





Joel Berkovitz
Partner
Shibley Righton LLP



Armand Conant
Partner
Shibley Righton LLP

Communicating to Owners Going Above & Beyond the Legal Requirements

A condominium corporation is required by law to communicate with its owners about certain matters. Managers are by now familiar with the prescribed information certificates required by the 2017 amendments to the *Condominium Act, 1998* (the “Act”) – Periodic Information Certificates (PIC), Information Certificate Updates (ICU) and New Owner Information Certificates (NOIC). These are in addition to other prescribed communications, such as status certificates and notices to owners required by various sections of the Act.

While it is easy to see these prescribed communications as a ‘box-checking’ exercise, we would encourage managers and boards to view them as an opportunity to communicate with and educate their

owners and, in some cases, to advance the condominium’s legal interests.

Take, for example, a hallway refurbishment project. Some parts of this project may constitute an improvement to the common elements. In many cases, section 97 of the Act will require the board to provide a notice to the owners that describes the cost of the project, how it will be paid, and that owners can requisition a meeting to vote on the project if they wish. But this often leaves out the most essential information; why the project is undertaken.

We often encourage our clients to include the ‘why’ of the project in the section 97 notice. An owner seeing that the board is spending hundreds of thousands or millions of dollars to upgrade hallways

might see this as unnecessary. However, when placed in the appropriate context that, for example, the current hallway finishings are out-of-date or in disrepair, a reputable design firm has prepared the new design, and the project was subject to a competitive tendering process, the project might be much more palatable. Of course, drawing the connection between the investment in the building and its effect on unit values is always beneficial.

Periodic Information Certificate

Another example is the PIC. The information provided in this form includes a list of upcoming reserve fund projects and their expected cost. While it would be easy to simply list this information and consider the job completed, this is



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another instance where going beyond the minimum requirements can be helpful. For example, suppose significant projects will take place in the coming year. It may be worthwhile to include a covering note with the PIC drawing the owner's attention to this, providing the estimated timing for when these projects will take place, and providing some basic information about expected impacts (e.g. noise, dust, loss of use of facilities).

The Status Certificate

Also, consider the status certificate. The Act prescribes specific minimum requirements as to what must be disclosed in a status certificate. But going beyond these minimum requirements can often help shield the condominium from legal liability. For example, even though this is not a prescribed requirement, we often suggest including a disclaimer that the corporation has not inspected the unit to determine if there are any violations of the Act or the corporation's declaration, by-laws, or rules. If such breaches are discovered after the new owner takes title to the unit, this language can be relied upon to oblige the new owner to address the problems, even if the former owner caused them.

Declaration, By-laws and Rules

Also note that corporations must include a copy of their declaration, by-laws and rules with the status certificate. But many potential owners will not read these documents, and those that do may not fully understand their implications. For this reason, many corporations choose

to draw attention to their most impactful rules in the status certificate. For example, it is much better for a potential owner who is a smoker to find out in the status certificate, which is usually issued very early in the purchasing process, that there is no smoking in the building than to learn this after they move into the building and start to receive complaints from neighbours and management.

Lastly, consider the much-maligned prescribed form of proxy. Even after five years of use, many owners complain that this form is difficult to understand and fill out, and we see many submitted incorrectly. It takes little effort to include a short guide or explanation on how to fill out the proxy correctly with the meeting package. Most management companies and condominium law firms can provide these guides free of charge.

Open Communication

Prescribed communications should not be the *only* communications that owners receive. When possible, timely and thorough information about the happenings in the community should be provided year-round and in various formats as required (e.g. newsletters, town hall meetings). It is often said that the biggest problem in our industry is that owners do not understand what it means to own a condominium unit. Thus, everything that can reasonably be done to educate owners will only benefit the community and the running of the corporation. Like in real estate, the three most important aspects are "Location, Location, Location," but for condominium

corporations, they are "Communicate, Communicate, Communicate."

Given that prescribed communications are required by law, it only seems natural to use them in a productive fashion that best serves the community, without significantly increasing the workload on management and the boards. We encourage all to try their best. ■

Joel Berkovitz is a partner in Shibley Righton's Condominium Law group. Joel's condominium law practice includes all aspects of condominium law, focusing on drafting and negotiating contracts for condominium corporations, advising Boards, corporate governance, and compliance matters. Joel is also a member of the Canadian Condominium Institute (CCI) and the Association of Condo Managers of Ontario (ACMO).

Armand Conant heads up the condominium law group of Shibley Righton LLP and represents numerous condominium corporations of all types across Ontario. Armand is a Past-President of CCI (Toronto) and Past Chair of its Legislative Committee, on which he remains a contributing member. He co-chaired the joint Legislative Committee, which submitted the legislative brief with recommendations for changes to the Condominium Act, 1998. Armand is a recipient of ACMO's Special Recognition Award, President's Award, and Associate Member of the Year Award. In 2020, he also received CCI-T's Distinguished Service Award. shibleyrighton.com



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