

# INJURY LAW GROUP



# Andrea Thielk Professional Corporation

150 Ouellette Place, Suite 101, Windsor,  
ON N8X 1L9, Canada  
Phone: 226-674-1000  
Fax: 226-674-1001  
[www.injurylawgroup.ca](http://www.injurylawgroup.ca)

# ELDER COLLEGE LAW FOR ELDERS CONDOMINIUM LAW

Speaker: Andrea M. Thielk,  
BA, LLB, JD, ACCI (Law), FCCI

Referenced From:

Barry Scott, LLB, ACCI (Law), FCCI  
FALL 2002 CONDOMINIUM COURSE  
PAPER

This Paper has been prepared in summary fashion and should  
not be relied upon without consulting your professionals.

# INTRODUCTION

Welcome to the

## **2015 ELDER COLLEGE SERIES ON CONDOMINIUM LAW**

- Excellent Primer on Condominium Law and Management
- Very Useful Resource for Condominium Directors
- Focus on the administration, operation and management of condominiums

# THE CONDOMINIUM ACT AND ITS REGULATIONS

- The Condominium Act governs each and every condominium.
- It sets out those matters which are required to be dealt with in the condominium's declaration, by-laws and rules.
- It has 2 significant regulations passed under the Act, Regulations 48/01 and 49/01.

# THE HIERARCHY RULE

- There is a hierarchy of documentation, starting with the Condominium Act, and descending through the Declaration, Bylaws and Rules in that order.
- The Act takes precedence over all other documentation.
- The Declaration takes precedence over the By-laws and the By-laws take precedence over the Rules.
- Any document that tries to set aside the Act, is void.

# THE DECLARATION

- The Use of the Units and Common Elements can be restricted by the Declaration.
- For example, pets may be prohibited.
- The courts have found that restrictions on “use” placed in the Declaration are not subject to any requirements of fairness but are subject to the Ontario Human Rights Code.

# BY-LAWS

- The By-laws set out the general operating procedures for the condominium.
- The supremacy of the Act is especially relevant with respect to the many condominiums where the By-laws were drafted and passed at a time when former versions of the Act were in force.



# RULES

- The Board may make rules with respect to the use of the common elements and the units.
- Rules must be reasonable and cannot contradict the Act, the Declaration and the By-laws.
- Rules must deal with the safety, security or welfare of the owners and of the property or be for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and the units.

# PROVISIONS REGARDING THE BOARD OF DIRECTORS

- The Board must consist of at least 3 directors or such greater number as the By-laws provide.
- Directors cannot be under 18 years of age, bankrupt or mentally incompetent.
- All business is to be conducted at Board Meetings. A quorum of directors is a majority of the Board.
- Any Conflict of Interest is required to be declared in writing and directors in conflict must refrain from voting and not be present during any discussion.

# PROVISIONS REGARDING THE BOARD OF DIRECTORS

- Directors and officers are required to act honestly and in good faith and to “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances” .
- Directors may be indemnified by the condominium and the condominium is required to maintain directors and officers liability insurance, if reasonably available.
- Directors may rely upon the written advice and statements of professionals such as accountants, lawyers, engineers, appraisers and managers.

# DIRECTORS' RESPONSIBILITIES

- They are responsible for carrying out the duties and obligations imposed by the Act.
- Board members who take on matters without the approval of the rest of the Board expose themselves to personal liability.

# DIRECTORS' RESPONSIBILITIES

Specifically,

1. Manage the condo's finances including budgeting, common fee collection, depositing and investing funds in accordance with s. 115, paying expenses and maintaining financial records.
2. Maintain proper insurance.
3. Maintain the common elements and ensure that the units are also maintained.
4. Manage and maintain reserve funds.

# **DIRECTORS' RESPONSIBILITIES**

**Specifically,**

5. Issue Status Certificates.
6. Enforce the Act, the Declaration, the By-laws and Rules.
7. Maintain all other condominium records, including materials turned over from the Developer.
8. Call and hold Annual Meeting within 6 months of the fiscal year end by giving 15 days clear notice to owners.

# PROFESSIONAL ADVICE

- The governance scheme works best if the condo's duties and responsibilities are not carried out by the directors themselves, but by qualified professionals.
- Section 37 (3) provides protection to the directors from liability when relying on financial statements prepared by an auditor or a report or opinion of a lawyer, accountant, engineer, appraiser or other professional.

# SPECIFIC RESPONSIBILITIES – ENFORCEMENT

- Condo may apply to the court for an order directing compliance with any duty imposed by the *Act*, the declaration, the by-laws or the rules. The court may make any order which it sees fit: s. 134.
- Compliance orders may include an award for monetary damages and legal costs and that such costs and damages may be collected as common expenses charged to the unit.



# **SPECIFIC RESPONSIBILITIES – ENFORCEMENT**

- Court may order an investigation or audit of the affairs or records of the condominium and may appoint an inspector to do so: s. 130.
- Court has the further power to appoint an administrator to assume some or all of the powers of the board as specified by the court: s. 131.
- Disputes regarding major agreements entered into by a condominium must be submitted to mediation and arbitration: s. 132.

# **GOOD GOVERNANCE SUGGESTIONS – WRAP UP**

1. Directors have a fiduciary duty to every owner and mortgagee to oversee the management of the condo and property in the best interests of all the owners as a group without regard to any personal interest.
2. Directors should not take risks with the other owners' property and money.

# GOOD GOVERNANCE SUGGESTIONS

3. Directors must fulfill their duties properly in accordance with the Act, the Declaration, By-laws and Rules.
4. The Board must carry out its obligations properly. Cost is not a relevant factor if it means not properly attending to duties, especially where it concerns safety.
5. If the price sounds too good to be true, it probably is. Hire the right people at fair prices and demand that the job be done properly.

# GOOD GOVERNANCE SUGGESTIONS

6. The Board's job is to oversee, not to manage, do bookkeeping, shovel snow, practise law, do accounting, oversee construction, do appraisals or any other tasks that should be hired out.
7. Obtain owner approval as required under the Act and where possible obtain owner input even if not required. Keep the lines of communication open.
8. Hold regular Board Meetings and keep good records.

# GOOD GOVERNANCE SUGGESTIONS

9. Do not throw out records. They are the blue print of your history.
  
10. Stay educated with your obligations and have a good set of checks and balances.

# CLOSING

*Thank you from Andrea Thielk.*

*Andrea Thielk practises Condominium  
Law and Personal Injury Law in Windsor,  
Ontario 226.674.1000.*