



## 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](mailto: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.

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**Q: As a condo unit owner, my husband was approached by our board to do the snow shovelling for our condo, which would include the sidewalks around the condo, the front steps, and around the entranceways. We are definitely interested in the job. However, is it our responsibility to get liability insurance for this particular job, or are we covered under the condo corporation? The condo board has asked us to provide liability insurance but I don't believe it has ever been provided in the past.**

**A:** Because you are being employed - hired by the condominium corporation to do work - you should get insurance and follow up with the Workers' Compensation Board (WCB). If you get hurt on the job while you are making money, generally it is not the condominium corporation's insurance that would cover your loss of income or any other damages that you may have suffered. However, there are exceptions and this is a complicated area of law. You need to speak to an insurance broker.

*Helpful Hint: I always encourage condominium corporations not to hire*

*people who are not properly protected through WCB or insurance.*

**Q: Are we, as condo owners, allowed to sit in on board meetings, not to participate, but to observe? The property manager of our condo has stated that if any condo owners show up at a board meeting, the board will get up and move to another venue. Does this seem like an open and transparent board?**

**A:** As owners, you are not entitled to sit in on all board meetings. I have no issue with having a public portion of the board meeting in which any and all owners can attend, listen and observe. However, there are matters that are of a private nature that must be dealt with simply at the board level .without owners in attendance.

*Helpful Hint: Boards must communicate to owners as to what is going on, and that will help people feel more comfortable in their condominium.*

**Q: It always seems difficult to get owners to volunteer to serve on the condominium board. Is it**

**possible to offer financial compensation as an incentive? What would have to happen to allow this to take place?**

A: Some condo boards in Alberta pay an honorarium to board members. The amount of the payment varies from board to board, and could be as simple as a payment of \$50 per meeting. In order to provide board members with an honorarium, the power to do so must be in the bylaws of the condominium corporation. If the bylaws do not provide for that ability, then you cannot offer an

honorarium. Check your bylaws.

*Helpful Hint: I am not a big fan of paying board members an honorarium. However, if that is the will of the owners then you must have that power in your bylaws. If you do not, then amend your bylaws accordingly.*

**Q: Can a condominium board raise condo fees by 40 per cent without any notice, other than an e-mail, and request that the new fee be paid immediately, stating that it was effective April when we only got notice April**

**25? The board decided to allow the owners two months (May and June) to make up for the difference in the funds that had already been sent to the board for April 2017, and then the payments would revert back to the 40 per cent. Is this legal?**

A: Yes, it is legal to increase your condominium fees by 40 per cent. From a legal perspective, there is nothing preventing a board from doing so. From a managerial and board governance perspective, I am shocked that a board would increase

condominium fees by so much on a one-time basis. This tells me that the condominium corporation has, in the past, either budgeted poorly or they have significant costs coming up and they are reluctant to issue a special levy. The other key point is the fact that it would appear, based on your question, that the board did a very bad job of communicating its plans to owners. I am hopeful that an explanation was provided at the most recent annual general meeting, or some detailed explanation was provided to the owners by way of

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written correspondence.

*Helpful Hint: When issues like this arise, get involved in your condominium. I am hopeful that this will entice people to attend the annual general meeting and perhaps get elected to the board so that other people can have a look at the current financial situation of your building.*

**Q: We have several units for sale in our building. One of the key safes was recently cut off from our railing, the key fob was used to enter our parking garage, and my bike was stolen. My bike was locked to a rack in the garage, and the lock was cut off. Do I have any recourse with the realtor or condo association, or only my own insurance?**

A: You probably do not have a claim against the property manager or the condominium corporation. I would strongly urge you to consult your insurance and determine whether or not you have any coverage in this regard. The individual who stole your bike obviously spent a lot of time planning this particular theft.

*Helpful Hint: The only*

*way to minimize or reduce crime in your building is to ensure that all owners are the eyes and ears for everyone else I would strongly urge you to remind owners to be vigilant with one another and with other people's property and to also consider implementing some sort of security program whereby you put in security cameras. Crime will always happen but we can take steps to reduce itsignificantly.*

**Q: We have had more than one bad or disruptive Tenant in our condo complex, specifically the rental units. At the last Annual General Meeting our board manager stated that there is nothing that can be done, other than to call the police and notify the board. What else can we do to deal with, and restrict, bad tenants?**

A: There is more that you can do. First, you should write a letter to the owner of the unit advising them that their tenant is causing problems for fellow occupants. The letter should set out the particulars of the complaint. If the owner fails to deal with the issue, then the board

could issue a notice of eviction and serve it on the tenant and owner of the unit. Generally, you would give the tenant 30 days to vacate the unit. If the tenant fails to leave the unit, then you would need to make a court application to get a court order evicting the tenant. The court order would require evidence in support of it, and someone on the board would swear an affidavit setting out the particulars. This process is used often and can be an effective tool in dealing with bad tenants.

*Helpful hint: It is important that boards follow the incremental approach in dealing with bad tenants. Do not start a court process without first giving the tenant the opportunity to rectify or remedy their behaviour. The courts need to be assured that the corporation has followed due process in seeking a court order.*

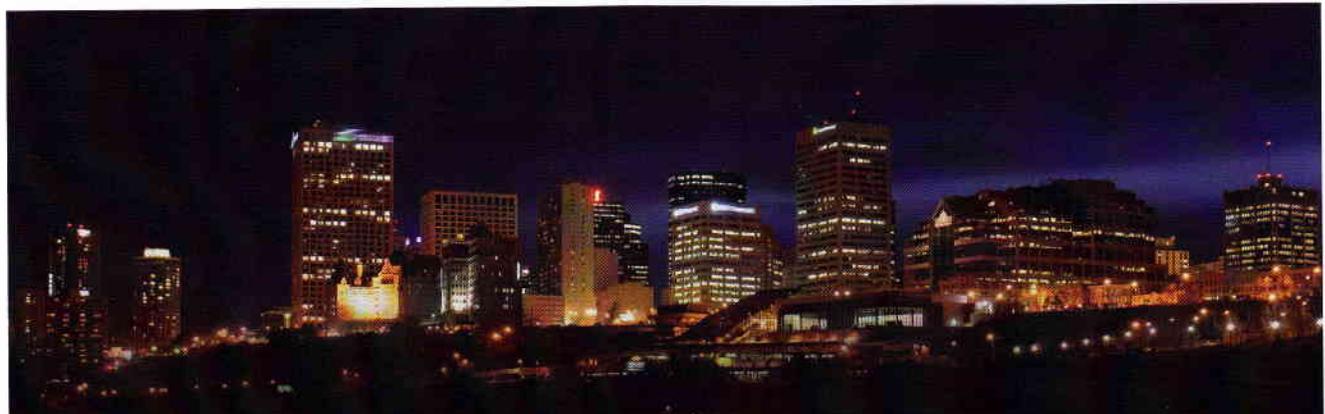
**Q: Our small bareland condo association has had water seep through the basement walls in four units. Damage has been limited on the inside,**

**but the walls need to be fixed at quite a cost. The association is of the opinion that the repairs are not the association's responsibility. Who should pay for these repairs?**

A: As a bareland condo, the starting point would be that the owner would be responsible for the walls. However, some bareland condominiums have what is called "managed property." You need to review your bylaws to determine whether or not any of the owner's responsibilities have been delegated to the

condominium corporation. If the responsibility of the walls was delegated to the condominium corporation, then it would be the responsibility of the condominium corporation to repair. Unfortunately, without the benefit of your bylaws, I am unable to give you a definitive answer on this question.

*Helpful hint: When an owner is faced with some uncertainty as to who is responsible for the repair work, it would be helpful for the property manager, the board, or legal counsel for the condominium*



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corporation to provide a written explanation to an owner so that there is some understanding as to the process.

**Q: I live in a 30-year-old condo building that will require many maintenance expenses over the coming years. There have been three special assessments in the last five years, two of which were for projects that the board knew were forthcoming. Previous boards had decided that these projects would be mainly funded by issuing special assessments to the unit owners as they come up, rather than raising condo fees to build the reserve fund to meet these expenses. I thought it was required by condo boards to plan for known future building repairs/projects by setting aside money from condo fees to cover repairs that are foreseen, rather than simply issuing special assessments as needed. Is the board planning things correctly?**

A: There is a requirement that a condominium corporation conduct a reserve fund study every five years. The purpose of this is to determine what repairs or maintenance work is required for

the condominium corporation, so that it can budget accordingly. A well-managed condominium corporation would charge owners what is needed to operate on a day-to-day basis, plus an additional sum to put aside for those future capital repairs. There is nothing illegal about issuing special levies, as opposed to collecting money over time and putting it aside. The problem with special levies is that it hits owners with significant payments and places some owners in a difficult financial position. I think the rationale for issuing special levies is that the board is trying to suggest that those who own a condo at the time the money is needed should pay, as opposed to owners paying for repairs five to 10 years into the future that they may not derive a benefit from. I think that kind of thinking is short-sighted, but legal.

*Helpful hint: A well-managed condominium corporation meets its day-to-day obligations, plus it puts money aside for future capital repairs. Special levies should be used sparingly, but they*

are a tool available to a board when money is needed.

**Q: I live in a 30-unit condo. Do the privacy laws mean that the board cannot tell us who has the bid, and the amounts they bid, on large jobs? Is there an approximate dollar value that should require more than one quote for a project? Our present board has told us that we have elected them and that we need to trust them. The minutes can only be seen by paying a fee to the management company. We are told this is common practice. Also, we have a guest room and rent parking spots. We have been told that to avoid paying taxes, more than 50 per cent must go back into the area for improvements. Can we use this money to replace the carpet in the social room?**

A: Generally, the board is entrusted to make decisions with respect to contractors. Again, it is prudent on the board's part to obtain three or four quotes from different contractors to ensure that the condominium corporation is getting good value for the work.

As an owner, you are not generally entitled to see the various quote amounts, as that would be information that would be discussed at the board level.

With respect to the minutes, they could be e-mailed to you at no cost. Finally, with respect to your guest room and parking spots, there is no general rule in the sense that more than 50 per cent must go back into the area for improvements. The Canada Revenue Agency (CRA) would look at these issues on a case-by-case basis.

*Helpful Hint: Condominium corporations are not for profit, and they are not entitled to make a profit, as the potential is there that the CRA could tax them for all revenues.*

**Q: I live in a bare-land duplex bungalow-type condominium. The president of our condominium association has been aggressively promoting his employer to carry out a project in our complex. When he raised this at a board meeting, two members of the board pointed out to him that he was in a conflict**

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of interest, and that he should leave the room while the board discussed the issue. He completely ignored these objections and carried on with his sales pitch.

The other four members of the board did not support the two members who objected to the president's involvement. The president then asked the board members to sign a contract with his employer, without first reading the contract. The same two board members refused to do so, but some of the other board members seemed inclined to sign the contract. At that

point, as a member of the community, I demanded that an extraordinary meeting be held to discuss the matter and allow residents a chance to voice their opinions.

This meeting is going to be held in the near future. In the meantime, the president has retired from his former company and now feels that he is completely free to chair a meeting on the project and speak in favour. I would like you to comment on what the community can do with a president who so blatantly broke the conflict of interest rule, and what should be said to the four

board members who made no effort to stop him.

A: Based on your fact scenario, there is no doubt that the board president was in a conflict and shame on the four board members who failed to see that. The minute the conflict issue was raised, the board president should have excused himself from the meeting and allowed the remaining board members to make a decision. I believe that the board president and the four members of the board did the condominium community a disservice. The fact that the board president has now resigned

from his employer may prevent you from dealing with this issue on a broader context. However, if the condominium corporation has been negatively impacted by this decision in terms of costs, then I believe that the board president and the four board members who ignored the conflict may have exposed themselves to personal liability.

*Helpful Hint: When the issue of conflict is raised, it must be dealt with seriously. The property manager must be equipped to respond to the issue of conflict, and if it is a complex issue then retain a lawyer to help.*

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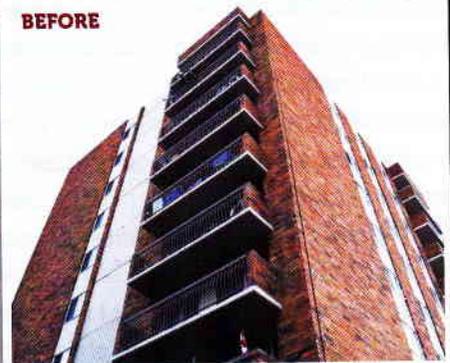
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