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About Condo

KEEP IT SIMPLE; DO IT RIGHT

Efficiency demands a degree of simplicity, and lawyers are often accused of making things too complex. The irony is, in my experience, that very often complications in legal documents and processes arise not because of the lawyer, but because of the complex circumstances that individuals or organizations fall into by, at some point in time, trying to avoid, or be overly creative in respect of, some otherwise straightforward legal obligation.

Take, for example, the condominium board of directors that decided it was too much trouble to calculate common expense contributions in accordance with Schedule D of the condominium's declaration. Instead, they either invented or approximated the amounts payable, till nearly a third of the condominium was paying too much, while the remainder was paying too little.

Undoubtedly, that board of directors *thought* that what it was doing made things simpler. After all, the bottom line for the condominium itself was the same, right? And their numbers weren't *so* far from accurate…what's $40 or so per unit per year, after all?

True enough, the differences between what was charged to unit owners and what should have been charged was minor compared with what it could have been (i.e., if the board had made an even more inaccurate calculation), but as anyone who has considered the so-called "Chinese water torture" will understand, even a trifling thing can cause significant harm if applied consistently over time. Losses, and other impacts of unfair or inaccurate calculations of common expense contributions, accumulate over time.

So, too, does the unchecked sense of power and entitlement of a board of directors that considers the condominium to be its exclusive domain where its orders cannot be questioned.

Another case in point is the condominium director who insisted that the property manager charge back repair costs to a unit owner for damage that arose in the owner's unit without any regard for the insurance obligations of the corporation pursuant to section 99 of the *Condominium Act, 1998* (the "Act").

Even after the relevant provisions of the Act and corporation's governing documents were explained, including the unit owner's obligation to pay only the condominium's deductible amount under section 105 of the Act, the director simply would not back down. Had the manager not stood her ground in that case, the corporation would have been open to a potentially ugly confrontation with the owner – likely ending in litigation – which the corporation could not win.

Unfortunately it is often the person – be it a manager, lawyer, engineer, accountant, or even director or unit owner – who refuses to give in to improper or inaccurate demands, who is seeking to do things right, who is most readily accused of making things "difficult" or of being "unreasonably demanding".

For example, one case with which we are familiar involves a condominium that the declarant held for several years before selling any of the units. Although operated as a rental property, the declarant ensured that the corporation was properly organized, including creating a minute book with a record of unit owners as required by section 47(2) of the Act. Of course, at that time, the declarant was the only unit owner.

Eventually, all of the units were sold, but, for reasons that need not be set out here, no turnover meeting was held. One of the unit owners then demanded that this be done.

As the declarant's representatives set about the task they became aware that none of the new unit owners had provided their names and addresses for service to be entered into the section 47(2) record of the corporation. The impact of this on the proposed turnover meeting was instantly obvious:

- section 47(1) of the Act requires, amongst other things, that notice of a meeting of owners shall be given to "each owner who has notified the corporation in writing of the owner's name and address for service," which notifications form the section 47(2) record;

- section 47(5) of the Act states that those persons whose names appear in the section 47(2) record 20 days before the date of a meeting of owners "shall be deemed to be the persons to whom the notice [of meeting] is required to be given";

- section 50(2) of the Act provides that, amongst other things, an owner must have been entitled to notice of the meeting in order to count towards quorum for the meeting; and

- section 51(1) of the Act provides that an owner must have been entitled to notice of the meeting in order to vote at the meeting.

In short: there was no way to call a valid and effective turnover meeting until an up-to-date section 47(2) record was created, and such meeting could not take place earlier than 20 days after a new record was made. Since the record can only be created by written notifications given by unit owners to the corporation, the declarant's representatives took steps to obtain such notifications.

Ironically (but not untypically), it was the unit owner who had demanded the meeting be held who most resisted the declarant's efforts to complete the section 47(2) record in order to ensure it could hold a valid and effective meeting. Instead, that unit owner alleged that the declarant was merely delaying the meeting and accused its lawyers of making things more difficult than they needed to be.

To make matters worse, the unit owner then proceeded to call its own turnover meeting (pursuant to section 43(2) of the Act) when the record was only partly updated and for a date that was fewer than 20 days from the date on which the first entry to the new record

was received by the corporation. As a result, no owner (including the unit owner) was entitled to receive notice of the meeting or to vote or count toward quorum at the meeting.

In all of these examples, it is evident that doing things right in the first place is often the key to avoiding unwanted complexity. The last example also demonstrates that complaining after the fact that correcting the consequences of past errors or omissions is too difficult or takes too long is a pointless exercise and one that, if acted upon, often merely contributes additional complications to the situation.

“A stitch in time saves nine,” the saying goes; and in condominium matters, it is a modicum of foresight and willing attention to necessary detail and accurate procedure that can help to avoid a multitude of difficulties.

Michael H. Clifton (April 2010)