



## **Strategies for Condo Enforcement**

By Ryan Treleavanon January 19, 2011

Under the Condominium Act, 1998 the Board of Directors has a statutory obligation to enforce the terms of its Declaration, By-laws and Rules. Inevitably, every Condominium Corporation will face instances of non-compliance with a wide range of obligations. Compliance can be achieved through a number of different routes, and the appropriate strategy is highly fact dependent.

In terms of general advice, Property Management should ensure that an effective document retention policy is in place. Properly documenting complaints is extremely helpful in any compliance setting. If a unit owner or resident approaches a member of the Board or Property Management with a complaint, they should be encouraged to reduce their complaint to writing and send it to Property Management. Independent files should be kept for each unit for which complaints have been received.



Properly documenting each step in the compliance process is very important and will save considerable expense should future legal proceedings become necessary. The following approach is not exhaustive, but serves as a general 'best practices' template:

The first step is to determine the validity of the complaint. If Property Management has received sufficient complaints, it should reach out to the complainants to obtain further information. Early contact with the aggrieved unit owners is a helpful strategy as it often diffuses the frustration felt by those individuals and combats the common perception of owners that Property Management and/or the Board are not actively enforcing the Rules. Keeping the complainant involved in the process often reduces tensions throughout the process.

Provided the Board and Property Management consider the complaint to be valid it will be appropriate to contact the offending unit owner or resident in an attempt to schedule a meeting to discuss the complaints. A letter should be sent by Property Management confirming the nature of the complaints received, identifying the specific Rules that have been violated and requesting an opportunity to speak to the unit owners about their obligation to bring themselves into compliance.

During this first meeting you should attempt to obtain as much information about the parties and the dispute as possible. Hopefully a resolution can be negotiated between the parties at this time, even on a trial basis. The results of the meeting should be recorded in a letter from Property Management that is sent to all parties.



If the offensive conduct is not resolved, Property Management should write a more forceful letter to the offending unit owner or resident. In this letter the specific breaches of the Declaration, By-laws or Rules should be identified and detailed. The unit owner should be informed that the Board has a statutory obligation to enforce these Rules and that if compliance is not immediately achieved the matter will be referred to the Corporation's solicitor and any subsequent legal fees incurred in securing compliance will be charged back to the unit by way of common expenses as (and if) provided for in the Declaration.

Should a matter escalate to the point where lawyers become involved, the first step is for the lawyer to send a letter to the offending unit holder notifying of the lawyer's involvement. The contents of the letter are very similar to the last letter to be sent by Property Management, but includes more exact estimates of the legal fees associated with compliance proceedings. Often the receipt of a letter from a law firm is a key component to securing compliance.

At this point the compliance route becomes largely dependent on the specific conduct at issue. Disputes over the terms of the Declaration, By-laws or Rules are required to proceed through mediation and then arbitration under the Condominium Act. Depending on the specific issue, the lawyers will often recommend an appropriate mediator or arbitrator for the dispute. If mediation and arbitration fails to secure compliance, the Corporation may proceed to the Ontario Superior Court of Justice to obtain a compliance order. Once a court order has been obtained, it can be enforced through contempt proceedings or through the local sheriff.

In some circumstances it will be possible to proceed directly to Court to obtain a compliance order. If the offending conduct is likely to injure an individual of the community or cause damage to property, the Condominium Act does not require the Corporation to first proceed with mediation or arbitration. This process is generally reserved for extreme cases.

Ultimately each dispute is unique and the appropriate response will be dictated by the facts of that case. Ensuring appropriate record keeping and initial response procedures are in place will help reduce the complexities of future compliance matter and reduce the costs of conflict for the Corporation.

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