

Fixing Broken Windows

By: Michelle Kelly, B.Comm., LL.B.

Crime is a topic of frequent discussion, especially during election years. As a result, government and law enforcement officials are under constant pressure to find ways to curb crime. Over the years, numerous theories have been hypothesized, but perhaps none more frequently than the “broken window theory”. The broken window theory was popularized by New York City Mayor Rudy Guiliani in the 1990s.

The broken window theory is based on the norm-setting effects of minor crime, such as vandalism or pick-pocketing. According to the theory, monitoring and maintaining neighbourhoods in an organized state will lower crime. For example, consider a building with a few broken windows. If the windows are not replaced, vandals may be inclined to break a few more windows. Sooner or later, they may even break into the building, steal what is left, and vandalize the inside of the building. Or take the example of a sidewalk where litter accumulates. Soon, more people are littering. Once the neighbourhood looks neglected, people may leave entire bags of trash or abandoned cars. To summarize, keeping up with the little almost harmless problems means that they don't escalate into bigger ones.

You might be thinking to yourself, what does this have to do with condominiums? Well, by proactively enforcing all breaches of the *Condominium Act, 1998*, the declaration, by-laws and rules, a condominium can prevent minor problems from escalating into unmanageable situations.

For instance, “Condominium A” has a no-pets provision in its declaration. Now assume that Mr. Jones decides to keep a cat in his unit. The cat is considered a harmless and loveable cat, and the board casts a blind-eye. Another unit owner, Ms. Smith hears about this and decides she wants a dog. Eventually the condominium is rife with pets and stuck with the undesirable, maybe even impossible, task of enforcing against a significant number of unit owners. The remaining unit owners will become frustrated and may disregard further rules. Now consider “Condominium B”, which has the same no-pets provision in its declaration. When Mr. Jones first brings a cat into his unit, instead of ignoring the situation, the Board enforces the no-pets provision. Ms. Smith, who was thinking of buying a dog, hears about the enforcement against Mr. Jones and is deterred from purchasing one. “Condominium B” remains flee free, while its neighbour “Condominium A” spends thousands of dollars and countless hours trying to enforce against offending unit owners.

The theory is equally applicable to the three horsemen of condominium problems, being people, pets and parking. With proactive enforcement, the condominium can prevent escalation. In addition, repeat offenders will be discouraged by the condominium's frequent enforcement against him and will be forced to comply with the Act, and the

condominium's declaration, by-laws and rules. Deterrence is a fundamental feature of any well designed legal system.

Apart from the benefits which may arise from proactive enforcement, the board of directors must keep in mind that the condominium has a duty to enforce the Act, and its declaration, by-laws and rules pursuant to section 17(3) of the *Condominium Act, 1998*. Allowing deliberate breaches to persist is a breach of the condominium's duty to enforce.

Contrary to popular belief, creating more rules is rarely the solution. Enforcement often is. Instead of drafting lengthy novel or intricate provisions in a condominium's declaration, by-laws, and rules, the focus should be on enforcing what exists. No matter how much time is spent drafting the declaration, by-laws and rules, proactive enforcement, not intricate rules, will win the day.

Under Giuliani's "zero tolerance" campaign, police strictly enforced the existing laws on subway fare evasion, public intoxication, and "squeege men." As predicted, New York City's rates of both petty and serious crime fell suddenly and significantly. Just as Giuliani recognized the importance of maintaining intact communities, so too should condominiums.

Michelle Kelly, B.Comm., LL.B., is an associate at SmithValeriotte Law Firm LLP in Guelph. Michelle practices extensively in the area of condominium law and is an active member of SmithValeriotte's condominium practice group. She can be reached at mkelly@smithvaleriotte.com.

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