Condominium Special Assessments
What you should know before purchasing a condominium
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There are already well over 900 condominium corporations in Ottawa at this time, and many more are being built. In Ottawa, as well as in other areas of Canada, the segment of new and resale condominium housing is growing. There are many good reasons for this growth. Downsizing at one end of the age spectrum and affordability at the other end are simply two of those reasons.

Regardless of your age or financial position, a condominium purchase requires the same (or more) due diligence as any other major purchase. Don't assume simply because the building or development has been around for many years or because the condominium developer has a good reputation in the area that there are no surprises lurking in the mountain of financial and corporate data that you have been given to review. This surprise may come in the form of a special assessment.

Condominium basics

I will be referring from time to time in this article to the Ontario *Condominium Act, 1998* as the "Act." The Act was proclaimed in 2001 and replaced the older Ontario *Condominium Act* which had remained largely unchanged since it was proclaimed in 1968.

The Act provides the framework for the creation and administration of condominium corporations in Ontario. One area of the Act that surprises some owners is the authority that condominium directors have in the operation of the condominium complex. A condominium board of directors is responsible for the operation of the condominium corporation. The directors set the corporation's budget, hire and terminate staff, sign and terminate contracts and are generally responsible for the overall management of the corporation. Many of these duties may be delegated to a professional property manager, but the manager reports to the board and may be terminated by the board at any time.

What is a special assessment?

A condominium board of directors is responsible for setting the corporation's annual operating budget. Based on this budget, the common expenses which are payable by each owner throughout the year are established. These common expenses are normally paid by owners on a monthly basis by preauthorized cheques or automatic withdrawal.

Occasionally, however, circumstances arise where a corporation's board of directors determines that additional funds are needed by the corporation over and above what is required for the corporation's monthly or yearly operations.

If the amount of additional funds, as determined by the board, is relatively small, the board may simply allow the corporation to go into a deficit position in one fiscal year and increase the monthly common expenses in the next fiscal year to make up the shortfall.

If, on the other hand, the amount of additional funds is greater, the board may levy an additional amount to be paid by each condominium owner, separate and above that owner's monthly common expenses. This separate amount levied by the condominium board is called a special assessment.

If special assessments are levied, they are very often in the thousands of dollars per unit; more often in the low thousands, although in some cases, much higher amounts occur. Very often, unit owners are given the option to spread a special assessment over one or more years. One year is very common and, for larger special assessments, condominium boards will often decide to allow unit owners to spread the assessment over several years.

Similar to nonpayment of common expenses, failure by an owner to pay a special assessment will result in the same mandatory statutory collection procedures set out in the Act for nonpayment of common expenses.

A special assessment does not need approval by the owners, and is not debateable. Once a special assessment is levied by a condominium board, payment is mandatory. The only action that owners can take is to call a special meeting of owners to remove all or part of the condominium board and elect a replacement board that may, after reviewing financial matters, decide to lower or eliminate the special assessment.

Why should there be a special assessment?

Special assessments will normally arise when a condominium board is met with a large and often unexpected cash requirement. Such a cash requirement might come from:

a. An unbudgeted expenditure from the condominium's operating fund; or
b. A condominium board receiving advice that the corporation's reserve fund is underfunded to carry out the requisite capital replacement program for the corporation.

Both of these situations can occur relatively often. Unbudgeted expenditures could arise if the condominium corporation has a series of unexpected insurance claims. High rise condominiums in particular often have large insurance deductible amounts in their insurance policies. This is due both to the potential damage risk if water leaks from floor to floor, but also due to an attempt by the condominium board to reduce the corporation's annual insurance premiums by self-insuring with a higher deductible. It very often only takes two or three insurance claims for a condominium's operating fund to be depleted before the end of the corporation's fiscal year. To replenish the funds and deal with this type of situation, condominium boards will normally turn to a special assessment.

Separately, the Act requires every Ontario condominium corporation to have the corporation's common elements, normally building exteriors, roofs, windows, doors, elevators (if applicable), and infrastructure reviewed every three years. This review is called a Reserve Fund Study (RFS). An RFS is carried out by a professional from a class prescribed in the Act, normally engineers, engineering technologists, or architects. The RFS determines the level of funding that is required for a corporation's reserve fund to meet the corporation's replacement program. Very often, increases in building material costs or a premature failure of a building component will require a cash infusion into the corporation's reserve fund to bring the corporation's reserve fund up to a level required by the RFS. In order to deal with this cash infusion requirement, many condominium boards have no alternative but to turn to a special assessment.

Special assessments and buying a condominium

If you are buying an existing condominium unit, the Act allows you to impose a condition on your purchase to allow you to obtain (at your own cost) a status certificate. A status certificate is prepared and issued by a condominium corporation at the request and cost of a potential owner, a mortgage company, or an existing unit owner. Along with the condominium's supporting engrossing documentation, a status certificate contains a snapshot of the corporation's financial health. This includes the current amount in the corporation's reserve fund and the corporation's last two years of financial statements.

A status certificate will only tell you what a corporation's board of directors is aware of at the date of the certificate. It will tell you if a special assessment has been levied and is still outstanding. It will also tell you if the condominium board is contemplating a special assessment. It will not tell you whether a special assessment will occur in another year unless it has been contemplated by the corporation's board at the date of the status certificate.

Similarly, the Act requires a developer to issue a disclosure statement to every prospective new purchaser. A disclosure statement provides financial information on what the developer believes will be the condominium corporation's financial health during the first year of the corporation's existence.

A prospective condominium purchaser should review the status certificate or disclosure statement with his/her lawyer. The lawyer should be knowledgeable about condominium matters so that a proper assessment can be made by the purchaser about the condominium's financial health and the likelihood of a special assessment in the short term.

Summary

Unbudgeted expenses or required reserve fund increases happen from time to time, and not even the most far-sighted condominium board can anticipate every eventuality. Prudent financial management of the condominium's assets however can help, but unit owners should expect that at some point in their period of ownership, a special assessment may be levied by their condominium corporation.

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