

Records: To Provide or Not to Provide, **THAT IS THE QUESTION**

By Devon Cassidy, Lawyer, Cox & Palmer

Within a condominium corporation, communication and disclosure is very important. Owners want to be informed as to the goings-on in their building and want to understand what has gone on in the past, so they can understand their investment. For this reason, the records of a corporation are very important.

This importance is confirmed by the number of issues which arise in respect of the records of a corporation. Owners and Board members often clash over what is a record, when it should be provided, and how promptly it should be provided.

As such, it would be helpful to restate the legislation which is quite clear in this area. *The Condominium Act R.S., C. 85, S.1* states the following in respect of records of a corporation:

“18(1) The Corporation shall keep adequate records, and any member of the Corporation may inspect the records on reasonable notice and at any reasonable time.

18(1A) In this Section, “records” include financial records, minutes of meetings of the members of corporation and its board, the declaration, bylaws and rules, all items referred to in Section 17, any reserve fund study, all agreements entered into by the corporation, disclosure of conflicts of interest and all other records specified in the by-laws of the corporation.

18(1B) The corporation shall keep all financial records for at least six years from the end of the last fiscal period to which they relate, in addition to satisfying the requirements of any taxing authority of the Province, Canada or any other jurisdiction to which the corporation is subject.

18(1C) Upon receiving a written request and reasonable notice, the corporation shall permit any owner or an agent of an owner, duly authorized in writing, to examine the records of the corporation at any reasonable time.

18(1D) The corporation shall, within a reasonable time, provide a copy of any record to a person examining the records, if the person so requests and pays a reasonable fee to compensate the corporation for the labour and copying charges.”



The records which are included in Section 17 are as follows:

- (a) the seal of the corporation;
- (b) the minute book for the corporation, containing the most current copies of the declaration, by-laws, rules and regulations and any amendments thereto;
- (c) a copy of any agreement entered into by the corporation or the declarant or the representatives of the declarant on behalf of the corporation, including any management contract, deed, lease or licence;
- (d) any existing warranty or guarantee for any equipment, fixture or chattel included in the sale of either the units or common elements that is not protected by a warranty or guarantee given directly to a unit purchaser;
- (e) any as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;
- (f) any original specifications indicating thereon all material changes;
- (g) any plans for underground site service, site grading, drainage and landscaping, together with any cable-television drawings;
- (h) any plans and information not mentioned in clauses (e), (f) and (g) but relevant to the future repair or maintenance of the property;
- (ha) the name, address and telephone number of the declarant and any subcontractor that performed work on the property;
- (hb) the name, address and telephone number of any architect or engineer responsible for overseeing the designing or construction of the property;
- (hc) all documents pertaining to the fire, sound and insulation rating of all structures on the property;
- (hd) a description and copy of all warranties, including warranties for common elements and units;

(he) all information pertaining to bank, trust company, or credit union accounts holding the reserve fund and any other fund of the condominium;

(hf) copies of all financial statements prepared respecting the reserve or other fund;

(hg) a list of all the units in the property, an indication for each unit whether it is sold or unsold and the names and addresses of the unit owners for sold units;

(hh) a list of all units in the property that have not been sold and are subject to an executed purchase and sale agreement; (hi) a list of all units in the building that are being rented, together with the names of the renters and copies of any applicable rental agreements;

(hj) a complete copy of documents, including any amendments, filed with the Registrar to obtain registration under the Act, that are not otherwise required to be disclosed under this subsection; and (i) any other items that the Governor in Council may prescribe.

As such, all of these listed items, as well as any additional records identified in your corporation's bylaws, are to be provided upon reasonable request with reasonable notice.

Owners and Board should also be aware that a corporation can change to an owner the labour and copying costs associated with providing these records.

It is important for Board to respond promptly to records requests, and important for owners to realize that 24 hours is not a reasonable time-frame to expect receipt of records.

Being aware of the legislation, having your records maintained in an organized and ideally digital fashion, and by having patience for both owners and the Board, many issues around records should be able to be resolved without moving to dispute resolution. ■

ANNUAL CHECK LIST FOR YOUR CONDO CORP

By Lisa Power, Real Estate 360, (reprinted from Fall 2012 edition)

A LIST OF TO-DO ITEMS FOR YOUR CONDOMINIUM CORPORATION DURING YOUR FISCAL YEAR

- ✓ Prepare annual agenda
- ✓ Schedule board meeting dates
- ✓ Complete building assessment
- ✓ Review board binder for turnover to new board
- ✓ Schedule AGM and prepare information package for Owners
- ✓ Request tender proposal for landscaping services
- ✓ Prepare semi-annual newsletter
- ✓ Arrange for roof inspection, window cleaning and carpet cleaning
- ✓ Review insurance policy for renewal
- ✓ Plan community event/Info Session For Owners
- ✓ Review contracts for management services and building staff
- ✓ Complete Building Staff performance review
- ✓ Start budgeting process
- ✓ Prepare budget
- ✓ Finalize budget and send to Owners
- ✓ Plan annual holiday party
- ✓ Prepare semi-annual newsletter