

The four Cs of condo living

COMMON ELEMENTS, 'CONDO NAZIS:' WHAT THE BUYER NEEDS TO KNOW

By Carol Jankowski

IF BUYING A HOME is the most significant financial investment most people make in their lifetime, purchasing a condominium unit is all that, and more.

Condo buyers are not just buying a piece of property, they are buying into a community, says lawyer Michael Clifton, whose practice has been 95 per cent condominium law since he began working here in 2002.

A condo community comes with costs and responsibilities, including the need to contribute to common expenses, obey the rules of the condominium corporation and accept its control of all exterior and perhaps even some interior changes.

Clifton adds a note of caution: "If you want to live independently and not have to deal with neighbours, you shouldn't live in a condominium."

The bible of any condo corporation is the 180 sections of Ontario's Condominium Act, half of which apply to unit owners.

There are also corporation bylaws to govern residents' conduct. Continuing to add new bylaws is not difficult: If the board of directors needs a rule to tell people to take down their Christmas lights by June, they can have one by giving unit owners 30 days' notice.

"The older the condo, the more bylaws it has ... and the more that are unenforceable," Clifton says.

Fortunately, the condominium act is ethical, respectful of both individual owners and the community as a whole.

If you are among the segment of society for whom the benefits of condo ownership seem to outweigh the obligations, Clifton lists four aspects of condo ownership to consider prior to purchase: communication, control, common elements and compliance.

• Communication

For their own good, unit holders should read condo newsletters and attend board meetings. Clifton says it's a little-known fact that if unit holders don't tell the condo

corporation in writing where they want official notices to be sent, they are not legally entitled to be kept informed or to vote on condo business.

It's also a fact that every condo community has two extremes of unit owners: aggressive, hypersensitive people whom Clifton calls "condo nazis," and their polar opposites: people who are as detached as they would be in a rented apartment.

The gap can be bridged, he says. "Most things can be solved through talking."

The contentious issues that are most likely to wind up in court involve pets and money, the latter including non-payment of common expenses, or resisting special charges imposed for unexpected expenses.

• Control

Who has control in a condo corporation? The point of having a corporation is to have a good community, and the focus should be on getting along, Clifton says, though there are always some who scheme and strategize to replace board members —

"people who want to re-enact world politics and social problems on a small scale."

Under the act, a condo corporation has considerable power, more so than a bank. If a unit holder is not paying common expenses, the corporation can register a lien on the unit immediately. Government and property taxes are the only claims that take precedence over the corporation.

Potential buyers should ask about the percentage of residents who are tenants rather than owners. Constant movement of

FIRST, READ THE FINE PRINT

Lawyer Michael Clifton says potential buyers should know themselves, and the rules, before they buy into a condo community.

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► were rewritten to allow changes to common elements to accommodate the rigours of student life.

• Common elements

The potential buyer should know what the corporation considers to be "common elements" — areas and structures it is responsible for maintaining.

If a unit has been previously owned, the prospective buyer needs to know if exterior features such as landscaping, satellite dishes or awnings were added or changed. If such features are not registered on title, the corporation may order the new owner to change or remove them.

It's not always easy to determine. Furnaces and water heaters may not be considered common elements, but they may be attached to a common element, such as a shared wall dividing two units.

And if a buyer plans to make changes, it's smart to investigate first whether the board has to, or will approve them.

Remember, Clifton says, everything a unit owner does affects the neighbours.

In the event of repairs, sometimes the condo corporation has the work done and pays the bill. Sometimes the unit holder has to arrange the repair, but the corporation's insurance will cover the cost.

Sometimes a condo manager runs in and does things without worrying about whose responsibility it is, and even that can cause problems down the road, Clifton says.

Ultimately, what's important is that the repairs get done. Then the unit owner and condo corporation can continue the debate over who should pay.

• Compliance

If unit holders obey the rules and talk, they're going to have a good community, Clifton says. A condo with a good reputation tends not to attract bad people.

Most of Clifton's clients are condo corporations, and he always advises them to hire professional condo managers.

However, he doesn't rule out self-managed properties. As an example, he points to a 74-unit townhouse condominium on Cedarwoods Crescent in

Kitchener, which has been well run by the unpaid president of the corporation, Garth Brillinger, for 20 years.

It was 1987 when the developers gave the Cedarwoods board a day's notice that they no longer wanted to manage the eight-year-old property. Their abrupt departure left the board with three members. Brillinger was elected president and got right to work.

Today he is retired from a career in human resources and devotes 15 to 20 hours a week to condo business, supported by a strong board, he says.

Brillinger's view is that to manage a condo, "you need a great smack of common sense and the ability to read contracts."

He agrees that not everyone is cut out for condo ownership. Every unit holder has to be willing to follow rules and encourage others to do the same. "If you sit back and think everything will be done for you, you won't fit in."

Brillinger's condo board has never charged a special assessment. The board plans at least five years ahead and has a healthy reserve fund. "However, unusual things can occur, and you have to be prepared to pitch in," Brillinger says. "If we can get people to co-operate, we can protect our property values."

He's seen at least one "condo nazi" in his time, but says rationale beats them every time. "I meet them head-on. Generally they're uninformed, and the board just has to show it's on solid footing and acting in everyone's best interest."

Early this year, Clifton left McCarter Grespan Beynon to open his own firm, Clifton Kok LLP, with a partner, Mark Kok, in Ayr. Although his practice will expand into other areas, he expects condo law will continue to be a substantial part of the caseload.

Would he buy a condominium? At the moment, it's a non-issue because he and his wife have two young children. "I mostly see all the problems," he says. "I could live in a condo, and when I retire I might, but I'd investigate it carefully first." 