

SUPERIOR REGION CONDO NEWS

Winter 2012

Canadian
Condominium
Institute

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condominiums

Northwestern Ontario Chapter

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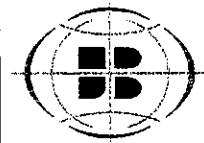
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Certainties in Life - Death, Taxes and Condo Fees

By Geoff Penney B.A., L.L.B., Ottenheimer Baker Barristers Et Solicitors



You will have to excuse the somewhat grim title of this article - I was searching for something "catchy". However, the more I thought about it the more appropriate it appeared to be. If you are a condominium owner, by default you pay your share of the corporation's expenses. This shared responsibility is one of the fundamental characteristics of condominium living. If a corporation is properly fulfilling its obligations and duties then condo fees are diligently collected and used in a manner which allows it to maintain, renew and repair the common elements, manage the property and assets of the corporation and provide necessary services.

Now some owners might complain that their fees are too high. Some might complain that their fees are too low (I'm not expecting to see many hands here). Some may have an issue with how the fees are spent Still others may feel justified in withholding payment of their share as a silent protest against a perceived injustice. One would hope that owners ultimately would understand

and appreciate the level of services that condo fees afford them.

Yes, one could say that there is certainly a love hate relationship when it comes to condominium fees. However do we really understand the issues surrounding condominium fees? Hopefully you will be a little better informed by the end of this article. On the other hand, this brief article might confirm everything you already know.

How Are Condo Fees Set?

It Should not be a great surprise that owners in different condominiums will pay different fees. Therefore it is of little value to question why the fees in your condominium are so much greater than the Shady Acres Corporation on the other side of the street. There are simply too many variables at play.

Condominium fees are used to pay the annual operating expenses of the corporation and to allow it to manage the corporation's property and assets. Until your Board of Directors has a handle on what these expenses will be and the expected state of its accounts, condo fees cannot be accurately set. This is why new condo purchasers should be wary when developers advertise low condo fees as a selling feature. At the beginning of each fiscal year your Board of Directors must create a budget. The Board has to look at the expected operating expenses for the upcoming year and then determine the Corporation's current financial status from independently prepared financial statements.

Your Declaration should set out the percentage share which each unit must pay towards the common expenses. This might be based upon the number of units in a corporation.

IF A CORPORATION IS PROPERLY FULFILLING ITS OBLIGATIONS AND DUTIES THEN CONDO FEES ARE DILIGENTLY COLLECTED AND USED IN A MANNER WHICH ALLOWS IT TO MAINTAIN, RENEW AND REPAIR THE COMMON ELEMENTS, MANAGE THE PROPERTY AND ASSETS OF THE CORPORATION AND PROVIDE NECESSARY SERVICES.

For example in a 35 unit complex each unit pays 1/35 of the expenses. In some cases where units are of different sizes condo fees might be based upon square footage of each unit.

What Are Condo Fees Used For?

For illustration purposes, think of a condominium as a business. It has many shareholders owners which rely on it to maintain and increase the value of investments. It has many of the same expenses which are required in order to carry on operation. Now take that business model and remove from it all sources of income. There are no products or services to sell to an adoring consumer. It generates no income. How does it survive and thrive? If it is a condominium it relies on condominium fees.

Operating expenses are common expenses and common expenses are paid from common assets. Condominium Declarations must list all expenses which are considered common expenses. These might be different for each corporation but they can include such things as: maintenance and repair fees, management fees, snow clearing, garbage collection, insurance, auditors, legal fees, cable television, electricity, superintendent wages, etc. If one were to sit down and think about it, there are many benefits one shares in exchange for monthly condo fees.

Why Do Condo Fees Sometimes Increase?

Condominiums are not immune to increases in the costs of products and services. As expenses rise generally, a corporation will not always be able to fulfill its duties and obligations based upon the same condominium fee. Something has to give; either condo fees increase or

the corporation's property and assets are prone to suffer. A corporation that continues to charge low condo fees despite a significant rise in: expenses is not doing its members any favors. People often mistakenly equate a "good" condominium corporation with cheap condo fees. This correlation does not always stand.

If indicated by its budget and current financial health a wise Board of Directors in consultation with its members will consider increasing condo fees to cover growing costs, and costs that are anticipated in the coming year. A Board which is not so fiscally responsible and continues on its path might create problems down the road, Obviously an increase in condo fees is an issue of great concern to some unit owners, especially those who may be on fixed incomes. However it is important to keep in mind that your unit is an investment, possibly your largest or only investment. If the corporation which one is a part of is in poor financial health and cannot adequately address its costs and expenses then the value of your investment may very well suffer. A small or gradual increase in fees to meet an expected shortfall is much better than a large assessment all at once.

Who Pays Condo Fees? Do I Have To Pay?

Short answer: every member of the condominium corporation pays his/her share of condo fees. Yes, you have to. Legally each unit owner has an undivided interest in the common elements of the corporation. This interest cannot be separated from the ownership of the unit. The common expenses are those incurred to allow the corporation to manage its property and assets. Your proportionate share in the common elements as stated in the Declaration determines your proportionate share in

Condominium fees are a necessary feature of condominium living. They should not be looked upon as a penalty but as simply the contributions required for the corporation to maintain the property and assets for the benefit of all members.

the expenses and therefore the condo fees you have to pay.

One cannot avoid paying condo fees and it is unfair to expect one's neighbors to assume your share of the expenses. One may assert an argument that I should not pay the same condo fees as others because I choose not to use many of the amenities, such as the swimming pool, fitness room or common garden. Non-use of a particular feature of the common elements is not a justification for withholding a corresponding portion of one's condo fees. Similarly, the unit owner who refuses to pay his share of fees because he does not agree with a decision that the Board has or has not made is not justified in doing so. Condo fees are not to be withheld as a means of protest. If one has an issue with the Board of Directors than concerns should be expressed in writing to the Board or in the context of a general meeting.

What Can Happen if an Owner Does Not Pay?

The new Condominium Act and a corporations Declarations and Bylaws state that the corporation

is under a duty to collect contributions to common expenses from each unit owner. Furthermore the corporation is obligated to take all necessary steps to enforce timely payment by each owner. A corporation cannot and should not allow arrears of condominium fees to go unchecked.

The corporation or its solicitors should forward a demand letter to the particular owner citing his arrears and providing a specified deadline by which full payment, including legal fees, is required. If this step does not bring about a satisfactory result, then the corporation can take an alternate course of action.

The new Condominium Act provides the necessary ammunition to enforce an owner's obligation to pay condo fees. If an owner does not pay his share of the fees and does not respond to demands by the Board or its solicitors then the Corporation assumes a lien over the unit. Section 51 of the new Act provides that an owner's failure to pay a share of any assessment or contribution constitutes a lien on the unit. Not only does the lien comprise the unpaid assessment but also interest,

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Certainties in Life - Death, Taxes and Condo Fees

By Geoff Penney B.A., L.L.B., Ottenheimer Baker Barristers Et Solicitors

legal fees and costs associated With the collection or attempted collection. 'The lien can be enforced like a mortgage meaning that the corporation could initiate power of sale proceedings for default (i.e. non-payment). To be enforceable a notice of lien or certificate must be registered at the Registry of Deeds as an encumbrance over the unit. Under the new Act the registered lien is payable in priority to any other liens, charges or mortgages other than alien for taxes.

In a significant departure from existing law in this Province, section 52(4) of the new Act allows a mortgagee, judgment creditor or lien or charge holder to payout the corporation's lien and then add that amount to their mortgage, lien or charge. The likely benefit to the mortgagee or creditor is that they can claim interest on the amount of the corporation's lien and remove it from its priority standing. 'The registration of a lien on a mortgaged unit may be considered an act of default on the mortgage.' The couple of hundred dollars the unit owner refused to payout of protest can soon balloon to include interest, fees and expenses. In addition your unit could be sold out from under you.

Conclusion

Condominium fees are a necessary feature of condominium living. They should not be looked upon as a penalty but as simply the contributions required for the corporation to maintain the property and assets for the benefit of all members. Perhaps knowing a little bit more about the issues surrounding condo fees will make that monthly contribution a little easier to make.

Geoff Penney is a partner with the law firm Ottenheimer Baker in St.John's, Newfoundland and Labrador. He is

the past president of the Newfoundland and Labrador Chapter of CCI (2004-2009) and continues to serve as a director. He was elected to the National Board of Directors of CCI in 2006 and was subsequently elected to CCI's National Executive Board of Directors in 2008. Geoff was elected as Vice-President of CCI's National Executive Board of Director's in November 2010.

Geoff Penney's excellent article on common expenses was based upon Newfoundland and Labrador's new Condominium Act. However that Act mirrors our Ontario condominium legislation. Geoff's reference to s.51 of their Act would refer to s.85 of our Act. His reference to s.52(4) of their Act would be s.88 of our Act. Newfoundland and Labrador's new Condominium Act has not yet been proclaimed into force as its regulations are still in development. The Newfoundland and Labrador of Chapter of CCI, including Geoff, was heavily involved with the development of their new condominium legislation.

Thanks Geoff for allowing us to reprint your article which appeared in the fall issue of the Newfoundland and Labrador's excellent newsletter.

H.W. Ontario Chapter CCI



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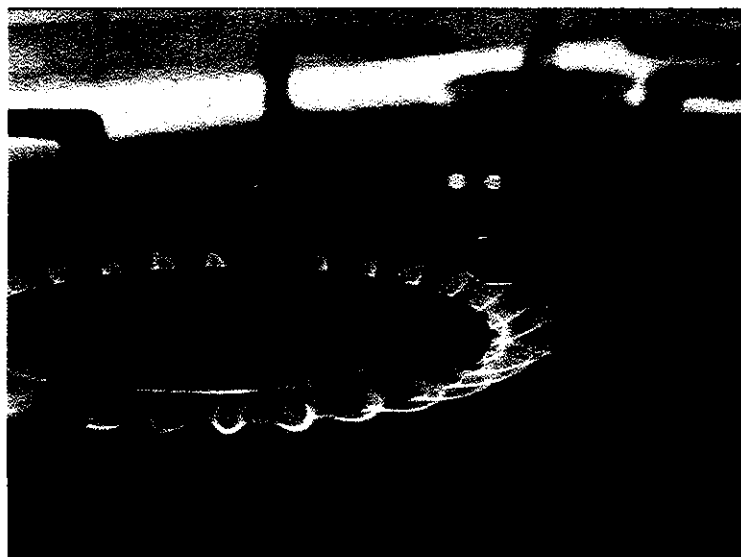
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Hazardous Gas Sensor Calibration - Don't Wait Until It's Too Late.

By Richard J. Gorka, President, Airon Group of Companies



IMAGINE THE SOUND OF AN ALARM GOING OFF. TIME MAY BE UP.

If you are an owner or manager of a building with hazardous gas sensors installed within the last one to five years; it is time to test their accuracy. Gas sensors not only require inspection every six months, they also have a lifespan. It is your service provider's duty to ensure sensor accuracy and system integrity and your duty to ensure occupant life safety and maintain building energy savings.

It is imperative that all building sensors are re-calibrated regularly by a certified technician. Technicians are trained to expose failure. Failure may include sensor filter blockage or clogging over the equipment's lifetime. As the responsible party, it is up to you to ensure these sensors are operating properly.

Technicians will perform a two stage diagnosis. First, a physical check that will include testing followed by re-calibrating of all your sensors. Provided with authorization, the technician will replace failed equipment with new, properly calibrated sensors.

For your protection and records, a log should be initiated, followed by scheduling of future inspection and re-calibration visits.

Be proactive! Finding that a sensor has failed after an incident can prove costly, or worse, result in disastrous life threatening exposure to hazardous gas.

Example: Typically, parking garage and factory facilities have CO sensors. These sensors regulate local exhaust fans. When out of calibration, these sensors will send improper messages causing the exhaust fan to run constantly thus wasting energy. More importantly, these fans may not engage when gases rise to dangerous levels, risking occupant's health and life safety.

Calibrating these devices is necessary to maintain their life expectancy and is very simple and economical. Feel secure with your building knowing that it has and will continue to have an on-going "clean bill of health."

Remember: Never assume everything will always function properly. Mark the last date of inspection on your calendars because time passes quickly! Act now! Call a qualified calibration company and request a certified technician visit your facility to resolve all your hazardous gas sensor concerns.

Richard J. Gorka has been in the HVAC Construction and Service industry for over twenty-five years. As founder of the Airon Group of Companies, Rick has developed hands on knowledge of all aspects of the business. Today, Rick uses his experience to support the team at Airon while focussing on new business development and ensuring the Airon Group of Companies remains financially sound as they continue to grow.

Government Commits to Open the Condominium Act, 1998

Condo Forms Amended as of September 1, 2011

By Armand Conant, B.Eng., LL.B., D.E.S.S. (SORBONNE) Shibley Righton LLP



Opening the Condominium Act, 1998

It cannot be any more clear or irrefutable that the Ontario government has committed to opening the Condominium Act, 1998 (the "Act") for a complete review and revision.

The government has stated so both in writing and orally in front of hundreds of people.

This past summer, both the Liberal and NDP parties answered the survey question about opening the Act in the affirmative. Then this past November 4th in opening the 15th Annual CCI-TI/ACMO Condominium Conference, Minister Margaret Best (who just two weeks earlier has been appointed the Minister of Consumer Services) stated to an audience of over 500 attendees that the government commits to opening up, and revising, the Act.

So the six years of effort of the joint CCI-T/ACMO Legislative Committee and joint Government Relations Committee seems finally to have been successful. This

is exciting news for our industry but it leaves one key question unanswered: When? To date the government has not indicated when they will start the review process, and given that Minister Best had only been in office for two weeks, she was not able to give a time frame. We also spoke with Minister Best after the Provincial Throne speech on November 22nd (opening Parliament) but the Minister could not commit to a date.

As Chair of the Legislative Committee and Co-Chair of the Government Relations Committee, I encourage everyone to maintain pressure on their provincial Members of Parliament to get the review process going. The two Committees along with our government relations consultant will also continue our efforts with the government and all political parties.

In the meantime, the Legislative Committee will continue refining and revising its Legislative Brief that was submitted to the government on May 31st of this year, along with working on the Regulations to the Act. This will include amendments relating to the fairness in municipal taxation initiative, the potential for licensing of property managers along with many other issues.

With this in mind, and as has been stated at various events including the condo conference, we encourage everyone to continue submitting suggestions.

Over the past 6 years we have received suggestions and comments from every sector of the condominium community, including owners, directors, engineers, auditors, developers, lawyers and many others. It is with this continued input that we will be able to

"This is exciting new for our industry but it leaves one key question unanswered: When?"

assist the government in shaping the best legislation possible for condominiums in Ontario. Condo Legislative reform is ongoing all across Canada. At the condominium conference, CCI National's Government Relations Committee hosted a luncheon of government representatives from across Canada to discuss their respective legislation. Eight provinces attended and it was interesting to note that all of them have either just finished revising their legislation or they are in the review process of doing so. CCI National's committee has been hosting this luncheon for several years now as its objective is to facilitate an open dialogue amongst the provinces so they can all share experiences with the goal of formulating the best condominium legislation possible. This year's luncheon was the most widely attended one yet and we hope that soon it will include all jurisdictions.

Probably the most important point at the luncheon was that the provinces unanimously confirmed that the single biggest issue facing them is finding a better process or mechanism for the resolution of disputes between owners and condominium corporations. The provinces

are investigating any and all possible alternatives. CCI National is assisting them by searching for alternative dispute resolution models from around the world. It is through this coordinated effort that we hope to be able to find the best possible procedures or mechanisms to deal with disputes between owners and Corporations in the most cost effective and efficient manner possible.

To continue the public and government awareness campaign by ACMO and CCI-T, it is intended that we will jointly host a Queen's Park Day in the spring, which will be a reception for all politicians, but particularly those in whose ridings are located a large number of condominiums.

So we are very encouraged by the commitment stated by the government. It is through a continued effort of assistance, cooperation and pressure from all across the condominium industry throughout Ontario that we hope the official process of reviewing and revising the Condominium Act will start as soon as possible.

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Government Commits to Open the Condominium Act, 1998 Condo Forms Amended as of September 1, 2011

Let's hope that in the next issue of the *Condo Voice* we will be able to announce when the government will be officially re-opening the Act.

Condo Forms Changed - September 1, 2011

In its desire to streamline its forms under various statutes (reduce government red tape), in September the Ontario Government implemented Bulletin 2011-04 entitled "Migration of Forms from Regulations", to take effect September 1st. As part of the government's "Open For Business Initiative", some of the Regulated forms under several Statutes, including the *Condominium Act, 1998* (the "Act") have been moved to the Government's website for better public access, or to the Ministry's internal knowledge management website if they are for use by Ministry staff only. To see the Bulletin, go to: http://www.ontario.ca/ontprodconsume/groups/content/@tssso/documents/document/ont06_026807.pdf

The amendments to the condominium regulations were:

Under O. Reg. 48/01:

O. Reg. 442/11 revoked all of the forms from the regulation and removed all references to form numbers. Other minor changes included updating the regulation to reflect the repeal of the Certification of Titles Act.

Under O. Reg. 49/01:

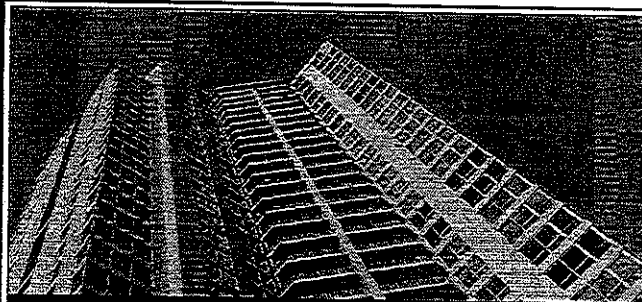
O. Reg. 443/11 revoked all of the forms from the regulation and removed all references to form number.

To find the list of forms that were affected by Bulletin 2011.04, go to:

www.ontario.ca/en/information_bundle/land_registration/content/ONT06_026719.html?openNav=forms

Although there was an initial stir in the condominium industry that its forms were fundamentally changed, It is now clear that there are no substantive changes, rather just the names. Their names were revised to include a reference to the relevant section of applicable Regulation or Statute, to ensure that the correct form is being used. In other words, the use of Form numbers alone in the Form's title (e.g. Form 13) has been discontinued and the government has reverted to their original names as we used to know them, such as the "Status Certificate".

Therefore, when using a mandatory prescribed government form, be sure to use the revised form, Which can be downloaded from the government's website.



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Are Engineers Really Necessary?

By Chris Williston, P.Eng., President, Caliburn Engineering Inc.



Condominium Board of Directors are often faced with the decision of whether or not to employ the services of an engineering firm. Minor tasks or maintenance-type activities do not usually require the services of an engineer. Major construction or restoration projects, however, will benefit from using a professional engineer.

An engineer or engineering firm is:

Professional- bound by a code of ethics to act impartially and protect the interests of the client, contractor and public;

Licensed - all engineering firms must be licensed by the Professional Engineers of Ontario. This overseeing body ensures that its licensees are qualified and regulates the provision of engineering services in Ontario;

Insured - Condominium Corporations do not typically have the amount or type of insurance necessary to manage large construction projects involving supervising multiple trades;

Responsible to the Client - An engineering firm has a duty to work for the best interest of the client to provide the lowest price for the best solution to the problem. Engineering firms can reduce the overall costs of a project proper tendering and contractor selection that can more than offset the engineering fees and;

Knowledgeable and Experienced - Usually the engineering firm will work with the Condominium Corporation to develop an appropriate description of the work to be performed, compile specifications to be used for tender purposes so that all bids are based on the same scope of work, determine and select appropriate contractors, prepare contract documents between the Corporation and the contractor, and manage and oversee the project with the objective of having the work done as specified and on time.

A Condominium board is typically made up of volunteers. The members of the board are not always available to review the work in progress on a regular basis and often are not familiar enough With the specific of the project to know what to look for if they do. Similarly, condominium managers are unlikely to have the technical expertise required to oversee a major project. Money is well spent on hiring an engineering firm to protect the interests of the Condominium. Notably, the likelihood of the Corporation having to locate a contractor to complete an unfinished job or to hire another contractor to redo work which has been improperly performed will be greatly reduced.

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CANADIAN CONDOMINIUM INSTITUTE

Northwestern Ontario Chapter

Presents

NO STUPID QUESTIONS

Three local Lawyers will review some interesting legal cases involving condominiums. There will be an "open session" where you will have a chance to ask questions regarding condominium legal issues on any topic pertaining to condominium law. There will also be a short review of some of the changes being considered by the Ontario government for the Condominium Act.

SPEAKERS: Doug Shanks - Cheadles LLP, Johanna Maki - CARREL & Partners LLP, Laird Scrimshaw - Martin Scrimshaw Scott LLP

Date changed to:

Wednesday, February 29, 2012

Starting at 7:00 p.m. to 9:00 p.m.

Registration begins at 6:30 p.m.

Please Register in advance to ensure proper seating and materials are available.

To be held at: MASONIC TEMPLE, 1600 Dease Street (Lakehead Shrine Club)

ENROLLMENT FEES: CCI Members: \$30.00 for each, Non-Member: \$40.00 each (includes HST) coffee, tea and snacks included.

This course will earn RECO or RIBO attendees MCE credits for 2 hours of instruction. RECO and RIBO Attendees will need to provide their Registration Number, check in & out to comply with requirements.

REGISTRATION FORM (Please Print Clearly)

No Stupid Questions

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ADDRESS: _____

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Winter 2012