

As the world faces its latest pandemic crisis, the situation has quickly also become an economic crisis. Let alone the lost income and lack of insurance causing some people to suffer, there now seem to be daily reports of lost jobs and layoffs. In response, governments, businesses and others are seeking to implement ways to minimize the impact of people's financial obligations.

Within the Ontario condominium industry, a recommendation has been put forward for a temporary regulation extending the time for enforcement of common expense payments from three to six months (before a certificate of lien needs to be registered to protect the condominium corporation's interests). **This is an excellent recommendation, but it is not the only, or even the most immediate, solution.**

## You, condo Board members, hold the key

Understanding how the most immediate solution works, requires knowing how condominium budgets, expenses and payment obligations work. Don't worry, it's not rocket science.

- (1) Critical to the operation of each condominium is the payment of its common expenses, defined in the Condominium Act, 1998 (the "Act"), as "the expenses related to the performance of the objects and duties of a corporation." In other words, whatever it costs to maintain, repair, insure, and otherwise run the condo, those are its common expenses. "Expenses" because they are things that cost money. "Common" because every owner is responsible to pay for them.
- (2) Owners' responsibility to pay is not just a practical necessity, but a legal obligation. Per section 84 of the Act: Not only "shall" owners contribute (when a statute uses the word "shall," it means "you've got to do it"), but they are not exempt even if they can't use any of the common elements, or are litigating against the condominium. In other words, there are no excuses: Every owner has to pay.
- (3) The actual amount that each owner has to pay is determined by referring to a table in the particular condominium's declaration (usually, in Schedule D) that sets out a percentage share for each unit, which gets applied to the costs of running the condo, which are determined in one of two ways: after the fact (based on invoices received), or in advance (based on a budget). As a general rule, condominiums use the second method: a budget sets out what the anticipated costs for the year will be, and each owner is required to pay their unit's proportionate share of the overall budget amount, usually on a monthly basis. (Any surplus gets applied to the next year's expenses or deposited to the condominium's reserve fund.)

As we say, however, this is a "general rule", and this is where the most immediate solution gets revealed. In fact, this solution is really *a range of solutions*, each or all of which can be implemented by a condominium board of directors to help owners in difficult circumstances to avoid the messy complications, and costs, of condo liens.

First, the budget: The board sets it; it requires no unit owner approval; the board can change it. It is not uncommon for budgets to have some "wiggle room" built into their estimates. Perhaps, for this year, the board can shave some of those down a bit, reducing owners' payment obligations.

Second, monthly payments: They aren't a requirement. The Act doesn't say owners' contributions *must* be paid on a monthly basis. It assumes it, and it is true that this is the most practical way for almost any condominium to operate, but a condo board has authority and discretion (subject to limiting provisions in its own by-laws – which, by the way, the condominium can elect to change) to determine when and how each unit's share of the common expenses are to be paid. Even where a monthly payment schedule is maintained, it isn't necessary that each month's contribution be exactly one-twelfth of the owner's annual obligation. Owners' monthly installments (at the board's discretion) can be varied.

In short, in response to the COVID-19 crisis, it is possible for condominium boards of directors to be creative, to consider (amongst other things) revising their budgets and/or to revisit and reset the due dates and amounts of owners' installments toward the common expenses. And all this can be done without jeopardizing the condominium's interests, which are the shared concern of every owner.

In times of crisis, we are all called upon to do our creative best to reduce one another's burdens. For further advice about these or other concerns and ideas you might have about handling the COVID-19 crisis, or other issues, in your condominium, be sure to consult with experienced legal counsel.