



Prohibiting Dangerous Offenders in Condos

By Denise Lash on August 14, 2011



In the U.S. steps have been taken recently by some condominiums and homeowner associations to ban sex offenders from their communities by amending their Declarations. Their motivation in doing so is to protect children but also to ensure that the market value of their homes would not be impacted by the presence of a sex offender.

In Ontario, many declarations impose prohibitions on dangerous pets but to date, prohibition on persons such as dangerous offenders or other individuals with criminal backgrounds are not part of condominium declarations, bylaws or rules.

This is mainly due to the concern that this type of prohibition may be considered discriminatory and contrary to the Human Rights Code.

The problem that condominium corporations face is deciding whether to wait and take action if the board becomes aware of a dangerous offender in their community or whether they need to be proactive before the offender moves into their midst.

One of the advantages of condominium living is that restrictions and prohibitions can be imposed in a corporation's governing documentation and there is some ability to control residents that live within its community. Freehold ownership does not have this advantage.

In the New Jersey case of [Mulligan v. Panther Valley Property Owners Association](#), the New Jersey Court upheld an association's sex offender restriction. In this case the association had amended its by-laws to ban [Tier 3 sex offenders](#) from occupying a unit. There was no prohibition against a sex offender maintaining ownership. The New Jersey Supreme Court in upholding the ban found in the by-laws found that:



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- (1) the restriction was applied equally to all residents
- (2) sex offenders were not a protected group for discrimination purposes
- (3) sex offenders were not proven to be handicapped for discrimination purposes, and
- (4) sex offenders were not viewed as a large enough segment of the public.

It is interesting to note, however, that the court recognized that permitting these types of restrictions in associations, from a public policy point of view, will have an impact on other forms of housing by moving sex offenders to other neighbourhoods and thereby increasing the risk to other communities.

This problem is not confined to associations in the U.S. More recently in Ottawa, one dangerous offender ended up being elected to a condo board and now the condominium corporation is dealing with the events that followed. [Eldon James Hardy, 65](#), a convicted pedophile, managed to get himself elected to the board of a condominium in Ottawa. It appears that no one had any idea as to Eldon's criminal history.

Most condominium corporations will have qualifications set out for board members in the Corporation's by-laws. At the very least, the by-laws should disqualify persons who have a criminal background.

It is time for condominium corporations to look at taking more extreme measures to ensure that the safety and security of residents is not compromised and put into place restrictions in condominium documentation. Of course, the documentation will have to be carefully drafted to avoid any potential argument as to its enforceability.

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