



Selling Condo Superintendant Suite

By Denise Lash on November 12, 2010

Many older condominium corporations may have a superintendant suite which is part of the common elements and which may not be used for a superintendant. I recently was contacted by a condominium corporation which had been leasing the suite pursuant to a bylaw authorizing the leasing but wanted to know if somehow the suite could be sold.

Where superintendant suite's are part of the common elements, in order to sell the suite, the declaration and description would have to be amended to convert the suite from a common element to a separate unit. The Condominium Act provides for amendments with the written consent of either 80% or 90% of the unit owners. This is often too high a threshold for most condominium corporations to achieve.

In a recent case decision, however, a condominium corporation was successful in obtaining a court order under Section 109 of the Condominium Act, getting around the requirement for obtaining the written consent of the owners. In allowing the declaration to be amended, the court considered the following:

- that the corporation was registered in the 80's and had stopped using the superintendant's suite 6 years after registration.
- that the sale of the suite would allow the corporation to use the funds to increase their reserve fund for much needed repairs due to the age of the building.

Section 109 clearly is intended to correct errors or inconsistency in condominium declarations. The judge however, in this case looked at other factors in arriving at the decision to allow the corporation to amend its declaration without the written consent of the owners.

Note that the requirements under Section 97 of the Condominium Act apply to the sale of any asset and would apply to the superintendant's suite once it is converted from a common element to a unit. Depending on the costs relating to the sale of the unit, the unit owners may or may not have the ability to requisition a meeting to vote against the sale.



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