

NADLAN-HARRIS PROPERTY MANAGEMENT INC. SPRING NEWSLETTER, 2019

In This Issue

- Breaking Bad Condo Habits.
(comments by Liron Daniels)
- Managing short-term condo rentals.
(comments by Liron Daniels)
- Condos include Materials in a Meeting Package if Owners Demand it?
- Leveraging your existing budget increasingly.
- Cannabis and accommodations.
- Condo Corporation Not Responsible for Parking Garage Vandalism – A Recent Case.
- Simple tips to help your building work for you.

Message from the President

Dear Board of Directors,

Sunnier days are here to stay! As nature continues to bloom, let us continue to approach life with a brightened disposition and a reenergized state. We are pleased that our team at Nadlan-Harris Property Management Inc. have the pleasure of working along with all of you for yet another beautiful season.

With Summer around the corner we wish you a beautiful and pleasant season of planning fun activities you can enjoy in the warm months to come.

Sincerely,



Liron Daniels
President
R.C.M., P.P.L., B.E.S.

Company News

*We encourage all residents to log into your Community website and use the fantastic features, as it is a great means of connecting with the community. **NEW features such as mobile access and consent to receive electronic communication have been implemented.** The platform will allow Nadlan-Harris Property Management Inc. to facilitate communication, increase efficiency and allow residents an opportunity to provide their valued feedback. We look forward to connecting with you.*

BREAK BAD CONDO BOARD HABITS

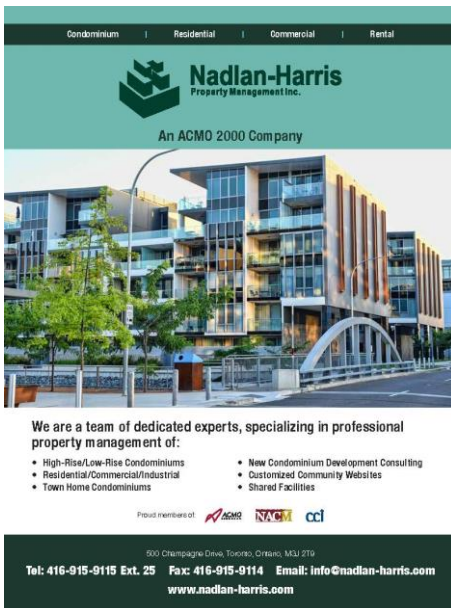
Featuring Comment by Liron Daniels, President of Nadlan-Harris Property Management Inc.



Much like people, condo boards can develop bad habits that are hard to break. Even good condo

boards, from time to time, need to break out of bad habits.

Liron Daniels, President of Nadlan-Harris Property Management Inc., identifies bad habits condo boards should strive to avoid.






Condominium | Residential | Commercial | Rental

Nadlan-Harris
Property Management Inc.
An ACMO 2000 Company

We are a team of dedicated experts, specializing in professional property management of:

- High-Rise/Low-Rise Condominiums
- Residential/Commercial/Industrial
- Town Home Condominiums
- New Condominium Development Consulting
- Customized Community Websites
- Shared Facilities

Proud members of:   

500 Champagne Drive, Toronto, Ontario, M3J 2T9
Tel: 416-915-9115 Ext. 25 Fax: 416-915-9114 Email: info@nadlan-harris.com
www.nadlan-harris.com

CONFLICTING PUBLIC OPINIONS

Condo boards can and should have disagreements. This remains the best way to come to the best possible solutions. Once there has been a majority vote the board should speak with a unified voice.

Whether giving direction to management, dealing with vendors or communicating with residents a condo board should speak with a single voice. Directors voicing dissenting opinions outside of board meetings can weaken a condo board.

FAILURE TO VOTE AND RECORD DECISIONS

After deliberation and decision, condo boards can neglect to have a formal vote or record decisions. Lack of formal records, meaning undocumented actions, are not legal. They can place any policy or financial decision at risk.

FABRICATING PROBLEMS TO ADDRESS

Serving as a condo director is hard enough without creating “problems” that don’t exist. Avoid demanding new procedures or processes likely to create more problems. That vendor who fails to perform as expected or resident who fails to abide by condo rules is more likely to be an isolated situation rather than reason to deliberate and question the way things are currently being done.

MANAGING SHORT-TERM CONDO

RENTALS

April 2019

Featuring Comment by Liron Daniels, President of Nadlan-Harris Property Management Inc.



Short-term condo rentals have become a popular topic within condo communities. Some communities

embrace short-term rentals as an individual choice made by condo owners. Short-term rentals may also elicit concerns that include safety, security, lifestyle and adherence to condo rules.

The internet has made short-term rentals easier to promote. They have become a way to make extra money for condo owners but at a cost to condo neighbours and the condo corporation.

Condo corporations concerned with short-term rentals have the resources and authority to control them.

Nadlan-Harris Property Management and **Duuo**, a provider of insurance for short-term rental hosts that is part of The Co-operators, have teamed up to offer a four-step process for managing or

controlling short-term condo rentals and how it can be implemented.

REVIEW GOVERNING DOCUMENTS



Governing documents – declaration or rules – may currently have restrictions or prohibitions against short-term residency. Where no mention is made of short-term rentals, or where governing documents are not in line with current intentions, they can be modified.

Minimum lease terms – 6 months or 12 months – can be added or removed in accordance with what is desired prohibitions on transient use can be added or removed permission can be required for short-term use check-in and check-out requirements can be implemented for short-term use.

COMMUNICATION AND DOCUMENTATION



Residents and staff should be informed of short-term rental policies and how they can assist in enforcing any

restrictions that may exist. Distribute a one-page document identifying short-term rental policies as provided in the declaration or rules. Residents can be encouraged to advise the concierge, security or management office when they suspect a suite is being improperly used for short-term stays inclusive of date and conduct being noted. Security, concierge and management can be instructed to log date and noted conduct for those suspected of short-term stays. Those entering with suitcases can be confirmed as residents or visitors and logged along with suite number.

BE PROACTIVE

When there are prohibitions or restrictions on short-term rentals, short-term stay websites can be monitored for postings for your building with suspected suites documented by making a copy of postings. Popular websites for short-term stays include Airbnb , Kijiji, Craigslist, VRBO, TripAdvisor, Homeaway, Flipkey and Roomorama.



ENFORCEMENT

When short-term stay residents are identified, condo corporations may consider enforcement actions which include:
Denial of building access to non-residents
Denial of access to common areas
Deactivation of fobs for any suite where non-residents are found to have been provided access in contravention of condo rules
Recovery of costs to identify offending suites when these costs are charged by an agency and directly attributed to that suite
Legal action

CONDOS INCLUDE MATERIALS IN A MEETING PACKAGE IF OWNERS DEMAND IT?

Allow me to paint a small picture in your minds. Condo 123’s AGM is coming up. Accordingly, the Board sends out a preliminary notice of meeting. As per the Act, the Board includes an invitation that owners may provide any material they want included in the subsequent notice of meeting. The Board also provides the required deadline to submit these materials. These deadlines are easy to calculate with our handy AGM Calculator.



The owners respond and send several of these requests to include various materials. Now what? Must the Board include these materials? The short answer is no. But this may not always be the practical answer.

WHAT DOES THE ACT SAY?

Section 45.1(1) of the *Act* states that preliminary notices must include certain information and statements. One such statement is a request that owners provide the board with any material they want included in the subsequent notice of meeting. However, the question then becomes “what must Boards do with these requests”?

Section 45.1(2) of the *Act* specifically addresses this issue. It says that when the board receives requests from owners to include materials the general notice, they do not have to be included in the subsequent notice of meeting.

In addition, section 12.2(2)(e) of the Regulations goes a step further. According to this section, the preliminary notice must specifically indicate that the board doesn’t have to include any material despite having received a request from owners to do so. The notice must include the submitted materials only in certain circumstances.

Section 12.8 of the Regulations lays this out for us. The materials must be included if the submission is: submitted by at least 15% of the units; made in the correct form (more on this below); provided within the deadline in the preliminary notice; made using an accepted method (more on this below as well); and not contrary to the *Act* or Regulations.

Obviously, not all requests will meet these requirements. Those that do not, need not *technically* be included.

HOW ARE REQUESTS SUBMITTED?

I would like to briefly touch on how to make such a submission before continuing. There are two main requirements: form and method of submission.

Form – Owner submissions should use the form called “Submission to Include Material in the Notice of Meeting of Owners”. This form can be

found [here](#).

Method – There are several ways to provide owner submissions to the Board, according to section 12.8 of the



Regulations: by any method set out in a Board resolution; by any method set out in a by-law; sending it to the address of service for the Corporation; or in the same manner as a records request (see section 13.3(4) of the Regulations); Note that section 12.2(2)(f) of the Regulations requires that preliminary notices state these methods.

SO, WHAT IS THE POINT?

Back on track. You may be left scratching your head. What is the point of even asking for the materials in the first place if the Board does not have to include them (except in very particular circumstances)? It seems like a rather toothless requirement, doesn’t it? The purpose of Owners’ meetings is typically to address important issues that affect all the owners/occupiers. It may be the case that the owner of unit 214 feels like their unit is too cold, or that whoever lives above unit 1405 has taken up at-home-bowling in the late hours of the night. Of course, these are both important issues, but are not necessarily appropriate meeting topics. If they were, meetings could themselves go on into the late hours of the night. However, the Board may receive other material submissions that do seem more suited to meetings. For example, the City’s composting schedule, or information about a Neighbourhood watch or a copy of the latest RFS. The *Act* and Regulations give owners the right to bring these materials and issues to the Board’s attention. However, they do not legally require these issues to be topics at a subsequent meeting.



A PRACTICAL ANSWER

Let's forget about the law for a minute and try applying some common sense. (There's an



oxymoron, here!). If there really is enough interest in an issue (i.e. at least 15% of the units), owners can just requisition a meeting to address that issue. This ability creates an incentive for the board to include

owner suggestions in their notice package. Why not avoid the hassle of another meeting if it can be addressed at the AGM? Accordingly, always give these requests some serious consideration. Don't just treat them like a mere formality. While it may be that the submission was not made by 15% of owners, or that the proper form has not been used, if there seems to be a wide interest in the topic, it should not be lightly discarded. In this vein, while we always recommend that owners use the prescribed forms, we don't think submissions should be outright ignored if they are not.

Condominium law is very democratic. This means, each owner has a voice. Of course, the more voices included, the louder the chorus will be. As such, if owners want to ensure that a particular topic is covered in a meeting, they should strive submit materials that demonstrate a wide interest in discussing it. They should also try to ensure that the submission is compliant with all of the Act's requirements. Likewise, when Boards and/or managers receive materials that owners are requesting be included in a meeting package, they should be mindful of the breadth of the issue being raised and not too quick to discard it. Like almost all things in the law. This requires a bit of a balancing act. Should you ever find yourself tilting a little too far in one direction, we are always happy to help with getting back on the tightrope.

LEVERAGING YOUR EXISTING BUDGET INCREASINGLY, LOANS ARE BEING USED BY CONDO CORPORATIONS TO LESSEN THE BURDEN ON OWNERS BY SPREADING OUT THE COST OF MAJOR PROJECTS.

Despite having the most conservative Reserve Funding regulations of any Province in Canada, older buildings in Ontario are facing shortfalls. Loans are increasingly being used by condo corporations to lessen the burden on owners by spreading out the cost of major projects. There are lots of condos using a loan to get major work completed without significantly increasing their condo fees, or gradually increasing fees over several years. This concept doesn't apply in all cases, but in many cases it does.

HOW DOES IT WORK?

The Reserve Fund for a condo corporation is a savings and expenditure model over a long period of time. The owners are saving money every year with the expectation of spending the money on very specific projects at some point in the future. When major expenditures are required earlier than planned, you also change your future savings needs. Take a window replacement project for example; if a corporation has been planning to replace all the windows over the next 3 to 5 years, a good portion of the money in the Reserve Fund, and a good portion of the money being saved every month (the Reserve Fund contribution) is likely to be spent on the window replacement. If the window replacement gets moved forward in time to be completed now (e.g. too many windows are failing) then the corporation no longer needs to save for the window replacement in 3 to 5 years. If the corporation levies a special assessment to pay for the window replacement, then the assessment may be reduced by using some of the money in the Reserve Fund. However, this approach ignores the money that is being saved every month towards the planned replacement in the future. Borrowing



may allow the condo corporation to leverage the ongoing Reserve Fund contributions in its existing budget.

WHEN DOES IT WORK?

This concept is particularly applicable when the project at hand is in your existing Reserve Fund expenditure plan in the next several years, and the planned cost estimates are close to reality. This also applies to older buildings that are on the brink of having renewed all the major components, and on the horizon, are many years where the corporation doesn't have any major expenditures.



SHOW ME

The table below shows a very simple, but real example. The current monthly condo fees of \$420/month include a contribution of \$120 which is going towards savings in the Reserve Fund. By working with a lender that understands condos and coordinating an update to their Reserve Funding plan with the Reserve Fund Study provider, this corporation was able to reduce the Reserve Fund contribution from \$120 to \$60.



With a \$75 loan payment now included in the monthly condo fees, the resulting condo fees are only \$435, a \$15 increase from the prior year. The corporation may also require gradual increases in the Reserve Fund contributions in the next few years, but the immediate impact to owners is minimized compared to the other alternatives.

COMPARE

Any decision of whether to borrow or special assess should compare the financial implications of the alternatives.

BUDGETED EXPENSES	CURRENT	NEW
Operating Expenses	\$ 300	\$ 300
Reserve Fund Contribution	\$ 120	\$ 60
Loan Payment	\$ 0	\$ 75
Total Condo Fees	\$ 420	\$ 435

In the example above, if the Board decides to levy a special assessment for the same amount (without a change to future Reserve Fund contributions), the unit owner would need to pay \$8,600. A mortgage payment (on a low rate first mortgage) repaid over the same period as the example above would carry a monthly payment of around \$60. Although the mortgage payment in this example has a lower interest rate, the additional \$60 mortgage payment is considerably higher than the \$15 increase in condo fees.

To be clear; we would never suggest to a condominium corporation that they should under contribute to their Reserve Fund. Most funding plans are far more complex than the simple example provided, but, if the plan for future expenditures changes dramatically, it may be wise to re-evaluate the funding plan and look at all the options available.

The funding needs of every condominium corporation are unique; as are the potential solutions when the funding plan gets off track. The best advice I can give any Board is to invest the time in looking at all their available alternatives, including borrowing. The best lending solution for a condo corporation requires a collaborative effort between the Board, a Reserve Fund planner, a lender that understands how a condo corporation operates, and a community of owners that have been well informed.

**CANNABIS AND ACCOMMODATION:
WEEDING OUT LEGITIMATE
REQUESTS.**



With the legalization of cannabis, many condo corporations have recently passed provisions to prohibit the smoking of cannabis. While there has been much said about the creation of these provisions, there has been little written about the duty to accommodate.

The smoking of recreational cannabis is not, in and of itself, a protected human right. However, if a resident has a medical condition and requires the use of cannabis, there is an obligation for the condo corporation to accommodate that person and permit the activity up to the point of undue hardship.

The parties should engage in a meaningful, respectful and confidential conversation to ascertain if the medical condition is considered a disability in accordance with applicable human rights legislation and whether the smoking of cannabis is a necessity.

There is always a balancing of individual and community rights when dealing with condo issues and this comes to the forefront with cannabis. Some points to consider during this process:

Condo corporations should not hesitate to request medical documentation which establishes that the person has a medical disability and requires the use of cannabis.



Ask for regular medical updates on the person's condition and whether the accommodation is still necessary. For example, is the medical condition permanent or temporary?

Further discussion should be had with respect to consumption and the type of accommodation required. For example, does the medical condition necessitate that cannabis is consumed by way of smoking or are there other forms of consumption

that are acceptable (i.e. edibles or oils)? Condo corporations should always approach these issues with an open mind and deal with requests for accommodation on a case-by-case basis. Some residents will have a medical condition that requires the use of cannabis and these individuals should be accommodated up to the point of undue hardship. However, some residents may simply use cannabis recreationally. In this regard, it is prudent to engage in a dialogue with residents so that the condo corporation can weed out the legitimate requests for accommodation.

**CONDO CORPORATION NOT RESPONSIBLE
FOR PARKING GARAGE VANDALISM – A
RECENT CASE**

In a recent case, *Friedrich v. MTCC No. 1018*, a condominium resident unsuccessfully sued the condo corporation after his vehicle had been vandalized.

The corporation had made changes to its security for the garage. The previous telephone entry system was replaced by closed circuit televisions and security guard patrols every two hours.

The resident alleged that the changes to garage security resulted in easy access to vandals. He argued that the corporation had breached its obligation contained in section 17 of the Condominium Act, 1998, to control, manage and administer the common elements and was also negligent under the Occupiers' Liability Act in failing to keep the parking garage secure.

The resident's case was dismissed after the Court concluded that the resident did not provide any evidence that the change in the garage security made it more likely that his car would be vandalized or that the corporation's security protocol fell below industry standards. The resident did not even provide any evidence to substantiate that his car had been vandalized while in the parking garage.

The Court stated that the corporation was not an insurer and determined that if there was any vandalism that occurred to the resident's vehicle

while in the garage, the damage was caused by criminals, not the condominium corporation. The Court found that the corporation had acted reasonably in hiring the security firm and that there was no evidence that the security firm did not discharge its duties in a professional and reputable manner.

The Court decision was upheld on appeal to the Superior Court of Justice. The dismissal of the appeal was since the resident failed to establish that the corporation had breached the standard of care required under the Occupiers' Liability Act. The Superior Court also acknowledged that the Board's business judgment concerning the security system was entitled to deference. The Ontario Court of Appeal has recognized that the "business judgment rule" applies to condominium board decisions. If the board of directors has acted honestly and in good faith and exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, the courts will give deference to board decisions. Directors who have met the requisite standard of care won't have to worry about the court "second-guessing" board decisions.

SIMPLE TIPS TO HELP YOUR BUILDING WORK FOR YOU

The great thing about living in a condo is that a lot of the annual maintenance that most

homeowners do themselves is done for you.



Duct cleaning filter changes, carbon monoxide alarm testing, common area painting, and so much more.

Keeping the space around your panels, vents, and alarms clear, and accessible, helps us and the professionals involved, do their job effectively. Spring and fall are when most buildings will send their maintenance staff around for a check on the essentials. Do your proverbial spring cleaning and move any obstacles to your vents and panels before you get the notice of entry, and you'll make maintenance day that much easier for both you and your condo's staff.

