

Ch-Ch-Ch-Changes

People generally say that change is good. However, in the condominium lifestyle, when people hear the word change, and if you are on the board of directors, the hair on the back of your neck may stand. Many times change in the condominium context can lead to a lot of trouble, misunderstandings, complaints and even expensive litigation. The change I am talking about refers to changes that owners make to their units and their exclusive use common elements such as their balconies or terraces. Hopefully, this article will answer some questions and alleviate concerns that many owners have with respect to when and how they can make these kinds of changes and why the boards of directors need to be so involved.

To start with, the board has a statutory duty to ensure that the Declaration, By-laws and Rules are complied with. At the same time, the unit owners have the right to expect that the board will enforce compliance with the Declaration, By-laws and Rules. Since most, if not all, declarations contain prohibitions against the altering of units and /or common elements without board approval, the board really has no choice but to make sure this provision of the declaration is complied with and, therefore, they must get involved immediately upon being notified about a unit owner's intention to alter their unit or common elements. The rationale behind this is quite simple. A condominium building is a complex development that has walls, plumbing, mechanical and electrical installations that service multiple units. An alteration incorrectly done can affect any one of these items and thus could cause problems in a number of units and in some cases the integrity of the structure of the building can be affected. Therefore, the Board must make sure that when a unit owner wants to make certain changes that their experts are notified and can determine what the effect, if any, will be on the structure of the building. What would surprise many people is how even the smallest of change can affect a large number of units.

Changes to the Unit

Each declaration is different, and there will most likely be alterations, such as painting and carpeting that can be done without board approval. For other changes which could impact other

units the board must be advised of such proposed changes. Normally, the board will require a plan or description of the intended work. In order for the board to assess the situation properly, many times they will request drawings to be prepared by your professionals or your contractors. The Board will have their engineer review same, and in most cases the alteration will be approved. A good example of such a change would be where an owner wants to remove carpeting and install hardwood flooring. This can seriously affect the sound attenuation barrier between the units which will increase the transference of noise. We all know what kind of problems noisy neighbours cause. An improperly installed hardwood floor will make ordinary walking sound like a marching band to the owners below. To avoid this, the Board's expert will ensure that there is proper insulation underneath the hardwood flooring to avoid any problems and that the relevant building code sections are complied with.

In some cases, the board's engineer may offer some suggestions or recommendations which then must be followed. Keep in mind, if the engineer for the board suggests that the change should not be allowed, the board really has no authority to ignore this advice and therefore must disallow the alteration. Sometimes unit owners perceive this as the board being unreasonable. However, in reality, the board's hands are tied because they must rely on the advice they receive from their experts; otherwise, they could be exposing the corporation and themselves to a potential lawsuit in the event there is a problem.

Changes to the Common elements

Changes to the common elements are far more complicated. Immediately, Sections 97 and 98 of the *Condominium Act, 1998* are applicable. Therefore, the board has a statutory duty to ensure that Sections 97 and 98 are complied with. The most common change to common elements is usually the exclusive use common elements such as balconies or terraces. Section 98 is quite clear and specific with respect to the steps that must be taken by a unit owner if they wish to alter the common elements. The first step is that the owner must provide all relevant information to the board so that the board can pass a resolution approving the change. The unit owner is required to enter into an agreement with the condominium corporation stating:

- a) that the owner will be responsible for all costs associated with this change,
- b) who will be responsible for the maintenance of this change, including repair after damage and insurance.
- c) any other issues required by the regulations made under the *Condominium Act, 1998*.

This agreement will then be registered on title to the unit so that all future purchasers of this unit are aware of the agreement and must comply with same. Most property management companies have these agreements already prepared to make it more convenient for the owners.

Certain common element changes may also trigger compliance with section 97. However, section 97 does not have to be complied with if the change is made to exclusive use common elements and the board is satisfied that the change:

- d) will not have an adverse affect on any other units owned by other owners,
- e) will not give rise to any expense of the condominium corporation
- f) will not detract from the appearance of the building, and
- g) will not affect the structural integrity of the building or contravene the declaration.

If section 97 is applicable, the unit owner has a few more hurdles to overcome. Generally speaking, section 97 deals with notice to all the owners of a change to the common elements. Even if the condominium corporation wanted to change the common elements they too, must comply with section 97. A change can be made without notice if the unit owner establishes that the change does not cost more than \$1,000.00 and/or 1% of the annual budget of the current fiscal year. If the cost is greater than that, a notice must be sent to all owners setting out the purpose of the change, the cost and the responsibility for maintenance and repair following the change. The other owners have a right to requisition a meeting to vote on this change and if a meeting is requisitioned then a majority of owners at such a meeting is required to approve the change. Generally, changes by unit owners to the common elements will not be of a substantial nature and as such approval of two thirds of the owners in the corporation will not be required. If no meeting is requisitioned within 30 days of receipt of the notice, then the change is passed.

All unit owners should review Sections 97 and 98 prior to undertaking the work. In the event the unit owner goes ahead and makes the change to the unit or common elements without contacting the board, the board has a duty to enforce compliance and will turn this matter over to the corporation's solicitor for enforcement. This will only increase the costs for all those involved and in most cases will result in the reversal of the change made to the unit or common elements. The court, in many cases, have upheld and acknowledged the Corporation's duty to enforce the Declaration and have favoured the right of the condominium corporation, as a whole, versus the right of the individual unit owner in this type of situation. It has been my experience, that if this matter goes to court, the Judges do not look very favourably on owners who unilaterally make changes without complying with the *Condominium Act, 1998* and the declaration.

While in most cases, changes to the unit will not involve the condominium corporation; there will be situations where they have to be advised. An owner has no way of getting around that and has a legal duty to seek board approval. If they choose to ignore this, it will only lead to problems. Therefore, it is advisable that all owners understand and appreciate the board's overriding statutory duty to ensure compliance with the Declaration and simply advise them of changes that require their consent. At the end of the day, the owner will usually get their change, the corporation is protected and large legal fees are avoided. A win win for all those involved except for me.