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Crossbridge Condominiums

When Should a Condominium Manager Engage a Lawyer?

Contacting a solicitor is necessary, but when? When is the right time for the property manager to recommend to condominium directors that they seek their solicitor's opinion? There are no absolutes when it comes to this answer. However, this article will outline practical circumstances when the manager should be advising the directors to seek legal advice.

Who Can Contact the Solicitor?

Property managers are responsible for understanding who can contact the corporation's solicitor to deal with the condominium matters. Some management companies may have a policy in place laying the groundwork at a company-wide level. The policy may require the board president to be the contact with the solicitor, and the manager may deal with the status certificate. Suppose there is no such policy in place. In that case, it

is essential to communicate and obtain approval directly from the condominium board of directors and to log those occurrences in the minutes at a board meeting.

Status Certificates

A status certificate is a legal document on a prescribed form that contains the legal description of the property, the finances, liens, and legal judgements or pending legal actions. Status certificates are very common as most purchasers require a status certificate when making an offer to purchase a condominium in Ontario. It is important to consider when and how to word the information or if it should be included in the status certificate. An example of when to request that the solicitor provide specific wording to be included in the status certificate would be if the city were attempting to expropriate land to expand the road.

Contracts and Request for Proposals

Often when there are issues between a service provider and the condominium, the condominium will refer to a signed contract to see if things were delivered as promised. What if the contract is poorly worded or favours the supplier's interest? Should a manager request that the board send the contract to the solicitor to cancel or revise it? Signed contracts are very challenging for a solicitor to reverse and get a corporation out of a situation. That is why the solicitor will always recommend that major contracts be reviewed before signatures.

By-Laws and Rules

The condo corporation may be considering updating a few rules and may have their own thoughts on what works. Before making that change, it's

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best to advise the board to review the items with the solicitor. The solicitor will have a complete set of the most common rules and won't need to re-create the wheel. Also, the solicitor can provide advice as to what rules are enforceable and why the wording is a particular way. The same applies to the addition of a by-law. The solicitor should be contacted to assist with preparing a standard unit by-law, electronic voting by-law, or borrowing by-law, for example.

Lawsuits and Notice of Legal Claim

Thankfully, many managers have never had to deal with ongoing lawsuits, but some managers, including myself, have been served just like in the movies. It's never a good feeling to be the recipient on behalf of the condominium corporation. Over the years, I have been involved with legal suits, including slips and falls, garage door damages, water damages, and construction deficiencies. Although I have experience in legal

claims and the preparation of a defence, I certainly do not claim to be a lawyer. A manager, even if well-experienced, must advise the condo directors to seek legal counsel as soon as the condominium is a named defendant in a lawsuit.

Video Cameras

Condominium surveillance cameras capture many things which are sometimes of interest to the residents or police. Understanding who owns the surveillance and who should have access is crucial. A resident may want access to video surveillance to see if they know who may have stolen their property. A resident may want to see if someone was using their unit key fobs like an ex-spouse or roommate. How about the police showing up at the property and requesting surveillance video for a local crime? The manager might have good intentions in assisting residents or police, but that may infringe on a person's privacy. It is always best to advise the board of directors and seek legal advice when providing security camera footage on a USB or disc. You never know if the video footage might be used against the condominium, so it's best to be sure only approved documents and footage are released.

Final Thoughts

Before recommending the board go through the high cost of speaking with a lawyer, it's a good idea to contact your management company to discuss the issue and seek guidance. Regional managers and senior management will likely have experienced the same issue at another property and can offer some advice. Another tip is to check information which may be readily available on the Condominium Authority of Ontario (CMRAO) website. It includes information on records requests, dealing with typical nuisances, and electric vehicle requests. And finally, when it is time to contact a lawyer, you can find a very knowledgeable group of law firms in the ACMO Professional Services and Trades Directory on the ACMO website. ■

Van Smith, RCM, OLCM, has been a property and regional manager in Ontario for 17 years. His education is in fire protection, real estate, and condominium management have assisted in tackling building projects and training others in the industry. Van currently serves on the ACMO Board of Directors. crossbridgecondominiums.com



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