

Older Condos: Be Careful What you Wish for

By Lou Natale BA, LLB



THE OLD saying “be careful for what you wish for” is very applicable when it comes to condominium ownership and management. You may be disappointed when you realize the unintended results of what you “wished” for. A case in point is the tunnel vision approach too often implemented by some boards of directors (and managers) in trying to keep monthly common expenses as low as possible at the expense of proper maintenance and repairs, stable long-term financial planning and enhanced property values. Of course, virtually every condominium unit owner and board member “wishes” to have low common expense fees or a zero budget increase year after year. But reality shows this is not possible, particularly with respect to older condominiums and their aging common element infrastructure.

Living in (and managing) an older condominium comes with some unique struggles and challenges. Too often, current boards of directors and managers come to realize that previ-



Oak Hill condominium on Speers Road in Oakville, Ontario was built in 1974.

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ous boards for many years neglected to properly maintain and repair the common elements (i.e., roof, garage structure, building envelope, etc.) and failed to properly set aside money in the reserve accounts because of their well-intended but short-sighted desire to keep common expense fees low and to avoid increases when possible. This type of decision-making (or lack thereof) becomes extremely expensive when the current boards and managers receive news from consultants that the long overdue repairs and replacements are today double or triple the cost as compared to when the work should have been completed. This creates a financial dilemma and the need for strong leadership from both the board and management. Whether the repair costs are paid through a loan to the corporation or by way of a special assessment or large increases to the reserve fund, boards must inform and educate unit owners regarding the situation and how they got into this position. It is sometimes easier for board members to put their heads in the sand when it comes to dealing with large, expensive repair work. But that is not leadership. The Act requires a condominium corporation to maintain and repair the common elements and it is the duty of the board to ensure this happens.

Recently, the Joint Legislative Committee for ACMO and CCI submitted a legislative brief (the "Brief") to the Provincial Government outlining a number of proposed changes to the Act. There are, in my view, several proposed changes which can directly impact and benefit aging condominiums to avoid situations where perpetual poor decisions of past boards have resulted in decaying infrastructure and financial mismanagement. Here are just a few examples:

1. Education is key to proper decision-making. Without the proper knowledge or understanding of the requirements of the Act, there is a greater possibility of poor decision-making and lack of planning. The Brief proposes that directors' qualifications include a requirement that each newly elected director attend an introductory directors' condominium course within two years of being elected and at the cost of the condo-

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minium, which course will provide the basic knowledge of the directors' duties and responsibilities.

2. Boards spending reserve fund money on things that are not properly considered major repairs and replacement can, over time, severely deplete a reserve fund account. For instance, there are situations where boards choose to spend reserve fund money on "changes" made to the common elements even though such expenditures are not permitted to be paid through the reserve fund as per Section 93 of the Act. As well, boards sometimes spend reserve fund money on matters that are obviously minor routine repair and maintenance. To address these types of possible violations of the Act, the Brief proposes to add new sub-sections 93(8) and (9) to the Act which will clearly state that no reserve fund money can be spent on "changes" to the common elements unless those changes relate to a government ordered change or an energy conservation initiative (see point 3) or a "change" where the material being used is reasonably close in quality to the original as is

appropriate in accordance with current technology and construction standards. As well, the Brief proposes that the phrase "major repair" be defined to include a monetary minimum to be considered "major" so as to avoid small routine expenses being paid through the reserve fund.

3. Boards are sometimes faced with situations where building components which are not energy efficient, such as the boiler, air intake system and lighting fixtures, are costing the corporation large sums of money in higher energy costs. Currently, the Act does not permit the Board to use the reserve fund which usually means that energy saving initiatives get delayed or shelved. As indicated above, the Brief proposes that money in the reserve fund be permitted to be used for these types of energy conservation projects which in turn will help condominiums spend less on utilities and perhaps more on needed repairs and maintenance.

Another initiative that will no doubt help condominiums generally in dealing with management issues is the requirement to license and regu-

late property managers in Ontario. Boards of directors made up of volunteers, who often know little about building infrastructure and reserve fund requirements, should expect to receive guidance and direction from property managers who have proper knowledge and credentials. Managers are dealing with budgets worth thousands and even millions of dollars and their knowledge about building components, reserve funds and other requirements of the Act are essential in guiding corporations in the right direction as they age. Both ACMO and CCI, as well as other industry stakeholders, support the need to license and regulate property managers. The rest is up to the Provincial Government. Stay tuned. ■

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