

CONDO CONVERSATION CORNER: A VIEW & A VOICE

Here are some items 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>.

HUMAN RIGHTS AND ACCOMMODATION FOR PERSONS WITH DISABILITIES

We had an inquiry concerning bylaws that unintentionally discriminate against persons with disabilities. For example, a person with a disability:

- requested a different parking spot to make it easier to get into and out of their vehicle but were told that swapping of parking spots was not allowed;
- has an alteration or addition to their deck but were told they had to have it removed.

In relation to the parking example, some CCs have parking as part of the common elements and hence can reassign parking spots. However, in other CCs, the parking may be part of the condo unit itself (physically or otherwise). Therefore, allowing the person to alter their parking area may be the option to choose.

In relation to the second example, alterations or additions can't be made unilaterally to common elements without first communicating with the Board. Similarly, many CCs have restrictions on what can be done to the exterior of units without Board permission. A different course of action may be appropriate depending on the scope of change, whether the deck is part of the unit or the common elements, and whether the change would affect other unit owners.

A few key points to consider

1. The Manitoba Human Rights Code (The Code) takes precedence over The Act. This is a prime situation to consult with your Condo Corporation's (CC) lawyer before making any decisions as a Board.
2. The Code defines discrimination in clause 9(1) and the applicable characteristics of the person complaining about discrimination in 9(2) <https://web2.gov.mb.ca/laws/statutes/ccsm/h175e.php#9>
3. While The Act does allow the legitimate imposition of restrictions through provisions in the declaration, bylaws and rules, the CC may violate The Code and open themselves to a complaint if they fail to make reasonable attempts to accommodate a person with special needs.
4. The Board should always be thinking of reasonable accommodation in regards to issues that could potentially result in a complaint under The Code. Note that this does not mean that the CC is necessarily responsible for costs, in whole or in part.

OBJECTIONABLE ODOURS

We receive multiple inquiries about objectionable odours relating to second-hand smoke in general and are starting to receive inquiries about cannabis smoke in particular.

There are both health and legal aspects to this issue. Most of us are familiar with the health risks of smoking tobacco and second-hand smoke, but have you heard of third-hand smoke¹²? It is the smoke residue on all surfaces in a dwelling that residents subsequently encounter, especially infants that tend to put things in their mouths a lot. As well, while cannabis is now legal, it is now without health risks too.³⁴

Most condo declarations have a clause along the lines of no one on the property shall do anything that interferes with a unit owner's reasonable use, occupation and quiet enjoyment of their unit or the common elements. Some condos have declarations or bylaws or rules specifically prohibiting smoking, perhaps more so in apartment settings and less in townhouses.

Assuming smoking of tobacco or cannabis is not prohibited in your condo corporation, what are the implications for odours that may bother other unit owners? The Government's *Cannabis in Manitoba* website has an FAQ page <https://www.gov.mb.ca/cannabis/faq.html#q8> with the following.

Can I smoke cannabis in my apartment or condo building?

The Smoking and Vapour Products Control Act prohibits smoking and vaping cannabis in the common areas of residential buildings (hallways, elevators, stairways, lobbies, etc.), including apartments and condo buildings, but does not regulate whether Manitobans can smoke or vape in their suites. That is up to the property owner or governing board or association. Restrictions on smoking and vaping cannabis in public outdoor places will apply to the property of multiple-unit residential buildings. However, the owner of the building may designate an outdoor area on the property at least 8 metres from the building and any swimming pool where residents of the building may smoke or vape cannabis.

Can I smoke or vape cannabis on my condo balcony?

The Smoking and Vapour Products Control Act does not regulate whether Manitobans can smoke or vape in their suites; that is up to the property owner or governing board or association. A condo or apartment balcony is considered part of a private suite, so rules around cannabis use on a balcony would be dealt with by the building's property owner or governing board or association.

As well, the Government's Smoking Laws and Enforcement in Manitoba website has an FAQ section <https://www.gov.mb.ca/health/tobacco/laws.html> with the following

I live in a multi-unit dwelling. What can I do if a neighbor's smoke is coming into my home?

There are no "smoker's rights" in Canadian law but in the absence of a no-smoking policy in your multi-unit dwelling, smokers may smoke inside their units and on their balconies. Smoking is not allowed in a building's common areas in Manitoba. Fortunately, there are still steps you can take to help reduce smoke entering your dwelling.

Talk to Your Neighbour: Your smoking neighbour(s) might not realize the discomfort you feel and health concerns you have regarding their second hand smoke coming into your home. They might be willing to do things like close the windows in their unit or change where they smoke or change to another form of cannabis such as edibles, in order to address your concerns.

Seal off Dwellings and Solutions with Ventilation:

The Canada Mortgage and Housing Corporation has produced a document⁵ to help you eliminate odour transfer and minimize air movement between areas in multi-unit dwellings. The document identifies the common pathways for odour and smoke and offers suggestions on how to seal those pathways and demonstrates how to better ventilate your home. It also shows steps that can be taken in consultation with management such as sealing off the

smoker's dwelling and adjusting building ventilation, and pressurizing your apartment.

Contact Your Landlord: In order to persuade the landlord to negotiate a solution, it is best to notify your landlord by writing a letter documenting in detail the problem of second hand smoke entering your home and any steps you have taken to resolve the problem. Include details of any health concerns you may be experiencing as a result of the second hand smoke and support it with a letter from your physician if possible. Documenting the problem and showing you've tried to work towards a solution can also be used to persuade the landlord to break the lease if no other solution can be found.

Further Action: If smoking in the multi-unit dwelling breaches a no smoking policy or if the smoking is to an extent that causes you to not be able to reasonably enjoy your living situation, you can appeal through the Residential Tenancies Branch in Manitoba⁵.

So if you are being bothered by second-hand cigarette smoke or cannabis smoke in your condo, you do have some recourse, but keep in mind that there are no "condo police". Pursuing legal action is always an option, albeit an expensive one - there is some odour and smoking-related case law <https://condocases.ca>. If the problem is serious enough and can't be resolved, the last resort would be to move out of your unit.

CONDO REGULATORY AUTHORITY (AKA CONDO POLICE)

Sadly, we receive a regular stream of questions along the lines of "What does a unit owner do if their condo board has become a clique or corrupt or incompetent or uneducated or just not willing or unable to make the difficult decisions?". Currently, Manitoba does not have any "condo police" - is it time that we should have someone to go to for our concerns?

Our neighbours to the east have the Condo Authority of Ontario (CAO) aka "condo police" <https://www.condoauthorityontario.ca/> for a few years now, with prescribed forms, policies and procedures, along with mandatory education for condo board directors and free online courses to meet the requirements. As well they have a Condominium Authority Tribunal (CAT) process for resolving disputes <https://www.condoauthorityontario.ca/tribunal/>. The CAT process can be done online and at a very reasonable cost.

To pay for the CAO budget, they collect \$1 per unit per month from all condo unit owners, which translates to an annual budget of about \$9M for a condo market of about 10x the size of Manitoba's market. We could do something similar, perhaps at a cost of \$2-3 per unit per month, but should we? The old adage "be careful what you ask for because you might get it" comes to mind. There certainly would be advantages to having a regulatory authority here, but what would the disadvantages be? What are your thoughts?

MISCELLANEOUS Q&A

Here is just a sampling of some of the inquiries we regularly receive. For reference, here is a link to the Condo Act of Manitoba <https://www.gov.mb.ca/condo/> (The Act).

Q: Regarding requests for a special general meeting (SGM), how many owners are required for the request to be granted and how much notice is required?

A: Sections 110-199 of The Act deal with meetings. In particular,

Special general meeting requested by unit owners:

114(1) A unit owner may request that a special general meeting be held by giving the condominium corporation a written request signed by those unit owners entitled to vote who, at the time of the request, own at least 25% of the units.

Board receives request for special general meeting:

115(1) Upon receiving a request for a special general meeting, a board must (a) call and hold the special general meeting within 35 days; or ...

Meeting Notice: 116(2) indicates that minimum 30 days notice is required if the meeting deals with matters requiring

written consent while 116(3) indicates that the by-laws may indicate a longer notice period but not less.

Note: if the meeting is not dealing with matters requiring written consent, consult your by-laws for notice requirements.

Q: How can a condo corporation protect its interest and not get scammed when getting work done or not getting the work done they thought they requested?

A: The easiest answer is to engage a professional property manager but beyond that have a look at the idea of using a statement of work (SOW) or a request for proposal (RFP), which was discussed in the Summer 2021 edition on page 21 <https://cci-manitoba.ca/sites/default/uploads/files/CCI-MB-Newsletter-2021-Summer-Final.pdf>

Q: What is a bareland condo and what are the respective responsibilities of the condo corporation and the unit owner?

A: Section 1 of The Act includes the following definition

"bare land unit" means a unit defined by the delineation of its horizontal boundaries on a plan and without reference to any buildings, structures or fixtures on the plan.

As well, sections 12-18 provide requirements for the Declaration and mentions "bare land" in several clauses. The Declaration for the condo corporation would provide the details on the respective responsibilities of the condo corporation and the unit owner.

Q: Can you explain "quorum requirements, proxies, requirements for meeting notices and minutes..."?

A: Here are a few links answering common questions like these? Note that the authors are in Ontario, and hence you need to consider the differences in the provincial condo acts and regulations.

<https://ontcondolaw.com/2021/08/09/condo-lingo-common-errors-and-misconceptions/>

<https://ontcondolaw.com/2021/08/17/condo-lingo-common-errors-and-misconceptions-part-2/>

<http://condoadviser.ca/2021/08/how-detailed-must-your-board-meeting-minutes-be/condo-law-blog-Ontario>

Q: How to clarify and clean up a confusing declaration?

A: Ask your property manager for advice, if you have one. Discuss with your condo board and form a committee to review and update your declaration (and bylaws). Once you know what sections and clauses you want to update, it would be good to have an initial consultation with your lawyer so you avoid going in the wrong direction for the changes you want to pursue. Also, that initial consultation will allow you to be more informed about put together a reasonable budget.

Note that changes to your declaration require written consent from the unit owners. Sections 22-25 of The Act deal with amending the declaration <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A22> and The Act defines "specified percentage" in section 1 <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A1>.

"specified percentage" (a) in relation to a requirement in this Act for the written consent of unit owners for any matter, means 80% or, if a greater percentage is specified in the declaration for that matter, that percentage specified in the declaration; ...

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¹ <https://www.mayoclinic.org/healthy-lifestyle/adult-health/expert-answers/third-hand-smoke/faq-20057791>

² <https://www.neha.org/eh-topics/air-quality-0/third-hand-smoke>

³ <https://www.cdc.gov/marijuana/health-effects/second-hand-smoke.html>

⁴ <https://www.cdc.gov/marijuana/health-effects/index.html>

⁵ <http://smokefreehousingon.ca/wp-content/uploads/2015/11/odour-problems-cmhc.pdf>

⁶ <https://www.gov.mb.ca/cca/rtb/>