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# An Owner's Guide to the Declaration, By-laws and Condo Rules

As a condominium unit owner, you do not just buy your unit; you also buy into a community and have joint ownership of the common elements.

It can be helpful to think of yourself as a shareholder in a company. You and all of your fellow co-owners are the shareholders and the only investors in this company. Unlike a conventional company, the condo corporation is not designed to make a profit. Instead, as the investors, you share in “profits” through an increase in the market value of your units. Using this analogy, you profit by getting an increase in the value of your “shares” in the company.

It is not all good news, though; you also share the risks and the costs of operating the company. For example, if there is an unexpected and unbud-

geted expense (i.e. the roof fails early and needs to be replaced entirely), the owners must come up with the funds to cover that expense. Ultimately, as an investor, a well-run condo corporation is your best asset.

The condo corporation's governing documents (the Declaration, By-laws and Rules) each serve a unique purpose. When operating well, these documents set the stage to allow the condo corporation to grow and adapt to any necessary changes. As an owner, understanding these documents will help you know how your condo corporation operates and what your role and responsibilities are within the condo corporation and the community.

In Ontario, the *Condominium Act, 1998* (the “Act”) sets out the frame-

work to create and operate a condo corporation. Everything in the condo corporation's documents and everything that is done on the property must comply with the Act. The condo corporation's documents are structured as a hierarchy: the Declaration; the By-laws, which must adhere to the Declaration; and the Rules, which must comply with the Declaration and the By-laws.

### The Declaration

The Declaration is the foundational document for the condo corporation. It is prepared by the Declarant (the condo corporation's developer) and does not have to be reasonable. Going back to the analogy of a company, the Declaration sets out the condo corporation's structure: who has what responsibilities and





jobs; what is the definition of a unit (the unit's boundaries); what is part of the common elements; who is responsible for paying for what (i.e. is it the owners' responsibility to maintain and replace windows, or the condo corporation's responsibility?), etc. The Declaration also spells out each unit's percentage of the contribution to the common elements. Understanding the Declaration is the key to understanding your obligations as an owner as well as the fundamental structure of the condo corporation.

Since the Declaration is the foundational document for the condo corporation, it is extremely difficult to change (either 80% or 90% of owners must approve changes to the Declaration, depending upon the type of change). This is to protect you, the investor/owner. Prior to finalizing an Agreement to purchase your unit, you and your lawyer should carefully review the Declaration so that you clearly understand what you are purchasing. Going forward, you will want to know that there will not be any foundational changes as to how the condo corporation operates without receiving proper notice and having an opportunity to consider and approve any change.

### The By-Laws

The By-laws are next in the hierarchy of condo documents. Condo corporations, like companies, have By-laws to deal with a wide range of governance and operational matters. In a condo corporation, the By-laws must be reasonable.

Typically the first By-law sets out the Board of Directors' qualifications, the number of people serving on the Board of Directors; the process for meetings and elections; whether the corporation can borrow money; and what is the standard unit for insurance purposes. The Board of Directors can make, amend, or repeal By-laws, but owners must be given notice of any changes to the By-laws, and, with a few exceptions, any new By-law must be passed by a majority of owners.

### The Rules

Finally, the condo corporation also has Rules. Like all businesses and properties, condo corporations need to have clear and reasonable Rules that promote the safety, security, and welfare of the owners and prevent unreasonable interference with the use and enjoyment of the units and common elements.

The Rules can be changed more easily than the other documents. The Board can change the Rules without approval from the owners, but the owners must be given 30 days' notice about any changes before those changes become effective. Since the Rules must respond to the community's evolving needs, it makes sense that the Board can more easily change the Rules.

We saw this very clearly when condo corporations needed to respond quickly to changes in the world, including the legalization of cannabis, short-term rental operations, and the coronavirus pandemic. Where Rules are needed to promote safety and security, the Board should be able to use their judgement to

act quickly and respond to the community's needs. By requiring notice of a Rule change, owners who oppose the proposed new Rule(s) can petition a meeting to change the new Rule(s).

Owning a condominium is an investment. Unlike a company, it is operated by a volunteer Board of Directors who must manage the condo Corporation by following and enforcing the Declaration, By-laws and Rules.

While maintaining and increasing market values for units is and should stay a primary focus of the Board of Directors, they cannot ignore the democratic rights of the owners. For this article's purposes, I have used a company analogy, but the condo corporation is also a community and operates as a fourth level of government. A well-run condo corporation requires good governance and proper budgeting, both of which are in all the owners' best interests. This requires transparency and responsible leadership by an elected Board of Directors and assisted by professional and accredited property managers. ■

**Laura (Glithero) Gurr**, JD, BA (Hons), has extensive experience in condominium law and acts for many condominium corporations around Southwestern Ontario. Laura also practices administrative law, including development and land use planning, property tax appeals and exemption applications, expropriations, landlord and tenant matters, and regulatory compliance issues. [cohenhighley.com](http://cohenhighley.com)



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