

Top 10 Considerations When Acting for a Purchaser of a Condominium Unit

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**TOP 10 CONSIDERATIONS WHEN ACTING
FOR A PURCHASER OF A CONDOMINIUM UNIT**

In my opinion, it is essential that a lawyer acting for a Purchaser of a condominium unit and/or a lender, review, at a minimum, some of the Condominium Corporation documents. As the Purchaser is buying an interest in the Corporation as well as an interest in real estate and the lender is taking security against such interest, a lawyer must review both the corporate aspects and the real estate aspects of the purchase and finance.

1. REVIEW OF MOST RECENT FINANCIAL STATEMENTS & BUDGET

Each Condominium Corporation is required under Section 30(3) of the *Condominium Property Act* (the "Act") to prepare an annual financial statement, in accordance with generally accepted accounting principles, for the preceding year and an annual budget which is the Board's estimate of the required expenses and revenue for the current year. Each owner and Purchaser is entitled to receive copies of these documents from the Condominium Corporation.

Although a lawyer's office cannot be expected to analyze these documents to the extent that an accountant would, they should be reviewed for any obvious issues that they might reveal. For example, if you are dealing with a unit in a 100 unit development that is 25 years old and the financial statements reveal that there is only \$15,000.00 in the reserve fund this is an issue that should be investigated. It may be acceptable or not. If not acceptable, it should be reported to both the Purchaser and Mortgagee. Similarly, if the unit is in a 100 unit apartment-style building and the Corporation has only budgeted \$10,000.00 for utilities, it is likely that the currently assessed condominium fees will not be sufficient and a sharp increase or special assessment will be levied.

Do they appear to be proper financial statements? Is there a deficit or surplus? Does the budget appear to be reasonable?

A copy of the most recent financial statement and budget should be provided to the Purchaser.

2. REVIEW OF RESERVE FUND STUDY, REPORT AND PLAN

The reserve fund of a Condominium Corporation is the fund which has been set aside, usually from the regular monthly condominium fees, to provide for the major repair and maintenance of common property (and any portions of the bare land Units that the Bylaws require the Corporation to repair and replace). Prior to the 2000 amendments to the Act, there were no statutory requirements for Condominium Corporations to maintain reserve funds. Many Corporations therefore did not have reserve funds or, if they did have reserve funds, they were completely inadequate. Many existing

unit owners did not see a need to create a fund for long-term maintenance of their projects. They believed that, for instance, when the roof needed repairs, those people who own the units at that time should pay for the repair.

However, in a condominium community, things are not always that simple. If it were a community of traditional single family homes, this wouldn't be an issue. Each person's property is his own responsibility. For instance, if your neighbour can't afford to maintain his home and the roof leaks, it is his problem. In a condominium community, because of the unique characteristic of common ownership of certain property (the common property), if your neighbour can't afford to pay for his share of the roof replacement, it is your problem - if it is a common property roof.

If someone is thinking about purchasing a traditional single family home, he can inspect and evaluate the entire property, including the roof, heating system and foundations, or if he lacks the expertise, he can hire a house inspector to do the job for him. A condominium Purchaser, on the other hand, often cannot even get access to the common property roof, heating systems and foundations to inspect, let alone evaluate. He may have no way of finding out the condition of important elements of the property he is purchasing.

Section 38 of the *Condominium Property Act* was added to address these situations. The Act now requires:

- 38(1) A Corporation shall, subject to the regulations, establish and maintain a capital replacement reserve fund to be used to provide sufficient funds that can reasonably be expected to provide for major repairs and replacement of:
- (a) any real and personal property owned by the Corporation, and
 - (b) the common property where the repair or replacement is of a nature that does not normally occur annually.
- (3) The money in the capital replacement reserve fund of the Corporation is an asset of the Corporation and no part of that money shall be refunded or distributed to any owner a unit except where the owners and the property cease to be governed by this Act.