

Condominium Cases from the Internet

Letter 1: Our board of directors has many problems but the one I want to mention is that they hang together as a clique: it's them versus us owners. If anyone complains or questions what they do or don't do, they close ranks, refuse to hear us out, and tell us that they have to be loyal to their board. My understanding of the Condominium Act, and this is reflected in your website, is that directors' loyalty and accountability is to the corporation and owners.

Answer: What you write about is unfortunately common. On the one hand, it is really nice when directors can trust each other: Some boards are always fighting among themselves and this is a waste of time. This said, boards are there for the corporation and are elected by owners. This is where their allegiance should be—their duty. For instance, they should not allow one of their members, even if it is the president, to engage in unethical practices. But, often, they find it easier to stick their heads in the sand and let it go to preserve their little group and their own standing in this little group—some do this for the sake of being re-elected. Better education of directors regarding their duties as per the *Condominium Act* would remedy some of these problems. So would a few penalties!

Letter 2: At the AGM, the president in his report mentioned that the board had revised the rules and added a new by-law. He said that owners wanting to have the package of new rules and by-law can get it for \$5.00 at the office. Do we have to pay for this?

Answer: Wait a minute! First of all, rules approved by the board have to be proposed to owners who have 30 days to requisition a meeting if they disagree. Second, a by-law has to be written with the help of the lawyer who also has to register it after it is approved by board and owners. There is nothing that says you can't pay \$5.00 but, at this point, this is premature because the due process has not been carried out. As well, rules and by-laws, when properly approved by owners, will then have to appear in future status certificates.

Letter 3: We have had the same president and treasurer for over 9 years and they are a catastrophe and very nasty and superior-types. What I don't understand is that every so often, we elect a new board member that is actually a very nice and competent person. Once these persons become board members, they seem to change entirely: they no longer respond to us, they don't even keep the promises they made and they all become like the other two so that in the end, we always have a very non-communicating, non-accountable and threatening board that writes us nasty letters as soon as we try to explain our concerns as owners. How can we stop this cycle of waste of good persons?

Answer: Yes, this is very unfortunate. It is simply due to the fact that each new arrival on the board has to integrate himself or herself within the group and the two powerful persons are the president and this treasurer. As a result, everyone ends up doing what these persons want. How can this be? Simple desire to fit in; inability to stand up for themselves in the group; belief that they have to be loyal to the board when, in reality, they have to be loyal to their principles and accountable to owners; feeling isolated and intimidated. What you need to do is get rid of the president and treasurer.

However, there is reluctant to suggest recourse to requisitioned meetings for this purpose. From the letters received, it is obviously difficult to organize such meetings and then obtain the over 50% of votes required to get rid of a malfunctioning board in condos that have over 100 units--and that's now most condos. To make matters worse, in too many condos, most of the owners live elsewhere. The *Condo Act* should address this issue of size and proportion of non-resident owners in the number of votes required to accomplish anything.

Letter 4: I have a problem with noise coming from a rattling sound in my fan coils or heating/AC. I have documented it on a daily basis and submitted this to the manager after she failed to respond the first time around. So when I presented this to her, she got very angry and gave a copy to the board and the president wrote me to tell me to stop being a troublemaker and stop harassing the manager. I never harassed her and have been very polite. We just can't sleep and we have headaches. It has been 3 months and they also wrote that I am the only one complaining about this. I mean, I can't believe this rationale for refusing me this service because, of course I am the only one complaining, this is in my suite! and the fan coil belongs to the corporation and is its responsibility. This is affecting our health. How long is it reasonable to wait? And is it acceptable to be accused of being a troublemaker for a reasonable request?

Answer: No, you are being perfectly reasonable and within your rights. Continue documenting this noise. Have you also thought of recording it and of renting a sound meter as a further documentation? You may want to have a visit from the Health Department of your municipality. I suspect that, if this manager and this president are thusly responding, there must be other problems in your condo. Try to get a better picture of what is going on. If all fails, you are probably in a position to seek a court compliance order under section 135 of the *Condo Act*, "Oppression Remedy," because what is going on is a failure to comply with the *Act*. But you will need to seek legal advice, and this can be difficult because you will not be able to have recourse to the law firm that deals with your condo. I know that this does not make sense but, generally, condo lawyers stand by managers and boards of directors and some feel that listening and helping an owner against them represents a conflict of interest.

Letter 5: Many of us owners have gotten together because we feel so helpless. We had an excellent president that we trusted but [*he/she*] moved away and now we are at the mercy of this management company that gives more and more maintenance work to their set of companies that they have for their other condos (we have checked this out) and a lot of us think that we are being taken for a ride because a lot of this work is not necessary and it is constant. At the AGM, it's interesting but sad to see how the lawyer, management company and auditor, all get along like old friends and back each other up as well as our useless and less than moral board, all of this at our expense. I call this the "road show" because these people always meet each other at the AGMs of a bunch of other condos and have developed ties with each other so that they really serve themselves and their industries rather than the condos that they are paid to serve. We owners really come last in all of this even though this is our money. We are disempowered and treated as if we were children. We feel helpless and it's only going to get worse. What can be done?

Note: This is only the first of several letters exchanged with this owner and the answers revolved around their calling a requisitioned meeting to throw out their board. However, the conclusion was that they would not be able to muster enough votes for this purpose because only 35% of owners are resident owners.

Forty seven letters have been received on issues of conflicts of interest. The feeling of helplessness that permeates the letters on this topic (as in many other topics) written by owners is overwhelming. Owners have really no one they can turn to for help. Even good boards at times have difficulties figuring out whether some maintenance work or repairs work are really needed. **Research Note:** It is significant that 40 of the 47 letters which mention conflicts of interest come from insiders, that is, persons who work or have worked in the condo industry and a few board members, especially presidents. Indeed, and this is worrisome, these situations are not generally obvious to resident owners and least of all to non-resident owners. In other words, conflicts of interest largely go unnoticed to those who count the most: Owners.

Letter 6: We received a letter from our condo's lawyer ordering us to stop throwing furniture down the garbage chute because it blocks it. The letter also stated that the manager has contacted us several times about the issue. In addition, it included a bill, including the GST [*this was just before the HST arrived*]. But there were several problems here. First we never threw any "furniture" down the garbage chute and I just can't see how someone can do this, it's not possible because these chutes are just too small. Second we had

taken pictures of all our possessions two months before this in case we needed this for our insurance company and these pictures show exactly the same furniture we have now, and none is missing, so we couldn't have thrown furniture down the chute. So we approached the manager and she said that she left several messages on our voice mail and even wrote us two letters; we tried to explain to her that it must be someone else doing this and showed her the pictures and invited her to our suite; we said that she must have had a wrong number for us and that we never received her letters. Nothing worked. I must add here that this manager has been nasty to us from the time we asked her if we could see the latest financial statements as this had offended her a lot and she had replied that this was illegal.

To make this long story short, before we could even pay the lawyer's fee, we got a lien put on our suite from the lawyer's office. How can a lawyer representing a condo do this? Don't they check facts before they send a letter to an owner that is actually being victimized? We could easily have hired a private detective to see if furniture had actually be thrown down, and so on, but I can't tell you how much we wanted to leave; we got out of there fast. We will never live in a condo again. There seems to be something wrong with the way some condo lawyers practice their trade and especially how some abuse liens to back up bad managers. I think that it's a well kept secret...

Note : This is a very sad situation and another example of cases where condo lawyers become the lackeys of boards and managers in order to retain their contract with the corporation. Basically, they don't check the facts and just blindly comply with a board's or manager's request. Now, under normal circumstances, a lawyer would be totally correct in sending a warning letter to an owner who is allegedly throwing furniture down a garbage chute and, if the owner failed to comply and failed to pay the fee, to lien him or her. However, before reaching such a drastic and costly (for the owner) step, a lawyer should independently assure himself/herself of the validity of the manager's complaint.

As well, "furniture" thrown down the garbage chute is truly an emergency that needs to be immediately investigated lest it causes catastrophic consequences. It does not seem that the manager truly investigated the situation.

There are several situations where a lawyer should be asked to write an owner and charge this owner for the cost of the letter. If the owner does not comply and does not pay the legal fee, then there is no other recourse but to lien the owner in question. These situations include owners

- who are noisy and disturb their neighbours (whether from their suite, their balcony, the common elements),
- whose smoking penetrates in other suites,
- who speed on the property,
- who throw stuff down the balcony

— all situations that are against the good of the corporation.

However, before a letter is written by the lawyer, the manager and board have to be able to show that they have investigated the noise or situation thoroughly and ethically, that they have talked to the owner or resident in question, and that they have written to him or her on more than one occasion. Only then, all things having failed, should a lawyer intervene. Under no circumstance should a lawyer play the role of board or manager: His or her role comes when all else has failed. And, at that point, if the owner fails to pay legal fees, it is correct to put a lien on the unit.

Letter 7: We have such an incompetent manager with a board that is actually afraid of him that I contacted this condo lawyer [*name deleted*] for help along with other owners. He didn't want to help out and advised us to move out. What kind of legal advice is this?

Answer: Two other letters using exactly the same words were received. The other two letters were from Toronto. If everyone who encountered problems in condos moved out, eventually condos would be empty. Lawyers would be able to do a far better job were the *Condo Act* improved.

Letter 8: We need help badly. There are all kinds of irregularities going on in our building, like the rules are not followed by board members, there are leaks that are not repaired, my neighbor got refused a status certificate pending his suite being entered and he says that this is not right, board members collect proxies and fill them out themselves, the board constantly ask the law firm really simple questions and pay an arm and a leg for this silly stuff that many of us owners know the answer for, so that we had a bill for over \$10,000 in legal fees last year for nothing. It seems to us that the lawyer is taking advantage of our board's ignorance and this [name deleted] is a smooth talker at the AGMs and prevents owners from asking relevant questions and gets paid for this as well. He agrees with anything the board says and I thought that he worked for us all in the corporation. You can tell how dishonest he is. How can we get help to have a better board, a better management and a more honest lawyer?

Answer: You need to requisition a meeting to get rid of this board, if you think that you will be able to find a better one. It is very obvious in the many letters received on this topic that the more incompetent and inexperienced a board is, the more they have recourse to lawyers, and threat of legal action, in order to preserve their vested interests and hide their ignorance. Competent boards carry on AGMs on their own and seek help only when a thorny or complicated legal issue arises.

Letter 9: In my condo we do not know what is going on. There are no special notices or newsletters and we do not even know when and if there are any board meetings taking place. We have no idea of what is going on except when we receive the budget and that budget does not explain much. At the AGM, the president's report is very sketchy and he does not seem to be able to answer questions in any lucid manner. When we go to the office and ask a question, it is never well received and one of our neighbours dared asked for a copy of the latest board meeting minutes and was told that he didn't need them and the manager has since been unpleasant to him.

Comment: Lack of communication from management and boards as well as difficulties in obtaining documents constitute the most frequently mentioned complaints received. The problems related to access to condo records and unfair fees charged are widespread.

Letter 10: I requested to have a copy of the Minutes of the Board Meetings for the past 3 months and received 3 pages. Please note: 3 pages for 3 meetings, one page per meeting. It said nothing, really: only that the minutes of previous meetings were accepted, that a discussion followed, that the financial statements were accepted, and other agenda subtitles. No idea of what was discussed. Second, they charged me \$5.00 per page and sent them to me via email as an attachment. I refused to pay because imagine how much I would have had to pay if the Minutes had been good ones? So now they want to lien me for the \$15. Help, please.

Answer: There is really nothing in the *Condo Act* that forces boards of directors to be transparent in the minutes of their meetings. But the minutes of your board, as you point out, are not even informative. Perhaps someone should ask about this at the next annual general meeting? I might add that some believe that the less written in the minutes, the better. I disagree because a future board might want to revisit some decisions made by a previous one and may not understand the reasoning that guided the decisions if there is no information on the process and the substance.

As to the fee, Section 55(6) clearly states that the fee has to be reasonable to cover copying and labour. But, in your case, there were practically no costs as it took the manager at most 3 minutes to email you the 3 pages. At best, \$3.00 would have been acceptable. And they certainly cannot lien you. This is not covered

among situations that can be the source of a lien. I suggest that you write back and offer \$3.00 and point to Section 55(6).

On the positive side, the manager has forwarded you the minutes via email, which saves paper, and has done so quickly and without questioning your motive. This is excellent: In many condos, they refuse to comply or question your motives.

Letter 11: Our fees are going up by about 3% each year and I am not complaining but there is a lot of wasted money and it is our money after all. For instance we have a full-time manager, full-time superintendent and full-time cleaner for a total of \$190,000 or 19% of our budget. I know that we don't need a full-time manager because all the other buildings our size share their manager with at least another building somewhere else. Plus the super and the cleaner spend half of their time socializing and smoking and lounging about. Either they should work for their money or our board should use them only half time. We could save \$75,000. The manager is hare-brained and the board totally rely on her. What to do?

Answer: Have you written to the board about this? Second, check out the possibility of having a requisitioned meeting to bring this issue out in the open. This is also important because, in July 2010, the HST (Harmonized Sales Tax) will kick in and will be added to the fees charged by companies that contract out supers, janitors and managers, as well as labor costs for plumbing, for instance. This will mean a good-size raise in fees for such services.

Letter 12: Eight months ago we got a special assessment of 20% of our yearly fees that for me amounted to \$64 a month or \$720 a year and this is going to last for 3 years. They didn't give any reason and we had had a 10% increase in fees as part of the regular budget. Now they just announced that our fees are going to go up by 20% again so that suddenly in less than a year my monthly fees are going up by \$64 in addition to another \$64 for three years for the special assessment for a total of \$128 a month or \$1,536 a year. That's a lot of money and all the owners are very upset as most of us can't afford this especially in these times of recession. Please tell us what we can do about this.

Answer: This is, indeed, a huge increase and I understand the predicament that this puts you in. Generally, special assessments and steep increases in fees occur when a condo, usually one built before 2001, does not have an adequate reserve fund and has to carry out serious repairs and replacements. Boards are then to be congratulated for such a decision, otherwise the building would keep deteriorating. But, in your case [*several letters were exchanged*], your reserve fund is adequate to meet whatever they need to do and your total yearly budget also seems to be adequate for a building your size. Also, normally, one would applaud spreading a special assessment over three years rather than within a few months, as often occurs.

The main problem here lies in the fact that owners do not even know the reason behind the special assessment and the large increase. One can be concerned that the board may be proceeding with expenditures that may fall under the rubric of those for which owners should be asked for their permission. You do need to requisition a meeting of owners to request a detailed accounting of and rationale for all these new expenditures.

Letter 13: I am totally frustrated by all the problems we face in my high rise and especially by the fact that owners don't seem to be able to get together and create a movement to force the government to strengthen the Condominium Act so that it will become more effective. Other groups lobby the government against us so why can't we get organized? Totally frustrated and wanting out of condo residence.

Answer: Your frustration is shared by many. However, there are mitigating circumstances that prevent owners from turning into an effective lobby group on behalf of their own needs and interests.

First, most condos have large proportions of tenants: Absentee owners often live all over Canada and even the world and are difficult to reach. As well, because they are not living in their own condo, they don't have the chance to experience its problems firsthand.

Second, as many of the letters clearly illustrate it, an owner who might try to organize others may end up being badly treated, indeed, by a manager who feels threatened or by a vindictive board and even by other owners who, as some readers have reported, think that he or she merely has "personal" issues with the board. Some of these owners have received letters from the condo lawyer to cease and desist or threatening them with legal action for one reason or another.

Third, even resident owners are difficult to reach. So the question remains: How to reach owners and organize them?

Fourth, owners are "sold" a lifestyle that is allegedly devoid of responsibility and concerns and, in theory, this should be partly true. But the reality is totally different because condos are not regulated. Owners who "bought" into this notion often get involved only after a real financial catastrophe happens, such as when there is a special assessment or their fees go up by %%%.

Last but not least, whenever an owners' association is formed, it is by volunteers who soon run out of time because of other commitments. And in contrast to other lobby groups mentioned by many readers—lobby groups with deep pockets--these associations of volunteers have very little money. Consequently, they can't pay experts, including lawyers, to draw up presentations to legislative bodies or organize campaigns on behalf of owners. Beware of interest groups that purport to represent owners when actually they merely represent their own industry or corporations--as we see in so many letters, a condo corporation may not even act in the best interest of owners, either via its board or its management.

Letter 14: They have replaced some parts in the elevators and they are now so noisy that they sound like a truck especially at night. We asked the people living on the other side and they hear it too. We also asked the people above and below us and they hear it as well. We asked the manager to come and listen to it and she did but she said that we were the only ones complaining and it is because our suite is built the way it is. End of the conversation for this really insipid woman. The board is as good as useless because they do what she says. We went back to talk to another owner and he appeared very fearful and didn't want to talk about it any longer and apparently the manager sent a letter to some owners telling them that it was illegal of us to knock on doors. Now everyone is afraid that if something happens in their suites and they need repairs, they shouldn't talk with us about this noise, otherwise the manager will not take care of their needs. Is there something we can do? We feel so isolated, and of course we can't sleep much.

Note : The letter above is very representative of some other letters received concerning noise issues. Owners are too often told that they are the "**only ones complaining**" and this seems justification for not doing anything. As the owner above writes, they feel very isolated. Feeling "**isolated**" is a recurrent theme in complaints received on a wide range of topics. A board and a manager have to attend to noise issues, even if only one owner is affected. At this point, there is no quick solution for such owners nor any inexpensive remedy. These two letters are also related to other issues with boards, managers, and lawyers already presented in earlier sections. In other words, problems tend to come in multiples with bad boards. Problems also repeat themselves from condo to condo.

Letter 15: We have recently purchased a condo in southern Alberta (Lethbridge). Within this complex of 60 units, two persons (related) own 14 of these units. In the annual general meetings, due to poor attendance

from other owners, we have noted that whatever these two gentlemen feel is in the best interest of the project, will get voted through due to their control of the vote. In reality, these two gentlemen rule the roost. I am uncomfortable with this, other than hunting down the other owners to ensure their attendance, is there any other way we can ensure that these "majority vote" owners cannot control the decision making? Any advice would be greatly appreciated.

Answer: Your problem is not a simple to resolve if owners don't get involved. Yes these gentleman can control who is elected to the board with having such a large vote. Your bylaws will state the number of people required to be on the board. My advice to you is to fill the board positions allowable in the bylaws. At the board level each member has one equal vote. This means if there are only 2 of them and they are elected to the board, and you need a board of 5 or 7 members, that they will be outnumbered when it comes to the voting at the board meetings (which is where all the decisions are made). The AGM is the only time the number of units one owns counts during the voting process.

Letter 16: We are having great difficulty find persons willing to be on the Board. What can be done if at the AGM there are no volunteers to be on the Board. Do the persons attending the AGM form a new Board?
thank you for your reply

Answer: This is not a unique concern for condominium corporations. Often only a few of the owners are willing to stand for election to the board. Before I respond to what your options are I would like to look at what can cause such apathy. There are generally a variety things that can cause apathy to result. The most common is that owners don't feel they have anything of real value to offer, in other words they are not needed, and that the existing board is doing just fine so why change things. When apathy results it is usually because the current board did not make the owners feel important and included in the operation of the corporation property.

The vast majority of owners in a condominium do not realize that the investment they have in the condominium property is impacted by the management style and that for this reason they need to be involved in the management, whether directly as a board member or indirectly as an interested owner. This also adds to the apathy factor. Providing information to owners is part of the solution.

The best way to resolve this issue is to be creative in the management of the property. Include the owners, that are not in the board, in as many ways as are possible without loosing sight of the fact the board is to make the decisions. When the board needs to make a decision the owners can provide input, research, etc. For example, if you're planning a landscaping project- form a committee of owners to determine the scope of the landscaping project and to identify the things needed to complete the project. Or for example, form a social committee of owners who become responsible for finding ways for owners to get to know one another. Condominiums that have a community lifestyle have fewer problems all around; from security to election to the board. Be creative and budget for professional assistance in strategic planning if necessary. The most important component to condominium management is the relationships between owners and board members.

Now, in response to your question. If no-one is willing to be on the board, the retiring board will need to hire a company to act as the Board. This is costly and difficult to find as the liability that that company takes on is huge, especially in a condominium where owners are not interested in the business of the condominium to such a great degree. Often informing the owners of the increase in cost that will result motivates them to get involved.