

Shared Amenities, Status Certificates and Miscellaneous Accounts

By the ACMO Associate Members Committee

A panel of experts answers questions of interest to property managers and condominium boards of directors. The following questions were submitted and the responses provided.

Q. *How can we get out of an amenities sharing agreement that says it is in "perpetuity"?*

A. The answer to this very interesting question, as is so often the case, is "it depends." First, a little background.



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These so-called shared amenities agreements are sometimes also called "joint use agreements," "easement and cost sharing agreements" and

"mutual use agreements." Generally, they share the cost of one or more particular amenities between condominium corporations, or between one or more condominium corporations and a non-condominium portion of a development. They are motivated by the desire to save costs – why build three pools for three buildings when one larger shared pool will suffice?

Typically, the agreements contain a formula for cost sharing, create a specialized board that puts forward budgets to pay for the shared amenities, and set out voting rules and dispute resolution processes. In most cases they are executed by developers on behalf of condominium corporations that are not yet registered. These condominium corporations then assume the obligations of the particular developer after they are

registered at a time when the developer controls the board (and prior to the "turnover meeting," being the meeting at which the owner-elected directors take over the board).

Shared amenities agreements contain provisions that set out how the shared amenities are to function. Owners and purchasers have relied on them to create access to and a working arrangement for the ongoing provision of the amenities. Some agreements also include non-amenity type of services and facilities, such as shared access ramps, fire exits, stairways and a host of other such matters which may be crucial to the functioning of one or more phases of the development. The termination (or modification) of these agreements therefore can have very serious consequences to the other parties.

Section 113 of the Act requires that a condominium corporation that seeks to terminate a shared amenities agreement (except a telecommunications agreement) must obtain a court order to terminate or amend the provisions of a shared amenities agreement. In order to be successful, the judge hearing the matter must be satisfied that the disclosure statement did not clearly and adequately disclose the contents of the agreement *and* that the agreement or any of its provisions produces a result that is "oppressive or unconscionably prejudicial" to the condominium corporation or any of its owners. This is a high standard indeed! In any event, the condominium corporation, as party to the agreement, must bring the application to court within 12 months of the turnover meeting.

So, it's not easy to terminate a shared amenities agreement, but it is not supposed to be easy. The provisions of the Act appear to recognize the importance of the ongoing operation of the agreement to the other parties – imagine if the remaining parties to the agreement are required to pay for the ongoing operation of a much larger pool than they otherwise would require because one of the parties terminated the agreement unilaterally. The Act also requires that the owners were inadequately informed of the provisions of the agreement in order to qualify for any order to terminate or amend the agreement. If the owners (as purchasers) knew of the particulars of the agreement by reason of their receipt of their disclosure documents, their board will not be entitled to terminate or amend the agreement simply because the owners in that condominium changed their minds. *Raymond H. Mikkola is a partner with Pallett Valo LLP. He can be reached at 905-273-3022 ext. 276 or rmikkola@pallettvalo.com.*

Q. *Should a property management company be charging the corporation for the preparation of the status certificate when it has already charged the person who ordered the status certificate with the statutory fee?*

A. Whether or not the property management company has the right to charge the condominium corporation a fee in addition to the \$100 statutory fee that was charged to the person who ordered the status certificate depends on the terms of the management agreement between