

## CONDO CONVERSATION CORNER: A VIEW & A VOICE

If you want to contribute to the discussion, you can make a submission to [cci-manitoba.ca/resources/condo-conversation-corner](https://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>.

### UNDERUSED HOUSING TAX (UHT)

We had an inquiry about the UHT from a member who was wondering if they would be impacted because of their extended absence during the winter. Since this is a relatively new term, we had to do a bit of research to prepare our commentary.

First of all, what is the UHT?

*"The Underused Housing Tax is an annual 1% tax on the ownership of vacant or underused housing in Canada that took effect on January 1, 2022. The tax usually applies to non-resident, non-Canadian owners. In some situations, however, it also applies to Canadian owners."*

Since it started in January 2022, most people didn't start thinking about it until they started preparing their 2022 income tax returns this past spring. It isn't clear at this point if Condo Corporations are thinking about it at all. CCI National in its Resource Centre has several articles published in the past half year (note that the Resource Centre contains articles and news from all CCI Chapters).

- The first was a CCI Toronto *Legislative Newsflash* provided the basic information, identified *Affected and Excluded* owners and indicated that Condo Corporations that own residential units may be in the affected group. <https://cci.ca/resource-centre/view/1518?words=uht&filter=>
- The second article was from CCI London and highlighted that Condo Corporations could face a \$10,000 penalty if it is *Affected* as opposed to *Excluded* and was not eligible for an exemption. Are you confused and worried yet? <https://cci.ca/resource-centre/view/1525?words=uht&filter=>
- The third article is from CCI Toronto and provides an update with the verbiage - *"For condominium corporations that own residential property (e.g., a superintendent's suite), it is likely that they would be required to file the annual UHT return, but would be exempt from paying the UHT unless one or more of the directors is neither a Canadian citizen nor a permanent resident."* <https://cci.ca/resource-centre/view/1519?words=uht&filter=>

The last article above includes the sage advice "...condominium corporations should seek professional advice from their auditor or other qualified professional..."

For the definitive information, we suggest you consult the Government of Canada's website, which is comprehensive but not necessarily clear to a lay person. It is recommended reading for Condo Corporation directors in general and Treasurer's in particular. Key terms to understand include *Affected* versus *Excluded* owners and the associated Exemptions.

<https://www.canada.ca/en/services/taxes/excise-taxes-duties-and-levies/underused-housing-tax.html>.

### NOISE POLLUTION

This topic came up at our recent *Condos, Concerns & Cocktails!* on June 8th at Smitty's Pembina & Grant location. While it is not condo specific and affects all residents, it is important, nonetheless. The context was Winnipeg but is likely applicable to other municipalities as well. The concern pertained to revving engines, repeated acceleration & deceleration, modified exhaust system, cruising up and down the street, car and motorcycle racing, and similar sources of vehicular traffic noise.

The condo owners that raised the issue with me lived on Wellington Crescent but the concerns raised are applicable to my condo as well, from which I can hear Regent Avenue West, and to condo owners on Portage Avenue and likely most of the other main roads in the City of Winnipeg. One of the condo owners said they have contacted their City Councillor, Sherri Rollins, who has been empathic, responsive to inquiries and has approached the Provincial Government and MPIC seeking support to address this nuisance noise situation. One possible enforcement measure, noise cameras, could take photos of offending vehicles when triggered by excessive noise and result in an automated ticket being sent to the owner. However, some Provincial legislation or regulation would need updating to allow sending the tickets. To date, there has been no action on that front, but with a Provincial election coming up this fall, it might be useful to ask the question of anybody knocking on your door and asking for your vote.

This noise pollution has been a problem for years. A quick scan of the internet for news items easily found multiple items.

- The City passed a bylaw in 2008 that included noise control.<sup>1</sup>
- In 2015, City police were getting more involved in the Sunday night drive events and taking enforcement action.<sup>2</sup>
- In 2018 the City looked at the possibility of installing noise cameras<sup>3</sup> but this was done in Edmonton and it backfired because the Alberta Government did not approve the devices.<sup>4</sup>
- Noise problems related to cruise night were again flagged by Councillor Cindy Gilroy in 2021.<sup>5</sup>

One of the things we have learned at CCI Manitoba the past few years is that politicians in general are receptive to communications from their constituents for issues of concern and that they do listen. So if this is an issue of concern for you, please let your MLA and Councillor know. The more voices that advocate for change, the more likely that change will occur.

### GENERAL QUESTIONS

One member asked a few questions pertaining to the Condo Act. The first question pertains to clause 139 (3)

#### Common expenses may be different

139(3) If provided for in the condominium corporation's declaration, the types of common expenses in respect of which unit owners are obligated to contribute may be different for different units or types of units.

**Q:** The specific question was whether the Condo Corporation could assess units' different monthly fees depending on how many individuals lived in the unit, perhaps because of increased usage of the common elements or increased common element expenses, such as for utilities.

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**A:** Changing the fee structure would require a change to the Declaration, and while Declaration changes can be done per the Act sections 22-25, it can't be for the purpose stated, since the fee structure is based on the units and not the individuals living in the unit, whose number may change frequently over the years. Keep in mind that most Declarations have a clause "single family residential" but human rights code has a very broad interpretation of "single family", which could include multiple generations and various cohabitations.

The second question pertained to a unit owner renting out their unit.

**Q:** Can the Condo Corporation charge a leasing levy?

**A:** Yes, assuming the Corporation's Declaration allows it and has a by-law meeting the requirements of clause 167 (t)

### Power to make by-laws

167(1) A condominium corporation may, by resolution of the board, make, amend or repeal by-laws ... (t) if permitted to do so by the corporation's declaration, specifying the amount of a levy to be imposed on unit owners who rent or lease their units, the account in which it is to be kept, the time by which the levy must be paid and the rate, or a method of determining the rate, at which interest is payable on overdue amounts;

Note that if the Declaration doesn't allow a leasing levy, the Declaration can be updated to do so Act sections 22-25.

Similarly, if the by-laws are found to be lacking they can be updated per the Act sections 167-168.

ALAN FORBES

CHAIR, COMMUNICATIONS COMMITTEE 🇨🇦

<sup>1</sup> City of Winnipeg Neighbourhood Liveability By-Law 1/2008 Part 5 - Noise Control (p42) <https://clkapps.winnipeg.ca/dmis/docext/ViewDoc.asp?DocumentTypeId=1&DocId=3996>

<sup>2</sup> Cruise-night crackdown coming for speedy, noisy Winnipeg crowd, CBC News, 2015-05-29 <https://www.cbc.ca/news/canada/manitoba/cruise-night-crackdown-coming-for-speedy-noisy-winnipeg-crowd-1.3093482>

<sup>3</sup> City looks at 'noise cameras' to crack down on rowdy Sunday cruise nights, CTV News Danton Unger, 2023-01-02 <https://winnipeg.ctvnews.ca/city-looks-at-noise-cameras-to-crack-down-on-rowdy-sunday-cruise-nights-1.4750957>

<sup>4</sup> Edmonton "noise camera" project backfires, Canad MotoGuide, 2018-09-17 <https://canadamotoguide.com/2018/09/17/edmonton-noise-camera-project-backfires/>

<sup>5</sup> Cruise night noise irks area residents, Cindy Gllroy, Free Press Community Review 2021-09-24 <https://www.winnipegfreepress.com/our-communities/metro/2021/09/24/cruise-night-noise-irks-area-residents>



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