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Real Property & Condominium Law

The lawyers and staff at Clifton Kok LLP provide experienced, practical and detailed legal assistance in relation to all real property transactions, including acquisitions (purchases), dispositions (sales) and financing, as well as in all matters relating to land use and development. We also possess extensive experience in regard to condominiums of all types (Standard, Phased, Common Elements, Vacant Land and Leasehold), working with developers from project conception and approval through to registration, unit sales and turnover, and providing guidance and support to condominium corporation directors, managers and unit owners in respect of all legal issues arising under the Condominium Act, 1998, including amalgamations, the drafting, interpretation and enforcement of governing documents, and the processing and enforcement of condominium liens.

Corporate / Commercial Law

Clifton Kok LLP provides comprehensive corporate and commercial legal services for businesses of all types and sizes, meeting their diverse needs including business creation, restructuring, mergers and acquisitions, corporate governance and shareholders' rights, agreements, complex transactions and other matters. We also assist not-for-profit corporations with incorporation and governance matters and have experience incorporating charitable corporations.

Estates Law

Clifton Kok LLP provides practical and effective legal services in relation to a broad range of Estates Law areas. This includes the preparation of wills, codicils and powers of attorney, as well as assisting with related and various estate planning and administration issues.

Advocacy, Litigation Support & Dispute Resolution

The legal team at Clifton Kok LLP provide a comprehensive assistance in a restricted range of legal proceedings and litigation. Depending on the case, a licensed paralegal or lawyer will assist in all matters before the Small Claims Court of Ontario, with Provincial Offense Act matters before the Ontario Court of Justice, and in a variety of administrative tribunal hearings, including the Landlord and Tenant Board and the Condominium Authority Tribunal (CAT). Major claims and other matters may be referred to counsel with more general or specialized litigation practices. Contact our lead licensed paralegal, Holly Bangay, for further information. Firm co-founder, Michael Clifton, can also serve as a mediator or arbitrator in disputes relating to condominium law that are currently outside of the jurisdiction of the CAT.

CK Legal's Condo Guru commentaries are provided for general information only relating to Ontario condominium law. They are not intended as legal advice. Anyone wanting or requiring legal advice or assistance relating to any aspect of condominium law should contact competent and qualified legal counsel, including the lawyers at CK LLP. Find us at www.cklegal.ca.

Musings on the New Meanings of Maintenance & Repair

Printed: May 4, 2018

For many years, the legislation governing condominiums in Ontario has made a distinction between the obligations to “repair after damage” and “maintain” the common elements or the units of a condominium corporation. Prior to 2001, these terms were undefined in legislation, other than a statement to the effect that they were “mutually exclusive”. When the *Condominium Act, 1998* (the “Act”) came into force in May, 2001, it contained new, clarifying language, which affirmed that the obligation to repair after damage included the obligation to replace after damage or failure, and that the obligation to maintain included the obligation to repair after wear and tear. Inevitably there were arguments over whether an item had failed, or whether a repair was needed due to wear and tear or damage, but these definitions were useful, particularly as they helped provide a basis for interpreting older condominium declarations and drafting new ones. However, the recent changes to this legislation have taken these definitions away.

Although not in force as of the date of this writing, once proclaimed in force section 89 of the Act will no longer define “repair after damage,” but will refer solely to “repair,” which is now defined (in section 1 of the Act) as “to repair or replace after normal wear and tear, damage or failure”. The term “maintain” under section 90 of the Act will be kept, and is not specially defined but is clarified by this statement in the new subsection 90(2): *“The obligation to maintain does not include the obligation to repair.”*

Surely there was a belief by someone, or some group, at some time that this would be a useful and beneficial change. What might not have been considered is what potentially difficult or contentious changes it triggers for existing condominium corporations, which – keeping in mind that the Act still retains subsection 7(5), which says, *“If any provision in a declaration is inconsistent with the provisions of this Act, the provisions of this Act prevail and the declaration shall be deemed to be amended accordingly”* – must now undertake the exercise of determining whether these amendments change the meaning of the provisions of their declaration to the extent that they also change the status quo of how the duties to maintain and repair the property of their condominium are shared.

For example, if your condominium was registered between 2001 and today, it might well only contain a reference to the obligation for repair after damage of a particular part of the property. Does this mean that the obligated party does not also have a duty to repair after failure or wear and tear (even if that party retains a corresponding duty to maintain the same part of the property)? Other, much older declarations often contained only the terms “repair” and “maintain” even though the legislation at the time might have implicitly required a reference to “repair after damage”. Since 2001, at least, these declarations ought to have been interpreted (thanks to subsection 7(5) of the Act) in light of the definitions in place, which has sometimes been challenging because the terms used were not consistent with the Act. When the new amendments come into force, however, they suddenly will be, and the old obligations will be subject to new interpretations, which might match what the declarant originally intended, but not what the condominium’s practices will have been.

It will be wise for condominium corporations to allow their legal counsel to consider the new language of the Act with the existing language of their declarations, and let them know whether anything of significance is changing for them.