

Financial Considerations

BACKGROUND

Caveats for Unpaid Condo Fees

If a unit owner does not pay condo fees or a special assessment, the corporation can place a caveat against the unit's certificate of title.

A caveat is a legal claim registered with the Land Titles Office that shows the corporation's claim against the unit and, if not paid, could be used to foreclose on the unit to pay the debt owing. This is a powerful collection tool, as unpaid condo fees could result in an owner losing their unit through a foreclosure.

There are fees for a corporation to register a caveat. The Land Titles Office charges a fee to register a caveat on a unit title. In addition, corporations often hire a professional, such as a lawyer or condominium manager, to register the caveat for them. This professional may charge a fee for their services.

Corporations have been able to pass these fees on to the owner when a caveat is registered, as long as the fees are reasonable. At times, the fees added to the caveat have been more than the condo fees owing. In other cases, corporations have added other costs to caveats besides the caveat fees.

There are several options that may ensure corporations can still recover caveat costs, while ensuring these costs are reasonable. For example:

- A specific amount could be added to

caveats, set out in law, to cover the costs to prepare and register the caveat.

- The corporation could be allowed to add their actual costs for hiring a professional and registering the caveat at Land Titles.
- The Land Titles fee could be added to the caveat.

Fines for Bylaw Violations

Condominium bylaws set out the expected behaviours of the owners and occupants of the units and how the corporation will be run. The goal of the bylaws is to encourage condominium owners to create and maintain an effective community and to manage the common property.

When a person breaks a bylaw, the corporation wants the person to stop the violation and follow the bylaws in the future. To enforce the bylaws, the corporation can use a sanction, such as a fine, as long as the bylaws allow that sanction. When a fine is charged, the amount and range of the fine must be listed in the bylaws.

Concerns have been raised about some unreasonable fines charged for bylaw violations. There are currently no limits to bylaw fines in law except that the fine must be "reasonable" and must be listed in the bylaws.

In some cases, owners may be issued a fine with minimal notice or notice that does not

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explain the reason the corporation believes a bylaw was broken. Although an owner may ask for more proof, boards are not always willing to provide this detail.

In other cases, owners are charged repeated fines for failing to follow bylaws even though the owner was trying to fix the situation. For example, an owner who had a pet that was no longer allowed in the unit was fined several times because the pet continued to be there, even though the owner was actively trying to find it an appropriate new home.

Several options are being considered to make bylaw enforcement fairer for everyone, while still allowing corporations to use sanctions to ensure bylaws are followed. Options include:

- Require the owner be given a notice of violation when a bylaw is broken, which gives the detail of the bylaw violation and why the corporation believes this is a violation (similar to a traffic ticket).
- Set a maximum amount for fines when a bylaw is broken.
- Limit how often the corporation could charge fines to an owner when a bylaw violation continues and is not corrected.

Borrowing by the Corporation

The option to borrow money gives condo corporations another way to raise money for expenses. This may be a practical option for large, unexpected costs such as emergency repairs, especially if the corporation does not have enough money in its reserve fund or if owners cannot afford a special assessment.

However, loans may not be the best choice in all situations. Interest rates on condominium loans are usually higher than individual owners may be able to get, which makes the loan more expensive. Some owners may also have the cash available, and may not want the

corporation to take out a loan that will impact them and future owners with increased condo fees to pay back the borrowed money.

In the past, corporations were able to set their own requirements for borrowing money, which may have been in the corporation's bylaws. These 'borrowing bylaws' can differ between one corporation and the next, and may give owners different amounts of input into the choice to take out a loan for an expense.

Rules for the corporation borrowing money are now going to be set out in law and the detail of those rules are being worked out. Some options include:

- Allow the corporation to borrow money if it has a bylaw that sets the terms for borrowing money.
- Require the owners approve an ordinary resolution before the corporation can borrow any money.
- Require the owners approve an ordinary resolution if the corporation wants to borrow more than a certain amount of money.

If You Have More Feedback

If you have some thoughts or comments you would like to provide after the Open House, please feel free to write down your feedback and send it to us:

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