

Volume 23

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**Don't Let Deadlines
Pass You By**

What to Keep in
Mind for 2019

**Maintain Your
Building to
Maintain Your
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Nancy Houle, LLB
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As I write this message, I can hardly believe that spring has arrived – it's even snowing! Winter seems to want to hang on, but soon enough the snow will turn into rain. With our days getting longer and sunnier, it's only a matter of time before the flowers begin to bloom.

CCI Eastern Ontario is excited to announce CondoContact's new co-editors, Michael Lewicki and Cheryll Wood. You may recognize these names as they are both active members in Eastern Ontario's condominium community – Michael as a realtor and CCI-EO Board Member and Cheryll as a condominium lawyer. We are very excited to see what they bring to CondoContact this year.

I also take this opportunity to extend a HUGE thank you to **Kevin Kattas**, a long-time CCI member and volunteer, for his contributions to CondoContact over the past several months. His hard work and efforts during our recent transition period will go a long way to the success of the upcoming issues. With his introduction of article themes, there is much to look forward to!

There has also been, and will continue to be, a lot to look forward to with CCI-EO's recent and upcoming events. Keeping with tradition, we kicked off the new year with our annual and highly anticipated *Lawyers, Guns & Money* seminar with Richard Elia and Jim Davidson. By the time you read this message, we will have already had our *Drinks & Disasters* seminar and social at Mill St. Brew Pub. We're excited to catch up with our members over a pint, and learn about emergency preparedness at this sold out event.

If you haven't already, make sure you register for the *2019 Ottawa Condominium Conference* happening on Saturday, May 11th at the Ottawa Conference & Event Centre. This is a great opportunity to connect with other directors, experts from various law firms, engineering firms, management companies, and other service professionals in the condo industry. The day includes your choice of nine educational sessions and the ever popular legal panel. Note that by attending these sessions, RCMs can earn up to 8 education points. We hope to see you there!

Thinking of this new year, and the opportunity for reflection, growth, and change, the CCI-EO Board of Directors listened to your feedback and decided to refresh our *Director's Course*. We recently had an introductory *Director's Course: Level 100*. We recommend this course for all new and potential directors, as well as new condo owners and professionals.

If you've been a director for some time now, I'm sure you know that the knowledge, expertise, and judgement that all need to be exercised by directors are very demanding and complex. Unfortunately this advanced material is not covered by the CAO's online training. To fill this gap in director training, we are revamping our educational programming: tentatively called *Level 200*.

Our first ever *Level 200* will be offered in mid-June, so make sure you keep up to date with CCI-EO news to hear more information. [Contact our Administrator, Angela Tracey, if you'd like to be added to the CCI-EO mailing list].



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Don't Let Deadlines Pass You By

What to Keep in Mind for 2019

Jessica Weick, JD, Lawyer
Davidson Houle Allen LLP

Andrea Daly, Articling Student
Davidson Houle Allen LLP



With a new year comes new important dates for condominium corporations to take note of. Staying organized and mapping out key dates and deadlines at the beginning of the year will save significant time and stress as these deadlines approach.

Each condominium corporation will have different dates and considerations to keep in mind, however most directors and managers should make sure to think about the following things at the start of the year:

- 1) Annual General Meeting;
- 2) Information Certificates;
- 3) Financial and filing deadlines; and
- 4) New Projects.

Annual General Meeting (“AGM”)

It's never too early to start planning your next AGM.... yes, even if you just had one in December. With the new requirements and deadlines imposed by legislation, it is essential to get the key dates into your calendar to avoid any surprises.

The basic requirement of course is that each AGM (after the first AGM) must be held within six months following the corporation's year-end.

Directors and managers should also take note of timelines to send out the Preliminary Notice of Meeting and Notice of Meeting to ensure that these are delivered within the prescribed timeframes.

When planning your AGM, ask yourself the following questions:

1. Will your Corporation be passing any By-laws or Rules or seeking to discuss an Amendment to the Declaration (at the AGM)?

If your answer is yes, any documentation should be prepared well in advance to allow the Board the opportunity to properly review

and approve the material so that it can be included in the meeting package.

2. Will you need a recording secretary?

If your answer is yes, book early! Often these bookings happen well in advance, so if you have a favourite recording secretary, reserve the date with them early.

3. Who will chair your meeting? Is the Board president going to chair, or will the Corporation have someone else chair the meeting?

The corporation's operating By-Law should be reviewed to determine what is said, if anything, about who should chair the AGM. Often condominium corporations will have legal counsel attend the AGM and act as the chairperson. Alternatively, the Board president may feel comfortable acting as chair. There are benefits to each approach and each condominium corporation will need to decide on who should chair based on what is happening in their condominium.

In the past, we have had condominium corporations use legal counsel to chair the AGM for the following reasons:

- 1** There is a contentious issue to be discussed at the meeting. This could include a controversial By-law or Rule, a vote to remove a director or an upcoming special assessment.
- 2** There is a legal issue on the agenda to be addressed by legal counsel and they will already be attending (may as well put the lawyer to work!)
- 3** The Board simply feels more comfortable having a third party keep the meeting organized and on-track.

At the end of the day, it is up to the meeting to approve the chair, if the chair will be someone different than as set out in the corporation's governing documents.

Information Certificates

It is crucial to put all filing deadlines for the Periodic Information Certificates into the condominium's calendar. Put reminders in place well in advance to start looking at what information needs to be collected or reviewed in advance of your deadline.

If anything changes during the year, you will also want to consider whether an Information Certificate Update is required.

Financial and Filing Deadlines

While deadlines will vary for each condominium, directors and managers should think about the following questions and keep financial and filing deadlines in mind.

- 1** When does the audit need to be completed in order to get the audited financial statements into the AGM meeting package?
- 2** When is the new budget due?
- 3** When do you have to start preparing the Annual Returns for the Condominium Authority of Ontario?
- 4** Have all updates been submitted to the Condominium Authority of Ontario in accordance with the filing deadlines?
- 5** Remember to send (or to have the auditor send) the annual tax return to CRA (on time).
- 6** Also always remember to watch your deadlines for notice and registration of liens (for any owners in arrears). The lien process should ideally be started (at latest) early in the third month following any default (in order to give plenty of time for the 10-day notice of lien, followed by registration of the lien within three months after the default).

New projects

Does the Reserve Fund Study call for any major repairs or replacements this year? If so, the beginning of the year is a good time to review the work to be completed, determine whether the work is required to be done this year, and if so, put a plan in place to get the work done.

It is also a great time to review your Reserve Fund Study and make sure that it is on track. If not, remember to consider any possible need to include warning in your status certificates (of a possible increase, pending the next study).

If your condominium has a manager, the manager will most likely be tracking all of these key deadlines. However, it is important for directors to also be aware of these dates as they approach, to make sure Board meetings are properly scheduled to review and approve documents as necessary.

Keep these tips in mind and get ahead of your 2019 to-do list! ■



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Habitat for Humanity Greater Ottawa Getting into Condos: **Orléans Welcomes Four New Condo Owners**



Vanessa Shwarz,
Director of Operations
and Communications
Habitat for Humanity
Greater Ottawa



July 1st was more than just Canada Day for four local families: it was the day they moved into their Habitat homes. After putting in 500 volunteer hours towards the construction of the four Phase I homes in Habitat for Humanity Greater Ottawa's (Habitat GO) Leacross Landing development, the families proudly took possession of their new condominium townhomes. The families were welcomed home with an emotional key ceremony on June 14, attended by Mayor Jim Watson and other dignitaries, as well as Habitat GO supporters.

"As a mother, owning a Habitat home is really a life changer for me and my son. We are going to build our life in a safe, comfortable, healthy home. The home will give us a sense of belonging and security and I am very thankful for that," says Annie, Habitat homeowner. "The Habitat GO community really is a community. It is a community of passionate individuals that work together to create better lives for others. I feel so fortunate that I got to meet so many wonderful people throughout this entire process."

The Leacross Landing development, located in Orléans, is the non-profit's largest development to date. Upon its completion in 2019, there will be 16 new affordable townhomes inhabited by local families in need. "This is our first condominium development," said Alexis Ashworth, Habitat GO CEO. "Moving towards this type of home ownership will enable us to build capacity and serve more families in Ottawa. With rising costs of land, this model allows us to build more homes in a cost-effective way."

Each home is approximately 1,200 square feet and includes three to four bedrooms, 1.5 bathrooms, a backyard, and an unfinished basement with a rough-in for a future washroom. "We want to give families the space to grow and the basements can be finished for some extra square footage in the future," added Ashworth, "many of our families have come from housing that was overcrowded or in an unsafe neighbourhood, and are really enjoying the extra space and new sense of community that comes from owning a Habitat home." The development is across the street from an elementary school and has easy access to public transportation, including a future stop for the LRT.

"Being a single mother is not easy, but finally all of my hard work has paid off," says Tereza, Habitat Homeowner. "Now we have a home to create memories in and a place my children can look back [at] in 20 years and say, 'That's the home we grew up in.'"

The Phase II homes will be ready for possession in early 2019 and Habitat GO plans to break ground on the final Phase in spring 2019. For more information about Habitat for Humanity Greater Ottawa or to learn how you can support their work in the community, please visit www.habitatgo.com or contact Vanessa Schwarz at vschwarz@habitatgo.com.

Vanessa Schwarz is the Director of Operations and Communications for Habitat for Humanity Greater Ottawa. She brings nearly 10 years of experience working in communications roles within the non-profit industry and has a Masters in Public Administration from Carleton University. ■

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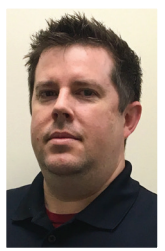


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In our last article, *Plan your Designated Substance Survey Now to Minimize Delays in the Future (Condo Contact Vol. 21)*, we discussed the benefits of conducting Designated Substance Surveys (DSS) for your condominium property and the benefits they have on minimizing the potential release of hazardous materials into the indoor environment of a condominium building. It is noted that leaving hazardous materials exposed and/or in poor condition can greatly impact the air quality within the condominium environment. Reviewing the information provided in your DSS and following the recommendations (i.e. asbestos maintenance and investigating mould concerns) are some of the proactive measures that can be followed to prevent some air quality concerns.

Air quality can be perceived in a number of ways depending on who you ask. Some may consider good air quality as fresh outdoor air whereas others may perceive bad air quality as air that is stuffy. Others may consider dusty air as poor. There are a lot of factors that can impact your air quality, some of which you can sense and may impact you immediately whereas other factors may impact you later in life. The following discussion addresses what can be done within a condominium complex to minimize negative impacts to your air quality.

Review of Hazardous Materials / Annual Inspections

One of the keys to minimizing the impacts to the air quality within a building is to ensure that your hazardous materials and, more importantly, asbestos-containing materials are maintained in good condition. It is understood that asbestos-containing materials – although they can be left in place if not disturbed – can become highly hazardous when in poor condition. When asbestos is in poor

condition the potential for the fibres to release into the air increases significantly. The specific asbestos-containing materials within a building, as required by Ontario Regulation 278/05, are to be documented as part of an asbestos survey that can also be included as part of your DSS. Asbestos surveys should be completed for buildings when the owner knows or ought to know of the presence of asbestos. Once the asbestos is identified, the condominium should not set the report aside and assume that their obligation is done. Like all building materials, the asbestos-containing materials (insulation, plaster, drywall compounds, stipple, etc.) can deteriorate over time and this needs to be monitored. The impacts of asbestos fibres on the air would commonly go unnoticed by the building occupants.

Based on the above, completing an annual asbestos inspection with the goal of identifying asbestos-containing materials that are in poor and/or deteriorating condition is key in minimizing the potential release of asbestos fibres into the air. These annual inspections are required by Ontario Regulation 278/05 once asbestos is identified and generally included within the Condominiums Asbestos Management Plan as a means to protect building occupants from the presence and potential release of asbestos fibres.

A professional or even a property manager with a level of asbestos awareness can conduct a walkthrough of the building with the asbestos survey (or DSS) in hand and conduct the inspection, as well as identify the areas that require repair or removal. Subsequently, the condominium board can then proceed to remove or repair and/or encapsulate damaged asbestos-containing materials. It is noted that the repairs or removals are to be completed by certified asbestos professionals and cannot be conducted by on-site staff with asbestos awareness training.

Based on the above, it is essential that respective unit owners do not partake in renovations of their units prior to identifying the presence or absence of asbestos and having an understanding of the impacts that disturbing asbestos materials within one unit can have on neighbouring units. The unit owner should refer to their condo Asbestos Management Plan prior to conducting any renovations and should even conduct their own project specific asbestos survey if uncertain about the presence or absence of asbestos in their unit. To the same respect, it is recommended that the identification of any deteriorating asbestos within their respective units be forwarded to the condominium superintendent with the goal of repairing the material as required. It is to be understood that several condominiums have shared HVAC systems. Therefore, air can easily be exchanged between units or even through generic air flow patterns via hallways and plenum spaces.

In the event that asbestos has been allowed to deteriorate and result in debris within the building space, air sampling can be completed by professionals to assess whether elevated levels of asbestos fibres are present in the air and then establish a cleanup program, if required. Alternatively, sampling can also be completed by environmental professionals following the cleanup of debris and/or the repair of the damaged asbestos to ensure asbestos fibre levels are within acceptable levels.

Water Infiltration / Condensation and Potential Mould

Similar to the annual inspections that are required for asbestos, best management practices would suggest that the condominium conduct regular building inspections to minimize water infiltration and subsequent water damage to the building interior. It is understood that more extensive building envelope inspections are required by engineers. However, cursory reviews by the condominium superintendent or even by building occupants can also assist in identifying small leaks before they become potential health concerns or even lead to further damage and mould.

Whether it be via gaps in the building envelope, poor seals on windows and/or doors or even water infiltration through the roof, the infiltration of water can cause significant damage to interior building materials. In instances where the water damage is not dealt with fast enough, the water damage can eventually lead to staining/discolouration on the material and then can eventually lead to mould if the material is not able to dry quickly enough. When the nature of the water intrusion is a slow and continual leak rather than a single water intrusion event, the mould may continue to spread as additional materials become damp and/or wet. At times, though visible mould may not be observed on the surface of a material, evidence of water damage (soft drywall, spalling materials, discolouration) can also serve as evidence of hidden mould in the wall cavities. If these concerns exist, it is suggested to contact a professional to establish whether mould may be present within the building envelope and impacting the air quality.

Apart from water leaks through the building envelope, mould can also form on the interior building surfaces due to condensation. The condensation most often forms when there is a notable temperature



difference at the surface of specific building materials and/or via the presence of elevated humidity within the building. Mould associated with condensation generally goes unnoticed for a period of time. It can often show up in areas with poor or wet insulation within the wall / building envelope construction (i.e. ineffective insulation), on window sills associated with significant condensation (old windows, poor window seal) and even behind furniture applied directly against a perimeter wall due to poor air flow at the interior surface of the perimeter wall.

Finally, mould can also be found on insulation associated with building piping and/or ductwork. Mould on the insulation is often associated with older pipes and poor or deteriorating insulation (i.e. rips on the outside jacketing and exposed fiberglass) combined with humid environments. These factors commonly result in condensation forming on the pipes, which provides an environment for mould to grow on the insulation material.

The presence of mould on building materials such as drywall, insulation and window sills can eventually impact the air quality in instances where the mould spores become airborne. Mould becomes more easily airborne if the mould is not treated or removed immediately and is then allowed to dry. Once the mould dries, it becomes more easily disturbed and can then release from the building materials and impact the air. Although moulds can be present anywhere (i.e. outdoor environments, indoor plants, waste receptacles, etc.), moulds associated with wet building materials are often associated with elevated indoor mould spore levels (aspergillus / penicillium, stachibotrys which can be more harmful), and can then affect air quality. Moulds impact people differently and can cause health issues more commonly to people with suppressed immune systems (i.e. elderly, ill).

A regular review of the building, performed by either the superintendent or an environmental consultant for larger scale investigations, can minimize any of the above circumstances and avoid widespread mould contamination. A building review will: 1) identify deteriorating insulation / seals / cracks in the building envelope; 2) review the building interior for the formation of condensation, which can help identify areas where mould can be located or may form (i.e. thermal investigations, cold zones); 3) review the pipes and associated pipe insulation to assess deteriorating / slow leaking pipes to minimize potential for mould formation or major leaks; and,

4) assess the temperature and humidity levels and establish if they are maintained within acceptable ranges to minimize condensation and the potential for mould growth.

If there is uncertainty regarding the presence of mould within a building, the following questions need to be asked:

- Has water damage / condensation turned into mould?
- Is the stained material actually mould?
- Did the water leak result in mould on a surface or behind the wall?
- Is the air quality impacted?

A professional can then be contacted to complete a mould investigation so they can assess the level of mould present on the surface of building materials and assess whether the air quality has been negatively impacted. Commonly, a mould/environmental consultant will compare airborne mould levels within the building against outdoor mould concentrations. In winter months, mould concentrations could be compared against control points inside the building (areas known to be clean) or other alternatives. It is to be noted that there are no current regulations associated with mould and that assessments are based on industry standards and a professional's opinion on a case by case basis. A thorough vetting process is essential when selecting a proper consultant for completing the mould assessment. It is wise to ensure a level of transparency when hiring a consultant. Always ask the consultant to describe their assessment program prior to engaging them in the work as there are no specific guidelines to follow.

Simple things that can be done by individual unit owners may include:

1) ensuring bathroom fans are used regularly and functioning properly; 2) allow some room for air flow between furniture and exterior walls; 3) remove condensation from walls / windows, if formed; and, 4) report water leaks immediately to the superintendent.

HVAC Maintenance

Heating, Ventilation and Air Conditioning (HVAC) systems may consist of a compartmental setup (each unit has its own system) or a central system that serves the whole building (shared between units). Poorly maintained HVAC systems can lead to high dust levels or stagnant air and can also lead to the presence of mould within the system. This in turn can often be evidenced by visible surface dust accumulation in units and throughout the building.

The HVAC system for a multi-unit residential complex or an individual residential unit for a row-house unit is often the main source of fresh air into a building. However, the fresh air may be compromised significantly as it passes through the HVAC system. Commonly, the most evident issue that stems from poorly maintained HVAC systems is the notable increase in dust and particles within the indoor environment. Particles and dust can often carry and/or be associated with a variety of allergens that can be brought into the indoor air from the outside. Regularly removing and replacing filters according to manufacturer recommendations while also ensuring

that the properly sized filters are installed within the HVAC is aimed at allowing the HVAC to work at capacity while filtering the air.

Changing the filters on a regular basis maintains acceptable particle/dust levels within the building and will likely also help improve the efficiency of the air flow within the building. Improving the efficiency of the HVAC does not only reduce operating costs but also reduces the accumulation of carbon dioxide levels within the building. The accumulation of carbon dioxide can stem from insufficient air exchanges and poor air flow within a building and can result in malaise and general fatigue. This is commonly referred to as stagnant air.

Outside of the regular filter changes, consideration should be given to the regular cleaning of the air duct systems as well as the air handling units (if present). Although ductwork (if not acoustical) is generally constructed of metal and is not conducive to mould growth, organic material accumulation within a duct is. When dust and other debris (allergens) accumulate within the Air Handling Units and/or the ductwork, any increase or pulse of air flow may release the built-up dust/debris, which may in turn impact the air quality. In addition, the introduction of moisture to the dust/debris can lead to mould growth in the ductwork and can then be released into the indoor environment.

With the above in mind, relative humidity in a building during the summer months is often within acceptable ranges and does not need to be supplemented. However, during colder / dryer months, humidification is often added to the air at the source (HVAC system) to ensure the building air is not dry. However, when the humidification is added to the air within a dirty ductwork system, the dust / particles become susceptible to wetting and can eventually lead to mould growth within the ductwork. Although hidden, the dust / allergens and mould can be pushed through the air and dispersed within the building. The inhalation of excessive dusts and particles and, as previously stated, moulds can impact a person's respiratory system and trigger adverse reactions in people who suffer from respiratory conditions or have a suppressed immune system.

Certified professionals can perform the appropriate duct cleaning which involves scrubbing the interior of the ducts (through the use of air whips, scrubbers) followed by the application of disinfectants for areas that cannot be reached. Faster accumulation of debris/dust and potential moulds is often associated with acoustical lined ductwork. This interior lining is not as smooth as metal ductwork. As such, the cleaning may also include the application of sealants / coatings to the interior ductwork.

Aside from HVAC systems, elevated dust levels associated with condominiums have also been linked to unmaintained dryer vents. The accumulation of lint / debris within these vents can hamper the release of exhaust air outside and can often result in the dust / lint particles being released back into the indoor environment.

In cases where excessive dust levels are suspected within a building, a professional can conduct a sampling program to analyze the composition of the dust. The goal would be to establish whether the

dust is made of outdoor type particles (mineral grains, plant material, pollens) vs. indoor related particles (cotton, hairs, skin). This type of assessment can help determine the potential sources of the elevated dust levels and properly prioritize the cleaning programs, as required.

Summary

As discussed above, the condition and operation of the occupied building contributes significantly to the quality of air supplied to the building occupants. By monitoring the condition of the building and reacting to the deterioration of building materials before:

- 1 The condition of asbestos-containing materials deteriorates and potentially release fibres into the air;
- 2 Water leaks allow mould to form on or within the damp building materials; and,
- 3 Condensation is allowed to accumulate on surfaces leading to mould growth

the potential for impacts to the air quality as a result of poor building maintenance is greatly reduced.

Similarly, regular cleaning / maintenance of the HVAC system and verifying that it is operating as recommended by the manufacturer /

engineer will also help ensure that the air is filtered properly, adequate fresh air is supplied and that the HVAC system is not contributing to the creation of poor air quality.

However, in the event that there are concerns regarding the air quality that cannot be maintained by maintenance staff, environmental professionals can work closely with mechanical / building engineers to identify the aforementioned concerns and provide solutions.

Mr. Shawn Doherty, P.Eng. is the Lead of the Hazardous Materials Group at EXP. An Environmental Engineering Graduate of Carleton University, Mr. Doherty has been practicing in the Environmental and Hazardous Field for over 17 years. In recent years, Mr. Doherty has completed several asbestos management programs for condominium corporations within the Ottawa area. His experience in the condominium field has allowed him to develop an understanding of the regulations and how they apply to condominiums.

Mr. Scott Lessard, B.Sc. is an Environmental Science graduate of Concordia University and has been working in the Air Quality and Hazardous Materials field for 6 years. Mr. Lessard joined the EXP team in 2016 and, in addition to the asbestos surveys and DSS, brings expertise in detailed air quality investigations, radon testing and mould investigation. ■

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Do I Really Need a Borrowing By-Law... Really



Patricia Elia, B. Comm., LL.B., A.T.C.
Elia Associates



Recently, my team had to convince a corporation that they needed a borrowing by-law to borrow 2.2 million dollars. It was an interesting discussion because the manager and the board were relying on the wording of the Declaration, which indicated that a special meeting would have to be held but insisted that the Declaration did not use the word by-law for the purpose of approving a borrowing by-law. What had already happened is that the Board had followed the wording of the Declaration but did not connect it back to *Condominium Act*, 1998 (the “Act”).

Discussion ensued, in the context of Section 56 of the Act, specifically, Sub-section 56 (3) which states as follows:

Borrowing by-law

(3) A corporation shall not borrow money for expenditures not listed in the budget for the current fiscal year unless it has passed a by-law under clause (1) (e) specifically to authorize the borrowing.

We were able to come to an agreement that a borrowing by-law is required. However, the discussion that I had on this issue with this board reflects a similar set of discussions with other boards recently and prompted the need, (in my mind) for this article.

So let's connect the dots. The Act trumps a Declaration and a Declaration should not run against the Act. Here, the Declaration does not run against the Act but it was being interpreted to circumvent the Act. The Act is abundantly clear that a corporation shall not borrow money for expenditures not listed in the budget for the current fiscal year unless it has passed a by-law under paragraph 56 (1) (e) of the Act, specifically to authorize the borrowing. The words “a” and “the” are key to interpretation.

Paragraph 56 (1) (e) of the Act states as follows:

(1) The board may, by resolution, make, amend or repeal by-laws under this section, (e) Subject to subsection (3), to authorize the borrowing of money to carry out the objects and duties of the corporation.

The fundamental principle underlying the Act is consumer protection. Thus, should someone and/or the board be able to mortgage your unit without your knowledge? No board should unilaterally be able to go and borrow money against the equity of the collective assets and units without obtaining unit owner approval as required by the Act. It strikes me that when you analyze the basis for it, the logic makes an abundance of sense.

What is also interesting to me is the fact that some think that it is a good idea to borrow without an instrument being registered on title indicating there is a borrowing. How would anyone ever know that there is borrowing if it were not registered? Minutes are not registered. There is no requirement in the status certificate to specifically disclose borrowings but you do need to conduct a title search on a unit and therefore, are able to see what the financial circumstances are of the corporation.

Accordingly, no lender should be accepting any documentation from a condominium corporation without the following:

- 1** An opinion from a solicitor confirming that there is compliance with the Act including the provision of a borrowing by-law for the specific borrowing; and
- 2** That someone from the lender's office or the lawyer's office has actually witnessed the passing of the by-law and reviewed those minutes.

I need not say more about Channel Property Management to further the latter point.

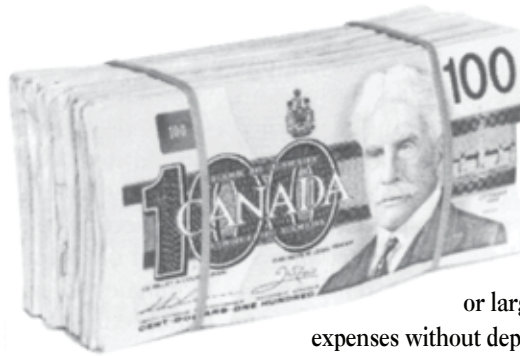
If Corporations wish to exercise good governance and be in accordance with the Act, a borrowing by-law is required for every single borrowing otherwise you could be handing a Board *carte blanche* with your money, your title and your vote. The case *YCC 42 v. Hashimi* reflects and confirms this principal in a different context where an administrator tried to put through a borrowing as part of a budget. The court was very clear that was not acceptable for an administrator to add debt to the budget as it still had to go to a vote of the owners. The case stands for more and it is a worthwhile read in understanding how the court processed the determination of the borrowing by-law being required. The bottom line is that people should have the right to say whether or not they will be obligated to pay a debt.

With that being said, one should be reasonable. The corporation's obligation to maintain and repair the capital assets and to fund the reserve fund and the operating budget is a continuous obligation. Ultimately, the corporation is responsible for maintenance and repair of the common expenses and in some cases the units and therefore its source of funding will always be the unit owners. Fortunately, monetary needs can be funded through borrowing or a special assessment. There are really only two short turn around choices if money is needed. The third option would be to plan ahead and proactively save for those expenditures before they come up.

This is about democratic rights and the right to encumber your assets.

Patricia Elia is a senior lawyer with Elia Associates. In her role as a lawyer, she brings expertise in business and condominium law, together with a unique perspective as a condominium director and owner. She believes in empowering communities to grow and thrive. Patricia is passionate about the condominium industry because of the important role condominiums play in the lives of real people. Currently, she is working on a variety of industry related programs and committees with a view to facilitating awareness and knowledge for unit owners, directors, property managers and condominium communities as a whole. ■

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Under the Condominium Act, 1998 (the Act) and Ontario Regulation 377/17, all condominium corporations are legally required to file condominium returns with the Condominium Authority of Ontario (CAO).

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PLEASE CONTACT THE CAO AT:
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The subject matter should be current, concise and helpful. Topics should relate to management and operations of condominiums and not be of a commercial nature.

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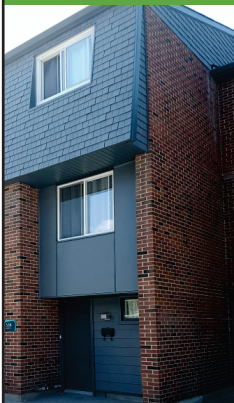
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