

IMPORTANCE OF DISCLOSURE STATEMENTS



When buying or selling a condominium, disclosure statements play a crucial role in providing the buyer with relevant information about the property and the condominium corporation. Two sources of information for prospective buyers and sellers are from the Canada Mortgage and Housing Corporation and the Canadian Condominium Institute. Proper disclosure can also insulate both the seller and buyer from costly errors if disclosure is questioned. From the CCI Manitoba Condominium Guidebook

"There are several forms of Disclosure Statements that must be produced in connection with the sale of a condominium unit, depending on the circumstances. For a unit in a project not yet registered, the Declarant must produce a Disclosure Statement on behalf of itself since the condominium corporation does not yet exist. In the case of an existing unit, both the current owner and the condominium corporation must supply a Disclosure Statement. The Disclosure Statements contain important information relating to the project as a whole, including information about building deficiencies that require major expenditures and the status of the reserve fund, as well as information relating to the specific unit."

The purpose of these documents is to enable prospective buyers to make informed decisions by understanding the financial health, governance, and potential issues associated with the purchase of the condominium. Buyers rely on the accuracy and completeness to assess the risks and benefits of purchasing a condominium.

If disclosure provided is inaccurate, incomplete, or misleading, it could lead to complications. Buyers could sustain unexpected financial expenses if they are not adequately informed about the condominium corporation's financial situation or any ongoing disputes or deficiencies. It is essential for sellers and their agents to provide accurate and complete disclosure documents to potential buyers upon demand. Failing to do so can have far-reaching implications, including potential legal consequences.

ONTARIO COURT CASE

CCI Manitoba regularly scans relevant or interesting news to add value to your membership. Keeping our members informed is central to our mission. A good example is a recent decision from the Ontario Superior Court about disclosure to a buyer and an impending special assessment.

A recent Ontario Superior Court of Justice decision deals directly with disclosure in the sale of an Waterloo Ontario condominium. Judge Gibson's decision, released in May of 2023, examined the disclosure of a special assessment. This

decision should remind us that improper disclosure can have consequences. The case is about the sale of a condominium in Waterloo Ontario in June of 2021.

While court decisions are generally binding only within the jurisdiction in which they are made, they can still be persuasive or instructive in other jurisdictions. An Ontario court decision may not have direct legal authority in Manitoba, but a Manitoba court could still consider it relevant and informative when faced with similar circumstances.

In this case, the buyer (Bruce) purchased a condominium in June 2021. In May 2022, Bruce learned that the corporation was seeking authorization from the owners to borrow up to \$2.5 million to repair or replace its lift station and water main. Bruce's portion of the repair was expected to be about \$34,000, which would be payable either up-front as part of a special assessment or as a loan. Bruce decided to challenge the corporation's ability to assess him a portion of the cost because in his view, the special assessment was not properly disclosed at the time he purchased his unit, about 11 months earlier.

COURT DECISION

In the case, Judge Gibson established that the corporation knew as early as 2017 that repairs to the water main and lift station would be required. At trial, evidence was submitted that the repairs were discussed in several board meetings. An auditor's report flagged the repair in November of 2020, the costs were significant and may require a special assessment or a corporate loan. Yet, on June 8, 2021, the day Bruce made his offer of purchase, the agent for the corporation issued a status certificate to Bruce that the corporation had "no knowledge of any circumstance that may result in an increase in the common expenses."

The case also established that the corporation's reserve fund did not possess the necessary funds to complete the work, and additional funding would be required. Judge Gibson's decision about the degree of disclosure in this case was clear,

[disclosure] requires fulsome disclosure, not minimalist. Only with full disclosure can the prospective purchaser assess their own risk and make informed decisions about the purchase...It should flag in clear language any financial concerns that should prompt a prospective purchaser to dig deeper into the "fine print."

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Manitoba disclosure requirements are different, but the principle is similar - it is safer to disclose than not, because if disclosure is successfully challenged, the consequences could be significant. Disclosure requirements in Manitoba are stated in the Condominium Act. CCI Manitoba also has a helpful guide that prospective buyers and sellers can download for free.

Judge Gibson's Ontario decision is a clear analysis of the failure, in that case, to clearly disclose the impending repairs and special assessment; he also observes that the buyer did not employ the services of a lawyer in his purchase. Judge Gibson wrote about the applicant:

Bruce did not retain a lawyer to review the status certificate, and he did not read all the information in the status certificate, relying on the summary provided by Marchesseau (Bruce's real estate agent) before submitting an unconditional offer. Bruce was not advised by Marchesseau of the note in the auditor's report with respect to water main repairs and the possibility of a special assessment and/or loan application. Marchesseau says that she explained to Bruce the risk of not retaining a lawyer to review the status certificate.

And further

Ought he (Bruce) have retained a lawyer to review the status certificate and advise him? Patently, yes. It is

always prudent for a prospective purchaser to do so, and choosing not to do so potentially exposes them to risk.

Bruce is entitled to an exemption from the special assessment or loan, for the period of time that he continues to own the unit. As a consequence, Bruce's portion of the special assessment must now be paid for by the other condominium owners.

None of the parties emerged unscathed. Bruce and the Condominium Corporation both paid legal expenses. The other owners of the corporation each paid a portion of Bruce's exemption from the special assessment. All of the involved parties would have been required to participate in pre-trial discovery, meetings, document collection and court proceedings.

LESSONS LEARNED

What can we in Manitoba learn from this case, accurate disclosure is important. If a corporation has knowledge of a significant impending expense and does not have the necessary funds available to perform the work, then later fails to properly disclose this potential risk to a potential buyer, there could be later significant consequences. Corporations may want to consult their professional partners if this scenario sounds familiar.

We can all learn from our mistakes, a wise person learns from other people's mistakes.

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