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# Hoarding

## When Clutter Goes Too Far

Many condominium communities have had to grapple – or are currently grappling – with residents with hoarding disorder. This has proved to be challenging in most cases, given the safety risks hoarding can pose to the community. And predictably, incidents of dangerous hoarding have only increased during the pandemic, as people with hoarding disorder have become more anxious and mental health supports have become less easy to access.

### **What is Hoarding Disorder, and is it a Disability?**

As is commonly known, Hoarding Disorder is a condition in which a person accumulates an excessive number of items and stores them in a chaotic manner, resulting in unaccept-

able levels of clutter. Hoarders cannot part with these items, even though they often have little or no value.

Hoarding disorder constitutes a disability under the *Ontario Human Rights Code* (the “Code”) because it is a “mental disorder.” As such, any person with a hoarding disorder is entitled to the protections offered under the Code.

### **Mere Clutter vs. Dangerous Clutter**

Clutter in a unit which constitutes a dangerous condition is prohibited under the *Condominium Act, 1998* (the “Act”). The dangerous condition is often only uncovered when the corporation’s superintendent or contractors enter or attempt to enter

the unit for an inspection, repair or maintenance obligation, such as during the annual fire inspection.

But how does a corporation determine whether the degree of clutter is a dangerous condition as opposed to just poor housekeeping?

Any breach of the Fire Code will always constitute a dangerous – and therefore unacceptable – condition. The Fire Code requires a free passage in and out of the unit and between rooms. Combustible items (e.g., old newspapers or paper products) in quantities or locations that constitute a fire hazard (e.g., stacked on a stove) are prohibited.

Is there a requirement that there be a breach of the Fire Code in order to establish a dangerous condition? The answer is no.







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Independent of a fire hazard, any degree of clutter which poses a risk of damage to the property, to the safety of the unit occupants, to the residents of the building and/or to the workers or guests of the corporation will be sufficient to trigger an obligation to remedy the unsafe condition. This would necessarily include conditions with associated risks of mould, disease,

What sort of accommodation does a hoarding scenario require? For starters, it does not require the hoarding to continue. In a recent 2021 decision of the Ontario Superior Court, for example, the corporation brought an application against two unit owners who had amassed an excessive amount of clutter in their unit. The court found the clutter was extensive, and

similar community supports

- Assisting in engaging a professional to remove the clutter and sanitize the unit (at the owner's or tenant's cost).

Other accommodation efforts may be appropriate depending on the unique circumstances of each case, and legal counsel for the corporation should be consulted. Under the law, however, the accommodation obligation does not go so far as to require a corporation or its property management to provide mental health services or provide care to a person with a disability. In fact, it would be inappropriate and even dangerous for management to do so, as management is neither trained nor licensed in that regard.

To the extent reasonable accommodation efforts are ineffective, the corporation may bring a compliance application to the Ontario Superior Court of Justice to remedy the dangerous condition, usually on an emergency basis.

### Parting Thoughts

Hoarding cases are unique. Corporations will want to engage their legal counsel early to advise management on what steps and accommodations are appropriate in the circumstances.

At the same time, hoarding is incompatible with condominium living and must swiftly be addressed. If the person with the hoarding disorder can get the required support and work cooperatively with the corporation to address the unsafe condition in a timely manner, this is the best of all scenarios and creates a healthier condominium environment for all community members. ■

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transmissible odours and/or pests. In *Carleton Condominium Corp. No. 25 v Patrick Egan* (2015), for example, the issue was bed bugs. The court found that by permitting the unit to become excessively cluttered and unsanitary, the owner was in breach of Section 90 of the Act, which provides that an owner must maintain their unit.

Similarly, if a unit has so much clutter that the occupants cannot safely prepare food or navigate their way in and out of the suite without the real risk of a trip and fall, the condition is a dangerous one which must be remedied.

### Accommodation Obligations

Many people with hoarding disorder are undiagnosed. In the absence of a diagnosis, can the corporation simply assume that there is no disability? In most cases, the answer is a hard “no.”

A legal obligation to accommodate arises if it is obvious to the corporation – or if it should be obvious – that the owner or tenant needs accommodation – even if they did not ask for accommodation. The test is not whether the hoarder has indicated to the corporation that they have a disability but whether the corporation ought to have known as much. In the case of hoarding, it will generally be apparent that the person has a mental health condition requiring accommodation. The corporation cannot turn a blind eye.

much of the items in the unit were combustible, posing a serious fire risk. The court found in favour of the corporation, and the owners were given seven days to restore the unit to a safe, liveable condition. The unit owners were also ordered to pay \$25,000 in costs.

Rather than allowing dangerous conditions to continue, the duty to accommodate a person with hoarding disorder will require the corporation to adjust its rules and processes to meet the needs of the hoarder, up to the point of undue hardship. Practically, this may mean one or some of the following:

- Assisting in creating a realistic action plan (including a realistic timeline) for remediation. This may involve hiring a hoarding remediation consultant (at the owner's or tenant's cost)
- With the consent of the person with the hoarding disorder, communicating with their family member, mental health professional, or social worker to address the unsafe condition and/or prevent a relapse
- Offering to help identify support resources. This could involve, for example, assisting the person in engaging a hoarding support coach or connecting the person with the Toronto Hoarding Support Services Network or