

OOPS!!



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Nobody's Perfect – The Honest Mistake

“Perfect is the enemy of good” is a quote often attributed to Voltaire. I recently read a version of this saying under the signature of a long-standing member of the property management profession. I reflected on the meaning of the quote that striving for the extreme of perfection may result in diminishing solid and positive outcomes. Therefore, is it reasonable to expect that property managers will be perfect in every task undertaken? I would say it is not reasonable. Further, I would suggest that it is not reasonable to strive for perfection because it is unattainable and makes more sense to accept periodic failure. Achieving excellence is the achievable goal.

Does human error happen? Yes, it happens to all of us humans. I know no one in this industry that has never made a mistake. Anyone who says that they haven't made a mistake is probably lying to you. Do property managers make mistakes? Yes. Is it acceptable from time to time if it is void of mal intention? Yes. Why? To err is human and forgive is divine. With this said, I wish to make it abundantly clear that choices driven by malicious intent are not mistakes. Fraud and theft are intentional choices.

Think about the impact of the pandemic on property managers. Take a normal workday and extend it by another 3-4 hours each day. Look at your inbox for the increased demands of

boards, unit owners, suppliers, COVID 19 protocols, retrofitting construction projects. Then factor in working from home, children being home and other personal commitments and a holiday at home. It is a wonder that more mistakes do not occur. A mistake along the way is inevitable, I think, and practically speaking, I have seen very few errors.

Proactively Avoid Mistakes

So how does one proactively avoid mistakes? Awareness of where mistakes may occur in the process of managing a property. By working with your team, tapping into years of experience, identifying and discussing areas of risk and planning for the worst-case scenario in

advance, you can anticipate how to avoid mistakes. Careful planning and review, especially with a second set of experienced eyes can help avoid a mistake. A further component to being proactive is knowledge. Continuing professional education allows a manager to remain current and to expand his/her/their view on property management issues.

course of doing so, anticipating the need for resources, including time.

Another way to avoid the harm of making a mistake is to stay within your professional expertise. If something is not in your realm of knowledge or experience, such as legal matters, then do not provide advice that you are not qualified to provide. While you may face pressure from

member of your team for assistance. Tell the client. If we make a mistake, own up to it first and foremost.

Take another breath and then acknowledge that every act or omission has a consequence. The consequences can come in many shapes and forms, such as damages, losses, third party claims, loss of trust, reputational loss, and loss of professional status. If we choose to work with condominium communities, we cannot be afraid of the consequences of failing. It is possible to manage the process and resultant stress around the mistake.

Those of us that are deemed professionals have a higher duty to our clients. This is why we are called professionals.

Another effective way to avoid a mistake is to not bite off more than you can chew. Be reasonable about what can be accomplished. Set reasonable parameters for performance and manage the expectations of your community and/or the board. One effective way to do this is to work out the timeline with the board to achieve the end goal and, in the

your board, you should not be putting your reputation, licence, or firm at risk.

However, there will be a moment or two in your career where you will make a mistake and perhaps fail in fulfilling your role as a property manager. First, take a deep breath and then assess the situation when you know you have made a mistake. Go and speak to a senior

Management Agreements and Contracts

A well-designed and written management agreement clearly articulates what the consequences may be for making a mistake. Contracts often communicate rights and interests. Management Agreements should consider whether an error is major or minor and what a party's rights may be: termination, damages, indemnification, etcetera. Further, property management agreements usually provide for insurance coverage in the

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instance of certain losses. With this said, interests should also be preserved and managed reasonably. Do you want to terminate a solid relationship for making a minor mistake in a market suffering from a shortage of qualified managers?

After admitting that an error has been made, identify, and quantify the losses arising from the mistake. Then think about who has been impacted by the loss and how to minimize the impact by finding a solution. The severity of the mistake often drives solutions. Will the consequence be additional work or service, will money be required to make the party facing the loss whole again, will it be necessary to remove the service provider?

In the course of finding a solution, legal counsel may need to be engaged by all the parties to assess the risk and interest of each party to the issue. Boards should be very thoughtful about trying to manage risks on their own and should seek legal advice to make sure that they fulfil their obligation under Section 37 of the Act, which requires due diligence. As well, insurers must be engaged in a timely way to ensure coverage where appropriate.

Those of us that are deemed professionals have a higher duty to our clients. This is why we are called professionals. This is why we have ongoing insurance, statutory compliance requirements for licencing and why we are called to continue our education throughout our careers. We cannot stand still and be ignorant.

As a supplier to the industry, one of the other challenges that I do come upon, from time to time, is willful ignorance. Anybody who knows me well will know that I have a very limited tolerance for anybody who intentionally keeps themselves ignorant. I think we are fortunate enough to have resources around us 24/7 and that nothing needs to remain a mystery to us.

In Spite of Imperfections

For myself, as both a condominium owner, director, and condominium lawyer, I have been involved with board work for about 18 years. In that time, I've had the opportunity to work with strong management teams that have supported the condominiums I have served. These professionals were on top of the knowledge required to effectively help the condominium community as a not-for-profit organization and keep its affairs running on

a day-to-day basis. But they were not perfect. Yet despite imperfections, we hit our budgets, hit our reserve fund targets, our maintenance and repair were better than average, we operated relatively smoothly, and we were never in deficit. Emergencies were anticipated and handled effectively. This, to me, is evidence that these goals are achievable despite imperfections. Therefore, the reasons why do some managers make mistakes or fail to perform adequately include:

1. Lack of training or knowledge
2. Lack of resources
3. Lack of planning
4. Pressure from boards making decisions to the detriment of the condominium's well-being. In my opinion, this is the board's error, not the property manager's.

With this said, I am extremely grateful for those property management teams that get educated, stay educated, think ahead, anticipate risk, formulate plans, have integrity, find solutions and work honestly to protect the Corporation and its owners, and who are accountable if they mess up.

Do we make mistakes? Absolutely. So, what do we need to do? In addition to the above, we need to have compassion. We need to understand the rights and interests of the parties and brainstorm various solutions. We need to assess risk and speak to professionals. Sometimes, we need to look ahead and value our business relationships that achieve excellence for our communities, even if they are flawed. ■

Patricia Elia is a senior lawyer with Elia Associates and has practiced law for 25 years in the areas of corporate law in large and medium firms before coming to Elia Associates. Patricia's commitment to condominiums has been in leadership roles such as the President of CCI Huronia, Co-Chair of CCI's National Council, a member of CCI National Executive and a member of all 5 Ontario chapters. She has also sat as Vice-Chair of CCI National's Government Relations Committee and Governance Committee. She is a founder of Women in Condos. She has been a Condominium Director for the last 17 years and a Unit Owner of a condominium.
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