

Questions & Answers with Robert Noce



CCI member Robert Noce, Q.C. contributes a regular column to the Edmonton Journal, answering questions from readers about various aspects of condominium living. These are questions that tend to arise fairly frequently, so Mr. Noce and the Edmonton Journal have kindly allowed InSite to republish some of them for our continuing education on the condominium life.

Robert Noce, Q.C. is a partner with Miller Thomson LLP in both the Edmonton and Calgary offices. He welcomes your questions at condos@edmontonjournal.com.

Answers are not intended as legal opinions; readers are cautioned not to act on the information provided without seeking legal advice on their unique circumstances.

Re-printed from the Edmonton Journal, with consent from the Edmonton Journal and Robert Noce, Q.C.

Dear Robert: I live in a townhouse condominium project. My next-door neighbour has people coming and going throughout the night. She is very pleasant with me, and always well put-together, but it seems odd to me that she is home during the day, and yet I hear the frequent pinging of the alarm and the slamming of the screen door throughout the night. I suspect that she may be an escort, and she is using her condo unit as a place to do business. What can I do about this?

A: Do you have any actual evidence of your neighbour's activities?

If the answer is no, then you need to deal with this issue very carefully because you do not want to make an allegation against an individual that is not true, or you may expose yourself to a defamation action.

There may be a legitimate explanation as to why people are coming and going at all hours of the night. For example, she or her partner may do shift work.

I would caution you from raising this issue with anyone until (and unless) you actually have evidence.

Helpful hint: Don't risk ruining somebody's reputation just because you are a busybody. Condo living is about respecting your neighbours.

Dear Robert: My condo board

has surprised me with their announcements of items which I thought would be addressed in an AGM for owner approval, but instead were dealt with at the board level.

For example, the board announced at the AGM that there would be an increase in condo fees and that the board members approved an honorarium for each meeting attended. Is this legal?

A: With respect to the increase in condo fees, the board is responsible for putting together the financial records and budget for the upcoming year which are approved at the AGM.

I would suspect that the financial statements and budget were approved at the AGM by the owners. I am not certain as to what you mean when you say that the board simply announced an increase in condo fees.

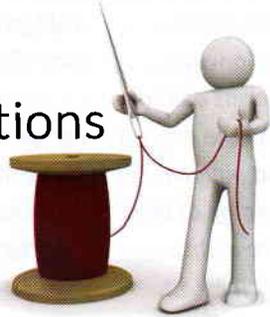
In regards to the honorarium, you will need to review your bylaws to determine whether or not the board has the authority to grant themselves an honorarium; some bylaws do allow for it.

Helpful hint: It is not a bad idea for owners to review their bylaws each year before the AGM. This way, they can speak up with confidence if something sounds questionable.



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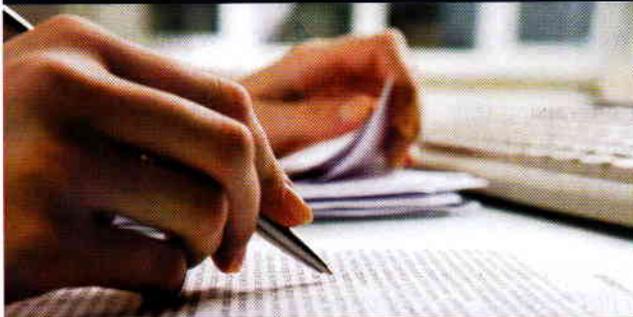
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*Dear Robert: When our
condo was self-managed,
we distributed to owners
a list of residents with
their unit numbers, phone
numbers and parking stall
numbers.*

*Our new management
company tells us that we
can no longer do this as it
is against the privacy law.
Owners miss this list and
seem unhappy that it has
been discontinued. Do you
have an answer for us?*

A: Your property management company is being prudent in its approach with respect to the information you seek. If you would like to put together an owners' telephone directory, then you will need the consent of all of the owners to put that together and publish their phone numbers and other personal information.

*Helpful hint: Privacy laws
have changed the manner
in which we can supply
personal information to
third parties. If you have
any doubt in terms of
how to deal with this
matter, then you should
contact a lawyer and ask
for a detailed opinion as
to what information can
be produced without the
consent of the owner.*

Dear Robert: I am

*having a dispute with my
condominium corporation
as to what is or is not
common property. Can you
tell me what constitutes
common property, in my
condominium project?*

A: The key document in determining what is or is not common property is the condominium plan. This document is filed at Land Titles and is a public document. You need to obtain a copy of your condominium plan and review it.

It really doesn't matter what your bylaws or the newsletters from the condominium corporation say in terms of what is common property. The Condominium Property Act defines common property as property that is described in the condominium plan. If there is a conflict between your bylaws and the condominium plan, the condominium plan will prevail.

*Helpful hint: Without the
condominium plan, it is
impossible to tell you
what is or is not common
property. What may be
common property in one
project, may not be common
property in another.*

*Dear Robert: I live in a
high-rise condominium*

building and the bylaws do not place any colour restrictions on window coverings.

To save money, I have put up a Canadian flag for a window covering and the board has asked me to remove it. What gives?

A: Perhaps you need to sit down with the board and read the relevant sections together, and see if one or the other of you is missing something. For example, your bylaws may define what constitutes a window covering. If there is going to be a dispute, perhaps it would be more

economical for you to put up some more traditional window coverings than to hire legal counsel.

Interestingly, an Ontario Conservative Member of Parliament has put forward a private member's bill that would make it illegal to stop someone from displaying the maple leaf. It is proposed that condo boards and building owners, on penalty of jail time or a fine, would no longer be able to enforce rules against flag wavers. If this becomes the law, I will make a note of it in a future column. (Whether

or not the constitutionality of such a law would be upheld is another story).

Helpful hint: Sometimes you need common sense; look around and see if your decorating complements the look of the condominium.

Dear Robert: I own a condominium in southwest Edmonton, and have received letters from our property management company about a \$50 association fee. The first arrived in summer; we ignored it. We have lived here since June 2009 and have not entered into any agreement with the

property management company. Is this legitimate?

A: It would appear that you are part of a homeowners association, not a condominium corporation. Therefore, the Condominium Property Act would not apply.

You will need to consult a lawyer and review the homeowner's association agreement, which should be registered on your title, to determine whether or not the property management company's notice is valid. If the homeowner's association agreement was registered

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at the time you purchased your home, you will be bound by its terms and conditions.

Helpful hint: When you purchase property, it is important to take some time to review the relevant documents and/or agreements.

Dear Robert: When our small condominium complex was first set up, 20 units had a unit factor of 365 each and five units had a unit factor of 450 each. We live in a unit that has 450 unit factors, and when we moved in six years ago, the monthly fees were \$35 more than the smaller units. Since that time, the spread between the smaller units and the bigger units has increased to \$100 per month, and will continue to grow as the budget increases every year.

Do condo fees have to be based on unit factors, or can we simply divide the costs evenly among all units?

A: The Condominium Property Act states that condominium fees must be levied on the basis of unit factors unless your bylaws provide otherwise. Therefore, if your bylaws do not provide for any other basis on which to charge condo fees,

your condo fees must be based on unit factors. It may seem unfair to you; however, the basis for unit factors is the most equitable approach.

Helpful hint: If your bylaws are silent on this particular issue and you want to change it, then you will require the support and approval of 75 per cent of the owners and unit factors to amend your bylaws to allow for a different approach in the calculation of condominium fees.

Dear Robert: Your answer in a previous column confused me, in that I do not know whether or not the board requires approval of the owners for budget and fee increases. Could you explain further?

A: The Condominium Property Act requires the condominium corporation to provide its financial statements and an annual budget to each owner. This usually occurs at the annual general meeting (AGM) of the owners, which must be held within 15 months of the last AGM.

Generally, that work is done at the board level and owners are simply receiving the financial statements and budget for information purposes.

However, the Condominium Property Act also states that the powers and duties of a corporation, which are exercised and performed by the board, are subject to any restriction imposed or direction given in a resolution passed at a general meeting. In other words, owners can come together and place restrictions on the board or change a particular direction of the board in terms of the budget. Therefore, owners do have an ability to provide further instructions to their board on a particular issue.

Helpful hint: Owners have rights under the Condominium Property Act that can be exercised at an AGM or

any other meeting of the condominium corporation. Unfortunately, interest among owners is relatively low at AGMs. If you are concerned about your investment, then I would urge you to take an active role.

Dear Robert: At our last AGM, the board put forth a motion for the owners to vote on, and they voted for no increase in condo fees in 2011, and to have one set of windows replaced. Last month, the board raised condo fees and did not replace the windows. Can a board negate an owners' vote?

A: Owners have the ability, under the Condominium Property Act, to impose restrictions or provide

direction to the board. If the Condominium act should ensure fee equity restrictions and/or directions were given at a duly called meeting of the corporation, and a proper vote was conducted, the board must follow the direction and/or restrictions imposed on the board by the owners. If the board fails to do so, then it may expose itself to a court action in which the owners could come together to challenge the board and its inability to follow the direction of the owners.

Helpful hint: Boards cannot ignore properly voted motions of the owners; they do not have the discretion to say that the board knows better.

