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Contributing to CCI Condo Contact Editor's Contact Information

A benefit of CCI membership is the opportunity to share perspectives with one another by contributing and reading articles in CCI-Ottawa's quarterly newsletter *Condo Contact*. If you are a condominium director, owner or manager, and have a unique tale to tell or advice to relay to other condominium boards, let us know! If you are a professional or represent a trade company offering services or products to condominiums and have a relevant article, let us know!

The subject matter should be current, concise and helpful. Topics should relate to management and operation of condominiums and not be of a commercial nature.

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EDITOR'S MESSAGE



It seemed as if spring would never arrive, but now that it has, the season promises to be a beautiful and bright one for Ottawa and CCI.

The Ottawa and Area condominium community continues to be one of growth and prosperity. Those who currently live in our region's condominiums know that they are lucky to do so during a time of expansion. As more condominiums are developed and built, our communities' contributions to both the architecture and lifestyle have more prominence. Similarly, being involved in CCI during this time of growth represents your commitment to the condominium lifestyle and promoting our communities in a positive light.

This spring's issue will benefit new condo buyers as well as those who have been in their unit for years. With articles on "Noise Complaints in Condos", as well as "How do I Choose a Condominium" there is something for everyone.

We hope you enjoyed the winter events, and invite you join us at some of the planned spring events that can help to further expand your network in CCI and the Canadian Condominium Community.

Kind Regards,
Nancy Houle
Editor, *CondoContact*

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P R E S I D E N T ' S M E S S A G E



We have had a busy winter with the very well attended Gun's Lawyers' and Money seminar in January and the sold out Directors' Course in April! Our membership levels remain steady, but with the continued growth in the Ottawa Area our condominium memberships should start to increase and we are looking at ways to spread the word about CCI. We have plans to try to increase our condominium membership and I know that those corporations which are members certainly benefit from their connection with CCI.

We had two very exciting events happen in May, our "How to Run an Effective Meeting" seminar on May 23rd was well received, with much participation from the attendees, and the first joint CCI-Ottawa and ACMO Conference & Trade Show in Ottawa, on May 31st. Watch for additional highlights from the conference in the next issue, and I wish everyone a very enjoyable summer!

John Peart
President – CCI-Ottawa

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Condominiums

HOW DO I CHOOSE A CONDOMINIUM?

By Mike Lewicki, Keller Williams VIP Realty



With the Spring Market beginning (and likely in full swing at time of print) it's the time of year that we fill up the gas tank, load up our buyers and start looking at condos! And then the inevitable question comes up:

What's the deal with Condos?

The discussion surrounding types of condos is one that could be covered over multiple columns as well as the perceived positives and negatives. A key factor in deciding to purchase a condo is a prudent and exhaustive review of:

1. Why are you buying a condominium?
2. Does the neighbourhood matter?
3. Is proximity to amenities important to you?
4. What are the condo fees, and what do they cover? (or proposed fees)

Often the first step is to understand the different types of condos and their potential benefits/negatives. Would you prefer a full house, or possibly a 1 or 2 bedroom apartment? Some would wonder why this matters, but condominium living is dependent on *choosing a lifestyle* outside of residential freehold. The type of unit preferred is usually selected prior to viewing them and is quickly decided after a few showings.

The realtor will often be the first point of contact for a potential buyer and there is a great marketing opportunity for Boards and property managers to consider when units come up for sale in their condominium project:

A lot of condominium buyers are curious not only about the condominium itself, but the *community within*. A great feature that a lot of Boards have created is a website with features and benefits of their building/association. Keeping an updated website and a proper information board is critical to providing key information to potential buyer's as they tour the facilities.

Today's buyers are web savvy, and property managers and boards should be aware that there are a number of websites out there that are used by real estate agents and buyer's alike to help them gather information on the condo, board or property management company. (Some buyers will want to walk away from the potential purchase based on feedback found online or

random conversations with people in the building).

Often the overall appearance of the building weighs in more than people think when buyers are comparing units. If the overall building is in disrepair, and general maintenance and upkeep are lacking then how well are the reserve fund and operating budget maintained?

A great way for a property manager (and the board) to stay engaged in the process of new owners is to keep an eye out for properties listed in their building/complex and reach out to the listing agent. By offering to provide basic info about the condominium(s), often it can help when the agent (or the homeowner) may not know what to ask:

- (a) Are there hours of operation for the facilities?
- (b) How many members on the board?
- (c) How long has the management company had the contract?
- (d) Any other items that are general knowledge but that could assist with the positive communication/view of the community.

Another opportunity is to talk with your contractors/employees about the 'fishbowl effect'. Employees and contractors often will forget they are in a 'work environment' and have discussions/comments without realizing who may be listening, and often out of context. They should always be aware of their surroundings and know that they are the face of the condominium/board when in the common areas etc.

The end goal should be a mutually positive outcome: The new buyer selects the condo for the unit that meets their home needs and the community gains a valuable new member.

Working with the real estate agent, owners and potential buyers will serve to provide future boards and owners with consistent ownership opportunity and less potential misunderstandings along the way.

Mike Lewicki is a Sales Representative at Keller Williams VIP Realty (Independently owned and operated brokerage) where he primarily focuses on Residential and Condominium Real Estate in Ottawa and Surrounding Area. You can read his blog about things that matter in Real Estate at www.condosbyreferral.com.



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CONDOMINIUM ACT, 1998

REVIEW PROCESS UPDATE

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



In our previous articles we reported that the review process of the Condominium, 1998 (the “”) is well underway and was not affected by the prorogation of government. As many of you will know, Kathleen Wynne was recently elected leader of the Liberal Party and thus became Premier of Ontario. On February 19th, ACO President, Dean McCabe and I had the privilege to attend Queen’s Park and hear the government’s Throne Speech, and later to attend the reception and speak with the new Premier.

We were anxious to see if the Throne Speech would contain any reference to condominiums or the reform of the . However, just before the speech we were advised that the Throne Speech generally only mentions new initiatives and not those already in progress. Therefore, we did not expect to hear any specific reference to the condominium industry or the ongoing reform process. However, you will be pleased to know

that condominiums were mentioned when the government dealt with the various forms of community living. This demonstrates that condominiums are still an important agenda item for the government.

After the speech, during our conversation with the new Premier she confirmed that condominiums are, and will remain, an important issue for the government and that the review and reform process will continue to its completion. This is excellent news for our industry.

The interesting issue will be if there is a provincial election before the new *Act* is introduced, and if so, would the new government change its priorities and not continue with the legislative reform. CCI (Toronto) and ACO have worked hard over the last couple of years to reach out to all three political parties and they have unanimously agreed that

condominiums and condominium legislative reform is necessary in Ontario. This is good news and hopefully will mean that we will see the new legislation in 2014.

As described in earlier articles, the broad based, public engagement review process has three stages. Stage I was completed at the end of 2012 when the reports of the various sessions, panels and committees were filed and an overall Findings Report published by the Independent contractor in charge of the review process, The Public Policy Forum ("PPF"). All of the reports are available on the government's website and on PPF's website (http://www.sse.gov.on.ca/mcs/en/Pages/condo_rev.aspx). These reports contain valuable information about the concerns, issues and options identified to date. The three stages consist of:

Stage One

Stage One involved various avenues or streams of discussion and input:

- (a) Ministers Public Information Sessions: Five were held in September and November of 2012 in Toronto, Mississauga, Ottawa, London and Scarborough;
- (b) Residents Panel: Consisting of 36 residents and tenants from across Ontario selected from over 500 individuals who volunteered for the Panel. The Panel met three times during October and November with various members of the condominium industry speaking to them on various aspects of condominiums. Then the panel broke out into working groups to discuss various issues and identify possible solutions;
- (c) Stakeholder Roundtable: Which consisted of approximately 25 individuals from the condominium industry including owners, owner associations, professionals, representatives from the building sector and many others. The Roundtable met for four days in October and November and was asked to identify key challenges and possible solutions. PPF also conducted many telephone interviews with stakeholders;
- (d) Public submissions to the government online portal at oncondo@ontario.ca and we encourage everyone to continue to make submissions including comments on all reports;
- (e) Submissions and reports from various stakeholder groups including the Legislative Brief and Dispute Resolution Model/Report submitted by our joint CCI (Toronto)/ACMO Legislative Committee.

Stage Two

Stage Two should commence shortly with the establishment of an Experts Panel. PPF indicates that for Stage Two, "subject matter experts" will build on the findings from Stage One, undertaking a more in-depth examination of the issues raised in

considering the feasibility of the options proposed, such as their effectiveness, cost and impact on other policy areas. The experts will develop a detailed action plan and recommendations based upon these discussions and the findings from Stage One."

Stage Three

Stage Three which should hopefully occur in the fall of 2013 will consist of providing the various stakeholders with the preliminary report from Stage Two for review and "validation" (i.e. comments). The expert panel will then review this validation and prepare their final report to the government in late fall in order for the government to prepare the new legislation for introduction into Queens Park in the spring of 2014.

In this article I would like to give a brief summary of some aspects the Findings Report by PPF. In subsequent articles we will discuss further parts of it along with the other reports submitted by the various parties mentioned above.

As mentioned in previous articles, the government grouped the discussions into 5 areas or themes: consumer protection, dispute resolution, financial management, qualifications of condominium property managers and governance. This is supported by the statistical analysis by PPF of the Oncondo submissions which showed the percentage breakdown as follows: governance (28%), dispute resolution (15%), finances (10%), consumer protection (10%), and property management (16%). In addition, they found that 16% of the submissions dealt with topics or themes outside the *Act*.

It is interesting to note that the Residents Panel identified seven values including well-being, fairness, informed communities, responsiveness, strong communities, financial sustainability and effective communication. Dispute resolution was an import issue for the panel. PPF summarizes these comments by the Panel as follows:

"These values not only establish basic benchmarks for the kinds of improvements condominium owners want from a revised *Condominium Act*; they also provide a clear and persuasive blueprint for the kinds of communities that owners want to build for the future."

The following are summaries of the issues, options and potential solutions reported by PPF in their Findings Report:

Consumer Protection

Purchase and sale documents should be written in plain language and include summaries that explained the key information buyers need to make informed decision on whether to buy. The full cost of buying and living in a condominium Corporation should be transparent. All costs

should be included in the first year and any exceptions must meet stringent criteria including disclosure, to ensure consumers can make informed decisions.

Dispute Resolution

It was almost universally agreed that a better system for resolving disputes is required. This means more than simply a better or more effective means to enforce the condominium corporation's documents, but rather must include such things as better access to information to the Corporation's information, ability to obtain informed and impartial advice and reliable, trusted mediation. While it was recognized that a more effective dispute resolution system is required for the future it was uncertain how this would be implemented and managed. As PPF stated on page 7 of the Findings Report "Many felt that some form of independent, authoritative agency or organization is needed to oversee the development and implementation of these tools and processes."

Financial Management

Reserve funds must be adequately funded through contributions that are based on appropriate, standardized studies. The purpose and use of operating funds must be revisited and adjusted and in some cases there should be more flexibility in which case it must be clearly stated how the funds can be used and that owners must be informed. Owners should have the necessary tools and access to information to keep them informed on how their common expenses are calculated and used. This information should be in a form that is easily accessible reliable and provided on a timely basis.

Property Managers

Managers and management companies should have a higher standard of skills and training, which will include compulsory knowledge and may require regulation of the industry by government or some organization acting on the government's behalf. There was no conclusion in the Findings Report that at this time property managers should or should not be licensed.

Governance

The first and almost unanimously adopted suggestion was that that directors, particularly first-time directors, need to have training and support. It is important that corporations do a better job in informing and educating their owners and residents about all aspects of their community including their rights and responsibilities and the financial state of the Corporation. PPF also reports that directors need to take additional steps to increase their responsiveness, transparency and accountability. Many of the various stakeholders of group indicated that often there is a breakdown in trust between owners and the Boards. In order to regain this trust it was suggested that boards need to improve on their responsiveness, transparency and accountability to the owners. This could be

done in several ways including making the corporation's records more readily available and ensuring that information given to residents is more complete, accurate accessible and up to date.

The various committees and stakeholders group did not just pick on the Boards. Owners and residents have a big role to play in regaining trust and improving their community. It was suggested that owners need to be more engaged and as PPF stated "... Accept a greater degree of responsibility for the good governance and management of the community, including participating in AGMs."

Issues outside the Act

It was interesting to note that all stakeholders, panels and discussion streams raised issues beyond the scope of the *Act* all of which would affect other legislation. These included property tax (fairness the municipal taxation), building conversions and Tarion coverage, insurance rates, tenant rights and responsibilities as well as "industry trends and power imbalances in the condominium sector." PPF reports that all these comments and proposals have been shared with the other appropriate government ministries.

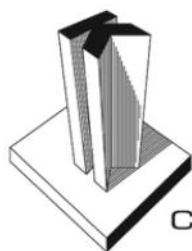
Conclusion

As PPF mentions, it was certainly agreed by all that there is no easy solution to the many issues and problems that face our condominium community particularly since there is such a great diversity in the size of condominium corporations and their needs particularly from a management point of view. We agree with PPF that there cannot be a "one-size-fits-all" solution.

Having been part of several of the discussion streams, including the Residents Panel, the Stakeholders Roundtable and the Deputy Minister's Advisory Group, not to mention working with so many great people on the Legislative Brief (and we are in the process of updating it), I agree with PPS' comment that "we should be encouraged by how much agreement exists across the condominium community on the issues and solutions."

While we still have a long way to go, and no doubt that the new legislation will not satisfy everybody, the broad based public consultation process that the government is using for the first time in Ontario appears at this stage to be working very well. If it is ultimately successful then the process might become the template for all legislative reform in Ontario. Even if it does not, we should end up with much improved condominium legislation capable of dealing with the explosive growth of condominiums and the many new issues and problems that are sure to arise in the years to come.

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NOISE COMPLAINTS IN CONDOS: THE PERILS OF FAILING TO ENFORCE CONDO RULES

By Rod Escayola, Heenan Blaikie LLP

Condominium corporations should take noise complaints seriously or risk facing painful financial consequences. In a recent case¹, a condominium corporation that failed to enforce its own rules prohibiting excessive noise was ordered to compensate an owner for the costs she had incurred to find alternative accommodation. The corporation was also ordered to pay a significant costs award. In his reasons, the judge criticized the property manager and the corporation for not having taken the complaint seriously.

The autopsy of a noise complaint gone wrong

Ms. Dyke lived in a high rise condominium in Toronto. She quietly enjoyed the use of her unit from 1994 until 2007, until the owner in the unit above hers removed the wall-to-wall carpeting and replaced it with hardwood flooring. Following a complaint from Ms. Dyke, the corporation retained a sound transmission expert, who confirmed that there was “more than average” transmission of sound, and recommended that 65% of the floor space be covered with area rugs.

The problem seemed to go away until February 2010 when a new tenant moved into the unit above Ms. Dyke’s unit. Unfortunately for Ms. Dyke, this new tenant was a professional dancer who eventually turned her unit into a full-time professional dance studio. Ms. Dyke complained repeatedly to her new neighbour but to no avail. As things worsened, Ms. Dyke started to complain to the condominium corporation and to the property manager, and eventually called the police to report a nuisance.

Unfortunately, the condominium corporation initially took no action. In fact, they never even sent a letter to the noisy neighbour requesting that the noise cease. The corporation instead advised Ms. Dyke to stop complaining to the neighbour, but rather to direct any communications to the property manager. Ms. Dyke did just that and numerous reports were made of excessive noise, comparable to the constant banging of a hammer. Yet, no steps were taken by the corporation or the property manager to rectify the situation.

Eventually, Ms. Dyke put the corporation on notice that if they did not take some action to enforce the corporation’s own rules prohibiting such noise nuisance, she would hold them legally responsible.

Rather than address the situation, the corporation advised Ms. Dyke that they “had been unable to independently verify the intensity of the disturbing noise”, completely ignoring the numerous past complaints, the 2007 noise expert report, and the fact that the security guard apparently had identified the source of the noise. To make matters worse, it appears that the corporation then started a campaign of harassment against Ms. Dyke, which included unfounded allegations that Ms. Dyke’s two dogs were disturbing neighbours. The corporation also took the position that Ms. Dyke should stop working from home as the corporation’s documents provided that units could only be used for residential purposes... yet it did nothing to address the professional dance studio above Ms. Dyke’s head.

As things worsened, Ms. Dyke could not work or make proper use of her unit and started to suffer ill health effects from the noise and stress of having to live with the constant noise of a dance studio above her. Eventually, Ms. Dyke had no choice but to move out of her condominium in December 2011.

Ms. Dyke then turned to the courts to obtain an Order enjoining the corporation to enforce its own rules against noise nuisance. She brought an application under Section 135 of the *Condominium Act*, 1998 [the “Act”], which creates an oppression remedy where conduct of a condominium corporation is oppressive or unfairly prejudicial or where such conduct unfairly disregards the interests of the applicant (in this case: Ms. Dyke). She also sought compensation for the financial losses she incurred when she was forced to temporarily move out of her condo.

The court concluded that the corporation acted in a way which unfairly disregarded the interests of Ms. Dyke when it failed to

take the adequate steps to enforce its own rules against such noise nuisance. The harassment campaign against Ms. Dyke also added to the corporation's unfairly prejudicial conduct.

The court ordered the condominium corporation to reimburse the expenses incurred by Ms. Dyke to find alternative accommodations, such as rent, hydro, utilities, furniture and movers. These expenses exceeded \$40,000. The corporation was also ordered to pay nearly \$20,000 in legal fees.

Unfortunately for the corporation, the matter does not end there. The judge deferred to another hearing the issue of whether further damages should be paid to Ms. Dyke to compensate her for her pain and suffering, mental anguish and distress, loss of income and loss of comfort and quiet enjoyment of her unit.

How to Best Deal with Noise Complaints?

Compliance issues, and in particular noise complaints, can be very difficult to resolve. Corporations and property managers must take them seriously and act on them with haste and resolve. Noise complaints can probably best be approached and resolved through the following three phases. However, as no two situations are exactly the same, corporations and property managers should involve legal counsel early in the process to ensure they are acting in compliance with the applicable legislation and with the condominium documents and policies.

First Phase: The investigation

The first step in dealing with a noise complaint should be to investigate it in order to determine whether the complaint is valid. Tolerance to noise is very subjective. What is disrupting to someone may not be to the next person. The reality is that anyone who lives in the city, and in particular in a condominium complex, must expect to be exposed to some level of noise. The corporation should intervene, however, when there is a breach to the *Act*, the declaration or the rules as they pertain to noise and nuisance.

The results of the investigation will also dictate what further steps should be taken by the corporation. The source of the noise, as much as its intensity, will have an impact on what the corporation can or should do about it. For instance, noise coming from a nearby train station or from a construction site across the street is really out of the corporation's control and the corporation should not get involved.

The corporation should open a separate file for each complaint and should get details of the complaint preferably in writing. It is important to collect as much information as possible from the complainant and information should also be gathered from neighbours. The corporation should also consider inspecting the

unit at the source of the noise but should first consult legal counsel with respect to rights of entries. Finally, the corporation should examine its declaration and rules on noise and any flooring restrictions. Did the unit owner replace his or her carpet with wood or tiles, as was the case in the Dyke case?

The corporation should also consider retaining a noise/sound transmission expert. In the Dyke case, the court commented on the fact that sharing the costs of such an expert between the corporation and the owner may often be seen as the fair thing to do. In other cases, an owner may be justified in taking the position that he or she should not be responsible for such an expense. It is important to discuss these matters prior to incurring the expense.

If the investigation concludes that an occupant of a unit is in breach of the *Act* or the condominium documents, the corporation has a legal obligation to ensure compliance and intervene. Stated otherwise, the corporation cannot turn a blind eye to a specific situation. Owners are entitled to expect that the corporation will enforce all of its rules against all of its owners.

Second Phase: The Intervention by the Corporation or its Property Manager

Where the noise is ongoing at the time of the complaint, the corporation should consider intervening immediately by knocking on the unit door to get the occupant to stop the nuisance. That may be sufficient to resolve the situation. In every other case, the property manager should write to the offending owner – and tenant in the case of a rented unit – to advise him/her of the problem. The letter should be as specific as possible and provide details and particulars of the incident(s). The letter should also refer to the declaration or rule being breached. Finally, the owner should also be given a specific (but reasonable) period of time to resolve the situation. The time granted to resolve a situation will greatly vary depending on the issue at hand: Noise from a party should cease immediately. Fixing a noisy A/C compressor may require more time.

In the event that the situation is not resolved, the property manager should send a second warning letter to the owner/tenant in breach. This letter should again provide details of the incident(s) being complained of, refer to the authority being breached, and specifically refer to the prior warning letter. The owner should again be provided with a very specific (and usually shorter) period of time to resolve the situation. The letter should specifically advise the owner that should the noise disturbance continue, the matter will be referred to the corporation's lawyer and that such a step will result in legal fees being claimed by the corporation against him/her. If appropriate, the corporation should consider referring the matter to mediation – keeping in mind that tenants do not have a right to request mediation.

Third Phase: Legal Intervention

If the disturbance or breach continues, the matter should be referred to the corporation's lawyer, who will most likely write to the owner in breach, giving him or her one last chance to immediately resolve the situation. This letter will likely specifically warn the owner that should the situation not be resolved, the matter will be referred to litigation and that legal fees will be claimed against the owner.

It is very important to provide your lawyer with as much background information as possible. Your lawyer will be more efficient and your legal fees will be cheaper if your file is up to date, well organized and complete. The more facts you provide to your lawyer, the more specific he/she can be in his or her final letter to the owner. This will avoid costly back and forth between the corporation and the lawyer.

In the event that the breach continues despite the final warning from the lawyer, the corporation may have no choice but to take legal action, likely pursuant to section 134 of the *Condominium Act* to obtain compliance. In some instances, the first step of such legal process may require formal mediation.

While a legal proceeding can be daunting and costly, the corporation has an obligation to ensure that all owners abide by

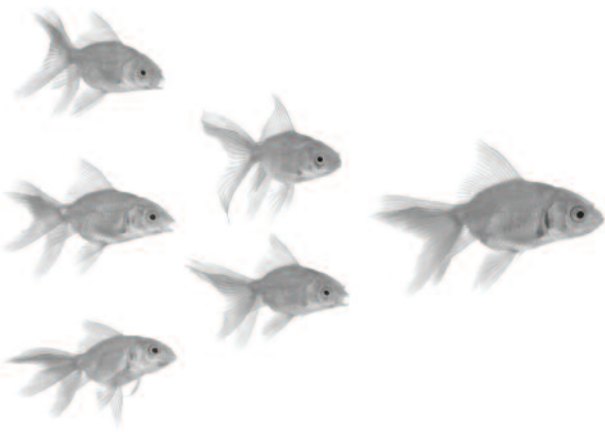
the *Act*, declaration, bylaws and rules. In the Dyke matter referred to above, the corporation's failure to act resulted in the aggrieved owner being the one commencing legal action.... but against the corporation, not against the noisy neighbour.

Conclusion

In Ms. Dyke's case, because of the corporation's failure to enforce the rules, all of the owners will be paying for her damages and legal costs as part of their common expenses. The unit owner and tenant of the unit where the noise originated appear to have escaped any financial consequences. Had the corporation properly enforced the rules, they may have been able to claim their enforcement costs from the owner of the unit where the noise originated.

At the end of the day, corporations have to be cautious and tactful when dealing with noise complaints. Since "prevention" is often the best "medication", corporations should consider adopting an Enforcement Policy to assist them in best addressing noise complaints in an efficient and systematic manner before things get out of hand.

1 Dyke v. Metropolitan Toronto Condominium Corp. No. 972, 2013 ONSC 463.



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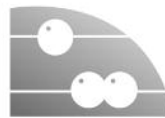
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