

Condo Voice

For Northern Saskatchewan

October, 2009

Board Obligations

By
Naheed Bardai

One of the most common questions asked by condominium residents is:

What are the duties and obligations of the Board?

As a general rule, members of the Board must act in the best interests of the condominium corporation. What this means is that if a Board feels a special assessment is required to fulfill the needs of the condominium, like replacing an aging roof for example, the Board must move to levy such assessment, even where doing so might place them (in their capacity as unit owners) in a difficult financial position.

The *Condominium Property Act*, 1993 (“the Act”) at s. 35 sets out the obligations of the condominium corporation. Section 35 states:

35(1) A corporation is responsible for the enforcement of its bylaws and the control, management and administration of the units, and of the common property and common facilities.

2) Without restricting subsection (1), the duties of a corporation include the following:

a) to keep the common property and common facilities in a state of good and serviceable repair and to maintain them properly;
(b) to comply with notices or orders by the local authority or any other public authority requiring repairs to the buildings or work to be done with respect to the parcel; and (with any reasonable request for the names and addresses of the persons who are members of the board.

The Board is elected by the owners to fulfill the obligations of the condominium corporation as set out in s. 35 of the Act. This obligation, however, is subject to one important limitation.

Section 39 of the Act states:

s.39(1) Subject to any restriction imposed or direction given at a general meeting, the board shall exercise the powers and perform the duties of the corporation.

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What this means is that the Board must act in the best interests of the condominium corporation to fulfill the duties of the condominium corporation as set out in the Act and Bylaws of the condominium, subject only to any direction given by the owners at a general meeting.

In rare cases, owners will direct the Board to do something that the Board feels very strongly is not in the best interests of the condominium. In these situations, I have always been of the view that, if the owners direct the Board to do something the Board strongly feels is not in the best interests of the condominium, the Board should resign. Always remember that it is the Board that must ultimately protect the condominium and answer for the actions taken by the condominium.

No matter what the issue, the thought process should be the same. The Board should begin by asking whether the issue relates to the duties of the

condominium corporation (ie: maintenance and repair of the property, enforcement of the bylaws or any of the issues set out in s. 35 of the Act).

Owners will often try and drag the Board into the middle of a private dispute between neighbours that has nothing to do with the enforcement of the bylaws or the duties of the condominium corporation. The Board should resist the temptation to become involved in these situations. If the Board concludes that the issue falls within their mandate (for example dealing with breaches of bylaws), then the Board should consider what is in the best interests of the condominium and let that question be the guide for all decisions.

Naheed Bardai, MacPherson Leslie & Tyerman LLP
**This article does not constitute legal advice.
Readers are urged to consult with legal counsel
for all legal questions.**

Share Your Success Stories

Condominium living offers many advantages. However, it also can also produce challenges. Have you have faced some problems as a condo resident or as a member of a condo board for which you obtained a satisfactory solution? It is entirely possible that the issue you dealt with is something that other condo residents or board members have also experienced or are now trying to resolve.

Please write and tell us about the problem you faced and how you resolved it. Your solution just might help be the answer for which other readers are looking.

If you are one of the people seeking a solution, perhaps our readers can be of assistance. We would be pleased to be able to change your problem into a success story.



Northern Saskatchewan Chapter

Seminar

What Condominium Boards Need To Know

Topics:

Condominium Board Responsibilities and Obligations

Naheed Bardai – Lawyer

Making the Best Use of Your Property Manager

Donna Singbeil, Property Manager, ICR Property Management

Kent Nicholson, Senior Property Manager, Colliers, McClocklin Real Estate Corporation

Thursday, November 12, 2009

7:00 P.M.

Come early for registration

Mayfair United Church – 902 - 33rd Street West

Cost: Members \$10.00 per person- maximum of \$50.00 per corporation

Non Members \$20.00 Couples \$30.00

Presented by the Northern Saskatchewan Chapter, CCI

Condo Safety Tips

By

Constable Rolanda McAvoy
Saskatoon Police Service

Let's start with access to any condominium - apartment, townhouse, or stacked townhouse style. Whether it is protected by security doors to gain access into apartment style condos or a security gate used to access onto townhouse style condo's secure property, all those who live there must take the responsibility on themselves for their own and everyone's security and safety.

Always ensure when you enter a secure area that the door closes behind you before you walk away. Never let anyone into a secure area whom you do not recognize as belonging there. They can contact the person they are visiting to let them in. If they say they live there but forgot their key, have them wait outside while you call the property manager to deal with them or provide them with the number they can call. If access is provided to guests through a buzzer system, ensure you can identify the person prior to letting them into the building and if you can't don't let them in. If they say they have an emergency, verify this by asking them if they need police and or fire assistance and what the emergency is so you can make the call for them.

Parkades are only as secure as you make them. Whether exiting or entering ensure the door is fully closed prior to driving away. It only takes a second for someone to sneak in, so make sure you are always watching because it could be your property that is damaged or worse. Make sure there is proper lighting inside and outside the parkade entry/exit points. As well, ensure the area is free of any possible hiding places for someone waiting to gain quick access to the building. One of the biggest deterrents is to use your vehicle alarm systems while parked in the parkade and never leave anything of value in your vehicle.

Surveillance cameras that are properly placed and have good quality images can be a valuable tool to help keep a building secure. They can also assist in identifying someone should they gain access, which may result in criminal activity.

Security of your unit begins with keeping your access door locked, even when you are home. To make your doors more secure install a deadbolt lock that has at least a 1 inch (preferably 1 ½ inch) long horizontal bolt. Also, add a stronger metal strike plate of about a 1/8th inch thickness securing it into the doorjamb with 3-inch screws that go into the framing beyond the doorjamb. You may also consider using a metal reinforcement that fits around the door and is drilled to accept the lock and knob. For further information on lock and door security you can contact your local locksmith. As well, you should install a door viewer, more commonly known as a peephole, in your entrance door. Ensure you have proper visibility of at least 190 degrees. Door chains are not effective in keeping people out and your goal is to not open the door unless you feel comfortable letting in the person on the other side. If you can't hear them speak, ask them to speak up. If there is still a problem, call the building manager and/or the police.

Window locks are very important to secure your property. You can add window bars to provide more security to existing window locks. For more information, contact your local window dealer and installer. Don't forget to secure window air conditioners with sturdy screws approximately 3 inches long that go into the wooden or metal frame to prevent them from being pushed in for easy access into your residence. In all cases, check that added barriers won't violate fire-safety codes or manufacturer warranties.

It is important to secure balcony doors whether you are on the ground level or upper level. Balconies can be scaled to gain access into a residence. You must secure them with the same type of deadbolt you would use on an outside door. You can purchase special hardware to secure sliding balcony doors but a cost effective alternative would be to place a strong piece of wood in the door's track to prevent it from being slid open. Keep in mind that you must also check that the sliding door can't be lifted from its track.

When laundry facilities are provided they are best kept in well traveled locations, well lit and highly visible by having windows so there is always the possibility of having eyes and ears for safety and security purposes. Remove the money from the coin slots regularly so if someone does break in they won't get much, which will be a deterrent for future thefts. If the room is locked, ensure you have a really good locking system. Another alternative would be to increase the condo fees and offer free laundry.

Some condominiums provide storage rooms, which are usually located in the basement. You need to take some precautions there as well. In the event of spills or flooding, store everything off the floor. If the storage area is made of chain link or any other material that is not fully secure, store items that can easily be removed away from the walls. Make sure the door hinges and screws of the access door are covered so they can't easily be removed to gain access.

Landscaping of the building as well is of the utmost importance when it comes to safety. Keep the hedges and trees trimmed and any other plants low to prevent them from offering concealment to someone trying to break into a lower window. Putting landscaping rock around the building can increase the possibility of hearing anyone who may be peeping into a window. Keep trees away from a building to prevent them from being used to gain access to higher floors. Lighting is extremely important for all sides of a building including any outside parking lots. Assigned parking spots should never coincide with the condominium door number. This helps to prevent others from knowing who may be away. You don't want to advertise that you are not home; it is like an invite in for any thief in the area.

It is important to always remember that all who live in a condominium are responsible for the safety and security of themselves and the others who live there. It is only as secure as you make it by taking on the responsibility of using all the security measures that are already in place. Everyone is responsible for reporting any concerns on the lack of some security measures or of some security items in place that may not be working to the building manager or the condominium board or whoever else may be in charge of your condominium security.

Did You Know?

Did you know? A board must keep proper books to account of all monies received and all monies expended by the board and make those books available for inspection by an owner or person authorized in writing by an owner.

Did you know? Pursuant to section 41 of the Condominium Property Act, 1993 if an owner's condo fees or any amounts due and owing to the condominium corporation are outstanding for 30 days or more they are not entitled to vote at a meeting.

Did you know? Every condominium is governed by its own unique set of rules called its bylaws BUT its bylaws cannot go against the Condominium Property Act, 1993 and the Act will override the bylaws.

Did you know? The corporation or a person authorized by the corporation can enter an owner's suite on 24 hours notice to carry out the objectives and perform the duties of the corporation.

Did you know? In most condominiums owners do not own their parking stalls: they have exclusive use over them. Therefore, an owner cannot sell, transfer or exchange parking stalls without meeting certain conditions including the approval of the condominium board.

Did you know? A corporation is responsible for the enforcements of its bylaws. The board is responsible to enforce the bylaws that are in place and can be held responsible if they do not.

Ask An Expert

Ask the Lawyer

by *Jamie D. Nykolaishen,*

Wallace Meschishnick Clackson Zawada

Q: The daily costs associated with running our condominium corporation are rising. As a result we need to increase our condominium fees. How do we properly raise our condominium fees?

A: Collecting condominium fees is crucial to the existence and continued life of the condominium corporation. It is important to ensure that enough fees are being collected to cover the daily maintenance of the building and property and that there are sufficient fees being contributed to the reserve fund.

Pursuant to *The Condominium Property Act, 1993* the Board of Directors of the condominium corporation is responsible to exercise the powers and perform the duties of the corporation. This includes management and administration of the corporation, including collecting fees, paying expenses and keeping proper financial records. In order to perform these duties the board is entitled to determine the amount of condominium fees required to cover all expenses and to levy the fees necessary, without the approval of the unit owners. It is important to remember that despite the broad power given to the Board of Directors, directors are accountable for their actions and must ensure that they are acting in the best interests of the condominium corporation as a whole and not in pursuit of their own personal interests.

The Condominium Property Act, 1993 provides that the corporation shall levy on the owners of the units condominium fees consisting of two parts; common expense fund contributions and reserve fund contributions. In order to determine the amount of fees required for the common expense fund, the Board of Directors should look at the past year's financial statements and the budget for the upcoming year to assess how much money the condominium association requires to meet the expected expenses. To determine the amount that should be collected for the reserve fund the Board of Directors should use the reserve fund study as a

guide when reasonably assessing what amounts need to be collected.

Once it is determined what amount of fees is required, the *Act* and *The Condominium Property Regulations, 2001* set out how the contributions are to be levied. Specifically, the *Regulations* set out the prescribed procedure for allocating amounts. The legislation states that the board must allocate the amounts required for the common expenses fund and reserve fund among the unit owners in proportion to the unit factors for their units. The funds can be allocated among the owners by a different scheme of apportionment only if 75 percent of all owners approve a bylaw to allocate the funds by a different scheme. This can be any scheme as long as it is approved by 75 percent of all the owners. If a different scheme of apportionment is approved the *Act* and the regulations provide further steps that must be taken to implement the scheme.

Once the Board of Directors determines and levies the fees they must pass a resolution outlining what the fees will be and the terms of payment. The *Act* provides that a fee levied in accordance with the *Act* is due and payable on the terms outlined in a resolution of the corporation once such resolution is passed. Common sense dictates that the owners should be given some notice of the fee increase and a reasonable time to pay same. (i.e. I personally think that at least one month's notice should be given when fees are going to be increased, or a month be allowed to pay a special expenses levy.) However, as outlined above it is the Board of Directors who set the terms and conditions of the payment of the fees and therefore it is in their discretion.

Reiterating what I have said above, the Board of Directors must act in the best interests of the condominium corporation.

CCI Working For You

Working on behalf of the condominium industry and its residents, CCI's objectives are:

- To educate ...through educational courses, seminars, and networking, all designed to equip condominium directors, owners and suppliers with the skills and knowledge necessary to conduct the affairs of a condominium corporation in a proper and diligent manner.
- To offer professional assistance ...so members may appeal to CCI for information and direction on resolving condominium problems and for referrals to appropriate professionals and services.
- To improve legislation affecting condominiums.
- To develop standards ...CCI has developed standards of competence in six key areas pertaining to condominium life. These cover law, accounting, property management, insurance, real estate, and building sciences.

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We Want To Hear From You

Your letter to the Editor would be welcome. If you have a question or wish to raise an issue with the NSCCI Board we would be pleased to hear from you. With your permission the letter will be published in this column.

Our Board would also be interested to learn what article topics would be of interest to you. Call, write, or e-mail us and we will make every effort to answer your request.



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