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*This Newsletter
has been prepared
in summary
fashion. You
should not rely on
this information
without consulting
your professional.*

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A New President for Windsor-Essex

The Windsor-Essex Chapter of CCI, for close to 10 years, has been in the capable hands of Andrea Thielk and it was with a bit of trepidation that I decided to follow in her footsteps. However, with the assistance of a capable Board of Directors, I decided to take the plunge. After all we are not reinventing anything new - our purpose and goals have not changed.

The primary goal of CCI is to educate condominium! Boards—Owners—Real Estate People—Lawyers—consultants and contractors to condominium, anyone who touches condominium needs education of the nature of the way it works or should I say the way it is suppose to work! CCI also offers professional assistance to members and provide referrals to those who may be of most

assistance in resolving condominium matters. CCI National also provides leadership in the condominium community lobbying at Queens Park for improved legislation governing

Proud member of



Windsor-Essex County Chapter

Membership has many benefits

condominium and they are also developing minimum standards for competence for service providers to the industry.

So, what does this mean for the average Condo Board member or the average Condo owner? I am asked, what does CCI do for us or me and why

should I join as a member?

My response is simple and clear. CCI provides everything that you need to be a “good” Director, Owner or condominium consultant.

For anyone who wants and seeks information with respect to condominium we are there to assist. To provide educational opportunities and materials, to provide access to professionals in the field and knowledge.

However, we cannot provide anything without continued support from the condominium community in the form of memberships.

Thank you for your membership and support of CCI.

William C. (Bill) Norris, BPA, AMCT,
RCM - President

Director's Code of Ethics

A director's role is an important one. The board of directors is responsible for making crucial decisions that could impact the corporation and unit owners for many years to come.

However, directors are human and are often faced with

moral dilemmas when dealing with their fellow owners. Can a director voice his disagreement with the board's decisions? Can a director share the process of how a decision was reached?

On the back page of this newsletter is CCI's Director's Code of Ethics. Having each

board member read and sign this document can help clarify the duties and responsibilities they have agreed to assume.

If you use the Code of Ethics, please let us know. If you need to change it before using it, please notify us in writing first.

Fraud—Not in My Condo

Following these Simple Steps may Protect your Condo from Fraud

By Andrea M. Thielk, B.A., LL.B, J.D., A.C.C.I (Law), F.C.C.I.



Mark your invoices "PAID" and record the cheque number on the invoice.

"While the audit process is a necessary component in the prevention of fraud, the reality is that an audit may not spot all fraud."

Ensure that all cheques require two signatures by authorized officers/ personnel of the condominium.



You open your newspaper and are shocked to see that an employee of a major bank has been charged with embezzling hundreds of thousands of dollars from unsuspecting bank customers. You watch a newscast as a bookkeeper is arrested for taking large sums of money from her employer. How does this happen, you wonder? How did their fraud reach such proportions? Usually it is the combination of a clever and sometimes desperate fraudster and a lack of oversight by those whose duty it is to prevent these frauds from happening.

The importance of operational policies to protect against fraud in condominiums cannot be overstated. Typically, operational policies include various provisions with respect to cheque signing or in the absence of express policies; it is common for certain unwritten policies or practices to exist. Unwritten policies and practices, however, may become lax over time or forgotten altogether when Boards change. Often Boards rely solely on their Auditor to catch fraudulent activity. While the audit process is a necessary component in the prevention of fraud, the reality is that an audit may not spot all fraud.

The following are some tips to assist you in developing your own policy and practices for fraud prevention:

1. Ensure your cheques are pre-numbered, so they can be filed in chronological order and easily tracked.
2. Pay the bank's administration fee to have your cashed cheques returned to you.
3. Ensure that the person who prepares the cheques is not the same person who signs the cheques.
4. Do not pre-sign cheques and ensure that all cheques are safely locked up. Seriously consider not authorizing credit card use and if absolutely necessary keep limits low and carefully monitor monthly credit card statements.
5. Do not make cheques payable to "CASH" but rather to the person who should receive the cash.
6. Record the purpose of the cheque on the face of the cheque.
7. Ensure that all cheques require two signatures by authorized officers/ personnel of the condominium.
8. Before paying any invoice, confirm that the Board has approved the expenditure.
9. Ensure that any cheques to be signed are accompanied by supporting documentation, such as an invoice.
10. Confirm before signing the cheque that the goods and/or services have been received in proper condition.
11. Check to see if the invoice has been properly calculated before paying.
12. Once paid, mark the invoice "PAID" and record the cheque number on the invoice. File the invoice and cheque stub in order of the cheque number.
13. Ensure that the person who receives the banking records and carries out the reconciliation is different than the person who prepares or signs the cheques.
14. Verify the monthly reconciliations with the actual statements from the Bank. When in doubt ask questions until you get satisfactory answers.

15. Consult with your insurer to confirm that the condominium has the proper fidelity bond and endorsements on employees, directors, officers, property managers and anyone else who handles condominium funds.

It may be a cliché but *an ounce of prevention is worth a pound of cure* when it comes to fraud. Following operational policies and practices that combine due diligence and a segregation of duties, along with a keen sense of awareness may help reduce your

exposure to fraudulent activity. Remember - a fraudster does not want to be caught. A fraudster will look for easy victims, those who do not ask questions and blindly trust those handling the funds. The more controls in place to prevent fraud, the less likely the fraudster will make your condominium a victim of fraud.

Andrea M. Thielk is a condominium lawyer at Clarks Barristers & Solicitors.

Insurance - What to Know When You Have A Claim

Join us for our next information seminar to learn more about insurance. What happens when there is a claim - who pays for what?

Bruce Rand, of PBL Insurance Limited, along with an expert panel, will provide information and advice, as well as answer your questions on this important topic.

Date: Tuesday, February 22, 2011
Time: 6:30 pm - Registration
 7:00 pm - Seminar
Location: Windsor Family Credit Union
 2800 Tecumseh Road, East
 Windsor, Ontario
Cost: \$15.00 for members
 \$35.00 for non-members

As seating is limited, pre-registration is recommended.

Phone: 519-978-3237

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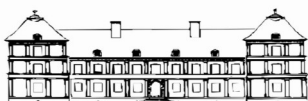
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William C. (Bill) Norris, RCM

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 Board Member of
 CANADIAN CONDOMINIUM INSTITUTE

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 Barristers & Solicitors

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*Accredited by the Canadian Condominium Institute



The first line of defense will always be the police.

“What happens when you find out that your next door neighbours are carrying out an illegal activity?”

Consider renting video surveillance equipment to record the activity



Nasty Neighbours - Part One

What happens when your neighbours turn out to be crooks?

By Ronald S. Danks, B.A., Hons. LL.B, ACCI, FCCI

Condominium communities are often compared to small towns. Like small towns, serious crime is unusual, but it does happen from time to time. Vandalism and theft are probably the most common. Occasionally, we hear stories of criminal assaults and other more serious crimes. For the most part, these crimes are committed by persons who do not live in the condominium. What happens, however, when you find out that your next door neighbours are carrying out an illegal activity? What can your condominium corporation do to deal with those individuals, as well as prevent a similar situation from occurring in the future?

Police and Other Appropriate Authorities

Obviously, the first line of defense will always be the police. If a condominium corporation's Board of Directors comes to the conclusion that a criminal activity is occurring within a specific unit, the police should be contacted and provided with any relevant information that you may have. If there is sufficient evidence that warrants further investigation, the police will respond. Sometimes it may be necessary to accumulate evidence to assist the police such as keeping a log of the frequency and number of people attending at a unit that you suspect is being used to deal drugs, or perhaps taking license numbers down of visitors' vehicles. If you are fortunate to have video surveillance you may need to provide tapes of the area surrounding the unit to the police. You might even consider renting video surveillance equipment on a temporary basis or moving existing cameras to better record the activity surrounding that unit.

Drug Dealers

According to Hamilton Police, who have been very successful lately in eliminating a number of notorious crack houses and drug dens in the downtown core, criminals are now moving to the suburbs. Those involved in dealing drugs will typically rent a ground floor unit in an apartment building, or a townhouse unit. Often, these drug dealers are affiliated with a criminal gang. The gang will install a “tenant” in the unit who may be a gang member, or some other person they control, (e.g. a prostitute). The “tenant” will then be responsible for taking drug orders. These drug orders are passed on to the gang leaders who then deliver the drugs to the unit on a daily basis, after which they are then distributed by the occupant. These drug dens are not necessarily confined to low end condominium sites and are often found in relatively upscale neighbourhoods where the clientele has more money to spend. However, they do attract undesirables and acts of violence are often associated with these dealers. In one townhouse condominium that the writer was involved with, the prostitute “tenant”, stabbed one of her customers on the front porch of the unit when he tried to make off with his drugs without purchasing them.

In no circumstances should any condominium Board member, manager or owner attempt to confront these individuals directly. That is the job of the police.

Ronald S. Danks, is a partner in the Hamilton/Burlington business law firm of Simpson Wigle LLP. He has practiced for 20 years in the area of condominium law and administration.

This article has been edited due to space limitations.
Watch for the next issue of CCI Review for the second installment in this article -
How to Spot a Grow-Up.

How to Spot a Drug Den:

- *Very little activity surrounding a unit during the daylight hours but unusually busy during evening hours, often late into the night;*
- *In highrise condominium units, ground floor units are preferred;*
- *Increase in petty crime and*
- *vandalism within the condominium corporation itself;*
- *Rowdy behaviour on a regular basis during the evening hours;*
- *Strange odours of a chemical nature emanating from the unit, that may be evidence of drug production;*
- *Lack of furniture in the unit;*
- *Increased frequency of illegally parked cars, (drug users seldom concern themselves with parking in the "visitors" parking areas if they can park closer to the unit);*
- *Frequency of police attending at the unit, (police will not always disclose to the condominium corporation that they suspect the drug den is operating within the corporation); and*
- *Erratic behaviour observed in persons coming and going from the unit;*
- *In respect of meth labs, watch for chemical containers in the garbage, surveillance equipment installed outside of the unit, vegetation dying, (they sometimes dump discarded chemicals), and strong chemical odours in adjoining units.*



Marijuana
leaf



Marijuana
cigarette (joint)



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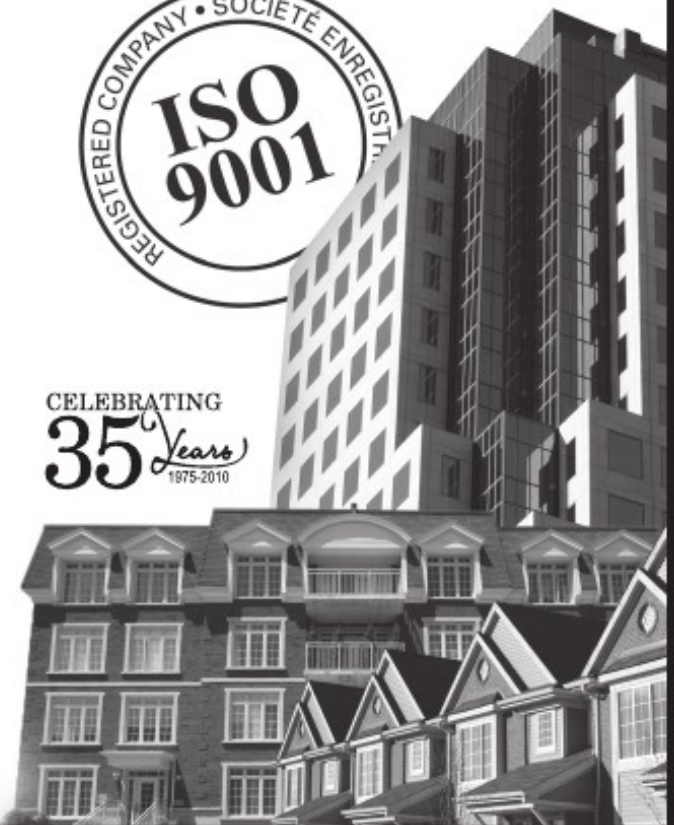
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Enforcement

If a unit owner breaches a condominium rule, what can a board do?

By Robert M. Mullin, B.A. (Hons.), LL.B, LL.M., A.C.C.I.

As anyone living in a condominium knows, conflicts arise. The most common complaints revolve around “people, pets or parking.” While a polite letter from the board of directors or property manager will correct nearly every problem, on occasion a difficult unit occupant will ignore, resist or increase their violations. Unfortunately, enforcement is a cost of running a condominium. Without enforcement a condominium’s declaration, by-laws and rules are illusory. When violations occur, there are a number of remedies that a condominium may utilize to achieve compliance, including; charge-backs, mediation/arbitration, and court proceedings.

The Law

Pursuant to section 17(3) of the *Condominium Act, 1998*, (the “Act”), a condominium has a duty to “take all reasonable steps to ensure that the owners, the occupiers of units, lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules.” Any enforcement steps taken by a condominium must be conducted in a manner that is non-discriminatory, consistent, and even-handed. According to section 119(1) of the Act, every director, officer, employee, declarant, owner, occupier of a unit, and mortgagee shall comply with the Act, and the condominium’s declaration, by-laws and rules. Also, section 119(2) requires a unit owner to take all reasonable steps to ensure that a tenant, or any other unit occupant, complies as well. Thus, the obligation to comply extends well beyond the unit owners and includes directors, employees, the developer, and unit occupants. If a condominium fails to do so, the condominium and the individual members of the

board could be exposed to liability.

How to Enforce

Self-Help

The Act does not prohibit a condominium from exercising self-help remedies. Typical self-help behaviours include: removing an unapproved satellite dish, or forcibly removing an uninvited guest. However, it is strongly advised that a condominium never pursue any self-help remedy due to the possible criminal and/or civil liability which may arise. In a notable 2010 case, the court held a condominium and its superintendant liable for close to \$50,000.00 in damages, after the superintendant forcibly evicted a real estate agent from the condominium’s lobby.

Document

Before taking any enforcement steps, a condominium should document the breach, including the date, time and nature of it, and preserve any evidence for future enforcement efforts. This could include taking photographs or transcribing telephone messages. If the matter is discussed at a board meeting, it should be reflected in the minutes. As soon as the breach is discovered, the condominium should send the offending party a registered letter indicating the time, date and location of the breach and referencing the violated provision. A condominium should never verbally dialogue with the offending party as these conversations often turn into “he-said, she-said,” situations. In addition, a condominium that acquiesces, or turns a “blind-eye”, to a breach may lose its right to enforce later.

Legal Involvement

If the condominium’s efforts to enforce against a unit owner or occupant are unsuccessful, the condominium’s solicitor will become involved. The first legal step in an enforcement file is to send a demand letter to the offending party. The letter will require compliance within a set period of time. If the deadline passes and

“According to section 119(1) of the Act, every director, officer, employee, declarant, owner, occupier of a unit, and mortgagee shall comply with the Act, and the condominium’s declaration, by-laws and rules.”

Inappropriate use of the common elements can cause conflict



the offending party has not complied with the letter, a second letter may be sent with a shorter deadline. All letters to unit owners and occupants are typically sent via regular and registered mail to counter any suggestion of not being received. If the situation is particularly time-sensitive or involves serious violations, the condominium may decide to forego the second letter and proceed with the enforcement remedies contained in the Act.

Mediation/Arbitration

If legal letters prove unsuccessful, pursuant to the Condominium Act, 1998, there are generally two enforcement processes, being: 1) mediation/arbitration; and, 2) court applications. Pursuant to section 132 of the Act, most condominium disputes must now proceed to mediation/arbitration. Mediation is an informal process of settling disputes through the intervention of a neutral third party, referred to as "the mediator". The mediator has no legal authority to impose a settlement on the parties, rather, he or she assists the parties in reconciling their differences. The dispute will be referred to arbitration if the parties have not selected a mediator within 60 days of submitting the dispute to mediation or 30 days after the mediator delivers a notice of failed mediation. Arbitration is an informal process of settling disputes through the intervention of a neutral third party, referred to as "the arbitrator". However, as opposed to the mediator, the arbitrator is authorized to make a final order. Once the arbitrator renders a decision, the parties are bound by it. The majority of condominium disputes are now resolved through mediation/arbitration.

Court Proceedings

The traditional enforcement process contained in the Act allows a condominium to commence an application in the Superior Court of Justice. Pursuant to section 134 of the Act, a condominium may commence an application to obtain a court order requiring compliance with the Act, the declaration, by-laws, rules, or an agreement. However, if mediation/arbitration is required under section 132, the applicant may not apply to court until he or she has unsuccessfully sought compliance through that process. Typically, mediation/arbitration is less costly and time-consuming than proceeding with an application in the Superior Court of Justice.

Determining whether the appropriate process is mediation/arbitration or a court application will depend on the circumstances and always with legal counsel. Regardless of the method selected, all enforcement efforts must be consistent and even-handed, otherwise future enforcement efforts may be thwarted by claims of unreasonable or discriminatory conduct by the condominium.

Costs & Charge-Backs

One of the most useful remedies for a condominium is a charge-back. A charge-back allows a condominium

to recover the costs of enforcement from a unit owner where the unit owner, or his or her occupant, breached the Act or the condominium's declaration, by-laws or rules. Common charge-back items include: clean-up costs, or costs incurred to repair and/or maintain the units or common elements where a unit owner has such an obligation and fails to do so. However, a condominium should always consult with legal counsel prior to charging the unit owner for such costs to ensure the condominium is legally permitted to do so.

Conclusion

Each condominium is mandated by the Act to ensure reasonable compliance. It is never advisable for a condominium to pursue self-help remedies. Instead, the enforcement remedies included in the Act should be pursued. Although mediation/arbitration will resolve the majority of disputes, in some circumstances it is more appropriate to proceed with an application in the Superior Court of Justice.

Robert Mullin is a Guelph lawyer who practices extensively in the area of condominium law and development.

**Before taking
any
enforcement
steps, a
condominium
should
document the
breach.**

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DIRECTORS' CODE OF ETHICS

Re: Condominium Corporation No. _____

I have consented to act as a Director of the Corporation and I agree to comply with the following Directors' Code of Ethics throughout my terms as a Director:

Honesty and Good Faith – I will act honestly and in good faith. I will do nothing to violate the trust of the unit owners I serve.

Care, Diligence and Skill – I will exercise the degree of care, diligence and skill of a responsibly prudent person in comparable circumstances. I will make a concerted effort to attend all Board and owners' meetings. I will act responsible and with due diligence to become familiar with the affairs of the Corporation and to uphold its Declaration, Description Plans, By-Laws, Rules, Resolutions, Policies, Agreements and Requirements of the Condominium Act and other legislation.

Conflict of Interest – I am not currently aware of any actual or potential conflict of interest with respect to any contract, transaction, holding deficiency claim, warranty claim, legal action, proceedings or any matter detrimental to the Corporation. If I become aware of any conflict, I will immediately disclose it to the Board. I will not promote my own interests or those of any owner, resident, family member, friend or contractor to the detriment of the Corporation. I will not seek any special benefits or privileges as a Director or Officer or accept any compensation either personally or on behalf of any other person except as permitted by a By-law. I will act only in the best interests of the Condominium Corporation as a whole and I will not favour the interests of any individual or group of owners or residents.

Confidentiality – I will not disclose to any person (including my spouse) information decided by the Board to be confidential or privileged or which reasonably ought to be deemed confidential. When in doubt, I will request determination by a resolution of the Board.

Good Conduct – At all times, I will conduct myself in a professional and businesslike manner at meetings of Directors or Owners. I will approach all Board issues with an open mind, preparing to make the best decisions on behalf of the Corporation. I will act ethically with integrity and in accordance with legal criteria. I will comply with rules of good conduct and will deal with others in a respectful manner. I will comply with principles of good governance and procedural rules of order.

Support – I will abide by decisions of the majority of the Directors even though I may disagree, but I reserve the right to express my own views to owners upon non-confidential issues.

Defamation – I will not make erroneous or defamatory statements about the Corporation or any owner, resident, director, officer, manager, staff or contractor of the Corporation.

Minimize Conflict – I will attempt to prevent or minimize conflict and disruption and will promote good relations amongst persons involved in our Condominium Community. I will promote a first class image for our Corporation, its units, owners and residents.

Education – recognizing that governance of a Condominium Corporation involves complex and changing requirements, I will continue to educate myself by reading relevant magazines (such as CCI's News & Views, CM Magazine or Condominium Business Magazine). I will support attendance by one or more Board members at any condominium seminars presented by the Canadian Condominium Institute (CCI), including CCI's Basic Directors' Course and CCI Advanced Directors' Courses at the costs of the Corporation.

Agreement – I hereby agree to comply with the provisions set out in this Directors' Code of Ethics.

Dated at _____ this _____ day of _____, 20__

WITNESS:

SIGNATURE

PRINT NAME OF DIRECTOR

UNIT NO.