



Occupancy Standards in Condos - How Many is Too Many?

By Barbara Holmes January 24, 2012



In a recent blog, we reported that the courts have confirmed that single-family restrictions contained in the rules or declaration of a condominium corporation are valid. The courts have noted that there are valid concerns that arise where the number of units with multiple tenants increase: excessive noise, littering, parking problems, damage to property, an increase in common expenses, and ultimately a negative effect on property values.

Even if all of the residents in a unit are part of the same family, similar issues can arise where the number of residents in a unit is excessive. For this reason, many condominium corporations are enacting occupancy standards by-laws, which specify the maximum number of people who can occupy a unit. The condominium corporation can choose between the standard under the municipal zoning by-law, (frequently one person per a set number of square feet), or the usually more restrictive maximum permitted by the Ontario Building Code, which is two persons per sleeping room in a dwelling unit. Sleeping room should be defined in the by-law as a bedroom or other area in a dwelling unit designed for sleeping as established by the as-built building plans, architectural plans or the corporation's registered description. This will prevent unit owners from subdividing their unit and creating more bedrooms than the unit was originally designed for, or using as bedrooms, rooms not originally intended as bedrooms, in order to accommodate more residents.

A occupancy standards by-law should provide that any excessive persons residing in the unit are required to be ejected and, where the owner fails to do so, the condominium corporation can assess against the unit an amount determined by the board that reasonably reflects the amount by which the contravention increases the cost of maintaining the common elements and repairing them after damage, and the increased cost of utilities that form part of the common expenses.

Where there are units with existing occupants exceeding the maximum set out in the occupancy standards by-law, the board can pass a resolution allowing those units which have additional occupants prior to enactment of the by-law to register each occupant with management and enter into an occupancy standards grandfathering agreement. Once the occupants have registered, if any occupant vacates the unit, the unit will not be permitted to have any additional occupants in excess of the maximum. Any residents who do not register with management and whose units are later discovered to have excess occupants will be considered to be in contravention of the by-law and will be subject to compliance proceedings.

Having an occupancy standards by-law together with a single-family restriction are effective measures that a condominium corporation can utilize to avoid the negative ramifications that may ensue where there are too many residents in a unit.

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