

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>.

CONDO CORPORATION INSURANCE RATES

We received another insurance related inquiry from a member.

How to deal with rising insurance costs in the face of Condo Act mandated insurance to be held by the condo corporation. Do Condo Corporations have any options?

Since the inquiry refers to 'mandated insurance', perhaps the inquirer has the idea of self-insurance in mind (i.e. not having an insurance policy at all and paying for any losses from their own savings). Assuming your condo corporation (CC) does not have a few million dollars available in the event of catastrophic loss, it probably isn't a real option. However, the idea may have some merit for smaller losses, in which case you could self-insure against a higher deductible than you have now. Would it save you money on your insurance premium, but more importantly, would it be a good idea or a bad idea, taking into account the possible lower costs now but with higher risks in the future? Best to talk to your insurance broker about your insurance costs and risks.

In addition to talking to your insurance broker, claims prevention and risk mitigation are two plans of attack against rising insurance costs. For claims prevention there are numerous tips and tricks for fire prevention, water damage, slip and fall injuries, etc, many of which can be found on our CCI Manitoba website in the members only area <https://cci-manitoba.ca/members-only/forms-templates>, which you can access with a username of **Member2021** and a password of **MBcondo204**. These tips and tricks are courtesy of our members at Hub International and BFL Canada.

The tips and tricks are really just mitigation actions that should be part of an overall risk mitigation plan for a condo corporation (CC). Does your CC have a risk mitigation plan and is it regularly reviewed and updated by the Board? If not, now is the time to start on one. If you are not sure what to include in the plan, get

a small group together under the direction of your Board and do some brainstorming. Think about the possible insurance claims that could be made and their causes. Your insurance broker could provide some guidance and so could your property manager. The basic idea is to come up with a list of possible risks, assess their likelihood of happening given your current preventive measures and then assess their impact if they did occur. Using simple high, medium & low ratings, and a simple matrix, such as the one below, you can determine the priorities to mitigate the risks.

Risk Mitigation Prioritization		Risk Likelihood		
		High	Medium	Low
Risk Impact	High	Immediate Action Required		
	Medium		Address after high impact & high likelihood	
	Low			Address all other risks first

Another growing area of concern for risk mitigation pertains to climate change, as alluded to in an article about the recent flooding in BC and the fires in the summer.¹ For your condo, have you included fire and flood in your risk mitigation plans and if so, have you considered how climate change may affect these risks? For information on climate change and the expected impact on our Province, the Prairie Climate Centre at the University of Winnipeg is a good resource.²

ENFORCEMENT OF DECLARATION CONTRAVENTIONS

Clause 218(1) of The Act indicates fines can be imposed for by-law or rule contraventions, but makes no mention of the Declaration.³ Was this an oversight when The Act was drafted? Clause 169(1) of The Act allows Rules to be implemented to affect the use of units and common elements for various reasons. However, clause 13(1)(d&e) of The Act talks about Declaration restrictions related to units and common element use⁴, clause 178(1) deals with common element changes by owners⁵, and clause 211(1) mentions imposition of leasing levees⁶. If fines can't be levied against contraventions of these and other Declaration clauses, what recourse does a condo corporation (CC) have?

Assuming that the lack of mention of the Declaration in clause 218(1) was an oversight of the authors of The Act, until such time as The Act is updated, could a CC pass Rules corresponding to Declaration clauses to allow for fines as part of their enforcement process. While it could be possible to do so, it would require a fair amount of clerical work to duplicate the intention of specific Declaration clauses and could introduce conflicts of interpretation if the verbiage is not transcribed 100% accurately. Plus the CC would have to

follow the process per clauses 169-170 in The Act to put the Rule(s) in place.⁷

To avoid the transcribing effort and potential interpretation conflict, could a CC instead pass a general Rule along the lines of "... consistent with clause 169 of The Act, for any contraventions against the Declaration's stated restrictions on units and common elements, said contraventions are subject to fines per our process documented in our..."?

What do you think about an approach such as this? Do you think it would work? Could a unit owner challenge the CC in court for making such a Rule? If the unit owner appealed the fine to the Residential Tenancies Branch (RTB), would the RTB side with the unit owner or the CC? Since this approach uses a Rule rather than an amendment to the Declaration or bylaws, would the Land Titles Office (LTO) have a say? Does anyone want to propose an appropriate wording for such a Rule? We look forward to getting your thoughts and opinions on this topic, as it could be an easy and effective way to empower Boards to enforce the rules and regulations.

CHECK YOUR MANITOBA HYDRO BILL

We've had several inquiries and comments from condo unit owners and property managers about the reduction of taxes on Hydro bills that was mentioned in our Fall 2021 Newsletter.⁸ The context mentioned in the article was for townhouses with an electric furnace in each unit and no natural gas on the property. The article indicated that **unit owners can apply** to have the taxes on their Hydro bill reduced - from 7% to 1.4% for the PST and from 2.5% to 0.5% for the City Tax.

After reading the fall CCI newsletter, a Winnipeg Exchange District condo owner applied to Manitoba Hydro for the reduction of Provincial and Municipal taxes. In this case, the unit owner's sole source of heat to their unit is an electric forced air furnace. After a review of the application by Manitoba Hydro, the unit owner qualified for the tax reduction. Manitoba Hydro backdated the reduction to the unit owners condo purchase date, December of 2017 and issued a credit on their account of \$290.

With this information, the unit owner told other unit owners and long term rental residents within the same condo corporation about the tax reduction. To date, one other resident has also qualified and is being issued a credit backdated to 2017. Other residents have applied and Manitoba Hydro is reviewing their applications.

In the above noted cases, each unit has one electric forced air furnace. Hot water for each unit in this condo corporation, comes from a central boiler heated by natural gas.

Note that this tax reduction potentially applies to condo owners anywhere in the Province

and applies to both electricity and natural gas customers, per Manitoba Provincial Retail Sales Tax Act clause 2(1.2) & 2(1.3).⁹

2(1) Tax on tangible personal property and taxable services

Every purchaser of tangible personal property or a taxable service must pay tax equal to the fair value of the property or service multiplied by the general sales tax rate.

2(1.2) Reduced rate for mixed uses of electricity

Despite subsection (1), the tax payable on the purchase of electricity is computed at the rate of 1.4% of its fair value if at least 80% of the electricity is used for

(a) heating a dwelling unit

(i) in which the purchaser resides, and

(ii) at least 80% of which has the permanently installed capability of being fully heated by electricity; ...

2(1.3) Reduced rate for mixed uses of piped gas

Subsection (1.2) applies to the purchase of piped gas as if the references in that subsection to "electricity" were read as "piped gas".

We submitted an inquiry to Manitoba Hydro via email to get clarification of the eligibility requirements - here is their response:

Hello,

Thank you for your email.

Natural gas and/or electricity may be subject to a reduced PST of 1.4% if the unit is a residential dwelling occupied by the owner or tenant. Each unit must be independently heated, with its own furnace, boiler or baseboards. Heating units must be hardwired, portable units do not qualify.

Customers can verify the tax rate being applied to their bills by reviewing the charges on the second page of their energy bills. If a customer is paying full PST (7%) and believes they qualify for the reduced rate (1.4%), please complete all the fields in the attached document and return to Manitoba Hydro.

Energy used for the heating of common areas does not qualify for the reduced PST; also revenue properties do not qualify for the reduced PST when billing in the landlord.

According to The Retail Sales Act, Manitoba Hydro is responsible for charging the Retail Sales Tax. For additional information, please refer to the Province Of Manitoba Finance at <https://www.gov.mb.ca/finance/taxation/electricity.html>.

If you have any questions, please call 204-480-5900 (Winnipeg) or 1-888-624-9376.

Thank you.

Manitoba Hydro

Tax Correspondence

Note that the above information indicates that the purchaser of the gas or electricity must be resident to be eligible, i.e. either a resident owner or tenant. As such, it appears that investor/non-resident owners would

not be eligible. If you are an investor/non-resident owner, we would like to hear from you to confirm this point - contact us via email cci.mb.news@gmail.com.

As to the City of Winnipeg tax on the Hydro bill, have a look at https://assessment.winnipeg.ca/AsmtTax/English/Other_Taxes/GasElect.stm, which states "If electricity is the primary source of heat then it is assumed that 80% of the electricity consumption is for the purpose of heating. The tax would be calculated as 2.5% X 20%" - this explains the reduction in the City's tax on the bill from 2.5% to 0.5% but it is worth noting that it applies only if the primary source of heat is from electrical consumption (i.e. if natural gas is the source for the heat, there would be no reduction in the City tax regardless of any reduction in the PST). From the Manitoba Hydro website we have from their glossary of terms "City Tax - A tax assessed by the City of Winnipeg. The tax rate is reduced on electricity services where the heating equipment is permanently installed and capable of heating 80% or more of the entire building. The city tax is applied on each line of billing and then totalled. On natural gas services, the tax rate is applied to the lesser of the actual usage of natural gas and the calculated non-heating use." This implies that other municipalities don't have their own city tax on the Hydro bill. If you live in a condo outside of Winnipeg, please let us know what your Hydro bill has for taxes - cci.mb.news@gmail.com.

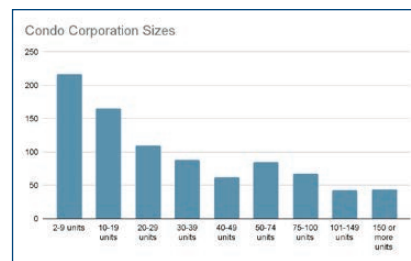
To apply for the reduced taxes on the Hydro bill, the unit owner should phone Manitoba Hydro at 204-480-5900 (Winnipeg) or 1-888-624-9376 (anywhere) or send an email to TaxCorrespondence@hydro.mb.ca. Once you provide Manitoba Hydro with your account information, a preliminary assessment is made and if you appear to qualify, Manitoba Hydro will send you a form to complete and submit. After submission, a determination will be made if eligibility requirements are met. If eligible, Hydro will apply the applicable reduction and provide an account credit for prior overpayment of taxes. Note that if eligible for the tax reduction, there is no need to separately make an application to the City of Winnipeg.

ATTENTION: SELF-MANAGED & SMALLER CONDO CORPORATIONS

Normally, Condo Conversation Corner items start with an inquiry from a member. This time, CCI wants to start the conversation, specifically with self-managed condo corporations (CCs) and smaller CCs. Hopefully with the help of you, our valued readers, this can become a recurring feature in our quarterly newsletter.

Who are our self-managed CC members? Only 12% of our CC members are self-managed, 75% of which have 53 units or less, and half of them have 25 or fewer units. Compare those numbers with our CC members that are professionally managed by a property management company - 50% have more than 48 units and 75% have more than 32 units.

Since our self-managed members are smaller in size, we looked at the broader condo market in the Province. Based on our research we know the sizes of almost 900 CCs, with a breakdown by size as shown in the figure.



Our research data suggests 73% of CCs are 49 units or smaller, which is similar to our self-managed CC data (75% are 53 units or smaller). Can we then infer that many of these small CCs are self-managed? If so, are these CCs being well served in the industry? Certainly not by CCI since they are not members and hence don't have access to our knowledge base and education resources. Are they being well served by accountants, engineers, contractors, lawyers, insurance brokers and others, or are they struggling?

What are the pain points or issues of most concern for smaller and self-managed CCs? We know of two cost related issues for sure - requirements for reserve fund studies and for annual financial audits or reviews, both of which represent bigger proportions of the budgets for smaller CCs. While both of these items are important for the management of a CC, some flexibility in the Condo Act requirements for smaller CCs would probably be beneficial (note that there are exceptions for auditor appointment for CCs of 9 units or less but nothing in regards to reserve fund studies). Similarly, depending on what is included in their common elements, the associated fees for a unit owner may be proportionately higher. Likewise, even our CCI membership fees are proportionately higher for smaller CCs.

If you live in a smaller CC or a self-managed CC, please talk to us. We'd like to better understand your needs so that we can better serve you. Please consider starting a dialog with us by sending an email to cci.mb.news@gmail.com or by making a submission to ccimanitoba.ca/resources/condo-conversation-corner. Let us get the conversation going.

CCI MB COMMUNICATIONS COMMITTEE 🍁

¹ Can we blame climate change for B.C. 'atmospheric river'? Greg Meckbach, 2021-12-02 <https://www.canadianunderwriter.ca/climate-change/can-we-blame-climate-change-for-b-c-atmospheric-river-1004215133/>

² <https://prairieclimatecentre.ca/>

³ <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A218>

⁴ <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A13>

⁵ <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A178>

⁶ <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A211>

⁷ <https://web2.gov.mb.ca/laws/statutes/2011/c03011e.php#A169>

⁸ Field Notes from a Condo Corp Treasurer, CCI MB Condominium News and Views, Fall 2021 Edition <https://cci-manitoba.ca/sites/default/uploads/files/CCI-MB-Fall-Newsletter-2021-FINAL.pdf>

⁹ Manitoba Retail Sales Tax Act [https://web2.gov.mb.ca/laws/statutes/ccsm/r130e.php#2\(1.2\)](https://web2.gov.mb.ca/laws/statutes/ccsm/r130e.php#2(1.2))