

CONDO LAW
HOARDING IN A CONDOMINIUM COMMUNITY
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Hoarding in a condominium community - FACT OR FICTION? Does holding onto a large number of possessions really make you a “hoarder”, a disorganized person or even an empty nester moving from a large home to a smaller one? The fact is that there is a point when excessive possessions and clutter bring about unsanitary and dangerous living conditions which can threaten the well being of the unit owner, surrounding units and the overall well-being of the building itself. Technically, what is “hoarding”? Although there are numerous ways to describe “hoarding”, it basically refers to when a person(s) keeps a large amount of items in their living space: excessively cluttering a space with “useless” items to a point where basic mobility and daily living is restricted by these items; narrow paths are carved out to navigate from room-to-room; and the function of rooms such as sitting in one’s living room, sleeping in one’s bed, taking a shower or cooking in one’s kitchen are impaired by physical materials. These extreme cases definitely do not happen overnight and in fact takes years to manifest to create such living spaces whereby items are overflowing from floor to ceiling.

So why and how do people get to such a point? There is no simple answer, but according to our research, this behavior is considered a mental disorder and it has also been interpreted as a form of obsessive-compulsive disorder (“OCD”). Essentially, hoarders use material possessions to fill a void in their lives, which may be created by life experiences such as the feelings associated with the loss of a loved one, abandonment, the instability of constant relocation, the sharing of possessions with other siblings, etcetera. Mistakenly, they think that holding onto sentimental things and acquiring possessions by compulsively buying, finding and/or collecting them will bring them comfort. Hoarding turns into a vicious cycle in which the hoarder almost literally becomes trapped emotionally and physically lives a metaphor of imprisonment. The clutter eventually becomes so dominant that a hoarder’s self-esteem, mental well-being, physical well-being and emotional well-being suffer, ultimately causing them to insulate themselves.

Watching shows like “Hoarder” and “Buried Alive” makes one wonder what is lurking in their neighbors’ units. You can be paying monthly common expense fees to have the common elements appear orderly and safe, but then there is a unit or more that could be potentially putting everyone in the condominium at risk through hoarding.

Hoarders often feel compelled to salvage items that might be of use to them “one day”. Unfortunately, this could mean at times bringing items back into their homes from street corners and garbage dumpsters. Often, these garbage items will be infested with bed bugs or vermin, thus bringing the problem back into their own residence and that of the condominium community. The ripple effect of such conditions is harmful and dangerous. Front entrances, lobbies, elevators,

hallways, common areas are all at risk for bed bug or vermin infestation when infested items are carelessly brought into the building. Hoarding also increases the risk of structural damage to the building, as a consequence of the sheer weight of the hoarded items. Imagine a flood wetting the hoarded items and increasing the weight load and stressing the structure. In addition, hoarding creates the risk of fire!

Unfortunately, discoveries of such living conditions usually occur when such cases are in the extreme condition phase. This usually happens when property management enters a unit for common element repairs and discovers a safety hazard and/or health risk to both the unit owner and other residents in the building or surrounding areas. Extreme hoarding endangers not only the unit dwellers but also other residents and firefighters; who can face great risk of injury and even death when battling flames with such clutter. Pests such as rats, mice, and cockroaches tend to thrive in such environments especially when food, crumbs, and other edible particles are lying around in the open and are not attended to. Dark, damp conditions are also a suitable hideout for nesting mice, rats, cockroaches and bed bugs. The dust, mildew, mould and rodent droppings commonly found in extreme hoarding situations can cause and/or irritate allergies, headaches and respiratory problems like asthma.

An example of hoarding situation jeopardizing a community's well-being occurred on September 24, 2010 at 200 Wellesley Street East in Toronto, where hoarding led to a fire in an apartment building. There was a hoarder in a unit that property management knew about; however, the necessary steps to be taken to deal with the situation had not been pursued. The fire ended up occurring in this particular hoarder's unit and displaced 1,200 people from their homes. Now a class action lawsuit by residents of 200 Wellesley against *TCH and Greenwin*, the building's property management company at the time is ongoing and the case is being based on the fact that management knew about the hoarding situation but did nothing to deal with it. It is also key to remember that hoarding is not limited to multi-storey residences as townhouses are equally at risk.

The sad reality of hoarding is that these problems can be more than just a nuisance for other residents; they can essentially become a life safety issue and a huge financial burden for the building(s) dealing with such situations. The efforts and finances involved in cleaning up, reorganizing, making living conditions habitable and making the community safe can be enormous! Communities can spend thousands of dollars to clean out a hoarding situation, only to discover the same person recreating the situation a few months later.

So what are the possible solutions? When a hoarding situation is discovered, it must be dealt with immediately. The longer it is allowed to go on, the harder it is to effect a change and to treat the related consequences. In condominiums, when thinking about or actually dealing with a hoarding situation that poses a threat to the residents and/or can potentially cause damage to the property, the following steps should be considered:

Review the corporation's policies and procedures on hoarding (create a policy and procedure on hoarding to deal with its identification and the corporation's proactive response, if you do not have one);

Enforce the procedures of the policy; we recommend the following as part of the procedures to be followed:

- (i) Collect evidence, written witness statements and video and/or photographs.
- (ii) Create a documented paper trail. (This is key!!)

Send a letter to the unit owner/resident under Section 117 of the Act requiring compliance with the Act.

Dangerous activities under Section 117 of *the Condominium Act* (the "Act") provides as follows:

117. No person shall permit a condition to exist or carry on an activity in a unit or in the common elements if the condition or the activity is likely to damage the property or cause injury to an individual.

Enforce under Section 132 of the Act; and

If possible, provide information or resources to deal with the mental health issue to the individual or their caregiving team/family/friends if any.

If the unit owner or occupant refuses to comply with the notice and prevents the condominium corporation from entering into the unit, it is advisable to get a third party involved, specifically the fire department or health department or a third party inspection company to help address the matter, as well as the courts. A condominium corporation must be aware that by putting forward a complaint to the municipality about a unit owner's hoarding situation, it may give rise to work orders or charges against the condominium corporation and sometimes its manager for unrelated violations observed by the inspector. The inspector may write-up any and all violations in sight, even those unrelated to the complaint. For this reason, condominium corporations should make sure that all aspects of their fire safety systems and plans in relation to the common elements are in order before making a complaint of hoarding in a unit to the municipality.

If the fire department is satisfied that the situation is unsafe, it can order the unit owner to alleviate the dangerous situation. If the unit owner or occupant fails to rectify the situation after the fire department's involvement, a court application may be commenced to obtain a court order under Section 117 and Section 134 of the Act, stating a situation exists that poses a threat to the residents or potential damage to the property. Regardless of whether the problem is solved with the court order, the fire department can also lay charges under the Fire Protection and Prevention Act. Under the Fire Protection and Prevention Act, 1997 (c. 5, s. 14), a resident cannot refuse a fire safety inspection.

If there are problems with leaks, mice, cockroaches or animals, a property manager could contact the municipal public health service. Although inspectors are primarily sent to apartment buildings, making the municipality aware of such conditions in a condominium corporation could bring about a further investigation. The City of Toronto may respond to a hoarding complaint in a number of different ways. In Toronto, for example, a call to 3-1-1 regarding hoarding is referred to a public health inspector if there is an environmental health and safety concern. The inspector then conducts an investigation to determine if a support service is needed or if another city division should get involved. Where a public health inspector is of the opinion that a public health hazard exists and where entry is denied, an application for a warrant of entry may be applied for through a Justice of the Peace. In cases where residents pose a danger to themselves or the public, the assistance of the Toronto Police Services may be sought. We understand that the City of Toronto, for example, is also actively looking to revise its by-laws pertaining to this issue. So always check with your corporation's lawyer to see the status of the law in your jurisdiction.

When it comes to condominium corporations, from a legal perspective, it is strongly recommended that a rule, policy and procedure that specifically addressing 'hoarding' be in place to clearly state enforcement procedures that will be taken should a unit owner be found to be creating a hoarding environment. The rule should essentially state that all occupants or unit owners in a condominium corporation are required to keep their property clean, as well as kept free of excessive amount of useless items, including paper or other items in the unit as this could constitute a fire hazard and a health hazard due to the increased likelihood of attracting vermin. Timelines should be imposed for the unit owner to address the issue, that is, the occupant or unit owner will be required to remove the clutter in fifteen (15) days failing which the Board will have the right to seek a court order to force the occupant or unit owner to remove the clutter, proceed to fine the occupant or unit owner, suspend the occupant or unit owner's privileges in the community and/or proceed with eviction of a tenant. Such a rule will only create an easier and stronger position should such a situation arise.

A key to dealing with a hoarding situation is to try and catch it at its earliest stages, and to address the situation immediately without any delay. Documenting all steps taken is essential for anyone undertaking the process (photographs, memorandums to title etcetera). When one is dealing with such situations, a balanced approach is valuable, together with a lack of aggression or judgment. The fact is these are delicate situations about people who are suffering and hoarding is the outcome of their pain. The superficial fix in such a situation may be de-cluttering and cleaning conditions, but to give a hoarder a chance to not repeat such behaviors will require serious therapy and assistance to not fall into the repeated trap of hoarding; this is sustainable change. So when determining the role of the law and the legal system, it should be about balancing the well-being and interests of the community and an individual intervening effectively to address such potential conditions while addressing the underlying problem to establish a long-term change, which requires a more sophisticated approach than simply mandating a cleanup and/or evicting the

individual so the law is only part of the solution. A positive, balanced and comprehensive approach will create an overall positive outcome with sustainable change when dealing with hoarding.

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Areas of Focus: Corporate/Commercial, Condominium Law, Privacy, Banking, Mediation

Patricia Elia, as a corporate commercial lawyer, compliments the condominium focus at Elia Associates by providing expertise and experience in areas such as corporate governance, policy development, contract review and drafting, negotiation and corporate/ commercial litigation support for our condominium clients. Patricia's corporate and commercial practice encompasses share and asset acquisition and sales, financing arrangements, shareholders agreements and related corporate governance matters, working with small to mid-size companies within a variety of industries including the steel, technology and restaurant industries.

Prior to joining Elia Associates in 2003, Patricia practiced at Blake, Cassels and Graydon LLP where she worked in the financial services group and focused primarily on consumer protection matters and regulatory and compliance matters for financial institutions, including the development and implementation of policies and procedures to address compliance with legislation such as the *Personal Information Protection and Electronic Documents Act* (Canada), the *Trust and Loans Company Act* (Ontario) and the *Canada Deposit Insurance Corporations Act* (Canada). She contributes articles for a variety of industry specific periodicals. She is also a certified mediator via the University of Windsor Stitt Feld Handy, and an Alder International Trained Coach and President of Inner Advantage. She is currently a Board Member for a 5 year old Condominium Corporation in Toronto.