Superior Region Condo News

SPRING 2019

Canadian Condominium Institute
CCI
Institut canadien des condominiums
Northwestern Ontario Chapter

IN THIS ISSUE:

Canadian Condominium Institute CCI Institut canadien des condominiums

Northwestern Ontario Chapter

PO Box 10692
Thunder Bay, ON P7B 6V1

T: 807.345.5963 **F:** 807.346.8892

http://cci-nwontario.ca/about-us/welcome-to-cci
nwontario@cci.ca
@CCINWOntario

BOARD OF DIRECTORS AND OFFICERS
2018/2019

Directors

Dan Kelly *President*	Advisor
Gord Soloway *Secretary*	Northwestern Property Management
Derek Tycholas *Treasurer*	LCPS Chartered Accountants
Doug Shanks *Education Chair*	Cheadles LLP
Sue Duncan *Newsletter Chair*	Synergy Property Management Solutions
Doug Steen	Advisor

ADVERTISING RATES 2019
CCI Northwestern Ontario Chapter

Size	Dimensions	Rate*
Business Card	2” h x 3.5” w	$50.00
¼ Page	4.75” h x 3.5” w	$125.00
½ Page - Portrait	9.5” h x 3.5” w	$250.00
½ Page - Landscape	4.75” h x 7” w	$250.00
Full Page	9.5” h x 7” w	$400.00

*Rates based on a per issue basis.

A Common Problem: Common Element Alterations and S.98 Agreements

By Doug Shanks and Cody Fraser

This article will explore a recent case, Noguera v. Muskoka Condominium Corporation No. 22, 2018 ONSC 7278 (Noguera). Noguera emphasizes the importance of having section 98 agreements in place before allowing any owner to make any additions, alterations or improvements to the common elements of the condominium. These agreements are required to be registered on title to the unit, with the effect that the obligations relating to the changes are binding on subsequent owners of the unit. However, entering into these agreements is not always common practice with condominium corporations. Like many condominium corporations, in Noguera, most of the unit owners had previously made structural changes but none entered into the statutorily-required s. 98 agreement.

Mr. Noguera, an owner within a condominium corporation, was planning to buy an adjacent unit, but before committing to buy it, he asked the condominium board to grant permission to open up the interior demising wall between the two units. This work would constitute a change to the condominium common elements, therefore, the work would have to be approved condominium board as required by section 98 of the Condominium Act, 1998, SO 1998, c 19 (the Act).

The minutes of the board meeting indicated that Mr. Noguera's proposed alternations were minor and approval was granted subject to the following terms:

1. That the unit owner will pay all costs;
2. That the alteration does not affect the use and enjoyment of adjacent unit owners;
3. That the alteration does not affect the symmetry of the building;
4. That that the alteration does not affect the corporations budget;
5. That all necessary engineering and Town approvals be given before the work starts;
6. That the wall was to be returned to its prior state at no cost to the corporation if the owner sold on of the units; and
7. The two units could never be sold as one unit

After the plans were approved by the Town and a building permit was issued, Mr. Noguera purchased the adjacent unit and proceeded with the work. The work required to make the two units one livable space was significant, including removing the kitchen from one unit. The cost for the alterations were approximately $230,000.

While he received approval of the board to make alterations, Mr. Noguera did not enter into a section 98 agreement with the corporation as required by the Act.

When a new condominium president was elected, concerns were raised because Mr. Noguera had not entered into a section 98 agreement. The board decided that Mr. Noguera and all other owners who had made changes to the common elements in the past would be required to sign a section 98 agreement. A heavy handed letter was sent to Mr. Noguera by the corporation's solicitor demanding that work to the condo be halted. However, by that point, all work had been completed in accordance with the plans submitted to the corporation and approved by the Town.

Section 98 agreements were issued to all owners of condominium units who had made changes to the common elements. However, the form Mr. Noguera received contained an additional clause that specified that if the unit was sold the unit would be restored to the condition it was in before the work was done. This included reinstalling the demising wall and all changes made to the interior of the two units to create one livable space.

In light of these actions, Mr. Noguera commenced an application under section 135 of Condominium Act. S. 135 of the Act is the oppression remedy, allowing for an owner, a corporation, a declarant or a mortgagee of a unit to make an application to the Superior Court of Justice for an order. An order will be granted if the conduct claimed by the applicant is found to be oppressive or unfairly prejudicial to the applicant. Mr. Noguera, claimed that the corporation had acted in a manner that was oppressive and unfairly prejudiced him on the basis that corporation was attempting to retract its permission to make the changes that were previously approved. Further, Mr. Noguera claimed that

the section 98 agreement was much more burdensome than the agreements presented to other owners.

The corporation took the position that Mr. Noguera had a conflict of interest (he sat on the condominium board) and because of that had no permission to complete the alterations. The Court rejected the corporation's arguments and ruled the decision made by the board was made in good faith by all concerned, following past practice. At the meeting that granted Mr. Noguera the right to move forward with alterations he disclosed his interest to the board. Further, the Court determined that the changes were not material to the corporation as there was no financial or other impact to the corporation.

At paragraph 77 of the decision, the Court concluded that the condominium corporation had treated Mr. Noguera more harshly than the other unit owners who had made changes to the common elements without having entered into a section 98 agreement:

"I further find that the Condominium, by purporting to require a term in the s. 98 agreement that goes beyond both its own approval and what it required of other unit owners, was abusive and unfair, and prejudicial to the applicants. The additional term in the Condominium's form of agreement would mean that they would have to undo changes for which no approval was needed in the first place. The requirements of the oppression remedy under s. 135 have therefore been met."

The Court reasoned that the corporation was primarily at fault for the circumstances that led to the dispute with Mr. Noguera as a result of its practice of not requiring owners to enter into section 98 agreements. The Corporation was ordered to pay Mr. Noguera $10,000 in damages arising from their unfair and oppressive conduct. The Court also ordered the parties to enter into a section 98 agreement that provides that if either of the

units are sold the demising wall must be reinstalled.

Section 98 agreements set out the duties and responsibilities of the unit owner when making changes to the common elements. These agreements are important for many reasons including liability. Having any alternations to the common elements listed on title is essential, not only for the present owners but if and when the condominium unit is sold. If it is not common practice for individual condominium corporations to have their owners enter into these agreements there are many repercussions that can come from this oversight, including the oppression remedy like in Noguera.

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. Cody Fraser is a law student at Cheadles LLP from Lakehead University Bora Laskin Faculty of Law 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.

cheadles
lawyers & trademark agents LLP

STEEN
PROPERTY MANAGEMENT
YOUR INVESTMENT IS OUR BUSINESS
Office: (807) 346-5690
Fax: (807) 344-1507
815 Norah Crescent
Thunder Bay, ON P7C 5H9
www.steenproperty.com

copperfin

Ownership means planning for tomorrow.

Our skilled Relationship Managers focus on your goals to offer a personalized plan that is uniquely yours.

copperfin.ca/business

#LifeForward

IMPORTANT FACTS

About Ontario Condominium Corporations And Their Obligations Under the WSIA

by Phyllis Ellis

WSIB Clearance Certificates Are Mandatory In Ontario

What Is The WSIB?

WSIB stands for the Workplace Safety & Insurance Board and is an Ontario Government Agency. Many of you may remember it as the old Worker's Compensation Board. It provides no-fault workplace insurance for employees injured at work or who incur a work related illness. The program is funded by employers and their contribution to the fund is based on the company's payroll and the category of their industry.

What Is A Clearance Certificate?

A Clearance Certificate confirms that a contractor or subcontractor is registered with the WSIB and that their account is in good standing. Contractors with as few as one employee must have WSIB coverage, report and pay their premiums on time in order to be eligible for a Clearance Certificate. This would include landscaping, lawn maintenance and janitorial contractors. By issuing a Clearance Certificate, the WSIB waives its right to hold a Corporation liable for unpaid premiums and other amounts the contractor owes the WSIB for the validity period of the certificate.

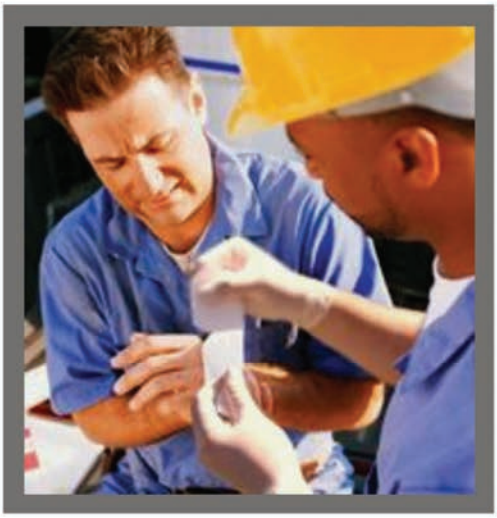
A Clearance Certificate is only valid for 90 days and then must be updated. Obtaining these certificates and keeping them updated is the responsibility of the Property Manager, but Board of Directors should ensure that this is taking place. Copies of the certificates must be kept on file with the Condominium Corporation for 3 years. Failure to do so may result in the Corporation being held liable for either some or all of the contractor's WSIB payment obligations plus interest for noncompliance.

Make sure you always have a valid Clearance Certificate on file for contractors *before* allowing them to start any work.

What Is Bill 119 and Why Is It Important to Condo Corporations?

As of January 1, 2013, the Ontario Government made WSIB coverage mandatory for most people in the construction industry and most importantly independent contractors.

Even though the construction industry is a Schedule 1 employer and already subject



to Clearance Certificates, the WSIB has enacted Bill 119 to further track and police the activities within the construction trades. This was mainly brought about due to registered contractors complaining about independents or handymen taking advantage of the then current guidelines by claiming they were exempt from registering with WSIB. This gave them an advantage for bidding on jobs at lower prices.

Bill 119 focuses on this side of the construction trade regarding independent contractors and officers of businesses who now must register with the WSIB. Independent contractors are exempt from registering with WSIB if they solely work in the home renovation business, however, once an independent contractor in home renovations is hired to work for a business, or if they hire an employee, (which includes family members, part-time or seasonal workers), they must register with the WSIB and provide Clearance Certificates to businesses who hire them.

As you can see, Condo Corporations hiring an independent construction contractor is complicated and they should consult with WSIB before hiring.

Bill 119 explicitly states that a contractor cannot start work until a valid Clearance Certificate is provided to the business or person hiring them. **Starting the work without a Clearance Certificate is an offence under Bill 119 unless the contractor is exempt.** You should request that a contractor provides a valid certificate whenever submitting quotes for a job or state that they will provide one prior to commencing work if they are awarded the contract. All Board of Directors should ensure that their Property Manager is fulfilling this obligation on their behalf.

As well, all Board of Directors, ***including those who are self managing***, should make this information available to all future Board members in order to prevent the risk of hiring an independent contractor/handyman in the construction trade who is not registered with WSIB. Fines imposed under Bill 119 are hefty and could possibly become a financial burden to Condo Corporations if they are charged and found guilty of non-compliance. These fines cannot be paid out of your Reserve Fund account so alternate payment methods would have to be sought.

What If I Hire An Independent Contractor To Do Renovations In My Unit?

An existing private residence is defined by the WSIB as being a house, cottage, condominium unit or apartment. It also includes any structure incidental to the private residence which is situated on the property and used exclusively for non-commercial purposes. These include

such structures as garages, sheds, fences or swimming pools.

If you hire an independent contractor to perform work in your unit they do not have to be registered with WSIB since this is considered a home renovation, however you must be the ***occupant or family member*** of the occupant who is doing the hiring. A family member can be the spouse, child, grandchild, parent, grandparent, father-in-law or mother-in-law, sibling or anyone whose relationship to the person occupying the unit is in a "step" relationship. To qualify for this exemption, a contractor must be directly retained by the occupant or a family member as outlined above. The contractor must provide estimates, contracts and invoices to the occupant (or family member) in the contractor's name and receive payment directly from the occupant or family member. Any subcontractor the contractor hires must have WSIB coverage.

Some trades that fall under Bill 119 include:

Electrical Work
Office Furniture Installation
Drain Contractors
Plumbing, Heating & Air Conditioning
Sheet Metal and Other Duct Work
Thermal Insulation Work
Road Building
Septic System Installation
Excavating and Grading
Asphalt Paving
Fencing and Deck Installation
Swimming Pool Installation
Plaster, Drywall and Acoustical Work
Painting and Decorating
Terrazzo and Tile Work
Carpeting and Flooring
Interior Designing Services
Insulation Work
Nonstructural Interior Demolition
Roof Shingling
Masonry Work
Precast Concrete Installation
Structural Steel Erection
Above Ground Window Cleaning
Siding Work
Glass and Glazing Work
Caulking and Weatherstripping
Concrete Finishing, Concrete Sealing
Home Inspectors
Homebuilding Operations
Form Work, Rough and Framing Carpentry
Finish Carpentry

Please note that the above partial list is referring to the construction trade and independent contractors who fall under Bill 119; however, you should already be obtaining Clearance Certificates from contractors you hire who meet WSIB's requirements even if they are not in the construction industry.

Fines Imposed

The penalties upon conviction of an offence under the WSIA are:

- for individuals, a fine of up to $25,000, or imprisonment for up to 6 months, or both;
- for Corporations, a fine of up to $100,000.

You may also be responsible for:

a) bringing a contractor's delinquent account up-to-date;
b) have to pay for any medical expenses a worker may incur if injured on the Corporation's property.

Questions and Answers

Q. Since a Condominium Corporation is a community of owners, why do they have to get Clearance Certificates?

A. The WSIB considers a Condominium Corporation a business and thus required to obtain Clearance Certificates for contractors they hire.

Q. Does that mean each condo owner renovating their unit has to obtain a Clearance Certificate?

A. No! Individual units or houses are considered a private residence and exempt from requiring Clearance Certificates; however, you must be the occupant or family member of the occupant and the contractor must be paid directly by you or the family member. Refer to the section in this article relating to home renovations. If you are renting, and your landlord is paying for the repairs, it is their responsibility to obtain a Clearance Certificate since they are not the occupier of the unit.

Q. In high rise condos with an office, does the Corporation have to get a Clearance Certificate to have office furniture assembled and installed?

A. Yes! WSIB has designated *Office Furniture Installation* under *Class G, Construction* and requires a Clearance Certificate before work commences. This includes the assembly, set-up or repair of office furniture and equipment such as workstations, desks, cabinets and portable partitions or display cases.

Q. What if a Condo Corporation hires a contractor not knowing they are required to get a Clearance Certificate?

A. The WSIB does not recognize ignorance of the *Act* as an excuse for exemption from the Corporation's responsibility in obtaining Clearance Certificates. Property Managers should be well versed in the *Act* as it relates to Clearance Certificates. As well, self-managed Corporations should impress upon each incoming Board of their responsibilities for obtaining these Certificates when hiring contractors.

Register with WSIB

To ensure full compliance with the *Act* Boards can register their contractors with WSIB's online ***eClearance*** service. WSIB will automatically forward up-to-date Certificates to you every 90 days. There is no fee for this service and is encouraged by the WSIB.

Phyllis Ellis
Retired HR Director
Past London Condo Board President

Disclaimer: This article is for general information purposes only and not intended as, or to be relied upon, for legal advice. Condominium Corporations are encouraged to contact the WSIB should you need further clarification regarding Clearance Certificates. You can also visit their website at www.wsib.on.ca or call them at 1-800-387-0750 and ask to speak to someone regarding Clearance Certificates.

Personal **Medical** Alarm

Everything you need for **safer**, independent living with **peace of mind** for yourself and your family.

Standard Package

- 2 way voice communication.
- Available with wrist or pendant button.
- 24 hour local service.

$24.95/month
+ $49 installation fee

Premium Package

- 2 way voice communication.
- Small automatic and complex automatic fall detection pendant.
- 24 hour local service.

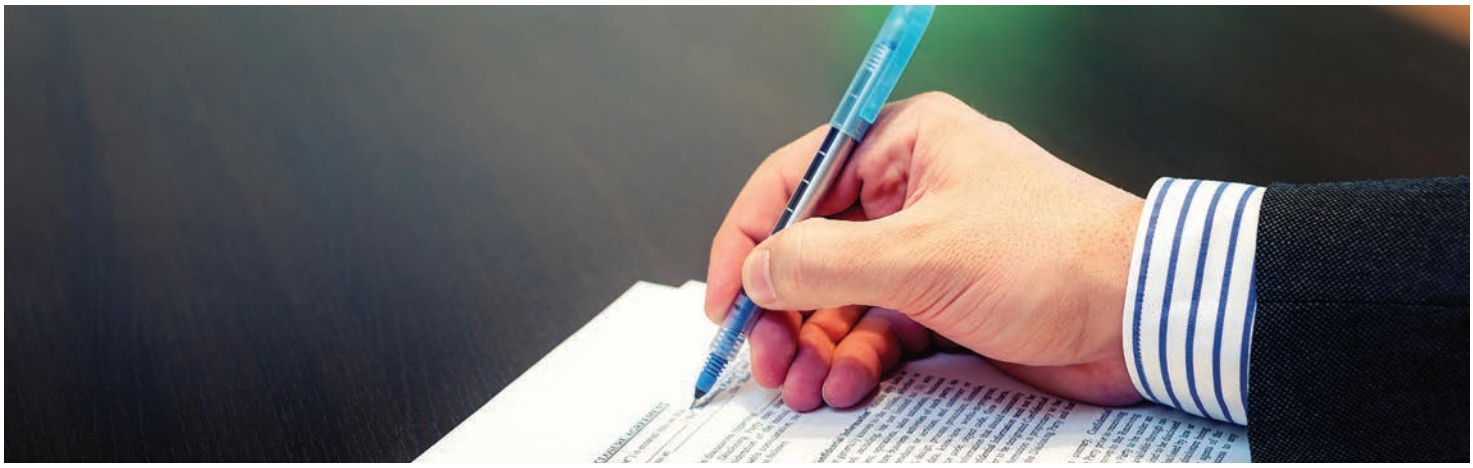
$34.95/month
+ $49 installation fee

Lock box rental for $50. Keep your key **safe** and **accessible.**

Do you already have a medical alarm? Transfer to APEX and upgrade to a new automatic fall detection system. Take advantage of our "no installation fee" and we guarantee your monthly payments will be less.

Call Matt or John today at (807) 683-9868.

Call **344-8491** for more information • **www.apex-tb.com**



Disclosure Statements: Say it Right and Say it Clearly

by: Graeme Macpherson | February 26, 2019
From CondoAdviser.ca website

When purchasing a condominium unit, it is absolutely vital that you know what exactly it is you are getting yourself into. Accordingly, the Act imposes specific disclosure obligations onto declarants attempting to sell a unit. This is done through section 72 of the Condo Act.

In the same vein, section 74 of the Act provides that if there is a "material change" in the information contained in the disclosure statement, the developer must "clearly identify" them.

What does this mean? And what can happen if the disclosure is not so clear? The Ontario Court of Appeal ruled on this issue recently.

WHAT THE ACT SAYS

Before getting to how the Court ruled, the exact language from the Act is reproduced below:

74 (1) Whenever there is a material change in the information contained or required to be contained in a disclosure statement delivered to a purchaser under subsection 72 (1) or a revised disclosure statement or a notice delivered to a purchaser under this section, the declarant shall deliver a revised disclosure statement or a notice to the purchaser.
(3) The revised disclosure statement or notice required under subsection (1) shall clearly identify all changes that in the reasonable belief of the declarant may be material changes and summarize the particulars of them.

The Act also defines a "material change". I am paraphrasing here but it is something that, objectively viewed, a reasonable buyer would have seen as sufficiently important to their decision to purchase a unit that they wouldn't have bought it had the change been disclosed. There are several exceptions to this. You can find them, along with the exact language, at section 74(2) of the Act.

Having gotten the nitty-gritty of the law out of the way, we can move along to the Court Appeal decision.

WHEN IS DISCLOSURE INSUFFICIENT

As noted above, according to the Act, if a material change to the information in disclosure statement occurs, purchasers must be updated. The Act requires developers to "clearly identify" these changes. The Court of Appeal recently ruled on what this means, and what consequences follow if a developer fails to abide by it.

In TSCC No 2051 v Georgian Clairlea Inc., 2019 ONCA 43, there was a dispute between the corporation and the developer with respect to several mortgages. Note that the developer in this case actually assigned the mortgages to another entity. However, for simplicity's sake, I will continue to refer to this entity as "the developer".

One of the mortgages in this case related to HVAC equipment. Originally, the developer intended to have a third party supply, and then lease it, to purchasers of the units. Later though, the developer decided to purchase the equipment, and sell it to the condominium corporation. The developer-controlled board agreed to give the developer a mortgage for these units. The other mortgage was for several parking and storage units. The developer conveyed these unsold units to the Corporation in exchange for a vendor take-back mortgage.

The Court of Appeal found that the applicable disclosure documents were insufficient because, among other reasons, they were so confusing.
Ultimately, the court failed to see how any reader of the disclosure would have any idea what they were purchasing. In addition, it was "replete with grammatical errors and missing words that exacerbated the problem."

The Court also took issue with the disclosure statement's cover letter, which directed the purchasers to look to the budget statement to see the mortgage payments owing. However, the budget didn't actually show any.
In addition, the budget statement contained a note telling purchasers that there were "no services the declarant provides, or expenses the declarant pays, that are reasonably expected to become a common expense." The Court found that this could be misleading to purchasers.

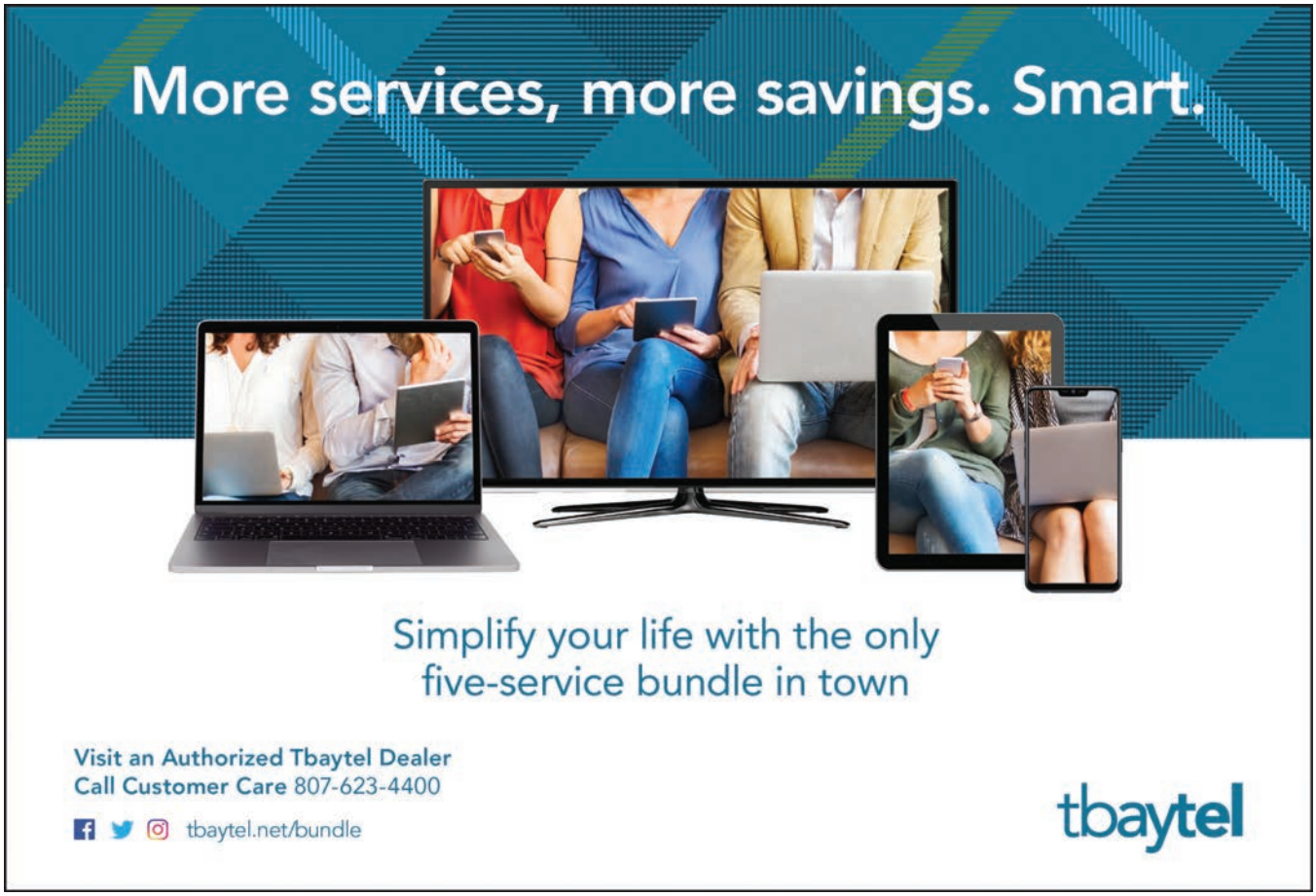
The Court also found that the mortgages and disclosure were oppressive. They breached the purchasers' reasonable expectations that they would not be paying a mortgage for items they thought they had already bought. Accordingly, it reduced the principal amount owing on the mortgages.

TAKEAWAYS

So what can we take away from all of this?

Firstly, a developer's revised disclosure documents must be readable and free from unnecessary complexity. Although, this lesson applies to any document that will be relied on by others. I will go ahead and admit that perhaps we lawyers could learn a thing or two from this as well. There is also a lesson here regarding the dangers of ambiguous language that could disguise the truth.

As always, thanks for reading! In light of today's subject matter, I have tried to make it as readable and free from unnecessary complexity as possible.



Can Noise Complaints Lead to the Eviction of a Condo Tenant?

by Rod Escayola | February 22, 2017
From CondoAdviser.ca website

People living in condos have a duty to comply with the corporation's regulations. Condo corporations, for their part, have a duty to take all reasonable steps to ensure such compliance. But to what extent? Can tenants of a condo unit be evicted because they are causing excessive noise? Or should the corporation let neighbours sort out their own differences? An Ontario judge rules that the answer to both questions is "no".

What is a condo corporation to do when two neighbours are at war?

Another difficult case emerged from a condominium in the Niagara region. A review of the facts reported in the case clearly indicate that two condominium neighbours could not tolerate each other. Unit 411 complained of loud noises, loud voices and profanities being screamed from unit 511. Unit 511, for its part, complained of noises and the smell of marijuana smoke coming from unit 411. Both units were occupied by tenants.

A campaign of complaints escalated between both units. Eventually, the corporation wrote to one to indicate that it would not intervene anymore "as there seems to be issues between the two of you. This is an issue between residents and it must be resolved between the two of you". This did not help and the noise emanating from unit 511 escalated to include "loud, alarming and frequent noise by dropping what sounded like a ten pin bowling ball on the floor" and profane language being hurled at the neighbour. Some of this was witnessed by other owners/occupants.

The corporation eventually brought a compliance application seeking to permanently evict the occupants of unit 511, or alternatively seeking an order that she comply with the declaration, by-laws and rules of the corporation. The owner of the unit at the source of the noise disruption brought a counter-application to discharge a lien registered against the unit. The lien had been registered as a result of the owner's failure to pay the legal fees incurred to deal with the noise complaints.

Interestingly, when the occupant of the other unit voluntary vacated the unit (possibly at the end of the lease), no more complaints were received about noise emanating from unit 511.

DECISION

The court appeared to have no difficulty in concluding that the occupants of unit 511 violated the rules of the condominium corporation by causing excessive noise in the unit and by shouting and screaming obscenities from her balcony and in the common areas.

Still, the judge reminded the parties that eviction was a "draconian" and "extreme remedy" reserved for cases where there is an ongoing refusal to comply with the rules. He was also of the view that the corporation's request to evict the tenant had been too heavy-handed. He criticized both parties for having adopted a confrontational position and suggested that it would have been more appropriate to simply approach the owner and tenants to request their assurance that, in the future, they would abide by the rules. (I am a bit skeptical as to how successful such an approach would have been, considering the volume of complaints and numerous warnings from the corporation). Still, the judge was of the view that the corporation should not have sought the extreme remedy of eviction, which inevitably would lead to the owner and tenants strongly opposing the court application.

When came the time to decide on the costs of the court proceeding, the judge ordered the owner and tenant of unit 511 to pay $2,500, which amount was added to the unit's common expense. Considering that the hearing appears to have lasted 2 days and considering the history of the case, I suspect that this is a drop in the bucket and that the corporation was on the hook for far more. Undoubtedly, the rest of the owners will have to absorb the bulk of the costs of this battle between neighbours.

WHAT ABOUT MEDIATION?

The case does not address the question of mediation. Keep in mind that mediation is not mandatory under the "current"

Condominium Act when corporations seek compliance against tenants.

UNDER THE "NEW CONDO ACT"

Under the revised version of the Condominium Act, courts will only be able to order a permanent eviction if:
A person poses a serious risk to the health and safety of individuals or poses a serious risk of damage to the property of the corporation;
OR
If the person is found to be unsuited for the communal occupation/use of the property and no other order will be adequate to enforce compliance.

This addition under section 135 of the Act further confirms that such recourse must be one of last resort.

LESSONS LEARNED

This is another case where a corporation is reminded to take a more conciliatory approach when dealing with compliance issues. Progressive, escalating and proportional steps should be considered – unless an occupant's behaviour is such that it puts other people at risk.

Still, it is hard not to feel sorry for the corporation, considering the volume of noise complaints, the numerous warning letters and considering that a condominium corporation has a statutory obligation to take reasonable steps to secure compliance.

LCPS chartered professional accountants professional corporation

Pat Charlebois, CPA, CA
Allan Prenger, CPA, CA
Tracey Greer, CPA, CGA
John Luft, CPA, CA
Michael Speer, CPA, CA
Bert Watts, CPA, CA
Derek Tycholas, CPA, CGA

- Accounting
- Auditing
- Personal and Corporate Taxation
- Business Advisory Services

1070 LITHIUM DRIVE,
THUNDER BAY, ON P7B 6G3
Phone: (807) 623-0600
Fax: (807) 623-0400
email: info@lcpsca.com

DID YOU KNOW?

adapt. for any situation offers

Interior Services:
- Kitchen & Bathroom Renovations & Design
- Painting

House Keeping Services:
- clean and organize your home one time cleaning or regular scheduled cleanings
- move-in and move-out cleaning
- post construction and renovation cleanup
- spring and fall cleaning
- inside window cleaning

for all your home needs call:
807.700.1500

What to Do When Condo Owners Send Insulting and Harassing Emails?

by: Rod Escayola | May 2, 2017
From CondoAdviser.ca website

Condo owners are often the first to notice when something needs the attention of the board or management. Whether it'd be a burned light bulb or a squeaky door. Emails facilitate these service call requests. But what is a corporation to do when the volume and content of an owner's communications is such that it constitutes harassment? In a recent case, courts have shown that they will not tolerate insulting or harassing emails.

FACTS OF THE CASE

A Toronto condo corporation was faced with an owner who emailed management virtually every day asking for corporate records, critiquing the effectiveness of management and complaining about building maintenance. The problem was not only the volume and frequency (after all, she was often reporting issues, which required to be attended to). The problem was also the content of these emails. When reporting issues, this owner regularly resorted to abusing staff (verbally and by email) and engaged in insults, body shaming, naming calling and other type of coarse language and rudeness.

Over the years, the corporation tried to be patient and tried developing a protocol with this owner to limit her communications to email correspondence. They asked her to refrain from coming to the office and verbally abusing them. Unfortunately, this proved to be insufficient. Office staff would come to their place of employment, day after day, to find a barrage of inappropriate communications. Over time, these communications amounted to directed and ongoing harassment.

The corporation brought the matter to court, seeking an order preventing this owner from continuing with that type of behaviour.

DECISION

The court relied on section 117 of the Condominium Act, which prohibits anyone from carrying on an activity in a unit or in the common elements which is likely to damage property or cause injury to an individual. The phrase "injury to an individual" has been interpreted to include psychological harm.

The court also pointed to the fact that the corporation's own rule prevented individuals from immoral, improper, offensive or unlawful use of a unit or of the condominium property.

Finally, since the communications were directed at staff of the corporation, the court relied on the Occupational Health and Safety Act as the owner's behavior constituted workplace harassment. Workplace harassment is defined as "engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome". Condo corporations are under a statutory obligation to investigate and protect its workers from workplace harassment and to remedy the situation by implementing and enforcing appropriate anti-harassment policies.

In the circumstances of this case, the court concluded that the communications from this owner were antisocial, degrading and harassing. For this reason, the court ordered her to cease and desist from abusing, harassing, threatening or intimidating (verbally or in writing) employees or representatives of the corporation. The court also imposed $15,000 in legal costs. Unfortunately, as is often the case, this is insufficient to cover the corporation's legal costs. The other owners will have to assume the balance.

LESSONS LEARNED

It is important to note that the corporation was not seeking to "silence" an owner. Owners should be able to report issues and voice their dissatisfaction or complaints. Corporations, directors and management do not, however, have to endure insult, harassment, defamatory or inappropriate communications. Corporations, in fact, have a duty to investigate and protect its workers from workplace harassment. When faced with inappropriate communications from owners or occupants, it is best to attempt to defuse them as early as possible. If possible, it is often a good idea to attempt to defuse them in person rather than through emails. Emails are impersonal and their tone is often difficult to read. When that fails, the corporation should make it clear that it will not tolerate or even respond to inappropriate communications. If that fails, a corporation should consider escalating the matter to its legal counsel. The corporation should not allow inappropriate, invasive or harassing behavior to continue.

Unfortunately, it is difficult to ask someone to "play nice" if they don't have it in them. Perhaps the $15,000 costs award will help.

Best Practices for Reserve Fund Studies

By Martin Gerskup, OAA, MAIBC, MRAIC and Mitchell Gerskup, B.Eng., EIT, HBA

By law, condominium corporations in Ontario must obtain a comprehensive reserve fund study report, which is updated every three years. The updated studies alternate between non-site-based updates, and site-based updates where the engineer will re-visit the site to perform a visual inspection of the development. Once the initial comprehensive reserve fund study has been completed, the condominium corporation may alternate indefinitely between non-site based and site-based updates every three years. If there is a major change to the corporation or the common element assets, the board of directors may elect to perform a new comprehensive reserve fund study, but this is not a requirement of the Condominium Act.

The purpose of the reserve fund study is to ensure the adequacy of the reserve fund: a special pool of money that the condominium must establish and use solely for major repair and replacement of its common element assets. An adequately funded reserve fund ensures these assets can be repaired or replaced when required (e.g., replacing a roof, repairing a parking garage, or replacing HVAC equipment). A properly maintained reserve fund means that owners aren't on the hook for sudden large assessments to pay for expected repair or replacement projects.

PLAYING AS A TEAM

Reserve fund studies are most effective when prepared by a qualified professional with specific training and experience in the preparation of reserve fund study reports, and who has been provided with accurate and up-to-date information and records about the property in question.

When done properly, reserve fund studies should always be a team effort between the condominium's board of directors, the property manager, and the engineer or reserve fund study provider. The best reserve fund studies are the result of everybody playing on the same team, sharing relevant information, and clearly communicating intent, because each party brings a unique body of knowledge to the table. The engineer preparing the reserve fund study will perform a visual review of the subject property; however, many conditions will be concealed from view, and engineers don't have the same depth of institutional knowledge as boards and management. Likewise, boards and management have a better handle on the property's repair priorities and management style, which will in turn inform how the reserve fund study is prepared.

For example, based on size, materials and model, an engineer might know how long a building's hot water tank is expected to last and how much it will cost to replace, but it is the manager who will know the maintenance history of the tank and whether the domestic water supply system has experienced any problems that might affect the life expectancy of the tank. The board of directors knows their own tolerance for risk and standards for replacement (i.e., wait until the component fails, or perform preventative maintenance and/or replacement). All of this information must be combined to best predict what repairs or replacements the condominium will face in the future and ensure that the reserve fund is adequately funded to cover these costs.

PEERING INTO THE FUTURE

The intent of a reserve fund study is to look at the entire life span of a condominium development and its components. Aside from the interior structure of the building, which will last precisely as long as the life span of the building, every single other component or system will be replaced or repaired, at some point.

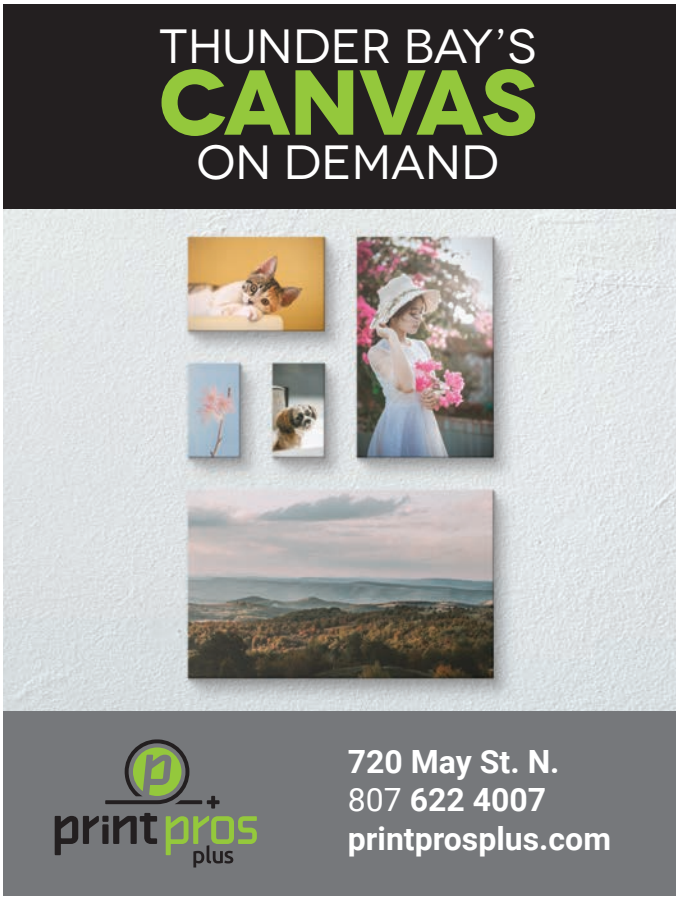
In the first 25 years of a development's life, components like site work (e.g., asphalt pavement), roofs (i.e., shingles and flashings), interior finishes, and sealants (caulking) will likely require replacement. Around the 25- to 30-year mark, flat roofs, waterproofing membranes, and many mechanical systems will likely need replacement. Beyond the 30-year mark, components like water and electrical distribution infrastructure, structural concrete (e.g., balcony and parking garage slabs) will all need repair or replacement.

It is the job of the engineer preparing the reserve fund study to ensure that everything that might have to be replaced is accounted for. This is why, despite the current Condominium Act regulations mandating a minimum 30-year component inventory and cash flow analysis, the current industry best practice is to examine expenditures over a 40- or even 50-year period. This is because 30 years is too short a period of time to fully capture the life span of many of the materials used in construction – especially those that will be the most expensive to repair or replace. It is important that these costly repair and replacement projects are captured by the study, even if costs 40 or 50 years out cannot be predicted with great accuracy.

For example, modern high rise condominium building envelopes will be constructed with either precast concrete cladding, or an aluminum and glass window-wall system. Both exterior cladding systems will last longer than 30 years, if properly maintained, yet will likely still require full replacement or significant retrofit within the first 50 years of the building's life. This is true of many of a condominium's most costly-to-repair assets, such as structural concrete repairs in underground parking garages, or for townhouse condominiums, repair or replacement of underground distribution infrastructure, such as the watermain.

When a reserve fund study is prepared with a 30-year component inventory, it can "hide" these expensive items beyond the horizon of the cash flow projection. While this might seem appealing to those purchasing new condominiums, as the condominium ages these "hidden" expenses will start appearing in updated reserve fund studies. This in turn will lead to sudden shocks in the reserve fund cash flow, necessitating large contribution increases or special assessments to make up the difference – the very thing that the Condominium Act aims to avoid by requiring a reserve fund.

By hiring experienced professionals like architects and engineers with specific training and experience in the preparation of reserve fund study reports, these types of situations can be minimized or altogether avoided.



Spring Cleaning at Condo Corporations

by Richard Murray

It may not seem like it yet, but Spring is just around the corner. With that in mind, condo Boards should look into some annual tasks.

Firstly, you should have already started, if not already completed, your contract negotiations for your lawn maintenance, if you have any. These are usually completed by tender and take a good month or more to finalize. You will likely use the services of your Property Manager to garner a list of potential candidates, or you may use your own resources. Either way, it is really important to get some references if you do not already know a candidate. Contracts can be for a single season, but also, many corporations set a multi-year contract to firm up pricing for budgeting purposes. Showing the potential for a multi-year contract may also create better pricing and better performance since poor work will jeopardize a larger fiscal reward for a contractor. Also, in projects such as lawn maintenance and snow removal, the first year of a contract will be a learning experience and the subsequent years will give you the work standards that you really want.

You will want to have the prospects all walk the site with your Property Manager so that questions can be properly answered and particular issues pointed out in advance. While letting a prospect do his/her own site visitation may result in a reduced price quote, what you really want is a proper job done as your first priority, with good pricing the second. It is also an excellent idea to take photos of the site in advance of awarding the contract and providing copies of these to the awarded recipient. In this way, there are no disputes about the existing conditions of the property prior to the landscaper initiating the contract. Apply the same logic when contracting out your snow removal provider.

Now is also the time to assess the snow removal situation. Has your snow removal company damaged any landscaping? Does your contract stipulate that they have to fix damage that they caused while completing their contract? It should.

If you do not have an on-site Property Manager or are self-managed, you have more work to do. There is a protocol to follow to tender a project. If you do not

have one in place, you may wish to contract the writer to get a standardized set of protocols to consider. Knowledge is strength.

Fire alarm inspections need to be performed at least annually. All units must be inspected by an independent inspector. It could be a staff member or an appointed alternate. The point is that you cannot rely on the honour system from the resident. The negatives are just too great. Often, a specific date is advertised and individual unit residents are provided with a door notice advising when their unit is to be inspected. Allow for an alternative or multiple dates since people do have their own life schedules and you need to reasonably accommodate these. Advised times will likely only be for an AM or PM on a particular day. Weekends or evenings may be preferable and your notice should include advising that if no one is available when scheduled, a fee may be charged for a come-back inspection. With the new rules about carbon monoxide alarms, you need to check for these too. Remember that there needs to be one alarm per level for fire and one alarm for carbon monoxide/unit. Whoever does the testing likely should have a few new alarms for sale when inspecting. Alarms must be replaced at least every 10 years but the batteries need replacing much more frequently. Remember also that if a unit originally had a wired alarm, it must be replaced with another wired alarm. New versions of wired alarms now come with a battery backup. Have your Property Manager check with a professional fire alarm company to ensure you have everything looked after properly. You do not want any issues where the condo corporation could be held responsible.

Site inspections of all common properties should be done at least twice annually. By this, I mean a full site inspection, not just a quick look around. Look

for items requiring maintenance or repair. Look at everything from a safety perspective. If you have balconies, check that the support structures are in good condition. You might even wish to modify your rules to stipulate weight and numbers restrictions for balconies. Look carefully at all roads and sidewalks. Are there any defects or uneven surfaces that could cause accidents? Deal with them. Are all lights in common areas working properly? Consider replacing defective lighting with LEDs. Do you have common areas like pools or tennis courts or party rooms? Check all of these thoroughly. If you have a pool, do you have the plans in place for lifeguards, bromine supplies and similar all looked after? Do any walls in common areas need repainting?

Do you have emergency evacuation exercises? These should be completed at least annually, possibly more frequently. Do you have any keyed areas? Are the records as to access up to date? For security for your premises, do you change codes occasionally? Now would be a good time to do this.

If you have your own private streets, you likely have catch basins that need to be vacuumed out each Spring. Plan for that work now. Do exterior/common windows need to be washed? Firm up your work plans now.

If you have any work that needs to be done in better weather, look to contracting that out sooner, not later. Many times you can get better pricing if work is done in fringe periods like Spring and Fall when the contractors have staff on hand but are not yet fully busy because their work is weather based. If a contractor can do work at their discretion when a nice day comes along, they love this option as it brings in money when they have the time and their personnel are not yet fully committed elsewhere. Also, minor work can be accommodated in fringe periods and many contractors will only work on large projects in the optimum work periods such as Summer so your smaller projects get left undone.

In summation, think like a professional and use common sense. By mid Summer you should be thinking about your Winter projects. Everything takes time and not just on your part. A busy contractor cannot just drop what they are doing to give you a quote. While this is not a complete overview it should give you enough to get you started in the right direction. Good luck. Think Spring!

SYNERGY
PROPERTY MANAGEMENT SOLUTIONS

Synergy Property Management Solutions: A balanced combination of industry experience and progressive innovation

We know that experience is best paired with education. We strive to keep abreast of new legislation and changes. We promote transparency and honesty.

- Fully licensed (CMRAO)
- Experienced
- Educated
- Professional
- Accountable
- Organized

Now accepting new properties!

Synergy is Management at its Best!

Teri MacNeil
Owner/President

Sue Duncan
Manager,
Condos & Non-Profits

John Janssen
Manager,
Maintenance
& Works

Call us today at 807-620-8999
synergypropertymanagement.ca

CCI-NWO 2018-2019 Membership List

CCI-NWO has 39 condominiums membership representing a total of 1656 units.

TBCC #	Condo Name	Number 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
52	Allure Building	51
54	Terravista Townhomes	18
55	Terravista Condos	30
56	Aurora Building	48
58	Hillcrest Neighbour Village	19

KCC #	Condo Name	Number of Units
10	Islandview	40

Business Partners
Adapt
Aon Reed Stenhouse Inc.
Apex Investigation & Security Inc
Architecture49 Inc.
Carpet Crusaders
Cheadles Lawyers & Trademark Agents
Clow Darling Mechanical Contractors
DRD Construction Services
First General - Property Restoration Services
Gillons* Insurance
J.D. Barnes Limited
Jones & Associates Insurance
LCPS Chartered Accountants Professional Corporation
National Service Professionals
North-West Electric
Northwestern Property Management
Paul Davis (Thunder Bay)
Print Pros Plus Inc.
ReMax First Choice Realty
Steen Property Management Inc.
Synergy Property Management Solutions
TbayTel
The Property Managers NWO. Inc.
WINMAR Property Restoration Specialists

Professional Partners
Christopher Jaglowitz - Lawyer
Rene Larson - Lawyer

NEWSLETTER DISCLAIMER
Reviewed and confirmed by Communications Committee March, 2016

This publication is designed to provide informative material of interest to its readers. It is distributed with the understanding that it does not constitute legal or other professional advice. The views of the authors expressed in any articles are not necessarily the views of the Canadian Condominium Institute and neither CCI nor any other party will assume liability for loss or damage as a result if reliance on this material. Appropriate legal or other professional advice or other expert professional assistance should be sought from a competent professional. Advertisements are paid advertising and do not imply endorsement of or any liability whatsoever on the part of CCI with respect to any product, service, or statement. Permission to reprint is hereby granted provided: 1. Notice is given by phone or in writing; 2. Proper credit is given as follows: Reprinted from (Insert name of publication). Copyright by Canadian Condominium Institute.

Canadian Condominium Institute | CCI | Institut canadien des condominiums
Northwestern Ontario Chapter

PRESENTS A

What You Need To Know Seminar!

Key Issues for Condo Directors

Date: Saturday, May 4, 2019
Time: 9:00 a.m. to 1:00 p.m.
Location: Victoria Inn (Embassy Ballroom)
555 West Arthur Street, Thunder Bay ON
Fee: $75.00 - members (no HST)
$110.00 - non-members (no HST)
Fee includes Continental Breakfast and coffee breaks
Registration: doors open at 8:20 a.m.

Register in advance to ensure seating and materials are available.

Topics

1. What Changes are Needed to the Declaration, By-laws and Rules.
2. Rules vs. Bylaws. What is the difference? When is one to be used and not?
    a. Enforcement of Rules, bylaws and declaration.
    b. What happens if you don't enforce rules etc.
    c. Grandfathering, case law review.
3. Using the new Status Certificate
4. Duties and Obligations of Directors of Condominium Corporations

Guest Speaker: Jim Davidson

James (Jim) Davidson is a partner at Davidson Houle Allen LLP. He represents condominium corporations, their directors, owners, and insurers throughout Eastern Ontario. Jim is much sought after in the condominium community and has been invited by many prominent organizations to speak about condominium law.

He believes that, despite the occasional challenges, condominium living makes sense and is the future. Jim is firmly committed to the cause and working for the rights of condominium-owners. His own ideas of fairness and justice are what keep him motivated.

For early registration and information contact us at nwontario@cci.ca Or
Call Lori @ 807-345-5963 between 9:00 am and 1:00 pm
Visit our website at: http://cci-nwontario.ca/about-us/welcome-to-cci

SPONSORED BY Copperfin Credit Union