



Rules Were Meant to be... UPDATED!

A Mediator's Perspective on the Importance of Updating Condominium Rules



Condominium by-laws can be hard to pass. Often, this is the case not because of conflicting views but rather the result of unit owner apathy. Some owners simply choose not to bother to attend meetings or otherwise participate in community decision making. While there are several theories as to why, the fact remains that without a majority from amongst the unit owner collective voting in favour of a new by-law, by-laws cannot be changed.

Rules, on the other hand, do not require a majority of all owners to be approved. In fact, rule changes can actually be easier to achieve for communities experiencing owner apathy, as a vote on proposed new rules is only needed if requisitioned.

Section 58 of the Condominium Act, 1998 addresses condominium rules. The only real parameters are that they should be reasonable and consistent with the by-laws and declaration of the community. The subject matter of rules should be intended to

promote safety, security and the welfare of the owners and property/assets of the corporation, as well as prevent unreasonable interference with the use and enjoyment of the common elements, units and assets of the corporation.

Given the relatively straightforward process for developing rules and the fairly broad parameters that the Act grants condominiums surrounding their content, I believe that condominium Boards should, even if just on a cursory basis, review their rules at least every 3-5 years to ensure that they reflect the personality of the community and that they are being adhered to. As a mediator, I make this recommendation for several reasons, all which centre upon the experiences I have had as my clients have looked at rules applicable to their communities in the course of addressing conflict. Rules that are clear, current, relevant and regularly abided by or enforced tend both to have the most meaning to conflicting parties and to offer the most guidance.

On the other hand, condominium rules that are irrelevant, generally ignored or which have failed to keep up with the evolving culture of a community can be viewed as existing only to be broken. Often, rules of this nature are not taken seriously and serve to escalate conflict rather than help manage it.

In the course of considering a review of your condominium community's Rules, it may be helpful to learn about some of the more interesting incidents surrounding condominium rules that I have come across when mediating and to reflect upon what could have allowed for a better set of circumstances for all involved.

Unintended Consequences: While rules generally tend to be drafted with the best of intentions, typographical errors or literal interpretations can sometimes give rise to unintended results. Seeing-eye dogs being required to be carried while upon the common elements and shirts and shoes having to be worn while swimming are amongst

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the likely unintended yet literal interpretations of condominium rules that I have encountered. As a result, I encourage condominium Boards to view rules as works-in-progress that can be fine-tuned over time to work as intended rather than set in stone when they yield unintended results or otherwise give rise to circumstances which do not best serve the community.

Get With the Times: If nothing else, the evolution of technology warrants updating rules. I recently came across a set of condominium rules that bans cassette players in a recreational facility. I am not certain that my teenager knows what a CD is, let alone a cassette tape! While I have certainly mediated my fair share of noise disputes in the condominium context, none have yet involved someone carrying a boom box over their shoulder while upon the common elements, stopping every now and then to flip the tape from Side A to Side B. Consider technological advancements and ensure that your condominium's Rules address them appropriately. For example, the emergence of smart phones is increasingly encouraging bans on snapping photos in changerooms.

Keep it Simple: Rules present a great opportunity to set out community restrictions in a way that is easy to understand. As a proactive means to manage future conflict, keep the language simple and straightforward so everyone knows what the rules are saying. Terms like "water

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closet" do not always clearly spell out what is being referred to and confusion over what rules mean tends only to frustrate matters.

Keep it Enforceable: While rules should speak to the culture of the condominium community, serving as a way to educate new residents and establish an understanding of what is acceptable behaviour, they have limited value if they cannot be enforced. For example, a rule preventing a resident from hitching onto a neighbour's Wi-Fi service may seem justified in the context of promoting good neighbourly relations; however, what can a Board or property manager do to prevent someone desperate for a connection from linking to one that is available?

Embrace Independence: Should a 10 year old condominium still have a rule that permits its developer to make use of its Party Room? While there may well remain certain rights of the developer within your condominium's Declaration or By-laws, little suggests that a community's Rules are outdated as those that speak to turnover stages in a mature condominium. If even only for perception of currency for members of the community, there is often little reason to keep reference to developer access in rules once a developer's responsibilities to a condominium have concluded.

In thinking about the Rules of your community, keep in mind that it can be a mistake to think that only the rule directly applicable to a situation is relevant. Many within a condominium community will view rules in their entirety and judge for themselves whether they feel there is any merit to them. A severability clause may legally suggest otherwise, yet perceptions play a large role in the management of conflict. A condominium community's rules will carry more weight if they are generally well viewed.

Ensuring that your condominium community's Rules are current, relevant, known throughout the community and are clearly stated can go a long way in managing conflict, saving everyone involved a great deal of stress, time and money in the long-run. **CV**



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