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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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PRESIDENT'S MESSAGE

Hello everyone in condominium land. As I begin writing this message in warm comfort of my kitchen I look out at another raging winter storm blasting all of Southern Ontario.

I think of all the condominiums out there, in particular those that have been blessed with excellent contractors who are prepared for winter snow. Those that watch the weather reports and plan their snow removal activities

considering time of day, duration of and estimate of amounts of snow. Consider when the snow may stop falling and when the majority of owners need to have access and egress to and from their parking facilities. Carefully consider the proper application of salt and sand on sidewalks and parking areas for safety and always considering the costs necessary for servicing the corporation. Those with Boards who understand the need to seek out good

contractors and to pay them fairly for the service they provide.

I also worry of those who chose the lowest bidder with insufficient staff and equipment to face the worst winter we have seen in years. Those that have benefited from multiple winters with few snow



events and long periods of above freezing temperatures, keeping costs artificially low not investing in winter equipment and having insufficient staff available. Those that decided to go with the per push contract, will have their budgets brutalized.

I think of the preparations for our upcoming seminars in particular the maintenance seminar and how it will benefit those that attend and I'm

saddened by those who decide not to attend.

I think of the tremendous work of many volunteers at the local level and the National level of CCI who tirelessly strive to improve the educational opportunities presented to Directors and owners in hopes to improve the lives

of those living in condominiums and improve the relationships that are so necessary to the smooth operation of hundreds of condominium communities

throughout the Country. Finally, I lament that the ground hog saw his shadow on the only sunny day in six weeks so we'll have another six weeks – Cheers!

Forever and always, looking forward positively, educating learning and growing.

*William C. (Bill) Norris, BPA,
AMCT, RCM
President, CCI Windsor-Essex
County Chapter*

“Intentions are to ensure that your Condominium building practices a proactive not reactive maintenance strategy.”



“Proper building maintenance is imperative in keeping a building suitable for occupation and keeping it a sound and marketable investment.”

What is Maintenance/Preventative Maintenance?

By Cheryl Valley, R.C.M.

Maintenance/preventative maintenance is an essential, planned maintenance activity designed to improve equipment life and avoid any unplanned repairs. Certain tasks must be scheduled at varying frequencies, all designed to keep the equipment from experiencing any unexpected breakdown.

The Importance of a Maintenance Routine and Preventative Maintenance Plan

Regular maintenance should be undertaken on all component and building systems to:

- Extend service life and prevent unnecessary breakdown of equipment
- Reduce energy costs and maximize energy efficiency by avoiding excessive wear and tear on mechanical systems.
- Provide safe and reliable service for Residents with minimal equipment interruption.
- Avoid legal claims to the Corporation

Regular maintenance will alleviate potential additional damages, cost increases, and corporation exposure to liability. Performing required repairs early will prevent more serious and additional problems and repairs from occurring.

Intentions are to ensure that your Condominium building practices a proactive , not reactive maintenance strategy.

Unnecessary expenses due to repairs that were not maintained and could have been prevented have a negative impact on the Corporation’s budget, strain on building staff and upset to Residents.

There are other areas that are also

affected or compromised if regular maintenance is not conducted. Large financial impacts can be stressed on energy expenses for mechanical equipment that may not be working efficiently and utilizing a greater demand for power. Well-serviced equipment requires less energy to operate because all systems are functioning at their peak performance.

Additional damages can occur to other components of the systems or building such as water damages etc., electrical issues and liability risks to Residents etc., requiring additional attention and money to resolve. The longer repairs are being neglected, the more damage is being caused and increase in costs to repair the problem. All of these conditions are typical when a building does not have a good preventive maintenance program.

Proper building maintenance is imperative in keeping a building suitable for occupation and keeping it a sound and marketable investment. A comprehensive building maintenance schedule to address any repair issues as well as preventative maintenance will ensure your Owners will stay content and will also assist in keeping condominium fees under control.

You also need to consider possible legal ramifications for the Corporation in neglecting building maintenance requirements.

Logging Information

Keeping a log of past repairs can aid in predicting future repairs and assisting in deductive evaluation for the contractor and possible money saving for unnecessary exploratory and/or



investigative assessment of the problem.. It also assists the management and board as a defense if a negligence claim is reported with regards to the improper functioning of equipment that may have a major impact on the Residents of the building. This will prove the Corporation utilized due diligence in conducting proper required maintenance. It is the responsibility of the Property Manager or Board to ensure that a log book is completed by a qualified, certified contractor in reference to the elevator, fire, generator and HVAC systems.

RISK MANAGEMENT STRATEGY
PROACTIVE
NOT REACTIVE

Preventative Maintenance Schedule

Since each property is different, the following list is not a complete list. By doing a complete walk-through of the property you can create a list of everything that will be included in the program. Certified contractors are required to perform some of the maintenance items.

Interior Common Area Maintenance

HVAC System
Chiller Tower
Exhaust Fans/Underground Garage
Fire Equipment/Door Closures
Generator/Elevator
Furnace Maintenance
Garage Doors
Main Drain Cleaning
Water Heaters

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Common Area Lighting
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Owner—Unit Maintenance: Prevent additional damages to other units—insurance claims—paying corporation’s deductible.

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William C. Norris, RCM
President, Canadian Condominium Institute,
Windsor-Essex County Chapter

YOUR CONDOMINIUM
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What is Maintenance/Preventative Maintenance? - cont.

preventative maintenance plan. Define in writing what needs to be done to each item and when. To determine what needs to be done to each item to maintain it, talk to your suppliers and subcontractors. Service booklets should also be reviewed for recommended maintenance schedules on equipment.

Develop a written schedule and /or chart, on maintenance timeline requirements. (Weekly, monthly, quarterly, annually etc.) The frequency in which items need maintenance.

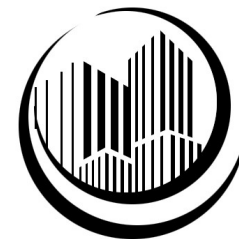
A master copy should be kept in the maintenance room or office to allow for regular review and updating if needed. The Property Manager and/or Board should ensure compliance and completion is being followed through. Additional copies should be provided to the building staff. The only way you can reap the benefits of proper maintenance is if the work is put into practice by the staff and the property manager.

If your staff is properly trained, and you regularly inspect and service all of the items identified as part of your program, you will save money by preventing replacements and additional maintenance.

The Corporation Should Ensure That:

- Servicing all required equipment and building components are being implemented in the annual operating budget.
- You have adequate trained staff or qualified contractors to provide quality servicing.
- Have an appropriate routine and time to carry out the necessary maintenance and verify completion.

Cheryl is a Registered Condominium Manager. She is president and owner of Pivotal Key Management.



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CANADA



Jeff Boivin, P.Eng.
Discipline Manager

Welcome New Members

We are grateful for the continued support of the entire condominium community and welcome the following new members to our chapter:

Condominium Corporations

Essex Condominium Corporation No. 74
Essex Condominium Corporation No. 97

Professionals

Anita M. Bois ~ Anita M. Bois Bookkeeping
Connie Grant ~ The Grants

David Casey ~ Ives Insurance Brokers Ltd

Erica Gerstheimer ~ Smith Valeriote Law Firm LLP

Ryan Bondy—The Evernew Group

G. Strubin ~ Practica Ltd.

**Suzanne P. Nicholls**
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“When determining whether the occupier has provided reasonable preventative action, the onus is on the occupier to provide evidence of prudent maintenance and care.”



“When determining whether the occupier has provided reasonable preventative action, the onus is on the occupier to provide evidence of prudent maintenance and care.”

Records and Reasonable Care Refute Responsibility

Court rules against slip and fall victim

By Andrea M. Thielk, B.A., LL.B., J.D., A.C.C.I.

We have all heard the axiom that the three most important things affecting real estate are *location, location, location*. Perhaps it could be said that the three most important steps in liability risk management are *document, document, document*. The recent Newfoundland case of *Murphy v. Interprovincial Shopping Centres Limited et al.* confirms the importance of this practice and establishes that reasonable measures to remove snow and ice are sufficient practices in commercial operations despite unfortunate injuries to persons due to a slip and fall accident. Since the concepts of invitee and licensee as they relate to liability have been reformulated, liability can be defined in its simplest form as the duty of an occupier to provide “reasonable safety” for all who lawfully enter a premises.

On March 19th of 2000, Plaintiff James Murphy, along with his wife, left their home in the evening and drove to a weekly dart league. When they left the establishment, which was located in Fall River Plaza in St. John's Newfoundland, Mr. Murphy fell on ice while walking across the parking lot of the plaza. There had been a severe blizzard in the area the previous day which had ended around noon on the 19th but was followed by freezing rain on the night Murphy fell.

The Defendant, Interprovincial Shopping Centres Limited, contracted Jack Hill & Son Ltd. to provide snow clearing and ice control services at the plaza. They were named as a third party to the

lawsuit. The snow removal company maintained records which verified that substantial efforts were made to remove the snow and ice.

In her decision, Justice Maureen Dunn said:

“In these circumstances it is clear the defendant had a duty to the plaintiff. The question is whether the defendant had in place a maintenance regime pertaining to ice and snow clearing amounting to a standard of reasonable care to ensure the plaintiff's safety while on its premises and prevent injury to him...”

Individuals who set out in adverse weather assume the attendant risks and must take care for their own safety and well-being...

To hold the defendant, and through it ultimately the third party, responsible for complete coverage of the Fall River parking lot on the days in question would be to hold both to a standard of perfection which, in Newfoundland and Labrador, will never be achieved. It takes time to bring a parking lot, roadways, private residences and other properties back to a normal and perfectly safe condition subsequent to a snow and ice storm. This is an impossible standard for individuals and corporations to meet when they reside in a province faced with periodic crisis weather conditions.”

Her Honor went on to dismiss Murphy's claim and awarded costs to the Defendant and Third Party.

When determining whether the occupier has provided reasonable

preventative action, the onus will be on the occupier to provide evidence of prudent maintenance and care. In *Murphy*, the logs provided by the snow removal company gave evidence to the fact that the plaza provided for the reasonable safety of its customers. The decision in *Murphy* confirmed that an occupier does not have to guarantee that the person coming onto the property will be perfectly safe.

Knowing that documentation is paramount raises the question, *what are the implications of this duty to document especially as it relates to the special circumstances of the Condominium Corporation in its role as occupier of the common elements.* The duty of the Condominium to provide reasonable safety is clear. Documentation helps substantiate that this duty has been fulfilled.

Documentation should be done contemporaneously, such that any incidents which may be a liability issue are recorded as soon as possible. It should be done when recollections are fresh and when conditions relating to the incident can be noted. For instance, was it raining, windy or snowing? Was there a sudden storm? What were the general circumstances? Could they have been predicted and reasonably addressed? A comprehensive report should include as much detail as possible.

Inspection reports are a vital part of the Condominium records. A thorough record should be kept of maintenance and safety procedures. A regular schedule for such items as testing smoke and fire alarms, cleaning dryer vents, testing elevators and checking balconies should be maintained and the results recorded as they are completed. Action should be taken if new equipment or repairs are needed. Invoices of purchases and repair work should be kept as part of the permanent record.

Log books maintained by on-site Property Managers provide excellent documentation. The Board of Directors should be aware of these logs and stay up-to-date on the information provided. They should put maintenance schedules into place and follow-up on reported problems. Book and record keeping should be organized and readily available. Self-managed Condominiums should follow the same procedures and they should be especially mindful to ensure that records are passed on to succeeding Boards.

Despite documenting, the Condominium Board should be vigilant and proceed with caution at all times. Will there still be occasions when something unforeseeable will be deemed to be negligence? The “should have known” element to risk management can be the most



troublesome. While the duty of care is limited to a standard of reasonable safety, the courts have determined that owners and Property Managers must take an **active** role in ensuring the safety of all who enter the premises. In fact, in *Mortimer v. Cameron* the duty is described as **proactive**. Mortimer sued the owner of an apartment building as a result of an alcohol-fuelled, playful shoving match turned tragedy when Mortimer fell into a wall that gave way. The Judge stated an occupier cannot “do nothing” in the face of a known risk.

In Condominium life, this is complicated by the dual occupier situation and the delineation of who is responsible for liability, the unit owner or the Condominium Corporation (the community of owners). This is especially true in exclusive use common areas. The Condominium may find itself liable as well as individual unit owners in some situations. A risk management protocol which includes meticulous documentation should bring “peace of mind” to Condominium Directors in their duty to provide reasonable safety and avoid liability.

© Andrea M. Thielk, B.A., LL.B., J.D., A.C.C.I. practises condominium law in Windsor, Ontario at Injury Law Group, LLP. Ms. Thielk is the Past President of the Windsor-Essex County Chapter of CCI.

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*“The premiums
of the many pay
for the losses of
the few and the
shareholders
expect a return
on their
investment.”*



*“ ‘Steady as she
goes’ is key to
maintaining
harmony and
balance at older
condominiums.”*

PROPERTY MAINTENANCE, CLAIMS AND INSURANCE

By Bruce Rand, B.A., C.A.I.B.

How does proper maintenance of buildings and property impact insurance claims and costs? Let’s begin by seeking guidance from the Act, declarations and by-laws as they pertain to maintenance, repairs and insurance.

Under the Condominium Act of Ontario, 1998 the objects of the corporation are to manage the property and the assets, if any, of the corporation on behalf of the owners. The corporation has a duty to control, manage and administer the common elements and the assets of the corporation. As well, the corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers, the lessees of common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules. A Board of Directors shall manage the affairs of the corporation.

The Act and the declaration govern the maintenance and repair of the common elements and the units. The corporation shall maintain the common elements and each owner shall maintain the owner’s unit. The corporation shall repair the units and common elements after damage exclusive of unit improvements as set out in the standard unit by-law. Notwithstanding, the declaration may alter the obligation to repair the unit after damage and pass this responsibility onto the unit owner. Specific by-laws may also alter obligations but are not to contravene the Act or the declarations. If an owner fails to maintain or repair the owner’s unit and if the failure presents a potential risk of damage to the property and assets of the corporation or a potential risk of personal injury to

persons on the property, the corporation may do the work necessary to carry out the obligation.

The Act provides that the corporation shall obtain and maintain property insurance, on its own behalf and on behalf of the owners, for damage to the units and common elements excluding improvements to the “Standard Unit”. It shall also obtain and maintain insurance against liability as occupier of the property or liability arising out of its building equipment. The declaration and insurance by-laws may expand these provisions as well as pass on liability for deductibles, lack of coverage or underinsured values. The Act does not provide that owners, investors or occupiers obtain insurance. Insurance companies accept the transfer of risk of financial loss in consideration of a premium cost. This is done through the issuance of a contract known as an insurance policy. The premiums of the many pay for the losses of the few and the shareholders expect a return on their investment. While the numbers may vary typically insurers look to reserve 50% to 60% of premium written to pay for losses.

There are many factors used by insurance companies in underwriting the risk for condominium realty. Successful underwriting involves proper risk selection, adequate pricing and a bit of luck thrown in for good measure. History shows that insurance for the realty market can be volatile and over time the losses can and will catch up causing shrinkage in capacity or market corrections. Geography, construction type, fire protection, crime, commercial or retail occupancies and adjacent risks



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are typical underwriting factors. Risk management reports provide information to the underwriter on the corporation's maintenance protocol, state of repair of the building and property, housekeeping and life safety. There are a number of insurers willing to underwrite condominiums in the Canadian marketplace both on an individual basis as well as on specific programs. Those corporations which qualify for custom or specific insurance programs typically experience savings in premium costs (sometimes rather shockingly low rates) as well as superior coverages.

The claims experience in the realty market can be cyclical but it has been generally poor. The frequency and severity have been on the rise over the past few years. We hear of the recent catastrophic water damage and fire losses but the more frequent every day claims amount to significant insured and uninsured financial losses. Indications are that rates will increase by 10% or more in 2014. In summary, insurance rates and premiums for the condominium sector are established through underwriting and are directly affected by the financial costs of insured losses for this class as a whole as well as the claims history for the individual corporation. Insurance companies will attempt to rehabilitate their unprofitable business through increased rates, increased deductibles, decreased coverages or exiting this sector of the insurance market.

The corporation and the residents play a key role in this outcome by protecting the assets through avoiding or reducing the risk of personal injury, property damage and the resultant financial costs. This can be achieved to a large degree by acknowledging the reality of risk, working with the insurance companies' risk management services and establishing thoughtful planning with the guidance of an ACMO accredited property manager.

Bruce is a Commercial Account Executive at PBL Insurance Limited and a long time member of CCI—Windsor-Essex Chapter, helping explain the ins and outs of insurance to condo owners and board members.



Bruce Rand, B.A., C.A.I.B.
Commercial Account Executive

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"It is important for prospective owners to become familiar with the concepts involved with condominium living."



Do you know anyone who has made a substantial contribution to your Condo community that is deserving of special recognition? Nominate them for the 2014 award!

1st Annual CCI Regional Certificate Of Merit

By Lise Allaire, RCM (retired)

In February of 2013 our Chapter of CCI received a letter from Lou Ann Morillo in response to a call to our membership for nominations of anyone associated with condominiums deserving of special recognition.

Lou Ann's letter nominated Evelyn Jaques (Evie) who became a board member of one of Essex County's largest condominium complexes in 1995.

Evie served on the board until 2007, holding every position on the executive and serving the last ten years of her tenure as President. The letter stated:

"Recognizing the enormous responsibility of the position, Evie set out to educate herself in condo management. She began attending CCI meetings at London's chapter."

Lou Ann further stated; 'Today this corporation is on solid ground with a substantial reserve, ACO certified in-house management and a seven member board committed to the highest standard of maintenance while keeping common fees competitive for the area, and we attribute it all to Evie's example of leadership excellence.'

What Lou Ann did not know was that Evie had an even stronger connection to our chapter of CCI. Evie communicated her enthusiasm for the help and education she was receiving from the London chapter to a young lawyer who also had an interest in condominium law. Evie convinced Andrea Thielk to attend

a seminar at the CCI London chapter and the rest, as they say, is history. Andrea founded the Essex County Chapter of CCI. And served as President for the first ten years.

It is members of the condominium community such as Evie Jaques that make CCI and our local chapter "The Voice of Condominium".



Andrea Thielk, Lise Allaire, Evelyn Jaques (Evie)

Do you know anyone who has made a substantial contribution to your Condominium community that is deserving of special recognition? Write to us at P.O. Box 22015, 11500 Tecumseh Road. Windsor, ON N8N 5G6 or email us at cciwindsoressex@gmail.com.

Lise has retired from property management but continues to demonstrate her commitment to condominium education by volunteering as both the secretary and newsletter chair for CCI-Windsor-Essex.

Professional Member Directory

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