



Court-Appointed administrators of Condo Corporations (Part One)

By Rod Escayola on January 05, 2012



The Condominium Act provides that the affairs of the condominium corporation are to be managed by a board of directors elected by the owners. Should the owners become dissatisfied with board members or the way they manage the corporation's assets, the Act provides a mechanism for owners to requisition a meeting of owners to remove one or more board members.

In addition, the owners (or the corporation itself) can apply to the courts for the appointment of an administrator to take over the administration of the condominium corporation.

Imagine for instance, a situation where a condominium corporation has accumulated extensive debts and becomes unable to meet its payment obligations for utilities and municipal taxes. Rapidly, annual general meetings become "chaotic with blame being heaped on others for the corporation's problems" and election campaigns become personal and acrimonious. Various factions of owners attempt to have the board removed, while the board accuses former board members of causing "internal strife and in-fighting". The level of hostilities between residents, owners and board members quickly escalates while the corporation remains on the "brink of financial collapse". In such circumstances, even the most well-intentioned boards can become dysfunctional and unable to effectively manage the corporation.

This was the situation in which York Condominium Corporation No. 414 found itself a few years ago. In an attempt to get out of this impasse, a group of owners requisitioned an owners' meeting to have the board removed and a new board elected (this was the fifth attempt in four years), while the board turned to the courts to have an administrator appointed to take over the management of the corporation.

The board relied on section 131 of the Act, which provides the courts with the power to set aside an elected board and appoint an administrator if "it would be just or convenient, having regard to the scheme and intent of the Act and the best interests of the owners".



When will the courts appoint an administrator ?

While there may be many instances where some owners do not agree with the board of directors, that does not necessarily mean that a court will intervene and appoint an administrator. The appointment of an administrator is an extraordinary remedy as courts will give significant weight to the principle that the democratic government of the corporation should not be overridden except where absolutely necessary.

In the case of Lum v. Strata Plan VR519, the British Columbia Supreme Court considered the following questions before eventually dismissing the application to appoint an administrator:

1. Is there a demonstrated inability to manage the corporation?
2. Is there a demonstrated substantial misconduct or mismanagement in relation to the affairs of the corporation?
3. Is the appointment necessary to bring order to the affairs of the corporation?
4. Is there a struggle among competing groups which has made proper governance of the corporation impossible? and,
5. Is the appointment of an administrator the only reasonable prospect of bringing order to the affairs of the corporation?

In my next posting, I will review some situations where the courts have appointed administrator.

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