

## CONDO CONVERSATION CORNER: A VIEW & A VOICE

**H**ere are some items in relation to prior newsletter articles, Lunch-n-Learns, webinars and *Conversations* in prior Newsletter editions. 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)

### FURTHER TO RESERVE FUNDS AND CONDO CORPORATION LOANS

The article about considering condo loans in lieu of special assessments<sup>1</sup> published in our spring 2020 newsletter continues to generate feedback from our members. This topic was discussed most recently in the winter 2021 edition<sup>2</sup> in our *Condo Conversation Corner* feature. In this update, a members raises three key points for discussion:

1. While it may have been acceptable back in 2015 to consider a condo corporation loan because of an immediate need for repairs and a lack of sufficient reserve funds, now that we're in 2021, all diligent Boards should have corrected their funding gap by now.
2. Using a condo corporation loan instead of using a special assessment approach forces the more solvent unit owners that could afford the special assessment to subsidize the less solvent units through their share of the borrowing expenses.
3. A condo corporation loan does make sense for the case of improving and upgrading the common elements for the betterment of all - this is what governments do on a regular basis, creating and improving public goods.

If you would like to add to the discussion, specifically in relation to the above points or raise other points, you can make a submission through our website [cci-manitoba.ca/resources/condo-conversation-corner](https://cci-manitoba.ca/resources/condo-conversation-corner) or send an email to [ccimanitoba@cci.ca](mailto:ccimanitoba@cci.ca) with a subject line of "Condo Loans and Reserve Funds". In particular for point 1, it would be interesting to get a sense of how well Boards have addressed their funding gaps - if you could include data on your current funding level in relation to the Ideal Balance in your RFS, we could compile the data, summarize and report back in a future edition. As well, perhaps include comments on your most recent RFS, which should be underway or complete by now.

### UNAUTHORIZED CHANGES TO COMMON ELEMENTS OR UNITS

We had an inquiry from someone who purchased a condo unit, and then sometime after moving in, they were approached by the

condo corporation (CC) about an unauthorized change by the prior unit owner, who had put in a patio. Sound legal advice is required here and CCI Manitoba is not in a position to provide such advice. For reference, here is our standard disclaimer

*Please be advised that our office 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 Institute can be found in the newsletter and on our website.*

While we can't provide advice, we can use this as a learning example and consider the general case of an unauthorized change within the context of new ownership of a condo unit. Some possible scenarios to consider are:

1. The unauthorized change was not disclosed to the buyer. Perhaps
  - a. the change was unknown to the CC prior to the sale of the unit;
  - b. the change was known to the CC but they failed to disclose;
  - c. the seller of the unit was unaware, having inherited the problem when they purchased the unit;
  - d. Or the unit owner knowingly did not disclose the problem.
2. The unauthorized change was disclosed to the buyer. Perhaps
  - a. the buyer didn't read the various documents that were provided during the 'cooling off' period after their purchase offer was accepted and they didn't have their lawyer review the documents;
  - b. the documents were reviewed but they just missed the disclosure or didn't understand the implications.

Regardless of the specific scenario, one could ask the question "what should have happened?". First of all, there should have been a disclosure per section 51(2)(a) of the Condo Act <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A51> from the seller using Form 2B per the Regulation, and also disclosure from the CC per section 51(2)(b) using Form 3 per the Regulation (<https://web2.gov.mb.ca/laws/regs/current/164.14.pdf>)

*51(2) If an agreement of purchase and sale for a unit is entered into after the declaration and plan for the land that includes the unit are registered, the seller must give the buyer*

- (a) a current disclosure statement that is signed by the seller and meets prescribed requirements;*
- (b) a disclosure statement that meets prescribed requirements and is signed by or on behalf of the condominium corporation not more than 90 days before the seller gives it to the buyer;*

However, upon reviewing the two forms, Form 2B doesn't seem to address the topic of unauthorized changes although it possibly comes close on page 2 with

*List any improvements to the unit or the common elements that the unit owner is or will be responsible for maintaining:*

Whereas Form 3, on the very first page there is a note in bold pointing us in the right direction

*Note: It is recommended that before the closing date of the agreement of purchase and sale, the buyer of a unit obtain a status certificate from the condominium corporation. A status certificate will show if the unit owner owes any money to the condominium corporation or is in breach of the declaration, by-laws or rules.*



**Building expertise  
you can count on**

Reserve Fund Studies  
Building Repair and Renewal  
Building Envelope Evaluation  
Structural Engineering  
Mechanical and  
Electrical Engineering

Timothy Reeve B.Sc., M.Sc., P.Eng.  
[tim.reeve@wsp.com](mailto:tim.reeve@wsp.com)

[www.wsp.com](http://www.wsp.com)

## CONDO CONVERSATION CORNER: A VIEW & A VOICE

and another note on page 12 of the Form

*Note: This Schedule does not deal with any changes a unit owner may have made to the unit or common elements without the knowledge or agreement of the condominium corporation.*

Interesting to note that the status certificate is only recommended and not required. Regardless, the buyer can request a *Status Certificate* per section 61 of the Condo Act <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A61> using Form 8 per the Regulation <https://web2.gov.mb.ca/laws/regs/current/164.14.pdf>. Generally, lawyers will recommend that their clients request a status certificate.

### **Status certificate**

61(1) Upon request by a buyer of a unit in a condominium corporation or a unit owner, the corporation must certify, on the form prescribed for this purpose, the following information:

- (a) the particulars of any amount that the unit owner owes the corporation;
- (b) whether, to the corporation's knowledge, there is any breach of this Act or its declaration, by-laws or rules for which a subsequent unit owner may be held responsible or that a subsequent unit owner may be required to remedy.

### **Effect of status certificate**

61(2) The status certificate is binding on the condominium corporation in favour of a buyer or unit mortgagee, who may rely on the certificate as conclusive proof of its contents as of the date of the certificate.

The Status Certificate Form 8 seems to be key, as on page 3 we have

9. As far as the condominium corporation's board knows, the current unit owner
- is not in breach of the declaration, by-laws or rules.
  - is in breach of the declaration, by-laws or rules. If the breach is not remedied by the current unit owner before the new unit owner's possession date, the new unit owner will be responsible for (provide details):
  - is in breach of a change agreement or some other agreement relating to the common elements. If the breach is not remedied by the current unit owner before the new unit owner's possession date, the new unit owner will be responsible for (provide details):

Lastly, and recalling the phrase "buyer beware", the buyer should thoroughly review the *Disclosure Statement(s)* and the *Status Certificate* by themselves and/or by their lawyer during the cooling-off period.

Note that the Status Certificate will document the issue only if the Condo Corporation knows about it. It is therefore useful to include a promise or representation in the offer to purchase along the lines of "the Seller has not made any change to the Unit or to the common elements except in accordance with The Condominium Act and the condominium corporation's Declaration, By-Laws and Rules".

If however, the problem was not disclosed to the buyer, what happens and who is liable? To be continued in a later edition of *Condo Conversation Corner*.

A few other aspects for possible discussion - if the unauthorized change was disclosed and detected by the buyer during the cooling off period, they could back out of the purchase via Condo Act section 54

### **Right to cancel within cooling-off period**

54(1) The buyer under an agreement of purchase and sale may cancel it for any reason before the end of the cooling-off period for that agreement.

or if the disclosure was made after the cooling off period

### **Right to cancel because of material change**

54(2) Subject to subsection (3), if a material change occurs in relation to an agreement of purchase and sale, the buyer may cancel the agreement at any time after the end of the cooling-off period and before being given possession of the unit.

### **Limitation**

54(3) The cancellation right under subsection (2) may not be exercised after midnight on the prescribed day or, if no day is prescribed, on the seventh day after the day on which the seller gives the buyer notice of the change in accordance with subsection 52(1).

but if it was not disclosed by the seller at all

### **Court may award damages for non-disclosure of material change**

52(2) The court may, on application by the buyer, order the seller to pay an amount to the buyer as damages resulting from a material change, if the court is satisfied that the seller failed to disclose the change to the buyer as required by subsection (1).

Remember the phrase "Buyer Beware". Read and understand the documents you receive during the cooling off period. Ask questions of your realtor. If in doubt, consider hiring a lawyer. Protect your investment.

CCI MB Newsletter Committee

CCI MB Communication and Membership Committee 🌟

<sup>1</sup> Condominium Loan Financing - A Practical Alternative to Special Assessments! by Blake Barrigar, CCI Manitoba Condominium News and Views, Spring 2020 Edition <https://cci-manitoba.ca/sites/default/uploads/files/newsletter/CCI-MB-Newsletter-2020-Spring.pdf>

<sup>2</sup> Condo Conversation Corner: A View And A Voice, CCI Manitoba Condominium News and Views, Winter 2021 Edition <https://cci-manitoba.ca/sites/default/uploads/files/CCI-MB-Newsletter-2021-Winter.pdf>



WELCOME  
TO THE  
CENTRE OF  
**WHAT'S  
NEXT**

[cwstevenson.ca](http://cwstevenson.ca)