

Legal Issues of Managing **Aging Buildings**



Photo: Dianne Werbiecki

Lambton Square, Etobicoke, four condo towers built in the mid-1970s by Cadillac Fairview.

By Jonathan Fine



THERE ARE six important concerns with managing aging buildings, all of which are related to money:

1. The sufficiency of the reserve fund to provide funding for major repair and replacement of the common elements.
2. Aging populations that may not be able to afford to pay for such major repairs and replacements.
3. The reluctance of boards of directors to raise common expenses to the required levels or to levy special assessments.
4. Resistance by owners to accept necessary increases in common expenses and the levying of special assessments.
5. Loss in value of units as a result of failing to keep up the building and common elements to the standards of newer/better managed buildings, coupled with the perception that the average purchaser would rather purchase in a newer building.

6. The failure or refusal of some boards to obtain a current, or for that matter, any reserve fund study.

From a common sense perspective, the solution seems simple, but there are some harsh realities at play:

1. Buildings and their various components require ongoing maintenance and repair, have life expectancies and eventually require major overhauls, especially if not properly maintained and repaired over time.

2. Many older buildings seem to be occupied by people on fixed or modest incomes.

3. Many boards of directors of aging buildings are comprised of people on fixed or modest incomes, who are therefore reluctant to raise common expenses or to levy special assessments because they themselves cannot afford such liabilities.

4. Dissident unit owners with misguided intentions can be persuasive to the masses faced with an increase in common expenses or a special assessment, and can rally the troops to call for the removal of a

responsible board in favour of a less responsible board that promises not to raise common expenses or to levy a necessary, but unpopular special assessment.

5. Unit values are market driven, which means that such units do not

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have an inherent value, but rather a comparative value to other units in the same building and in other similar buildings.

6. Perhaps the harshest reality is that some people simply don't have the ability, or alternatively, lose the ability to afford to live in their unit. The truth is that not having the ability, or losing the ability to afford to live where you live is not an uncommon phenomenon for

various reasons e.g., burdensome debt, illness, unemployment, bankruptcy, buying in over one's ability to afford. It happens to seemingly "rich" people who own mansions in Forest Hill or Rosedale, as well as to people of lesser means. To be able to afford the privilege of owning real estate, it is not sufficient simply to come up with the funds to purchase it, one must also afford to maintain it in a good state of repair.

7. When the owner of a detached house can't afford the upkeep, he or she are the only ones to suffer because either the quality of living standards or the value of the property will suffer. When some owners of condominium units cannot afford the upkeep and compromising financial decisions are made as a result thereof, the rights and property values of those who can afford such costs are adversely affected by weak boards or by revolutions by the vocal minority (or majority).

The applicable law is clear:

- Condominium corporations are obligated to maintain and repair the

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common elements.

- Condominium corporations are obligated to collect sufficient monies each year to pay their bills and to fund the reserve fund in accordance with the reserve fund study.

- Condominium corporations are obligated to maintain a reserve fund to be used for the major repair and replacement of the common elements.

- Boards of directors must manage the affairs of the condominium corporation in good faith.

- Fifteen per cent of the unit owners can requisition a special meeting to vote on the removal of a board of directors, and a vote of the majority of the unit owners voting in favour of removal, can remove a board of directors.

The problem is that some boards don't abide by the law, and fear of the inability to pay increases in common expenses and special assessments can cloud reason, resulting in poor decisions and the avoidance of short-term pain in favour of long-term disaster.

So What Can be Done?

1. Education: Expand Early and Often/Develop a Culture of Pride, Responsibility and Commitment: The failure or inability to raise sufficient funding is born out of ignorance and fear, which in turn is born out of a culture of penny-pinching, procrastination and weak leadership. In order to counter this downward spiral, it is necessary to develop a culture of pride, responsibility and commitment, where there is a wide-spread understanding and acceptance that the maintenance, repair and replacement of the common elements is expensive, but necessary, if property values are to be maintained.

2. Powers to Auditors to Intervene: One of the main problems with the *Condominium Act, 1998* is that there is no overseer of financial compliance. Condominium corporations must have a yearly audit, but if they don't or if there is otherwise noncompliance from a financial perspective, there is no independent enforcement mechanism. It seems to



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Managing condominiums with care

me to be sensible for the government to legislate that a condominium corporation's auditor have the power to do something if the auditor is of the opinion that a condominium corporation is being managed in a fiscally irresponsible or incompetent way (which would include noncompliance with the Act). These powers might range from writing a warning letter to unit owners, to revising the budget or the reserve fund funding plan, to making an application to Court for the appointment of an auditor.

3. Filing of Reserve Fund Studies and Reporting on Compliance: It is all well and good to have a law that requires obtaining and periodically updating a reserve fund study, but that is not enough. There should be a reporting and filing system of reserve fund studies and a watchdog in place to ensure compliance.

4. The Appointment of an Administrator: When all else fails, there is procedure under the *Condominium Act, 1998* for the appointment of an Administrator. This procedure is useful for concerned unit owners, but has also been used by boards of directors who have been unable to manage as required because of unit owner opposition and various obstructionist tactics such as untruthful propaganda and serial requisitions to call special meetings to remove the board of directors. The Administrator steps into the shoes of the board of directors and has the power to manage the condominium corporation in accordance with the Judge's order appointing the Administrator. ■

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