



Terminating Developer Agreements by Condo Corporations

By Barbara Holmeson December 17, 2010

Section 112 of the Condominium Act (the “Act”) permits the new board elected after the turnover of the Corporation to terminate certain types of agreements for the supply of goods, services or facilities entered into by the Corporation prior to the turnover. The rationale for this section is that condominium corporations should not be bound by “sweetheart deals” made by the Declarant, that may not be in the best interests of the Corporation. A recent court decision, Lexington on the Green Inc. v. TSCC No. 1930 considered whether Section 112 would allow a Corporation to terminate its obligation to purchase a manager’s residence unit from the Declarant.



The Corporation’s Declaration stated that the Corporation was obligated to purchase from the Declarant the residence manager unit, one parking unit and a storage locker for a specified price within 120 days after registration of the Declaration. The Disclosure Statement also set out in language similar to the Declaration the Corporation’s obligation to purchase those units. In addition, the first-year operating budget for the Corporation showed the mortgage payments for the units as a budget item.

After registration of the condominium, but prior to turnover by the Declarant to the purchaser-elected board, the Corporation entered into an agreement of purchase and sale with the Declarant, on the terms set out in the Declaration. The purchaser-elected board passed a resolution purporting to terminate the agreement of purchase and sale pursuant to section 112 of the Act.

At trial the judge agreed that the board could terminate the agreement and also ordered that the provision in the Declaration which obligated the Corporation to purchase the units be amended to state that such obligation was subject to section 112 of the Act.

This decision was reversed on appeal. The appeal court determined that there is a distinction in the Act between obligations created by the Corporation’s Declaration and obligations arising out of legally binding contracts between two or more parties. Based on this distinction a Corporation cannot rely on section 112 to terminate obligations created in the Corporation’s Declaration. In the Lexington on the Green case this meant that the actual agreement of purchase and sale could be terminated, but the obligation contained in the Declaration to purchase the units could not be terminated.



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There are lessons to be learned from this case. Before attempting to terminate any agreement, condominium boards should check to see if the agreement relates to an obligation imposed on the Corporation under its Declaration. Developers should ensure that obligations to purchase units, equipment or other facilities from the Declarant and to enter into mortgages/loan agreements relating to such purchases are clearly set out in both the Declaration and the Disclosure Statement and also reflected in the budget, in order to avoid having these obligations terminated by the purchaser-elected board.

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