

Indemnification in condos: a potential double-edged sword

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Condominium owners and residents have an obligation to comply with their governing [Rules and Regulations](#), [By-laws](#) and [Declaration](#). If an owner or resident breaches any of the governing documents, and the condominium corporation is required to incur costs to enforce compliance, then most Declarations require that the owner indemnify (or “reimburse”) the Corporation for the costs that it has incurred.

The rationale for this indemnification is sound. If one owner in a condominium building is not complying with the governing documents, then it is not equitable for the other owners to have to contribute to the enforcement costs.

A Double Edge Sword

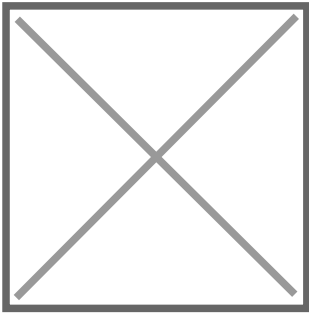
The challenge for condominium Boards, lawyers and property management is that a “breach” of the governing documents is not always so clear. If an owner has been living for a year with a dog in a “non-pet” building, and has tried to conceal the animal from property management, then the breach of the governing documents would be clear and unambiguous. This owner should be responsible for fully indemnifying the condominium corporation’s enforcement costs.

Not every scenario, however, is so clear and unambiguous. Consider the scenario of a group of owners delivering information to the rest of the condominium building regarding the conduct of the Board. Regardless of whether the information is accurate or not, condominium Boards typically get very angry and defensive when this happens. Often times the Board in question will immediately instruct their lawyer to send a letter demanding that the communication cease and that owner(s) indemnify the condominium corporation. If the Board (and its lawyers) have clear evidence of slanderous statements, then an indemnity of costs may be appropriate. However, if the group of owners can prove that each and every statement is true and accurate, the “chargeback” of legal costs will almost certainly be challenged by the owners, and this could lead to a separate dispute.

As owners continue to breach their governing documents, all of the relevant stakeholders (lawyers, condominium Boards, property management) need to be careful when relying on indemnification clauses, and always look at the remedy as a potential double-edged sword.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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