



Condo Connection

Wilson, Blanchard – Condominium Management with Experience and Integrity
www.wilsonblanchard.com

The WB Condo Connection highlights Ontario condominium related articles and educational items that may be of interest to Boards of Directors and condo owners. It is published online and available on our website (www.wilsonblanchard.com) as well as in hard copy format to each of the members of our Boards of Directors.

We hope you enjoy this edition and we welcome your comments, suggestions or article topic requests by email to newsletter.editor@wilsonblanchard.com or by mail to:

Editor – WB Condo Connection
101-701 Main Street West
Hamilton, ON, L8S 1A2

AWARDS ANNOUNCEMENT

By Angela Bandiera
Property Manager

Wilson, Blanchard would like to congratulate the following for their achievements:

A well deserved congratulations for 30 years as a Registered Condominium Manager to **Ray Wilson**.

The following have received an award for 5 years as a Registered Condominium Manager:

- Sandra Banner
- Ross Boncori
- David Glendenning
- Fred Jayasekera
- Scott Johnson
- Tobi Scott-Conacher

The following have received an award for 10 years as a Registered Condominium Manager:

- Mike Mullen
- Doug Sheldrake

And a special acknowledgement to **Karen Reynolds** for receiving the ACMO President's Award.

Inside This Issue

Awards Announcement	1
Changes to WSIB	1
Chargebacks- Are They Liable?	2
Special Announcement	4
Welcome!	4

Changes to WSIB

By Wayne Klem
Executive Director of Property Management – Toronto

WSIB has been around for some time protecting those employees working in the construction and trade industry by their employers.

Wilson, Blanchard has always been protecting our condominium corporations by ensuring that the contractors the Board of Directors have approved to conduct work for corporations have appropriate liability insurance coverage and WSIB coverage for their company employees before they step onto the property to conduct work.

Wilson, Blanchard requires all contractors and trades as well as suppliers to update Wilson, Blanchard on these very important documents on a regular basis to ensure these documents are current and up to date.

Primarily the WSIB program has only required contractors (employers) to cover their employees under the WSIB program and pay a premium to WSIB for the coverage required. Effective January 1, 2013 the Ontario Government will change the law to include not just workers but business owners as well.

Under the new WSIB program most independent operators, sole proprietors and partners in a partnership working in construction will be required to be covered by WSIB and pay premiums to WSIB.

Changes to WSIB from page 1

There are some exemptions; one being those in the home renovation industry as well as those designated as executive officer or partners in a company who do not perform construction work.

With the new WSIB law coming into place January 1, 2013 you can be assured that Wilson, Blanchard will continue to ensure that your corporation is properly covered and protected at all times under the new WSIB law.

Chargebacks – Are They Lienable?

By Jeff Lack, BAcc, CGA
Manager of Financial Reporting

One of the most common questions that arise out of the Condo Act is whether a chargeback can be legally collected by way of a lien? The problem in answering this question is that the theory of the Ontario Condominium Act, 1998 (the “Act”), in all its’ complexity, does not always correspond with prevailing practice – i.e. decisions and precedent that have been set by the courts.

With that in mind, we will discuss the “theory” – our understanding of how the Act is intended to work – and leave it to competent legal professionals to deal with the current practice. In fact, opinion amongst lawyers on the subject even differs, with some suggesting that virtually all chargebacks can be liened and others refusing to register any liens for any chargebacks, regardless of the situation. As such, it must be noted that this article is intended as discussion and information only – this should not be used as legal advice. As every individual situation differs, anyone requiring legal advice should obtain professional legal counsel.

Only Common Expenses are Lienable

The very first section of the Act defines a “common expense” as any expense that is specified in the Act or in a declaration. In general, common expenses of a corporation are paid by all owners “in the proportions specified in the declaration” (section 84(1)). As such, it would appear that all expenses, including

chargebacks, must be shared by all. However, section 84(1) begins with the phrase “Subject to the other provisions of this Act...” This in essence is the “out clause” that defines a chargeback – a specific common expense charged to a specific unit. In order to charge an expense to a specific unit (as opposed to being shared by all units) we must draw on one of these “other provisions” that deal with expenses.

Further to the above, the Act clearly states that “common expenses” are lienable (section 85(1)). In fact common expenses are the only arrears that are lienable. Therefore, a chargeback must fit in to the definition of a common expense in order for it to become lienable. Coming back full circle, we must therefore find a section of the Act (an “other provision”) or a clear statement in the declaration (or a by-law) that allows for a chargeback to be defined as a common expense.

“Other Provisions” in the Act

The Act contains 5 sections that identify specific costs that can be added to specific units – i.e. charged back.

1. Section 92 – Maintenance & Repairs

This section provides specific situations when the cost of certain work can be added to the owner’s contribution to common expenses – i.e. specific costs being added to specific units. These include:

- repairing damage, when required to by the declaration,
- maintaining common elements, when required by the declaration,
- maintaining their own unit if failure to maintain it presents a potential risk of damage or injury, where required by the Act.

The owner must be given an opportunity to complete the repairs or maintenance. The corporation may carry out the work if the owner refuses or fails to do so in a reasonable time. As Section 92(4) specifies that this cost is a common expense and that it can be added to a specific owner’s contribution, chargebacks under this section are lienable.

Chargebacks from page 2

2. Section 98 – Indemnity Agreements

Where an owner fails to comply with an indemnity agreement, Section 98(4) clearly states that the costs, charges, interest and expenses resulting from this failure may be added to the owner's common expenses. Clearly, this section is only applicable if an indemnity agreement exists. As with the above section, this chargeback can be liened as it clearly defines the costs as being part of common expenses.

3. Section 105 – Insurance Deductible

When an owner causes damage to their own unit *through an act or omission*, Section 105(2) allows the lesser of the repair cost or the insurance deductible to be added to the owner's common expenses. Section 105(3) extends this situation to allow the deductible to be charged back even where there has been no act or omission of the owner however this section requires a corporate by-law. Again, these chargebacks are lienable as they are clearly defined as "common expenses" by the Act.

4. Section 57 – Overcrowding Surcharge

In short, Section 57 states that the corporation may levy an additional assessment against a unit (for increased maintenance and utility costs) where an owner contravenes the occupancy standards. These standards are generally based on the municipality standards of the city the condo is situated in. A by-law passed by the corporation is required in order to levy such an additional assessment, however where such a by-law exists, the Act clearly defines this additional assessment as a "common expense" (section 57(5)) making this chargeback lienable.

5. Section 134(5) – Compliance Order Costs

When a corporation obtains an award of damages or costs against an owner, that amount as well as any additional costs that the corporation incurs to obtain the court order is added to the common expenses of the unit. While a court order is required to enforce this section of the Act, the chargeback is lienable as the Act specifies that the amounts are added as "common expenses".

Chargebacks from the Declaration

Section (7)(4)(a) of the Condo Act allows common expenses to be defined in the corporate declaration.

As such, many newer declarations define the chargeback amounts associated with amenity use (i.e. a party room rental) or consumables (i.e. access cards or utilities usage) as common expenses. Defining them as such allows the chargeback to be lienable.

Practical Advice

1. Never assume you can chargeback an amount or that it will be lienable. Always ensure that the amount fits into one of the above sections of the Condo Act (or declaration). If it does, it is collectable by way of a lien. If it does not, it is not collectable and not a valid chargeback.
2. The above notes are listed in order of "strongest legal argument" to the weakest – i.e. the Maintenance and Repairs section of the Act has the most legal clout while the Compliance Order Costs and Declaration have the least.
3. If it appears at all possible that a chargeback may be challenged, the property manager should collect as much evidence as possible to support the claim and obtain clear instruction from the Board of Directors. The court system is based on the balance of probabilities and any challenge in court will be won by the party that can prove 50.1%. The court system also tends to be biased for the individual owner (the "small guy") rather than the condo corporation (the "big guy").
4. A Note on Indemnification Clauses in the Declaration:
Indemnification clauses are legal "catch all" clauses that basically say "you won't hold us accountable for anything done by anyone else" (i.e. a 3rd party). Such clauses have been used in the past in Ontario as the basis for chargebacks, however there is much controversy in the court system regarding this and case decisions have gone both ways. As such, using this clause may be risky and obtaining legal advice prior to using it is strongly recommended.
5. A Note on Damages vs. Fines:
When dealing with potential chargebacks ensure the proper terminology is used in all correspondence.

Chargebacks from page 3

Damages in Ontario are acceptable as they are direct costs based on actual expenses. Levying anything that may be considered a "Fine" is illegal as it can not be validated as an expense.

Welcome!

Wilson, Blanchard would like to welcome our newest managed properties:

- Halton Condominium Corporation #355
- Wentworth Common Elements Condominium Corporation # 478
- Halton Standard Condominium Corporation #602
- 78 Corporations from Mather Management
- 14 Corporations from Casa Property Management

Special Announcement!

We are pleased to advise that effective September 1, 2012, Wilson, Blanchard Management Inc. has acquired the contracts and staff of Casa Property Management. We are also excited to announce that effective October 1, 2012 Wilson, Blanchard Management Inc. has acquired the contracts and staff of Mather Property Management. With this exciting addition, WB is showing significant growth in the Kitchener market. These acquisitions bring a number of quality Condominium Corporations into our portfolio and staff with impeccable reputations.

Warm welcome to all the staff, Board members, and unit owners!



101-701 Main Street West
Hamilton, ON
L8S 1A2

Phone:

905-540-8800

Fax:

905-540-4450

Email:

info@wilsonblanchard.com

206-16 Four Seasons Place
Toronto, ON
M9B 6E5

Phone:

416-642-2807

Fax:

416-642-2810

Email:

tinfo@wilsonblanchard.com

15A-842 Victoria Street North
Kitchener, ON
N2B 3C1

Phone:

519-743-7667

Fax:

519-571-5083

Email:

kwinfo@wilsonblanchard.com

Newsletter Editor Email:

newsletter.editor@wilsonblanchard.com

Visit us at:

www.wilsonblanchard.com