



>> HOMES & CONDOS

> CONDO LAW

Building's board can't block complaints about manager

No right for directors to maintain such a prohibition



Gerry Hyman

Does the board have the right to prohibit residents from complaining to management about the inappropriate conduct of their on-site manager?

Unless there is a rule requiring owners to bring such complaints to the board, and not to the management company, there is no right for the board to maintain such a prohibition.

At our annual general meeting, an owner nominated himself as a candidate for the board. There was only one vacancy and no

other candidate. The chair declared the candidate elected by acclamation without a vote. Is this legal?

It is not unusual for the chair of the AGM to announce that an owner may nominate himself, especially when there are otherwise no candidates. If the chair provides a reasonable opportunity for other owners to contest the election and no one steps forward, it is proper for the chair to advise that the one candidate is a director by acclamation.

Our board enforces a rule that prohibits dogs, even though we are aware of a dog residing in the building. Are we prohibited from buying a small dog?

The courts have decided that, while a rule may limit the number or size of dogs, a rule prohibiting dogs is unreasonable and thus unenforceable. A dog prohibition is

valid, however, if contained in the declaration.

A rusty water pipe resulted in water damage to my car. The board maintains it is not responsible for damage to personal belongings and will only replace the rusty pipe. Are they correct?

The board is responsible for common element repairs. The corporation could be held liable for the damage to your car. But it must be shown that the damage resulted from the failure of the board to remedy, within a reasonable time, the common element leak of which it was aware.

Our board is pushing through an exterior painting project at a cost of more than \$4 million over approximately four years. The board maintains that the cost will be paid out of the reserve

fund and according to section 95(2) of the Condominium Act, no owner consent is required for the corporation to make an expenditure out of the reserve fund. The board's purpose, apparently, is to change the colour of the exterior. Is the board correct?

The board is correct that section 95(2) states that owner approval is not required for a reserve fund expenditure. The question, however, is whether this is a proper reserve fund expenditure. The reserve fund may only be used for major repairs and replacements.

If the exterior walls have deteriorated and require replacement, the board may use the reserve fund without owner approval. Otherwise the project is not payable out of the reserve fund and constitutes an addition, alteration or improvement to the common elements.

If it is not a reserve fund expenditure, then if the estimated cost is greater than the larger part of \$1,000 and one per cent of the corporation's annual budget, the owners must be notified and advised of the project. They must be told of its estimated cost and also advised that at least 15 per cent of unit owners are entitled to require the board to call an owners' meeting to vote on the project. The project may be approved at the meeting by a simple majority vote of those present in person and by proxy.

If the estimated cost exceeds 10 per cent of the budget, the board must call an owners' meeting at which it obtains the approval of owners of at least 66-2/3 of all of the units.

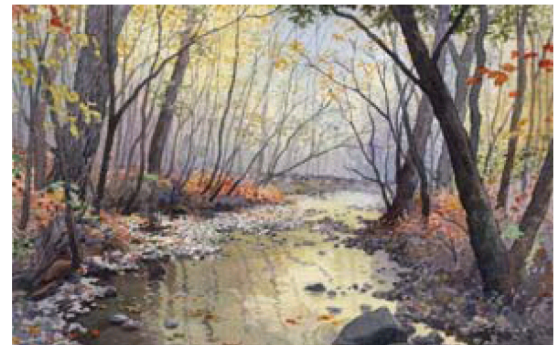
Lawyer Gerry Hyman is an expert in condominium law. Send questions to gerry@gerryhyman.com or fax to his attention at 416-925-8492. Letter volume prevents individual replies.

MIXING UP THE MEDIUM

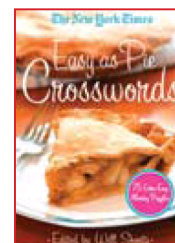
A unique watercolour approach to renderings for The Ravine condominium project



MICHAEL MCCANN ILLUSTRATIONS



Usually computer-generated, architectural drawings for The Ravine condo development were lent a brush of creativity from award-winning artist Michael McCann. The seven-building, mixed-use community overlooking the Don Valley — and to be built by Urban Capital and Alit Developments — begins with a 336-unit tower. Suites will start in the mid-\$200,000s.



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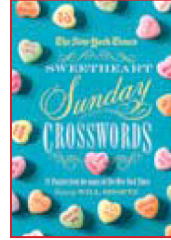
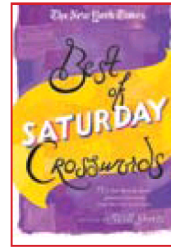


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