

CONDO CONVERSATION CORNER: A VIEW & A VOICE

Here are some new items and others concerning previous newsletter articles, Lunch-n-Learns, webinars and Conversations in previous Newsletter editions. If you want to contribute to the discussion, you can make a submission to cci-manitoba.ca/resources/condo-conversation-corner.

Disclaimer:

CCI Manitoba is unable to provide specific legal advice. We recommend that you speak to a lawyer regarding the challenges or problems you may be experiencing. For your information, a list of lawyers who are Professional Members of the Manitoba Chapter of the Canadian Condominium.

Note that frequent references are made to Manitoba's Condominium Act (The Act) <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php>.

SMALL CONDO CORPORATIONS (CC)S & AUDIT REQUIREMENTS

We've had a few inquiries about audit requirements for small CCs and expression of concerns with rising costs. Apparently some smaller accounting firms have gotten out of the audit business and some others have been bought out by larger firms. For smaller CCs, the cost of an annual audit can be a significant percentage of their annual budget.

First, the basics for financial reviews and audits are governed by The Act in sections 73, 156 & 157 which includes requirements for the auditor and provides an exception for CCs of fewer than 10 units in clause 156 <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A156>.

Exception

156(4) This section does not apply if

(a) a condominium corporation consists of fewer than 10 units; and

(b) all the unit owners consent in writing to dispense with the audit until the next annual general meeting.

As well, there are additional clauses in part 6 of the related Condominium Regulation <https://web2.gov.mb.ca/laws/regs/current/164.14.pdf>.

In terms of the costs, as is the case with many professionals and contractors, getting a few quotes from different companies could provide some savings. As well, all CCs could consider doing a financial review rather than a full audit to save some money - this was discussed on page 14 in our May 2016 newsletter edition <https://cci-manitoba.ca/sites/default/uploads/files/newsletter/CCI-MB-Newsletter-May-2016.pdf>.

SHORT TERM RENTALS (STRS) OUTSIDE OF WINNIPEG

We had an inquiry from a member in response to our prior communications about the City of Winnipeg webpage <https://engage.winnipeg.ca/short-term-rentals>

"Noticed that the questions in this article were only pertaining to Winnipeg. Will there be another survey done regarding other parts of the province?"

Note that this is not a CCI lead consultation, but an initiative of the City of Winnipeg in response to issues raised by the hotel industry and the condo industry (owners, residents and investors). Each municipality will have to address the issue on their own. If you have concerns about short term rentals in your neighbourhood, you should contact your municipal council. That said, we are the Manitoba chapter of CCI and can provide some assistance, in the form of communications via our website,

social media channels and quarterly newsletter. As well, we can share our experience from the situation within Winnipeg. Also note that your municipal councillors are probably aware of what is happening in Winnipeg on this issue because for the past year or so we have been providing complimentary copies of our newsletter to councils in the following municipalities

| | | |
|----------------------------|--------------------|-------------------|
| City of Brandon | Town of Altona | RM of Springfield |
| City of Dauphin | Town of Beausejour | RM of Gimli |
| City of Morden | Town of Carman | RM of Taché |
| City of Portage la Prairie | Town of Neepawa | |
| City of Selkirk | Town of Niverville | |
| City of Steinbach | Town of Stonewall | |
| City of Winkler | Town of Swan River | |

If you live in a condo outside of Winnipeg and you are not in the above list of municipalities, let us know, and we will add yours to the list.

NOTICE REQUIREMENTS FOR MEETINGS & ELECTION OF OFFICERS

We received the following inquiry from a member:

1. Can a Condo Corp call an emergency meeting and elect a new president, vice president and secretary with one week notice?
2. Also President duties, are these duties different with every condo corporation?

First of all, the unit owners don't elect officers (like President, Secretary, etc.) - unit owners only elect directors. The officers are chosen by the directors. So if they want to remove someone they will need to remove him or her from the Board.

The President's duties (and potentially those of other officers) are typically defined in the By-laws but need not be.

With respect to the notice provisions, the only guidance the Act gives is if there is something that needs written consent, and removing a director does not require written consent.

Minimum time period for giving notice of meetings

116(2) When this Act requires a meeting to be held to consider a matter that is to be determined by obtaining the written consent of unit owners, the minimum time period for giving notice of the meeting is 30 days.

By-laws may specify time period

116(3) The by-laws of a condominium corporation may specify the time period for giving notice of a meeting, which may be no less than 30 days for a meeting described in subsection (2).

Depending on the specific circumstances, this type of inquiry could pertain to a Board meeting (electing officers) or an owners meeting (electing directors), both of which have quorum requirements to conduct business. The pertinent sections of the Act for the Board would be 94 through 102 <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A94> while the sections pertaining to owners meetings would be 110 through 116 <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A110>

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BENCHMARKING DATA

We had another inquiry from a CC looking for benchmark data so as to compare their expense line items with other comparable properties, and similarly for their reserve fund and contribution levels. While this data does not exist, it is something we could collectively pursue. If you and your CC would be interested in working towards establishing benchmark data, send an email to us cci.mb.news@gmail.com

INSURANCE CLAIMS - CC OR UNIT OWNER POLICY

We received an inquiry about water damage in an apartment style setting and whether the CC's policy pays the claim or the unit owner's policy pays. The example posed is a toilet leak, possibly from a faulty flange installed by a contractor, affecting units below the floor of the leaking toilet.

If there is a covered loss under the CC's policy to the condo complex, other than unit owners improvements/betterments and their personal property, then the responsibility to repair falls to the CC and their insurance providers.

If a unit owner sustained damage to any of their improvements or betterments, and or personal property, they would make a claim through their own insurance company.

However, if a unit owner, by their act or omission to act causes the resulting damage, then the CC should be able to recover up to the applicable deductible of the CC policy,, which is dependent on the type of loss that is being dealt with. This holds true, even if the unit owner engages the services of a contractor to perform work in their unit, which loss can be attributed to their negligence.

Lastly, if it can be established that the contractor was negligent, then the CC's insurance will subrogate against that contractor on the full value of the claim once all repairs have been completed under the CC's policy, not just the deductible. However, any settlement would not be based upon "replacement cost" but "actual cash value", which means that if depreciation can be applied to any portion of the repairs, this will be negotiated between the adjuster for the CC and the adjuster for the contractor.

Claims against a third party can, in some instances, take months to resolve and can entail legal action, with the associated additional expense.

FEES FOR CONDO DOCUMENTS

We had an inquiry from a member that was selling their unit and was concerned about the costs associated with providing the buyer with the required condo documents. While they understood that documents such as Status Certificates and Disclosure Statements require time and effort from the CC and/or the Property Manager (PM), the prices seem high. More of a concern was the cost associated with static documents such as the Declaration or the Bylaws, which merely have to be sent as a PDF in many cases.

These costs are a frequent complaint, although some of the complaints could be avoided completely if the unit owner had merely retained copies of the documents they were previously provided, either upon their own purchase or during their residency.

So what should a PDF copy of a Declaration or the Bylaws cost? First consider if the document already exists or has to be scanned. Also consider if the document is available in a self-serve kiosk or whether a human has to intervene to send it to the requestor. Some (most?) self-managed CCs provide PDFs for free. Similarly, some property management companies provide the PDFs for free. Other CCs, self-managed or otherwise, have an online repository allowing owners to help themselves to a PDF copy.

As to the Status Certificate or the CC Disclosure Statement, this does take some time to produce. Property Managers are busy and skilled professionals and should expect reasonable compensation for their time. Similarly, for self-managed CCs, the volunteer directors would have to devote some of their own time to producing the documents. Isn't it reasonable for the CC to charge a fee? What would you deem to be reasonable? At least one self-managed CC provides all documents, including the Status Certificate and the CC Disclosure for \$100 total.

Does your Property Manager have a fee schedule for the various documents? Document requests, especially for larger CCs can take up a fair amount of time for a Property Manager. Also, when the requests come in for documents when a unit is for sale, time is of the essence, so the person processing the request will be interrupted from other important work to process the request. Keep in mind that Property Management companies are in the business of both making money and serving their clients - they have to do both to stay in business.

So if you are concerned about the cost of documents, PDF or otherwise, the first thing to do is maintain a file of the various documents you receive, such as the declaration and bylaws when you purchase your unit, and the other documents you receive during your residency such as budgets and annual financial reports. As for the documents needed to complete the sale of your unit, consider the document cost within the context of the overall financial transaction, which includes legal fee, realtor commission and the price of the unit.

LIABILITY PROTECTION FOR BOARD OF DIRECTORS

We received a submission through our Condo Conversation Portal

"Our bylaws state that our directors and officers will be indemnified and saved harmless by the corporation except for any fraudulent or dishonest act. My question is, does this bylaw protect the board?"

That is a standard provision found in most condominium Bylaws. Generally speaking, the intention is to indemnify the Board should they incur any liability or be put to any cost by virtue of being an officer or a director. So, yes, it is intended to afford some protection to officers and directors.

The CC should have liability insurance designed for a condominium corporation which includes the coverage for the directors for claims for bodily injury and property damage arising from the operations activities. The CC should also purchase a specific Directors' and Officers' liability policy to protect those on the board in this volunteer position. In particular, there is a requirement for director and officer liability insurance in section 187 of The Act,

Directors' and officers' liability insurance

187(2) A condominium corporation must obtain and maintain insurance for

(a) any liability incurred by a director or officer arising out of any act or omission by him or her with respect to carrying out his or her functions and duties, except liability that results from a breach of his or her duty to act honestly and in good faith with a view to the best interests of the corporation; and

(b) any liability incurred by the corporation arising out of any act or omission of a director or officer with respect to carrying out his or her functions and duties.

CCI MB COMMUNICATIONS COMMITTEE 🍁