

real estate

Condo-Ology®: A former front line condo manager's perspective

The Condominium Act of Ontario: Is it Sufficient?

The current Condominium Act of Ontario ("Act") legislates the bare minimum requirements for the operations of condominium corporations, as would any future Act. As is the case in many aspects of life, minimum requirements are not the standards one should strive for.

I believe many readers are familiar with Mike Holmes, a television personality and champion of good building practices. Mr. Holmes has a trademarked saying "Make it Right™" and is an outspoken critic of builders that simply meet the minimum standards under Ontario's Building Code. With respect to minimum standards, Mr. Holmes has been quoted as saying, *"Even if they are minimum standards, codes matter. I'm not a fan of people who build only to code, because the building codes are minimum standards. I want to see people build past minimum standards, so that every homeowner has the safest possible living environment."* I believe Mr. Holmes' opinion regarding building codes holds true for the Condominium Act as well.

As outlined in my previous articles, Condominium Boards of Directors ("boards") can be classified under two headings: Reactive or Proactive. Reactive boards only seek to meet the minimum standards set out in the Act. Proactive boards consistently exceed these standards.

In addition to inferior performance and poor communication, the behavior of a board with a reactive approach is often more costly than a proactive board. Similar to most provincial legislation, the Act is complex and reactive boards can incur substantial annual fees for legal opinion to ensure that they are in compliance with a tortuous worded minimum standard. In contrast, a proactive board and, their property manager, are most likely exceeding these minimum requirements (knowingly or not knowingly), thereby eliminating the continuous need to incur the cost for legal opinions.

In order to illustrate the importance of exceeding minimum standards, let us consider an example in which a board had two ways to handle the communication of a reserve fund expenditure to condominium owners.

I was involved in a situation in which a condominium corporation had entrance stones that were dated and at the initial stages of deterioration. The reserve fund study recommendations had indicated that the replacement should not take place for five years. Within the Act, a board has the full authority, without consent of the owners, to decide to replace a component of the condominium's common elements. At this point, the board had two options i) proceed without the involvement of the owners, or ii) choose to engage the owners and put it to a vote.

It was determined that the owners would be engaged with a proposal for the replacement stones. Additionally, a full disclosure of the cost, including the effect the expenditure would have on the reserve fund balance, was included with the annual general meeting notice package. While the board wished to proceed with the replacement, which could have been done without the consent of the owners, the minimum requirements were exceeded by communicating to the owners that they would not authorize the replacement unless 66.66% of the owners agreed.

The outcome was that the 66.66% threshold was met, the job proceeded, and it looked fantastic. Despite the fact that the owners were not all in agreement with the replacement, the decision was accepted because they had been engaged. The engagement of owners, through transparency, resulted in a cohesive and happy condominium community.

To answer my own question – no, the minimum requirements, as per the Act, are not sufficient. Would you advise your kids to go through life endeavoring to only meet the minimum standard? No. Consistent with good parenting, boards should seek to serve their condominium owners to the best of their ability – continually exceeding the minimum standard.

FORE!

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