

DEALING WITH DIFFICULT PEOPLE: A LEGAL PERSPECTIVE

On March 20, 2012, I had the opportunity to attend the “Dealing with Difficult People” seminar at the Mocha Shrine Centre in London. Over the course of the evening, Doug Simpson-Dietrich and Dawn White provided many excellent tips for dealing with difficult people. In the few short months since their presentations, I have had great success in implementing some of their tips when dealing with irate owners (and even a few lawyers). I thought I would reciprocate and share some tips for dealing with difficult people from a lawyer’s perspective.

The “Condo Commando”: Difficult Owners

Most directors and property managers have a story about a unit owner that made their life miserable for one reason or another. Some owners take it upon themselves to review every decision made by the board, questioning their authority to make decisions without the input of the owners and the decisions made. In the industry we often refer to these owners as the “self-appointed watchdog” or the “condo commando”. Others simply are not suitable for condominium living, whether it is persistent late payment of fees or frequent non-compliance with the *Condominium Act, 1998* (the “Act”) or a condominium’s declaration, by-laws or rules (collectively “documents”). Fortunately, there are a host of powerful remedies in the Act for enforcing the provisions of the Act and a condominium’s declaration, by-laws and rules, including chargebacks and liens (section 85), mediation/arbitration (section 132), compliance orders (section 134), and oppression claims (section 135). The aim of this article is not to describe these remedies in detail, but rather to provide tips on navigating them safely or avoiding them altogether.

A. Non-Compliance: People, Pets & Parking

A significant source of conflict in condominiums is owners or occupants that fail to comply with the Act or a condominium’s documents. Pursuant to section 17(3) of the Act, the directors are obliged to take all reasonable steps to ensure compliance with the Act and its documents, but the offending owner often acts surprised, confused or incensed by the board’s decision. The remaining owners take sides, and the situation escalates. In all enforcement matters, regardless of the method, there are a few things that the board should keep in mind:

1. *Warnings:* Unless the breach is serious, such as conduct warranting criminal charges, the first communication from a condominium should be from the board and/or property manager. In my experience, nothing incites an owner more than receiving a letter from a lawyer without any prior warning.
2. *Communication:* To avoid a physical confrontation, or a “he said, she said situation”, all communications with owners on compliance matters should be in writing, preferably sent via registered mail or by courier to thwart a later claim that it was never sent. Also, any communication sent to an owner should be clear and concise, setting out the details of the breach (i.e. date, time), the provisions of the condominium’s documents that were breached, a deadline for compliance, if applicable, and the consequences for further non-compliance (i.e. chargeback, mediation/arbitration, or a court application).
3. *Consistency:* Another common complaint from owners is inconsistent treatment by the board. While these complaints are usually meritless, often arising from a perceived inconsistency rather than a real one, directors should be mindful of previous decisions made by the board, including a former board, in similar circumstances.

4. *Documenting the Evidence*: While recording evidence of the breach is crucial to a successful enforcement file, a director that is confronted with a breach should not approach the offending owner as it could result in a physical altercation. Instead, the director should take detailed notes of the breach, including the date, time, and a brief description of the event. If there were any other witnesses to the breach, the director should record their names, addresses and contact particulars. Lastly, directors should avoid taking photographs when the owner is present; take the photograph when the owner is inside their unit or offsite.

B. Records Requests

The Condo Commando usually makes frequent and repetitive records requests and demands of the board and/or property manager, often during a dispute with the board regarding a compliance matter. The board or property manager, acting with good intentions, will sometimes entertain these demands to their own detriment. While responding to record requests is appropriate, after reviewing the request to ensure that they comply with the requirements of section 55 of the Act, answering questions regarding those records or the other affairs of the condominium is usually ill-advised as a disagreement as to what was said often arises.

It is important to note that there is no obligation on a condominium's board or property manager to respond to questions from an owner. In *York Condominium Corporation No. 60 v. Brown*, [2001] O.J. No. 5851 (S.C.J.). Kiteley J., in describing the owner's right to access rights, stated:

“The unit owner is entitled to access to records. She is not entitled to engage in an investigation and demand responses from Directors, Officers or managers. The unit owner's rights do not include the right to make written interrogatories and then complain when answers are not provided or not provided in what the unit owner considers a timely manner.”

This does not mean that directors and property managers should refuse to answer all questions posed by owners. I acknowledge that refusing to answer reasonable questions would likely increase the number of difficult owners. However, the following is a list of topics a director or property manager should never discuss with an owner:

- 1) Employees (contracts may be released to an owner upon request);
- 2) Actual or pending litigation or insurance investigations;
- 3) Other owners or units, including other enforcement steps that may be underway against another owner; and
- 4) Any matter that has been referred to the condominium's professionals to handle, including any enforcement matter with the owner demanding information where the condominium's lawyer has carriage of the file.

C. Delegation Requests

The Condo Commando or offending unit owner may also request to attend the next board meeting. The purpose of these requests is generally two-fold: 1) to gather information not normally available to the owners; and 2) to persuade the directors to change a decision made to one that the owner supports. Instead of permitting the owner to attend a board meeting, consider asking the owner to put their concerns in writing for the board to review at the next board meeting. This will provide the owner an opportunity to express concerns, while ensuring the owner is not afforded an opportunity to derail the meeting. It also reduces the chance of a confrontation.

Despite my previous comments, if the board is satisfied that an owner has a *bona fide* reason for attending a board meeting, such as expertise in a particular area, the board may want to permit the owner to attend the meeting. If permitted to attend, make it clear to the owner that he or she is merely there to provide information; they will not be entitled to vote or be present during the discussion and vote by the board.

“The Rogue Director”: Difficult Directors

Dealing with difficult directors can be more difficult than dealing with difficult owners. To properly manage the affairs of the condominium, the directors must be in constant communication, attend various board meetings together, and make decisions on significant issues. Some directors communicate with their fellow directors in a manner that is offensive, overly-critical, and sometimes even bordering on slanderous. Other directors believe they can operate solo and make significant decisions without the approval of the other directors. Many of the comments above relating to difficult owners also apply to situations with directors. However, dealing with difficult directors raises a host of new issues as well.

A. Qualifications & Disqualifications

One of the best methods for improving a condominium’s odds when dealing with difficult directors is to pass a by-law to increase the qualifications for persons running for a position on the board. The Act has very few qualifications for directors: a director must be at least 18 years of age, cannot be an undischarged bankrupt, and cannot be incapable of managing property within the meaning of the *Substitute Decisions Act*. Since these qualifications are pretty easy to satisfy, some condominiums have begun to pass by-laws increasing the qualifications to include a code of ethics, or to prohibit persons with certain criminal convictions (i.e. fraud) from occupying positions on the board.

A by-law may also increase the situations where a director may be forced to resign from the board as a result of a disqualification. Like qualifications, the Act describes very few situations in which a director will be disqualified: a director cannot become an undischarged bankrupt, incapable of managing property, or permit a lien to be registered against his or her unit for over 90 days. Pursuant to section 56 of the Act, a by-law may be passed to increase the disqualifications. Typical disqualifications include failing to attend a specified number of board meetings in a given period of time, without reasonable excuse, or being a party to a mediation, arbitration, or court proceeding in which the condominium is a party with an adverse interest.

B. Removal from the Board

Where a director is so difficult that the board cannot properly manage the condominium’s affairs, the remaining directors may ask the director to resign. If problems continue to arise, or the director refuses to resign, the directors may requisition an owners’ meeting to remove the director. It should be noted that the directors must satisfy the requirements of section 46 of the Act just as any other owner would to requisition a meeting. At the owners’ meeting, a majority of the owners in the condominium, not merely those present at the meeting, must vote in favour of removal for the requisition to be successful.

Other Difficult People

Although there are a host of other people that could cause a condominium’s board or property manager grief, most of these situations are easier to handle. Examples include employees, contractors, or their agents. Most of these situations can be resolved by notifying the company of the problems or requesting that different agents attend the site. If that does not improve the situation, the condominium can look at terminating the contract, or at least not renewing it.

Avoiding Difficult People

Instead of dealing with difficult people, why not try to avoid them? I acknowledge that it is impossible to avoid them altogether. Some people are miserable and strive on making the lives of others difficult. That does not mean that you have to give up. Many condominiums have very few issues with difficult owners or directors. From my vantage point, they all appear to have at least three things in common:

- 1) Communication: the directors and property managers understand the importance of effective communication. The condominium sends various communications to the owners to keep them apprised of decisions, notify them when contractors will be on site, and inform them about upcoming events. But communication is a two-way street. If the owners have a concern or notice an item that needs attention they do not hesitate to contact the property manager to report it. Finally, each individual actively listens to the comments and concerns of the other before responding.
- 2) Education: the directors and owners are educated. The directors attend educational activities, such as CCI events, and read the condominium's documents and the Act. They do not simply rely upon the property manager to make every decision for them. In addition, many of the owners even read the condominium's documents. In most cases, this reduces the number of compliance issues and the ensuing conflict that arises when the board is required to enforce the condominium's documents against an owner.
- 3) Respect: there is a common respect amongst the owners, directors, and property manager. Although disagreements still arise, they are dealt with in a respectful manner that recognizes differences, while encouraging critical thinking.

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