



GOT
ETHICS
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Finding a Better Way

Musings on
a more ethical
approach to
condominium living



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A LOT of what we talk about in ACMO and CCI meetings in regard to condominium living has to do with resolving conflicts between people. Not infrequently, those conversations revolve around a contest between real or perceived “rights” on the one hand, and challenges to the acceptance or enjoyment of those “rights” on the other. Board members, managers or unit owners are often cast in black-and-white terms of “right” and “wrong” or, more particularly, “rights-holders” and “offenders of those rights.” Often, each party sees itself as the rights-holder and the other as the offender.

Such insistence on seeing oneself as the party with the rights in question (i.e., as the “victim”) is very legalistic thinking. Indeed, as lawyers, we typically get pulled into these situations for the primary reason that it is part of our trade to define a party’s rights (or lack thereof) and explain their further rights (or lack thereof) to enforce or defend the same. We are rarely if ever asked if there is something beyond those rights that might be better.

■ Keys to Dispute Resolution

The common assumption seems to be that *having a right* is somehow equivalent with *being in the right*. With a slightly different spin: it is the view that every right – simply by virtue of its existence or possession – is worthy of either defense or enforcement. So the key to dispute resolution often becomes an almost mechanical issue – the winner is the one who is proven to have a right. Where the parties have competing rights, it then requires the mechanical process of determining which right *applies* or *is superior* in the circumstances.

All this is well and good, and it certainly helps lawyers to put their children through college, but is it “best,” is it *really* right? In other words, is the typical excitement about rights in and of themselves really the be-all and end-all, the way that things *ought* to be considered and done?

■ Ethics as it Defines Rights

Contrary to the popular view that ethics is all about knowing and applying specific rules of conduct, it is thoughtful consideration of *what ought to be done* that is central

to a properly framed discussion of ethics, including when dealing with the sub-category of ethics that defines *rights*. The idea is (or ought to be, so to speak) that rights arise out of what *is* right; not that what is right is determined by what rights one possesses. However, in today's "culture of entitlement" this key principle of ethical reasoning seems to have been all but lost or at least has shifted into reverse. The result is a more contentious, more legalistic environment which, frankly, this lawyer considers unfortunate and ill-fated.

Notwithstanding the lawyer's card I carry, I believe that there *is* a better way than the mere defense or enforcement of rights to resolve conflicts and improve communities.

■ An Amish Example

A few years ago, all of North America was touched by a stirring example of this better way. This example was set by a small Amish community in Pennsylvania, to which came a terrible tragedy when a 32-year-old milk truck driver,

driven to a tormented state following the death of his own child, took hostage the community's school, released the adults and boys, tied up the remaining 10 young girls and shot them, killing five and wounding the others. The shooter then took his own life.

... to be generous in one's perspective, controlled in one's reactions, and caring in one's attitude and approach, is how [we] can emerge from any conflict as genuine winners.

As shocking as this tragedy was, the most astonishing story is what followed. True to the values of their faith, the Amish community to which this violence had been done immediately took steps to assure the family of the shooter that they were not held responsible, that they were still cared about and accepted by them. It was reported that

about half of the people attending the shooter's funeral were from the Amish community, and in turn the shooter's family were invited to the funeral service for the girls who were killed.

In an interview reported shortly after the event, one community member said, "We were all speaking the same language, and not just English, but a language of caring, a language of community [and] a language of service. And, yes, a language of forgiveness."

The example of this Amish community is not only an example of tremendous courage in the face of tragedy and a profound capacity to forgive; for the purposes of universalizing their experience and being able to apply it to the less dramatic circumstances most people and communities are likely to encounter, we can also look to two other underlying traits exemplified by them, which I call "self control" and "a generous perspective."

By self control, I mean that quality of character that says, "I'm not going to let *your* attitudes, ideas or



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behaviours dictate how I feel, think or act.” This idea of self-control involves not merely withholding or suppressing a reaction, but actually not reacting at all. Instead, the self-controlled is in charge of his or her own thoughts, feelings and conduct, and not directed by the words or deeds of others.

■ A Condo Example

Perhaps you’ve seen some counter examples in your condominium. We know of boards and managers who threaten unit owners with liens and litigation simply for spite because of some complaint that was made about them. Likewise, some owners will nit-pick incessantly at board decisions because of some once-upon-a-time offense or disagreement. In more than one case I am aware of, the story begins with an ousted director whose reaction is then to challenge every decision of the new board, which in turns leads to the board taking, alternatively, defensive and aggressive stances, not always concerned for what is correct, in response to which the former director is more than willing to reciprocate.

On and on these and other similar dramas go, with hard feelings and costs escalating all the while, till the hope of resolution is all but completely obscured. Perhaps at some early stage a decision not to be offended on the one hand, or not to be goaded on the other, might well have avoided the whole thing.

Likewise, a generous perspective at any time can help to avoid an unnecessary dispute.

■ A Generous Perspective

It is generous, for example, not to presume that a failure to pay common expenses in a timely manner necessarily represents a dishonest character. It is a failure of generosity to assume that someone who makes an unauthorized change to the common elements must be trying to “get away with something” or does not care about his or her neighbours or neighbourhood. It is ungenerous to attack the board of directors of your condominium without regard and appreciation

for their volunteerism. Indeed, the entire “us–them” mentality in regard to boards and unit owners that has grown significantly in the past few years is a very distressing example of a completely ungenerous perspective.

A generous perspective is one that is not content with viewing people in a two-dimensional way, but when dealing with them presumes and takes into account those aspects of the person’s life and character that may not be revealed in a single encounter or a specific context. In its broadest expression, it is the perspective suggested by the interviewee in the newspaper article quoted earlier, exemplified by speaking (and, I would suggest, listening) in the language of caring, community and service.

There is an underlying lesson here for condominium boards, managers and owners, which becomes more evident through experience: Sometimes when we insist upon having what we believe to be our rights in reaction to the words or deeds of others, we may actually be interfer-

ing with the goals we really (or perhaps ought to) have in mind. Think of how often condominium meetings, homes or entire communities have become disrupted due to the insistence of one party or another, or both, on possessing and defending or enforcing their “rights” against the other at all costs.

Sometimes, if not most times, to be generous in one’s perspective, controlled in one’s reactions, and caring in one’s attitude and approach, is how both parties, and the condominium overall, can emerge from any conflict as genuine winners.

While the suggestion of this article might not accord with what one expects from a member of the legal profession, I believe it touches upon a more profound ethical point of view that will in fact accomplish what condominiums are purportedly really made for – the establishment of good, viable and well-governed communities. ■

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