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Compliance and Mental Health Disability in Condominiums

People suffering from mental illness in a condominium setting, as in any community, represent a diverse group. They are persons experiencing many different types of health conditions, including anxiety, depression, phobias, hoarding, paranoia, schizophrenia, and dementia – and the list goes on. Each disability condition can range from mild to severe. Some people with mental illness require accommodation within the condominium setting – many others do not.

Predictably, the outbreak of the COVID-19 pandemic has exacerbated certain mental illness symptoms, including individual feelings of fear and helplessness. How can a condominium corporation appropriately enforce compliance when dealing with mental health issues in its community?

Ditch the Stereotypes

As a starting point, misconceptions about people with mental illness should be consciously identified and avoided. For example, there is a common misconception that people with schizophrenia or severe depression are more prone to violence. The reality is that these residents are no more violent than people who are not mentally unwell. In fact, people with mental illness are more likely to be the targets, rather than the perpetrators, of violent acts.

Look for Solutions

In exceptional circumstances, mental health disability can cause compliance challenges. This may mean the resident, on account of his or her disability, creates excessive noise, hoards, or

otherwise engages in conduct incompatible with condominium living. The Ontario Human Rights Code (the “Code”) requires that the corporation accommodate the resident in a manner that respects his or her dignity, to the point of undue hardship. This does not typically mean that the corporation must tolerate the non-compliant behaviour – it simply means that the corporation must explore and implement solutions to assist the resident in complying with the *Condominium Act, 1998*, and the corporation’s declaration, bylaws and rules.

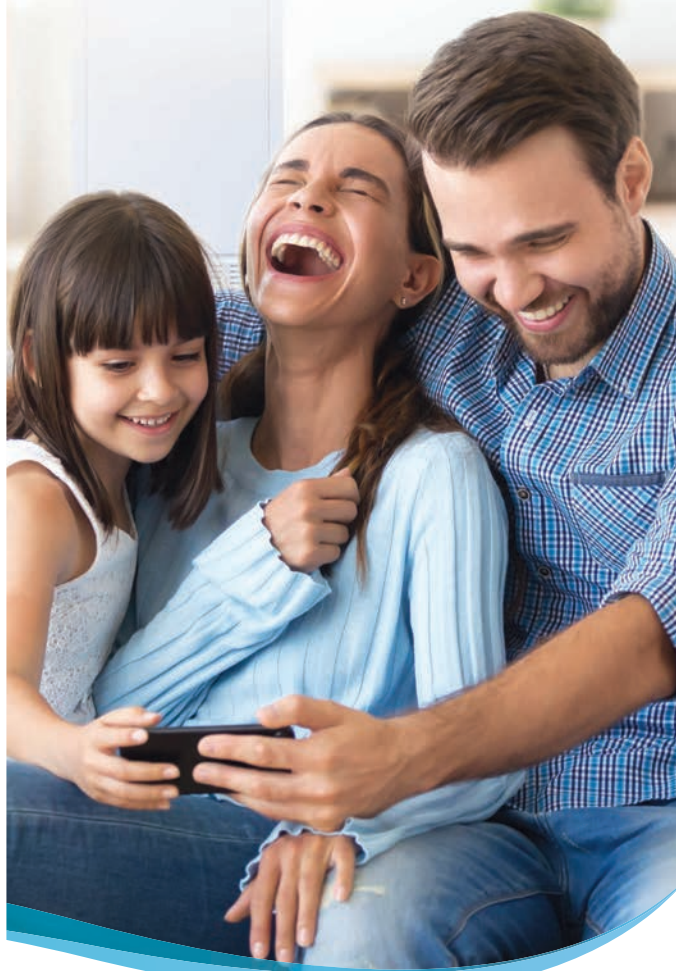
When dealing with a resident with a hoarding disorder, for example, the corporation may be required to arrange for regular inspections and cleaning and sanitization of the unit, ultimately charg-



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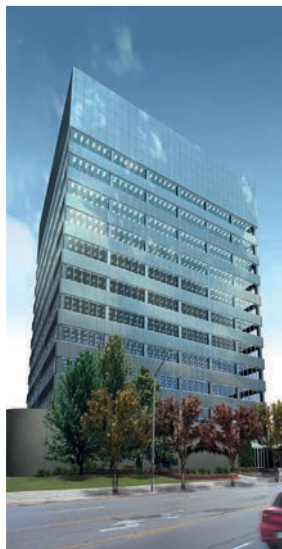
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ing the costs back to the unit owner. Similarly, property management may have to anticipate and avoid triggers when communicating with a resident with post-traumatic stress or other anxiety disorders. Property management may also have to provide several cues to a resident with dementia who might be found loitering in the common elements, or maintain a list of the resident's contact supports to call in cases of emergency.

Know the Limits

Many will be familiar with the requirement to accommodate disability up to the point of "undue hardship." There are reasonable limits to the corporation's accommodation obligation.

For example, it does not form part of the corporation's accommodation obligation under the Code for property management to provide mental health services to residents with disabilities. Property managers are sufficiently saddled with management responsibilities for them to also be required to take on the role of mental health caregivers, which they are not tasked to become, and the law does not require that they do so.

In addition, the Human Rights Tribunal of Ontario (the "HRTTO") has made clear in a decision last year that the corporation's duty to accommodate does not require the corporation to provide a "perfect solution." That is, an accommodation which meets the resident's needs and respects his or her dignity is all that is required—it does not have to be the accommodation of the resident's choice.

Further, there will be no ongoing accommodation obligation where the resident rejects accommodation attempts. In one case, a college student engaged in erratic behaviour, such as random fits of crying and incoherent speech. The college administration believed she had a mental illness and attempted to discuss an accommodation with her. However, the student denied having a disability and did not seek accommodation. She later claimed discrimination. The HRTTO ruled that when "...an organization perceives a person to have a disability but the person denies it, it is unclear whether the duty to accommodate arises and precisely what form any such duty would take." As the student did not take part in the accommodation process, the HRTTO found she could not later claim discrimination.

Escalate Where Necessary

To the extent a mental health disability causes health and safety issues in the common elements or the units, the corporation should react quickly.

For situations involving a resident in crisis, the corporation may contact the police and request a mobile crisis intervention team, where available (in Toronto, this is the "MCIT"). These teams partner with a mental health nurse and a specially trained police officer to respond to persons experiencing a mental health crisis. It should be noted that MCIT will not respond if a weapon is involved or if it is otherwise unsafe for a nurse to attend the site.

In non-emergency situations involving health and safety, and after broaching any accommodation obligations, the corporation will want to send the usual compliance letters. Thereafter, the corporation may have to commence legal proceedings to seek an order for compliance under the *Condominium Act, 1998*. Typically, the corporation will be able to rely on Section 117 of the Act, which provides that no person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual.

Remember Accommodation is Individualized

Accommodation is never one size fits all. Corporations should be flexible and respond to individual disability needs in good faith without sacrificing the health and safety of the other residents. ■

Deborah Howden is a Partner in the Condo Law Group at Shibley Righton LLP. Her practice involves all aspects of condominium law issues, with particular emphasis on human rights and labour and employment matters. Deborah is actively involved in the condominium community and frequently writes about condominium law topics. She teaches condominium law to managers and directors in-house at various conferences and management companies. She can be reached at deborah.howden@shibleyrighton.com or shibleyrighton.com

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