Court-Appointed administrators (Part Two)

January 17, 2012 By Rod Escayola

In my recent blog posting, I discussed the factors that courts will consider before setting aside an elected condominium board of directors to impose a court-appointed administrator.

Below are some examples where the courts have intervened and appointed an administrator. They include situations where:

- the corporation is in serious financial trouble, where independent auditors have determined the existence of irregularities in the financial records, or where the financial interests of the owners are at risk;
- there are ongoing breaches to the fire code or building code regulations or the corporation has operated for numerous years without following the legislation;
- the property is in a state of disrepair and neglect, requiring immediate attention and the corporation has been without a property manager for numerous months;
- the corporation has gone without an AGM or a board election or the board has not presented financial statements for an extended period of time;
- there has been deliberate misconduct on the part of the board of directors; and,
- the reserve fund is “flat broke” and the property is unsafe or requiring urgent work.

These are, of course, only examples and the court’s decision will turn on the specific facts of each case.

The Recent case of MTCC No. 856

In the recent case of *Metropolitan Toronto Condominium Corp. No. 856*, both the owners and the newly-elected board agreed that the corporation had been mismanaged over the years resulting in a lack of repair, maintenance and financial planning. The facts were not disputed: the condominium was currently in a crisis situation, with an operating deficit of $360,000, of which approximately $100,000 was for unpaid water charges, and uncollected common expenses from owners totalled over $46,000. Both parties agreed that the situation was intolerable and that the Board could not continue as it was currently constituted.

The board members alleged that they had been “verbally abused, harassed, or intimidated” by unit owners in their effort to carry out their mandate and were of the view that only an administrator could bring the administration of the condominium’s affairs under control. On the other hand, the majority of owners alleged that the current board of directors “had turned insensitive to the genuine concerns of the owners, was intimidating and, as a result, no longer enjoyed the trust and confidence of the majority of owners”. They sought the removal of the present board of directors and new elections, or alternatively, the appointment of an administrator selected by them.

The court concluded that:

a) There was a strong (sometimes even bordering on violent) struggle within the corporation amongst competing groups such as to impede or prevent the proper governance of the corporation;

b) Only the appointment of an independent administrator had any reasonable prospect of bringing the affairs of the corporation in order;

c) It would be in the best interests of the corporation and of all the owners that an administrator be appointed to operate and direct the affairs of the corporation until further order of the court.

The court appointed the administrator for a period of six months but, “given the significant challenges in regard to the property, both of a political and financial nature”, the court ordered the administrator to present a report after three months for approval by the court.

Condo corporations should be aware that the appointment of an administrator will not be appropriate in all cases of a disagreement between board members and unit owners. Since self-governance by the board is the expected norm, courts only exercise the power found under section 131 of the *Condominium Act* when it is absolutely necessary.

My next post on this topic, will deal with the end of the administrator’s term or how and when corporations can return to self-management.
