and so is the liability. Unfortunately, boards are not always happy, harmonious groups. As a safety mechanism, Ontario's Condominium Act requires every board to keep an adequate minute book, which serves to protect the board, property manager, and residents of the condominium.

A well-documented minute book allows residents to see how their condo fees are being spent, the financial standing of the corporation, and decisions on general upgrades to the building. If residents disagree with their board representatives, they can use information gleaned from the minutes to inform their vote on new board members at the annual general meeting (AGM).

In the case of a discrepancy, and a resident challenges the board's integrity, spending or general decisions, the board can refer to the minutes showing exactly what was discussed, what decisions were unanimously made, and what was officially agreed upon.

Minute-taking can be a daunting, difficult and tedious task, but it's also an important task. Keeping a fair and unbiased record of decisions can go a long way toward bolstering the confidence residents have in their condominium board.

Some boards will have a director or the property manager take meeting minutes, while others will hire professional recording secretaries. Whomever produces them, proper minutes should never be a reflection of personal objectives.

It can be challenging for directors or management to wear two hats in a meeting — that of an engaged, active, decision-making participant while simultaneously being a totally objective transcriber of the proceedings. Professional recording secretaries are independent third parties trained to listen for and distill the pertinent information required for the minutes.

A well-produced set of minutes will depict relevant material, such as projects that are out for tender, and any other decisions that involve money and careful consideration. Since financing comes largely from condo fees, these types of decisions will be of interest to all members involved, including the residents of the condominium.

Minute-takers must be aware of what should and shouldn't be recorded. The level of detail embedded in a set of minutes can vary from board to board. However, table talk (the weather, general discussion not involving a decision and back and forth between board members) is typically excluded from the minutes, as it can compromise conciseness and add clutter to the document. Some boards may want specific comments included for clarification, and that's perfectly fine.

There is another level of pressure associated with being the minute-taker because these documents are admissible in court. If litigation occurs, and it becomes necessary to rely on the minutes, the simple fact that the minutes were taken by an independent third party may be helpful.

If minutes were altered after they were adopted, a third-party recording secretary would have a copy of the original set of minutes. It is also good practice to add disclaimers for minutes that were altered after the fact, so a trail of edits exists.

For brief or informal meetings, minutes may be helpful, but not necessary. However, for official meetings that require a quorum, well-taken minutes are absolutely imperative. Minutes of owners' and board meetings are part of the minute book mandated by the Condominium Act.

A good minute book includes a complete record of all meetings and resolutions of directors from each meeting. Minutes should also thoroughly describe financial figures and accurately represent the condominium's financial standing.

An official minute book needs to contain:

- The signed minutes of all meetings;
- Any reports that were tabled; e.g., management report, financial report, any shared facility meeting minutes, committee reports;
- The AGM minutes, complete with the auditor's report and any other reports given at the meeting; e.g, reports from the president, treasurer, committees;
- Confidential minutes pertaining to matters regarding owners or staff members, known as in-camera minutes

It is good public relations, and best practice, to make the minutes available to residents once the board has adopted them. Board minutes need to cover the topics discussed and the resulting motion or resolution.

Owners need to be informed that the minutes for the previous month were adopted and approved at the following month's meeting. Although posting them is not required, it is a good way to promote dialogue with residents and board members.

Publicly posting approved minutes (or distributing them via email or online platform) keeps owners informed and demonstrates the board's transparency and integrity, which often become points of contention. It is not uncommon for residents to question or doubt their board, and well-produced minutes are a great start, and often a more-than-sensible answer.

Marko Lindhe is a partner at Minutes Solutions. He can be reached at marko@minutessolutions.com or via www.minutessolutions.com.

Condo Audits Uncover Four Common Issues

PROFESSIONAL ADVICE MAY BE IN ORDER WHEN CORPORATIONS CONFRONT AMBIGUITIES

By John AbedRabbo

With few exceptions, the Condominium Act of Ontario (the act) requires an independent auditor to perform an annual audit of the financial statements of a condominium corporation. Sections 60 and 71 underline the rights and responsibilities of an independent auditor.

It's important for unit owners to understand that an independent auditor does not prepare the financial statements, nor is he or she responsible for the daily bookkeeping and management activities. These activities are the responsibility of management and the board. The auditor's responsibility is to provide an independent opinion as to whether the financial statements are fairly stated in accordance with the applicable accounting standards (in Ontario, these would be the Canadian accounting standards for not-for-profit organizations).

However, during an audit, an auditor may come across certain issues related to financial or operational matters that may need to be highlighted to management and the board, and in some circumstances to unit owners as well. These issues are not misrepresentations nor errors that would cause the financial statements to be false or misleading. In fact, if the statements have material errors then the auditor may have to qualify his or her report, or even worse, issue an adverse audit opinion.

This article addresses some issues that don't necessarily cause the financial statements to be false or misleading, but quite frequently come up during an audit and would typically be brought to management, the board and unit owners' attention.

1. Reserve fund-qualifying expenses

Section 93(2) of the act states that the reserve fund shall be used solely for the purpose of major repairs of the corporation's common elements and assets if the corporation has the obligation to repair or replace these items. Quite often there is some ambiguity about what constitutes a replacement. Would replacing carpet flooring with ceramic flooring qualify as a replacement? Would replacing certain equipment with technologically more advanced equipment qualify? There is no simple answer here and every situation should be evaluated individually. Obviously, when evaluating each situation, one must consider the reserve fund study, technological advances, statutory requirements and the incremental cost.

Another issue that comes up frequently is whether the corporation has an obligation to repair or replace an item. One recent example that hit the news is the Kitec plumbing issue. The Toronto Star reported on this topic a year ago, stating that one condominium corporation anticipated a retrofit cost of $5,000 to $6,500 per unit. Further, the article stated that owners must pay for this retrofit directly (i.e. those expenses cannot be charged to the reserve fund). The management and board should consult with professionals, such as engineers, lawyers and auditors, before making a decision in case of an ambiguity.

2. Reserve fund study delays

This is somewhat a simple issue but commonly occurs. The act states that a reserve fund study must be conducted within three years of the preceding study. Auditors frequently find that the corporation has simply not commissioned a new study within the prescribed period. There should be no reason to delay the study past the three years. This should be considered as important as a person's annual check-up at the doctor, except the corporation only has to do its financial check-up every three years.

3. Borrowing money "unintentionally"

This issue frequently catches boards and management by surprise and usually after the fact. Essentially, a condominium corporation may not borrow money unless it passes a special bylaw (with support from a majority of unit owners) to authorize borrowing. Boards and management may get caught in situations where the supplier provides long-term financing, which may be considered borrowing if it meets certain criteria, such as implied or explicit interest on the financing.

Thus, the board and management should always check the specifics of the financing arrangements and consult with an accountant before signing these contracts. If a borrowing bylaw is required, consult legal counsel as well.

4. Bank and investment accounts

Every condominium corporation in the province must maintain at least two bank accounts with an eligible financial institution in Ontario. One account should be used for the operating activities and the other for the reserve fund activities. Further, these two accounts must be under the corporation's own name and must be designated as operating and reserve fund bank accounts. Thus, not meeting any of the above mentioned guidelines would be an issue that the auditor would typically highlight. Obviously, the solution is to follow these guidelines.

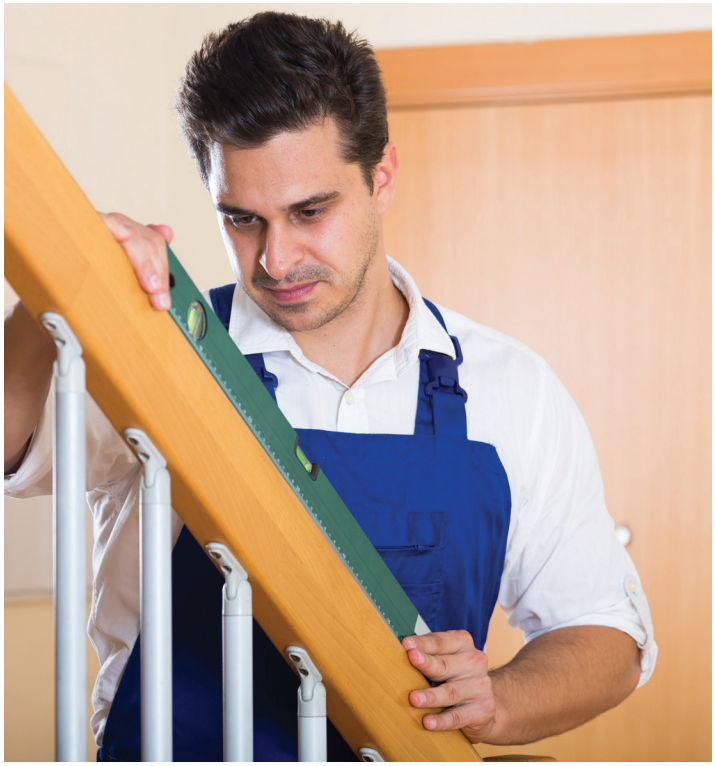
The one issue that auditors frequently encounter, however, is the commingling of cash. Or, more specifically, the corporation is using cash in the reserve fund bank account to finance operating activities. This commonly happens when a corporation has a large operating deficit and so uses its reserve fund assets to finance its deficit. The solution to this issue is proper cash flow management and budgeting, which includes deficit recovery budgeting.

As for investments, the act specifies what a condominium corporation may invest in — what are defined as "eligible investments." For obvious reasons, the act allows low-risk investments, such as guaranteed investment certificates, term deposits and some bonds.

The act also requires that the corporation establish an investment plan for the reserve investments. This is essential to ensure liquidity and to safeguard the assets. Frequently, auditors find that condominium corporations don't have a formal investment plan. This is a simple process and should be based on the reserve fund study.

To avoid these common audit issues, the board should retain the services of a reputable management company that understands the industry and the act, and is willing to work with other professionals. Upfront consultation is always cheaper than settling the legal issues that may result from not following the act.

John AbedRabbo, CPA, CA, CPA (Illinois) is a chartered public accountant and has more than 15 years of experience in accounting, audit and tax services. John is a partner at Polyzotis & Co. LLP, Chartered Accountants, a Toronto-based firm. John's practice is focused on providing audit services to more than 90 condominium corporations. He can be reached at 416-360-4310, ext. 240 or by e-mail at: john@polyzotis.com.



Spring Maintenance

Spring is fast approaching and like all home owners there are a number of tasks to ensure your condo is prepared.

- Make sure air your dryer air vents is clear of accumulated lint which will keep flapper open.
- Check and clean range hood filters.
- Report any safety hazards such as a loose handrail, lifting or buckling carpet, etc.
- Vacuum fire and smoke detectors, as dust or spider webs can prevent them from functioning. **Remember:** Smoke and CO detectors need to be replaced every 10 years.
- Replace heating system air filters.
- Level any exterior steps or decks which moved due to frost or settling.
- Check the condition of your eaves-troughs and downspouts for loose joints and condition of building, attachment. Clear any obstructions to ensure water flows away from your foundation.

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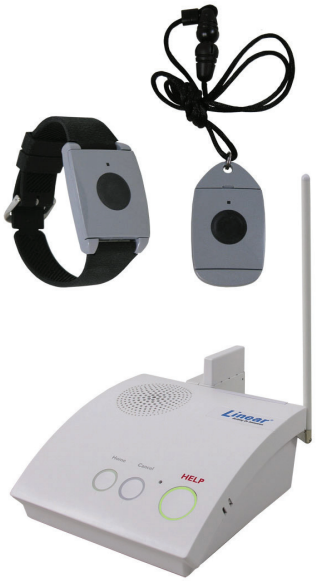

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Ignoring bullying and harassment not an option for condo boards

By Chris Jaglowitz

April 13, 2016 was International Day against Bullying, Discrimination, Homophobia, Transphobia, and Transmisogyny, better known as the "International Day of Pink." A recent Ontario Human Rights Tribunal decision demonstrates that condo boards must apply the Day of Pink concepts every day of the year.

In Welykyi v. Rouge Valley Co-operative Homes Inc., the Tribunal chastised a co-operative housing corporation for not responding seriously, swiftly or effectively to a series of nasty, discriminatory and offensive messages against specific residents distributed by unknown perpetrators. The 10 affected residents each made a human rights complaint to the Tribunal that were heard together and addressed in a single decision.

From April to September 2012, almost twenty extremely offensive messages were distributed by an unknown perpetrator in the form of flyers left throughout the building or posted in common areas or to specific unit doors. Many messages were delivered by vandalism, through messages written onto elevator walls and doors and the applicants' unit doors.

The offensive messages targeted 10 specific residents of the community. The Tribunal included one sample message in its decision, but characterized all of them as follows:

These messages referred to the applicants in terms related to the prohibited grounds of disability, race, sex, gender identity, ancestry, age and receipt of public assistance. The content of these messages are truly heinous and display a shocking level of ignorance and intolerance.

The Tribunal found that the co-op board undertook minimal steps to redirect security cameras so as to dissuade or catch the offenders and so the campaign of hatred persisted for months. The Tribunal also noted that the co-op had no human rights rules or policies on the books and that the board did not strongly condemn the offensive acts publicly until after the complainants enlisted an advocacy organization to intervene on their behalf to the board.

The Tribunal also found that the co-op board failed to act reasonably by working with the complainants or even acknowledging their complaints, leaving the applicants feeling vulnerable, prompting them to apply for relief to the Human Rights Tribunal. The Tribunal described the applicants' experience as follows:

[194] The applicants were subjected to horrible harassment over a period of roughly five months. There is no doubt that this harassment was a grave affront to their dignity and that it affected them profoundly. The respondent was not responsible for the harassment, but was responsible for not addressing the harassment adequately. It is important not to conflate the harassment with the inadequate response when assessing the appropriate remedy for the applicants. The respondent's failure to take reasonable actions to address the harassment was objectively serious. The applicants felt completely unsupported by the respondent and the harassment most likely would have ceased sooner had the respondent taken meaningful action more promptly. The applicants' evidence indicates that they felt abandoned by the respondent and had no reason to believe the harassment would stop, since, in their view, nothing was being done about it. Ms. Welykyi's evidence was that the respondent's indifference was more hurtful than the harassment itself.

In the end, the Tribunal found the board's response to be inadequate and awarded the co-op to pay the 10 complainants $3,000 each "as monetary compensation for the infringement of their right to be free from discrimination and harassment in the occupation of accommodation, including injury to dignity, feelings and self-respect."

In addition, the co-op was ordered to circulate the Tribunal's decision to its residents and to post it conspicuously for six months. It seems ironic to use public shaming to educate people not to turn a blind eye to bullying and harassment, but it feels like a suitable punishment in these circumstances.

Although this case was brought against a co-operative housing corporation it has direct application to condominium corporations, in that the governance and political issues between the two are more common than not. For instance, the Tribunal also addressed but ultimately rejected an allegation that the co-op board made a reprisal against the applicant complainants by taking the position that those applicants pursuing human rights complaints were ineligible to serve on the board. Another part of the decision described tensions between the old board and the new board that was elected somewhere in the middle of the piece. On these and other points, there are plenty of parallels between the co-op and condo worlds in this decision. It's a must-read.

While condo and co-op boards are not expected to be kindergarten teachers and referee every dispute between residents, the lesson from this decision is that boards cannot be indecisive or indifferent when a member of their community is being targeted and the board has the means to make a meaningful difference. Given that the hateful messages in this case appeared in common areas, which is the board's turf, there was no excuse for the board to shirk its duty to act decisively.

Boards can take small, simple steps that involve only tiny expenditures but can make a huge difference in scenarios like this. Some of those steps could be to:

- Accept and properly investigate complaints of anti-social behaviour;
- Acknowledge complaints and keep complainants informed and involved;
- Pass and enforce a no-harassment rule to set community tone;
- Modify security coverage or procedures to prevent or document problems; and
- Condemn anti-social behaviour in a newsletter column or posted bulletin.

The single largest failure of this co-op board was to ignore the complainants. After reading the decision, it is crystal clear that this case would not have been brought or would have been resolved earlier had the board reached out to the victims and supported them. Because the victims in this case could not identify the perpetrators, they pursued the only party who could and should have been able to protect them. By failing to take steps against the perpetrators, the board made itself an obvious target.

Condo boards have a unique position and obligation to ensure that their community remains a friendly place. This decision is clear proof that there may be serious consequences for failing to fulfill that important responsibility.

Chris Jaglowitz is a partner at Gardiner Miller Arnold LLP in Toronto and is editor of the Ontario Condo Law Blog, where this piece first appeared.

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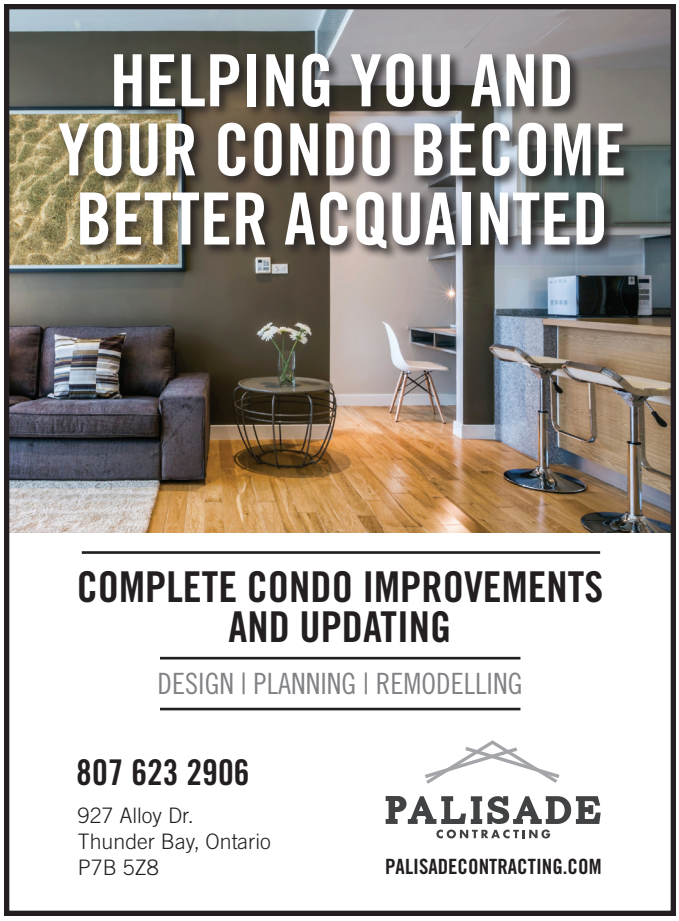

Three Ways Boards Run Afoul of Their Statutory Duties

By Sonja Hodis

There are many duties the current Condominium Act (1998) requires directors to fulfill. Case law and experience suggest that there are certain duties that some boards and their directors tend to run afoul of or choose to ignore. Here are three common breaches and tips on how to avoid them:

1. FAILING TO FULFILL MAINTENANCE AND REPAIR OBLIGATIONS

Sections 89 and 90 of the Condominium Act set out the default repair and maintenance obligations of a condominium corporation. These default provisions can be altered by a corporation's declaration in accordance with section 91.

Whatever the corporation's maintenance and repair obligations, the board must fulfill them. Failing to do so can result in claims against the corporation requiring damages to be paid out to owners. For example, in Ryan v. York Condominium Corporation No. 340, the corporation had to pay close to $70,000 for failing to fix a water infiltration problem in a timely manner.

What to do? Take reasonable steps to repair and maintain the common elements as quickly as possible.

The corporation's duty to repair and maintain has been highlighted by an increase in smoke migration complaints in condominiums. Failing to properly maintain and repair a common element which is causing the smoke to migrate from one unit to another can attract liability, even though the corporation is not the cause of the smoking. Corporations may not only face a court application, but also a human rights complaint if the smoke is affecting a person with a disability.

What to do? If the corporation receives a smoke migration complaint, investigate how the smoke is migrating as soon as possible.

The corporation may need to hire a smoke migration consultant to see if any common elements need repair or replacement to prevent the smoke from migrating. This testing will help determine whether the problem is a maintenance/repair issue for the corporation or unit owner or just a nuisance claim. If there are deficiencies in the common elements that cause the smoke to migrate from one unit to another, repair them immediately to avoid further liability.

2. FAILING TO ENSURE STATUS CERTIFICATE ACCURACY

Directors may delegate the task of completing status certificates to their property manager. However, boards must be aware that they have a statutory duty to ensure that the status certificates are accurate.

An error in a status certificate can lead to claims against the corporation resulting in payouts to new purchasers who relied on the incorrect information. Alternatively, it may lead to a financial loss for the corporation if it can't collect special assessments from new purchasers. In Orr v. MTCC 1056 and 673830 Ontario Limited v. MTCC 673, the condominium boards learned the consequences of failing to fulfill this duty the hard way.

What to do? Regardless of who prepares the status certificates, the board should review the status certificate information at least once a year. Ideally, the board should review the status certificate information every quarter. If the corporation has any ongoing litigation or knows about the potential for a special assessment in the near future, amend the status certificate to reflect the change in circumstances or knowledge of additional expenditures that will affect the common expense fees.

Do not add information that is not required in the standard form. This can needlessly create extra liability, as the condominium corporation did in the Orr case.

The board can not alter the corporation's statutory duty to ensure the accuracy of the status certificate. However, it can assign responsibility for errors and their associated costs to a third party such as the corporation's property manager.

Carefully review the corporation's management agreement to ensure that the liability for accuracy and completeness of all information contained in the status certificate rests with the management company. Also check that the management company bears liability for all costs incurred by the corporation as a result of any errors the management company makes in preparing the status certificate. This may allow the condominium corporation , such as MTCC 673, to get reimbursed for its costs when there is a mistake in a status certificate prepared by the property manager.

3. FAILING TO HOLD VALIDLY REQUISITIONED MEETINGS

Section 46 of the Condominium Act requires the board to hold an owner's meeting when it has received a valid requisition. To be valid, the requisition must be signed by owners representing at least 15 per cent of units and state the nature of the business to be presented at the meeting.

If the requisition is valid, the meeting must be held within 35 days or at the next annual general meeting if the requisitionists so request. If the board does not comply with this duty, the requisitionists can call the meeting and be reimbursed by the corporation for the reasonable costs incurred to call the meeting.

Many times, these requisitions result in a power struggle between the board and a group of unhappy owners. In order to show who is in control, some boards will spend a great deal of time and money trying to find a way to avoid holding the meeting.

However, boards should think twice about trying to avoid holding a requisition meeting. The courts have reiterated that the ability of an owner to requisition a meeting is an important democratic right in a condominium. Accordingly, the courts have liberally interpreted the requirements for a requisition based on the legislation's goal of consumer protection. (See Hogan v. MTCC 595.)

The courts will not let boards create obstacles to prevent owners from calling a meeting. Nor will the courts allow boards to deny owners the right to a meeting on technical breaches or strict interpretations of the wording of the legislation.

Failing to call a validly requisitioned meeting can result in a court order for the corporation to hold the meeting and pay the costs of the owner(s) who obtained the court order. However, the court will not require a board to hold a meeting where the requisition contains false and misleading information.

What to do? If the board gets a requisition, also verify that 15 per cent of owners listed in the corporation's records under section 47(2) and who are entitled to vote (not more than 30 days in arrears) have actually signed the requisition. Many times, requisitionists will have tenants who are occupying the unit sign. Tenant signatures cannot count toward the 15 per cent. In addition, if two owners from the same unit sign, they only count as one owner.

If the requisitionists have met the requirements under section 46(1), determine whether they wish to have the issue addressed at the next AGM or a special meeting called. Use this opportunity to talk to the requisitionists to see if the board can resolve the issues outside of a meeting. If the requisitionists are prepared to waive the meeting, be sure to document this agreement in writing.

If they do not consent to the issue being addressed at the next AGM or do not waive the meeting, the board should call the meeting. Be sure to deal with the issues as outlined in the requisition letter. Have the corporation's legal counsel review the requisition to determine what, if any, action can be taken at the meeting or whether the meeting will be just a discussion.

The board shouldn't waste its time or the corporation's resources fighting over whether the meeting should be held unless the requisition contains false and misleading information. The board's time and corporation's resources are better used educating owners about the issues — possibly with help from a guest speaker — and giving owners an opportunity to be heard at the meeting. The requisition may signal that a bigger issue needs to be addressed.

It's important to be aware of these three common breaches because, as shown in the above examples, when boards run afoul of their legal duties it can create liability for the corporation.

Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. She advises condominium boards and owners on their rights and responsibilities under the Condominium Act and other legislation that affects condominiums. She represents her clients at all levels of court, various tribunals and in mediation/arbitration proceedings. Sonja can be reached at (705) 737-4403, sonja@hodislaw.com or via her website at www.hodislaw.com.

CCI-NOW - Membership List

CCI-NWO HAS 38 CONDOMINIUMS, REPRESENTING 1,651 UNITS.

Condo Name	Total Units	Unit Range
Islandview (Kenora)	40	0-49
The Carriage House	22	0-49
Varsity Square	48	0-49
Guildwood Park	40	0-49
Guildwood Park	40	0-49
Waverley Park Towers	151	150+
Guildwood Park	70	50-149
McVicar Estates	53	50-149
Glengowan Place	54	50-149
Parkview Meadows I & II	54	50-149
Maplecrest Tower	98	50-149
Parkview Meadows III	50	50-149
Victoria Park	42	0-49
Parkview Condo	17	0-49
Boulevard Park Place	72	50-149
Leland Court	13	0-49
Signature Court	36	0-49
Parkwest Manor 1	31	0-49
Harbourview Terrace I	67	50-149
King Arthur Suites	36	0-49
Parkwest Manor II	31	0-49
Harbourview Terrace II	35	0-49
Brookside Place	24	0-49
Banting Place	48	0-49
Brookside Manor	48	0-49
Fanshaw Place	36	0-49
Marina Park Place	29	0-49
Hilldale Gardens	38	0-49
Silver Harbour Estates	21	0-49
Foxborough Greens	26	0-49
Pinecrest Manor	32	0-49
Fanshaw Place II	30	0-49
Mariday Suites	48	0-49
Lakeview Suites	24	0-49
Allure Building	51	0-49
Terravista Townhomes	18	0-49
Terravista Condos	30	0-49
Aurora Building	48	0-49

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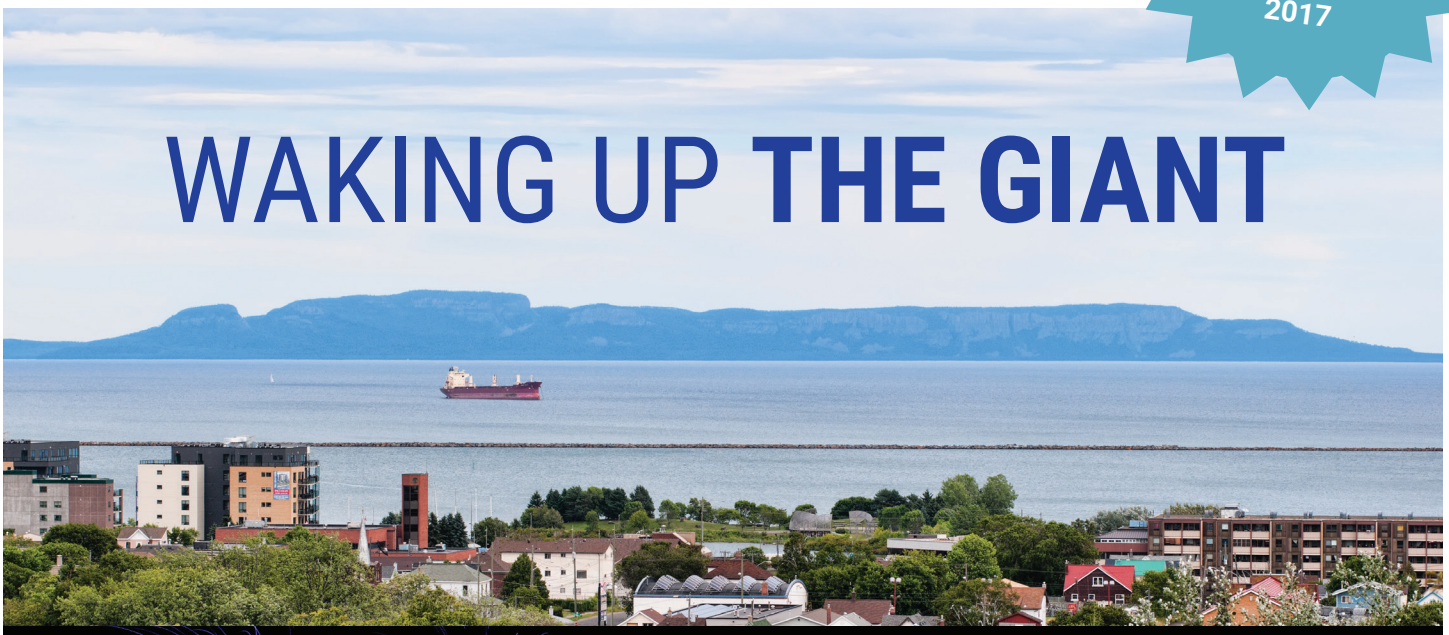
2017

WAKING UP **THE GIANT**



Join members from coast to coast and the National Executive for the fall CCI Chapter Symposium & National Leaders Forum/Council Meeting for the first time ever being held in Thunder Bay celebrating the 35th Anniversary of the CCI.

Featuring condominium living education, seminar and social functions.

WEDNESDAY OCTOBER 18

Registration and meet & greet at the Fireside room Valhalla Inn.

THURSDAY OCTOBER 19

Join us in the Tap room of the Sleeping Giant Brewing Co. along with the Flipper Flannigan Flat Footed Four and a local flare of delightful cuisine by Nikos Mantis of Pinetree Catering.

FRIDAY OCTOBER 20

Spectacular fine dining at the McGillivray Landing in Old Fort William followed by “Fright Nite” at the Fort.

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