



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 superintendent liable for close to \$50,000.00 in damages, after the superintendent 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. The board of directors should never verbally dialogue with the offending party as these conversations often turn into “he-said, she-said,” situations. It may be appropriate for a property manager to have these conversations with an offending unit owner, but he or she should prepare a note for the file immediately following the encounter. These contemporaneous notes can assist if the “he-said, she-said” argument arises later on. 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 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.

For more information, please contact our condominium practice group chair:

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