

A Financial Primer for Condo Boards

By Ray Mikkola, LLB

Condo directors are responsible for the healthy financial management of their corporations. Managers can share their wealth of knowledge to assist novice and experienced boards stay 'in the black.'

YOU HAVE been elected (or cajoled, reluctantly agreed, pulled over the finish line, or similar...) as a director on your condominium's board. *Congratulations!*



A new world of responsibility and authority awaits you, particularly when it comes to the financial health of the condominium corporation. Financial management in many ways is the most important duty that directors owe to the owners of a condominium.

In virtually every condominium, there is only one source of income: common expenses collected from owners. The importance of these payments is underscored by the types of expenditures that are the sole responsibility of the board.

For example, it is the duty of the directors to insure not only the common elements against loss, but also the units (with such improvements to the unit as will be set out in the Standard Unit Bylaw). If the condominium building is destroyed by fire, all of the owners and the owners' lenders will look to the insurance policy that has been arranged by the directors for recovery or to rebuild the building (or everyone loses).

Where utilities are provided as part of the common expenses, all such utilities (water, electricity and gas) must be provided in accordance with an arrangement set up by the board (or everyone is shivering in the dark).

And when the roof needs to be replaced or significantly repaired, the owners in most condominiums will be looking to the reserve fund (again, a responsibility of the board to maintain) to pay for this expensive capital repair or replacement (or everyone is wet and mouldy).

On the income side, the importance of prudent financial management is evidenced by a statutory lien regime which virtually guarantees that common expenses will be collected, even where the owner is deceased, bankrupt, refuses to pay, or where there are mortgages registered on title to the unit which, in a non-condominium scenario, would make such collection doubtful at best.

The responsibility of a director to the corporation and through it, to the owners, is daunting. There are a few general rules that will serve a director well:

1. Get it Right the First Time

I don't know of many people who like budgets. They are detailed and subject to endless "tweaking" before they can be put forward with any degree of confidence. And like any plan, they do not long survive contact with the reality of the expenditures once they are implemented. But directors should rely on their professional managers for the preparation of accurate budgets. If a corporation is self-managed, rely on the experiences of the other directors (and past directors) and the successes/shortcomings of the prior budgets.

Expenses should be monitored against the budget throughout the year. But there are no shortcuts. Costs tend to rise, and it is better to have a small surplus at the end of the year than to end up short. Directors should

consider not only expenses, but also any rebate, incentive, reimbursement or similar types of government proposals, and including sub-metering arrangements to bill the cost of utilities directly to unit owners or their occupants.

The income side of the equation is relatively predictable (multiply the anticipated required expenses by the allotted proportions of contributions to the common expenses set out in the declaration and divide by

12 to get each owner's monthly contribution), but divining the expenses is more difficult. Even anticipating all of the categories of expenses is not always easy.

Don't forget the requirement to give effect to the mandated contribution to the reserve fund, based on your reserve fund study, which you should update at least as frequently as required by the Act.

There is no requirement to get the approval of the owners – the budget

process is entirely the responsibility and the duty of the board. However, communicating the (sometimes unhappy) reasons behind the budget is good policy so that owners can appreciate the deliberations behind the board's decisions.

2. The Special Assessment Option

Sometimes, having done a superb job with the budget, you as a director are faced nevertheless with a shortfall for expenses that need to be paid immediately. This happens either because your budget underestimated expenses, or there is an unexpected expense that you did not or could not anticipate at the time that the budget was finalized.

In my experience, these have been caused by a catastrophic (meaning "expensive") failure of the common elements (the indoor pool on the rooftop atrium develops a crack, for example) for which there is insufficient funds in the reserve fund, a manager, director or employee absconding with corporation monies (I have been involved in such a case) or a lawsuit that quickly proceeds to judgment against the corporation.

On this last example, it should be noted that a judgment against the condominium corporation is a judgment against all unit owners for their portion of the common interests. So, if the judgment is not satisfied, the winning party to the lawsuit may soon afterwards start towing cars out of unit owners' driveways!

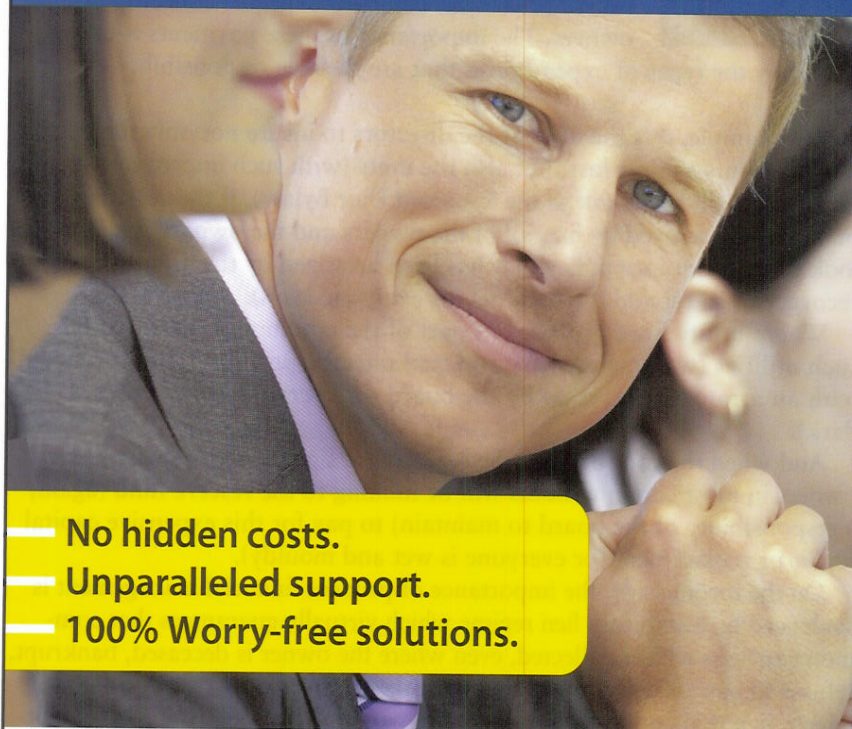
Assuming that there is no insurance available for any of these events, the board may wish to levy a special assessment for this type of extraordinary expense.

The owners will not be happy, but the alternatives (especially the car towing part) will be less happy. Start by reviewing the condominium documents (declaration and bylaws) as they often contain procedural issues (extent of notice, method of payment, etc.)

The board will need to confirm the amount of the special assessment at a meeting of directors, and carefully minute the decision of the

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board, and then communicate the special assessment to the owners, and be prepared to enforce collection.

Make sure your lawyer is involved from the beginning, as this matter is technical and you do not have the resources or time to unsuccessfully defend what you have done.

3. The Loan Option

The board might elect to borrow money to pay for the shortfall described above instead of levying a special assessment. Again, you will need legal advice. For example, it may not be possible to borrow without passing a bylaw, which requires the approval of a majority of owners at a meeting duly called for that purpose.

There are a number of lenders who are prepared to lend, but they will require various documents and legal opinions, so the money will not typically be available as quickly as it might if you levy a special assessment.

Loans to condominium corpora-

“it is the duty of the directors to insure not only the common elements against loss, but also the units.”

tions, although more common than a few years ago, are still somewhat confusing to bankers. For example, as the condominium corporation owns no property, there is no “mortgage” to register in the ordinary sense. The loan must be properly authorized so that the promise (referred to as a “covenant”) to repay is a valid and binding obligation of the condominium corporation. For this reason, bankers rely heavily on lawyer’s opinions to confirm the validity and enforceability of the executed loan documents.

■ The Bottom Line

The first *Condominium Act* was proclaimed in 1967. For more than 40 years, the legislature has put its

faith in the ability of volunteer directors to manage condominium corporations whose budgets, in some cases, are several millions of dollars annually.

The *Condominium Act* therefore assumes that directors will discharge the responsibilities placed upon them to manage the finances of the corporation in a careful and responsible fashion. The Act gives them the tools to do so, by, among other things, putting in place a very strong lien regime and giving the board virtually limitless access to monies from unit owners.

The key for directors is to act prudently and carefully in exercising their authority and their discretion for the overall benefit of their condominium community, sometimes by making difficult, but necessary choices. ■

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