

“Summertime and the Living is Easy”

At last, it is summertime. Now that the warm weather is upon us, it is time for a refresher course in proper patio/balcony/terrace behaviour from a condominium standpoint.

I know what you are all thinking: “The Grim Reaper has arrived to ruin our summers!” Rather, I am here to make sure that all the owners have a great summer and are able to enjoy their patios/balconies/terraces without being disturbed by their neighbours trying to do the same thing.

As it always happens, as the first hot weekend approaches, many owners come out of hibernation to enjoy the weather. This means they are firing up the barbeques, setting up the patio furniture, doing their gardening, and generally readying their exclusive use terraces, balconies and patios for the summer season. This also means that they will be inviting friends over for barbeques, music and, of course, beverages. It never fails that once the first long weekend comes, the management office is inundated with complaints from owners about neighbours who are having loud parties and generally causing a disturbance.

Most condominiums have a rule or a clause which states: “no owners, their families, guests, visitors and agents shall create, nor permit the creation or continuation of any noise or nuisance which, in the opinion of the board or manager disturbs the comfort or quiet enjoyment of the units, or common elements by other owners, their respective families, guests, or visitors having business with them. In addition, most have a rule that states no noise or odours shall be conveyed to or be transmitted from one unit to another. The board once again makes the determination if any of these odours shall be deemed a nuisance. If so, the owners shall at their own expense take such steps as necessary to abate such noise and/or odours to the satisfaction of the board and if they do not, the board can take the necessary steps to abate the noise and odours. The owner will then be liable to the corporation for all expenses incurred, including reasonable solicitor’s fees. And yes, in my opinion, solicitor’s fees are always reasonable. But that’s another article.

I have encountered situations where owners have decided that their balconies or terraces are the perfect place to burn incense and to smoke cigarettes and, in some cases, other not so legal substances. These odours can easily permeate to other units and while some owners may consider these “scents” a welcome addition, others may find it to be obnoxious and therefore a disturbance.

Also, many people will decide that they will want to put a barbeque out on their balcony. This may or may not be allowed and your declaration or rules will provide the answer. Certain condominiums allow for barbeques, others do not. Some may allow only gas barbeque and not propane. Don't assume you can install a barbeque simply because you have a balcony or terrace. Once again, if you install one when it is prohibited, I will be retained to seek your compliance to have it removed. In addition, the smoke and odours from a barbeque can easily disturb other owners.

The problem with this type of nuisance clause is the generality of it. Realistically, any noise or odour can be considered to be a nuisance or disturbance. Therefore, the board of directors must exercise a certain amount of discretion before they decide to take steps. Usually what happens is that an owner will complain to the concierge or security that their neighbour is causing a disturbance. The concierge/security will usually attend the unit to investigate. Most of the time, the concierge/security simply has to tell the owner to lower the music or cease whatever they are doing to cause such a disturbance and the problem is resolved. The concierge/security will make an incident report which will be filed with the management office. If the disturbance continues over a period of days or weekends, reports will be made of each incident of complaint and the property manager will then have to get involved and speak to the board of directors for instructions on how to proceed. The property manager will first send a warning letter to the owner that if this behaviour continues, the Board will have no choice but to deem it a nuisance and refer the matter to their lawyer.

Once I am contacted, the real party begins. If I have to send a letter, there will be a cost to the condominium corporation, which, they in turn will charge back to the unit owner as a common expense. Most lawyers will charge anywhere from \$300.00 to \$500.00 for the writing of a letter. The letter will state that now that I have been retained, the violating owner will have a certain period of time to comply with the board's wishes to cease the behaviour and to pay my fees. I will review the concierge/security reports, the letter(s) from the property manager and any other documentation the Corporation has on this issue. Since a paper trail has been maintained, this will prove to any judge or arbitrator that the corporation tried to resolve the issue and the owner refused. If my fees are not paid, they will be treated as unpaid common expenses and a lien may be registered against the unit. At that point there will be an additional \$850.00 to \$1,000.00 in legal fees charged against the unit.

If the disturbance continues and the owner decides they will not do anything or have chosen to ignore our letters, I will be instructed to commence enforcement proceedings under the *Condominium Act, 1998* which usually means mediation and/or arbitration. If a mediation cannot resolve the matter, the Corporation will proceed to arbitration, where they will seek an order enforcing the unit owner to cease this activity. This type of order can be enforced in the same manner as a court order. To get to that point, the condominium corporation will have paid thousands of dollars in legal fees, all of which will be enforced against the unit owner. It seems like a lot of work and a lot of problems caused simply by owners trying to enjoy themselves this summer and disregarding their neighbour's complaints. Most owners have to keep in mind that although, it is their unit, their property, their exclusive use, they have to be aware that their actions may disturb their neighbours and they simply can't continue to do this activity. It is important to keep in mind the condominium corporation is not targeting individuals or any owner in particular. The condominium corporation has an overriding duty under the Act to make sure that the rules and the declaration are being complied with. They owe that duty to all the unit owners. As a result, if someone is not complying, they have no choice but to take steps to enforce compliance which means in some cases legal proceedings. That is the reason why the letters are sent and mediations, arbitrations and court proceedings start. Some may think that it seems to be over-kill to have to send a letter regarding a simple noise or odour, but it is

important to understand that if somebody is being disturbed, the Board's hands are tied and they must investigate. The Board cannot ignore the issue, because then the owner that complained may start a proceeding against the board for not doing anything. Once again, nobody will win, except the lawyers of course. Win or lose, the lawyers get paid.

My advice to you is enjoy your summertime activities, but keep an eye open to the fact that you may disturb your neighbours. Not all complaints will be reasonable, and many times they are unreasonable, but as long as the owners are aware that they have neighbours, many situations can be avoided. Hopefully with this article I can help avoid some of these confrontations so that all the owners can enjoy the summer without a visit from yours truly, Mr. G. Reaper and you can enjoy a peaceful summer without the need for condominium corporations having to retain the likes of me and I can spend my time on my patio with my favorite beverage instead of having to write a letter.