



What remedy is available when a Condominium corporation treats owners unfairly?

By Rod Escayola on July 18, 2011

A complaint that we often hear from condominium owners is that they are being treated unfairly by the Board. Conversely, many owners or the condominium corporation may feel that the conduct of a single individual is so intolerable that it is oppressive to the community as a whole. Section 135 of the *Condominium Act* provides an extraordinary remedy to both owners and condominium corporations in such cases of oppression or unfair treatment.



The oppression remedy serves the purpose of protecting everyone's *legitimate expectations* from conduct that is unlawful or from conduct that, while technically authorized, is considered unfair or oppressive. In such cases, the Act grants the Court "awesome" powers to make any order it deems proper, including an order prohibiting a specific conduct or requiring the payment of compensation.

Section 135 of the Act deals with three different kinds of conduct:

- Oppressive conduct;
- Conduct that is unfairly prejudicial; and,
- Conduct that unfairly disregards someone's interest.

What remedy is available when a condominium corporation treats owners unfairly?

Oppressive conduct usually requires an element of bad faith, meaning that the respondent took an action *knowing* that it was wrong or unfair. Lack of diligence, abuse of power and failure to cooperate are examples of bad faith. A recent case dealt with a corporation's application against a unit owner who had engaged in significantly aggressive behaviour towards other unit owners and management. Relying on the oppression remedy and on the court's wide discretionary powers, the judge concluded that the owner's behaviour was coercive, abusive and oppressive. Acknowledging that the measure was drastic, the judge ordered the departure of this owner from the condominium, the sale of his unit and the recovery from the proceeds of the sale of the unit of the Corporation's costs in returning the unit to a state of fitness for occupation. The Court also ordered that the owner pay the Corporation's costs on a full indemnity basis and that all costs be deemed to be common expenses collectible from the sale of the unit.



Conduct that is *unfairly prejudicial* only requires that the complainant's rights be limited in an unfair or inequitable manner. It includes situations where two groups of owners in a similar situation receive different treatment by the Board. To illustrate this, one only has to think of a situation where the Board is allowing some owners to benefit from a privilege while refusing this same privilege to others.

Claims that conduct is *unfairly prejudicial* are often raised together with allegations of conduct that *unfairly disregards someone's interests*, the latter being found when one's interests are unjustly ignored or treated as being of no importance. An example of this was discussed in a case where a condominium complex was comprised of both commercial and residential unit owners. Although the "commercial directors" were removed from the board in a legal majority vote, the commercial directors sought and successfully obtained a declaration that their removal from the board was unfairly prejudicial to them and unfairly disregarded their interests.

There are however limits to recourse to the oppression remedy, as this remedy only protects *legitimate expectations* as opposed to "wish lists". For instance, the courts will balance the owner's objectively reasonable expectations with the Board's statutory authority to govern and duty to exercise judgment in making decisions. The court discussed the requirement to strike this balance in a 2009 case where an owner made an application for the removal of a new walkway servicing the parking lot, arguing that it was unnecessary, oppressive and interfered with his privacy. The court held that the decision of the Board was not oppressive because the old walkway presented legitimate safety issues and that all other options had been carefully considered by the Board.

The oppression remedy is aimed at balancing reasonable expectations and conflicting interests, often in order to protect individuals when the rule of majority is unfair to them. The oppression remedy can also serve to give relief to a corporation dealing with recalcitrant owners. In light of the existence of this remedy, it is paramount that condominium corporations treat everyone fairly and apply the same rules to everyone. A corporation cannot, for instance, allow some owners to disregard the rules and only enforce them against other owners. It is important for the Board to be consistent and fair.

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