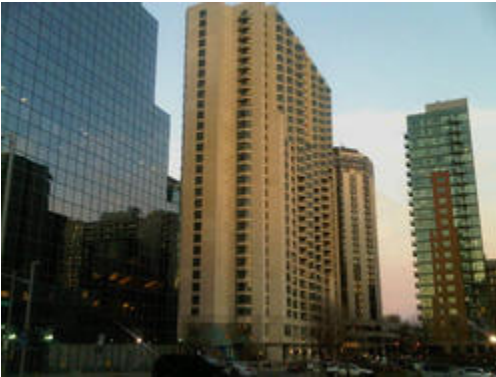




## Condominium Enforcement Costs

By [Shawn Pulver](#) on December 01, 2011



A significant difference between condominium litigation and typical commercial litigation is that a condominium corporation has the right under the [Condominium Act](#) to recover all of its legal fees in obtaining a compliance order against a unit owner.

Typically, in a civil proceeding, a successful party is entitled to receive up to approximately 60% of its legal costs (depending on any offers to settle that may have been previously advanced). This means that even if a party "wins" the case, he or she will almost never recover all of his or her legal fees.

Under the *Condominium Act*, a condominium corporation which successfully obtains a compliance order is not limited to recovery of the legal costs ordered by the Judge. Rather, under [section 134\(5\)](#), a condominium corporation may proceed to lien for all "additional actual costs to the corporation in obtaining the order."

This is a powerful remedy afforded to condominium corporations, and was enacted by the legislature to ensure that condominiums are not at a financial disadvantage by having to commence successful enforcement proceedings. In practice, however, it is sometimes difficult and costly for a condominium corporation to enforce its lien and recover all of its "additional costs."

The issue is that while [section 134](#) of the *Act* ensures recovery of all legal costs to obtain the court order, the corporation can not ensure recovery of its costs to enforce its lien against the unit owner. Therefore, if a corporation has incurred \$50,000.00 in legal costs in obtaining a compliance order, and only \$25,000.00 is awarded by the court, it may, pursuant to section 134(5), lien the unit owner for the additional \$25,000.00. However, there may be costs associated with enforcing the lien (including attempting to sell the unit by way of power of sale, and other legal costs to negotiate payment), that may not be fully recoverable by the corporation.

It is for this reason that a condominium corporation must first consider whether it is prepared to potentially be out of pocket for some costs before deciding to lien. While the Ontario Court of Appeal has confirmed that condominium corporations have a legal right to [lien](#) for these additional costs, the recovery of these costs is less than certain. Ultimately, the recovery depends on the unit owner's ability to pay and whether he or she attempts to defend the enforcement of the lien.

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