



**Jason Rivait**  
B.A.(Hons), M.A., LL.B.  
Partner,  
Miller Thomson



**Justin McLarty**  
Associate  
Miller Thomson

**Cover Story**

# A Holiday Do's (and Don'ts) List

As We Reach Into Our Storage Lockers to Dust Off Holiday Decorations, What Better Time to Remind Boards and Residents of Their Holiday Do's (and Don'ts)

The holiday season provides a unique opportunity for condo corporations to foster a sense of community. From recognizing hard working staff to throwing mixers for residents, there is ample opportunity to build morale and celebrate each other's differences. Boards should be encouraged to seize this opportunity, while being mindful of the slippery legal landscape.

A host of issues typically only present themselves during the holiday season. We will dive into the four most common questions condo corporations grapple with during this festive time of year.

**Holiday Decorations**

Whether your holiday decorating style is more Charlie Brown than Clark Griswold, many residents will want to do some decorating over different holiday seasons. Well-drafted rules can help to ensure that the decorations are safe and do not unduly interfere with others.

An important point to remember is the diversity of festive events celebrated throughout Ontario. Older rules, which may have focussed on Christmas themed events and may even reference specific calendar dates in December and the New Year, should be replaced with more inclusive provisions. For example, we would recommend avoiding rules that provide: "Decorations may not be placed on the



common elements before December 5th and must be removed no later than January 5th in each year."

Alternatively, a rule that applies to any festive event will likely serve the building's community better. Condos should also

carefully consider what types of decorations will be permitted. The nature and character of the building should be factored in when making such decoration decisions.

A classic example is door and balcony decorations. As most unit entry doors

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balcony doors and balconies will form part of the common elements, the corporation's rules should ensure that no damage will be done to the door/balcony when hanging a decoration. For example, the condo could require that only over-the-door hooks be used.

Please also remember that certain religious rituals must be accommodated up to the point of undue hardship. The Ontario Human Rights Code has paramountcy if there is a conflict with the corporation's rules. A great example of this is the affixing of a mezuzah to the door or door frame of the unit, which is a religious ritual. To be clear, this conduct would be permitted notwithstanding any rule to the contrary. Condo corporations must be mindful of any religious rituals of residents and consider how the Ontario Human Rights Code interacts with the Corporation's governing documents.

Whatever decoration rules are put in place by a corporation, they should ensure the safety of all residents and apply broadly to all festive events.

### **Social Host Liability**

While discussions of third-party liability may not get a festive event going, the use of alcohol in party rooms or other amenities should be kept in mind throughout the holiday season. In very limited circumstances, the host of a social event can be held liable for injuries or damages caused by one of their guests to a third party after they leave the party.

In *Childs v. Desormeaux*, the Supreme Court of Canada clarified that a host can only be held liable if they contributed to the events that caused the injury. As a result, the door remains open for a host to potentially be held liable in certain scenarios, including, for example, if they willingly and purposively over-serve one of their guests.

While there has not been a case involving a condo's potential social host liability, a few measures can be put into place to reduce the risk of a claim against a corporation and help everyone to have a safe holiday season:

1. Require owners to provide security at their event, if alcohol is to be served.
2. Require events to either be 'bring and serve your own alcohol' or, if the host is to provide alcohol, require that they hire a Smart Serve bartender. Events in which alcohol is to be sold should be strictly prohibited.
3. Prohibit drinking party games, such as beer pong, which are designed to increase consumption.

These requirements ideally would be set out in a separate party room or amenities use agreement that each resident would have to complete as part of the booking process. Finally, corporations should use this time of year to ask their insurance broker whether they have social host liability or if it can be added to their policy.

If the board is considering holding a holiday party for residents, it should plan ahead and budget for the expenditure. The budget should be modest and residents should be encouraged to chip in, where possible.

### **Packages and Deliveries**

There may be nothing more satisfying than getting all of your holiday shopping done with a few clicks of the mouse, but a large volume of parcels are often a headache for a building's concierge desk.

While most condos will have a security system in place for receiving and arranging for pick-up of packages, the growing volume of deliveries creates storage issues for buildings both large and small. While accepting packages is a common service offered by most buildings, the concierge desk should not be turned into one resident's personal receiving department. A few measures can go a long way in protecting the corporation.

First, packages should not be received unless the resident has signed a waiver form. The waiver should stipulate that the corporation will not be liable for the packages it accepts on behalf of the resident. Residents should make their own arrangements for particularly valuable or fragile deliveries. A concierge will have no way of knowing whether a parcel is a pair of socks or a Faberge egg, and while care will be taken to receive

and store all deliveries, the corporation should be clear from the start it will not be liable for accidental damage or loss.

Second, there should be stipulations on the size and/or weight of parcels that the concierge desk will accept. The volume of deliveries can easily overwhelm the storage space available to most concierge desks. Making it clear that the delivery of large items, such as flat screen TVs or furniture, will not be accepted can help to ensure that all residents can take equal advantage of parcel delivery services.

Finally, condos should institute labelling procedures, such as writing the unit number on two sides of the parcel. This will help the concierge track down a parcel and can aid in tracking down the resident who tried to shove all that cardboard down the chute rather than take it down to the recycling room.

### **Bonuses**

It is only natural that a board would want to reward a bonus to the concierge who has a smile for each resident every morning or the superintendent who knows the building like the back of their hand. The board should remember, however, that they are ultimately the trustees of the unit owners' money, and distributing bonuses should be handled with care.

First, the Corporation should be on firm financial ground before handing out bonuses. While no unit owner (hopefully) wants to be a Grinch, providing bonuses when the owners are faced with a large special assessment may be regarded unfavourably.

Second, the bonuses should be properly documented and handled like any other expenditure. This process ranges from approval of the exact bonuses in the minutes of the board meeting at which they were approved to ensuring that the bonuses are a line item in the corporation's audited financial statements.

By no means is the above holiday dos (and don'ts) list exhaustive. However, it does provide some guidance on many questions condo corporations will deal with during the holiday season. We hope you have a safe and happy holiday season! 