Good Advice

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We wrote about this before. We'd like to share it again.

In these days of the COVID-19 crisis, many condominium unit owners are or will be finding it a challenge to pay their common expenses – let alone keep up with their mortgages, insurance premiums, utilities, groceries and other regular expenses. In response, many condominium boards have been seeking counsel about what they can do; in particular, they have wondered how they can protect the interests of the condominium without adding to the burdens of their already heavy-laden homeowners.

The sub-heading we used last time still applies:

You, condo Board members, hold the key

So, how does this work? Ultimately, it's pretty easy.

The only reason a condominium lien arises is this: The board has developed a budget, or identified a special expense, for the condominium; it issues an assessment (either the regular annual one, or a "special" one) to each owner telling them what share of the budget or expense they have to pay; a deadline for payment is set; when the owner defaults, a lien arises automatically under the Condominium Act, 1998, and the board then has three months in which to get the owner to pay or, in order to protect the condominium from losing the lien and its priority creditor status, to register a certificate of lien against title to the owner's unit.

Note that in this scenario, there are just two keys steps that cause a lien to arise: (1) The board establishes the amount and due date for payment; and (2) The owner defaults. As a result, the lien arises, immediately and automatically. From that point, interest and all reasonable costs of collection also get added to the owner's account, potentially increasing their debt exponentially.

With this picture clearly in mind, it's evident that the way a board can to help prevent a lien arising and adding to the costs and concerns of the unit owner, is not by changing the number of days or months that the corporation has to register a certificate of lien – that is an *after the fact* issue; rather, where the board has immediate and effective influence over the whole process, is at the start: When and how it establishes the amount due and its deadline for payment.

With great power, so forth and etc…

While the precise steps that need to be taken for each condominium might differ somewhat, the fact is that a condominium board – without holding a single owner's meeting, without requiring unit owner approval or government intervention, and likely without even changing a word of its by-laws – has the power to effect changes that can immediately remove the risk and burden to unit owners of defaulting on common expense contributions.

You have the discretion to amend the current budget. Reduce it to whatever you have to, to ensure the condominium's necessary expenses are payable when due, and to make regular common expense contributions as affordable as possible. You also have discretion to establish how much of each unit's assessment is due when. Make the amounts due, and their due dates, doable.

What if your by-laws insist that owners pay monthly? Fine. What if they require that the monthly amount be a perfect 1/12th of the unit's share of the annual budget? Don't sweat it. Without altering the by-law, you can make the math work. (Or, better still, give the condo's auditor/accountant a little work to do – everyone's scrambling these days – to help work it out for you.) Use your power to issue special assessments (the time and payment amounts for which are ultimately utterly flexible) to ensure that any resulting shortfall in the budget will be covered.

In ordinary circumstances, would this be what you should do? No. Not ordinarily. But these are not ordinary times. Extraordinary times can call for extraordinary measures. Having the power to effect changes that benefit the lives of others, you not only can but should exercise it with care and compassion and, in this case, a little creativity.