



Privacy Issues Relating to Security Recordings and Entry Systems

By Carol Dirks

Inside this issue:

- Privacy Issues Relating to Security Recordings and Entry Systems **1-2**
- Home Renovation Tax Credit: Condominium Considerations **2-3**
- Directors' Code of Ethics - ACMO September 2009 **4-5**
- News & Notes **6**

What does your Condominium Corporation's Privacy Policy Cover? The installation and use of security cameras and access systems by condominium corporation's raises an issue respecting compliance with the privacy provisions of the *Personal Information Protection and Electronic Documents Act* ("PIPEDA").

As we all know, PIPEDA regulates the collection, use and disclosure of personal information by organizations, including condominium corporations. Specifically it requires that condominium corporations be accountable for the personal information it collects under its control, and must limit collection of personal information only as necessary. The disclosure of personal information for a purpose other than for which it was collected is not permitted unless there is consent by the individual or if required by a statute, such as the Condominium Act.

The use of video surveillance equipment by condominium corporations raises distinct privacy issues. The type of images that are recorded by a video camera are considered to be of a uniquely personal nature. The cameras record an individual's physical characteristics and sometimes speech, as well as information about an individual's activities such as when they come and go, and with whom.

The Privacy Commissioner has cautioned all organizations about the use of video surveillance equipment to ensure that adequate measures are taken to comply with

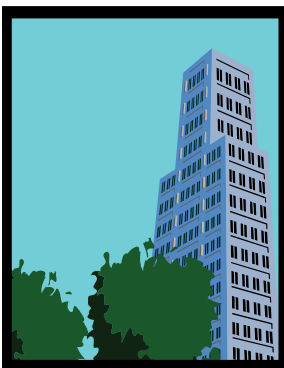
the privacy provisions. Particular concern has been raised about the use of surveillance equipment which is concealed, and not disclosed to residents. Concerns have also been raised about key fob access systems, in respect of the personal information that is recorded, about an owners' access to the common areas. In some provinces, the provincial privacy commissioner has issued guidelines for condominium corporations in respect of the safeguarding and storage of personal information.



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Obviously for condominium corporations there is significant importance in having proper video surveillance and access systems which record who is coming onto and leaving the condominium property to protect the safety and security of the residents, and the condominium property as a whole. These systems assist in identifying persons who may engage in criminal activities, or are in breach of the Declaration, By-laws or Rules.

What does this mean? Condominium corporations should have a comprehensive written privacy policy in place that includes the use of video surveillance and access systems by the corporation, and the personal information that those systems collect.



(Continued from page 1)

The policies should cover the following issues:

1. What is the purpose for the collection of the personal information being recorded by the video surveillance and fob system.
2. The restrictions to be imposed by the condominium corporation respecting the use of the personal information that has been recorded by the video surveillance and fob system.
3. Who has a right to see the information which is recorded by the video cameras and access system, and in what circumstances. The information recordings should only be accessible by specifically designated persons on behalf of the corporation and for a limited purpose.
4. What if an owner makes a request to see the video recordings or access control information. Unit owners should not be given access to the recorded surveillance information, unless that owner is the subject of the surveillance itself.
5. Where are the surveillance cameras to be located and when do they operate. They should not be positioned to cover areas that go beyond the condominium property or capture images of adjacent buildings. Also there should not be cameras where owners, tenants, guests would expect to have privacy such as in changing rooms.
6. How owners and residents are to be notified that such common areas are subject to video surveillance.
7. How long will the personal information recorded by the surveillance equipment and access system being kept for, and how that information is to be destroyed.
8. How is the surveillance information being stored.
9. What is the process for an individual to make a complaint about the use of personal information relating to video surveillance or access system.



Corporation may also wish to address the recording, either by video or audiotape, of Owners Meetings, by either the condominium corporation or one of its members in its privacy policy.

Home Renovation Tax Credit ("HRTC"): Condominium Considerations

By David Thiel



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Condominiums do not normally become involved in income tax matters. However, the announcement of the Home Renovation Tax Credit ("HRTC") in the 2009 federal budget will in essence require condominium corporations to become involved on behalf of their unit owners in early 2010 in providing information to facilitate the claims of individual owners for the HRTC.

This additional task for condominium corporations results from the fact that the Canada Revenue Agency has announced that the HRTC will apply to a unit owner's share of eligible expenses incurred by a condominium corporation relating to common element renovations.

This article will provide a brief summary of the operation of the HRTC and conclude with comments of specific application to condominium corporations, especially in relation to the documentation which will be prepared for unit owners. This article is intended to be a summary relating to condominium corporations, and individuals should obtain their own personal tax advice from a qualified advisor.

(Continued from page 2)

Tax Credit – The HRTC is a non-refundable tax credit calculated as 15% of that portion of eligible home renovation expenses exceeding \$1,000 and less than \$10,000. Therefore, the maximum credit is \$1,350 (15% of \$9,000).

Timing – The eligible expenses are those expenses for work performed or goods acquired in the period after January 27, 2009 and before February 1, 2010, pursuant to agreements entered into after January 27, 2009. The HRTC is to be claimed on the 2009 tax return notwithstanding a portion of expenditures may occur in 2010.

Who Can Claim? – The HRTC is family based, meaning that an individual and his/her spouse (or common law partner) and any children under eighteen years of age share the credit up to the maximum allowable amount as discussed above.

The expenses must relate to an eligible dwelling. In essence, an eligible dwelling means that the individual, his/her spouse and/or children ordinarily inhabited the dwelling during the eligible period. In other words, a non-resident condominium unit owner who leases his/her condominium unit would not be eligible for the credit with respect to the condominium unit.

Eligible Expenses – Eligible expenses are renovations and alterations to a dwelling (or the land on which it sits) that are enduring in nature. Related costs such as permits, professional services, equipment rentals and incidental expenses are included.

Although each expense should be reviewed separately, most if not all Reserve Fund expenditures for common element maintenance/repair/replacement in our view will likely be eligible expenses for the purpose of the HRTC.

Note however, appliances and furniture are not eligible which could be Reserve Fund expenditures. Items such as purchase of tools, carpet cleaning, maintenance contracts are also not eligible. In general, maintenance expenses on an annual or more frequent basis will not be eligible.

Condominium Corporations – Condominium unit owners will be able to claim the credit based upon their proportionate share of eligible expenses of the condominium corporation.

The owners should be provided with a statement from the condominium corporation, signed by an authorized representative, containing the following particulars.

1. amounts incurred for renovation/work
2. clear identification of vendor/contractor, business

address, GST/HST registration number

3. description of work performed and dates when work or services performed (or goods delivered).
4. portion of cost of work allocated to owner (percentage based upon Declaration).

The aforementioned statement should include a disclaimer that the Corporation is not providing tax advice.

This statement should be provided as soon as reasonably possible after the eligible period ending February 1, 2010 in order that owners have the information available in preparing their individual tax returns. The statement is an important document and great care should be taken to ensure that the information provided to owners is complete and accurate.

The statement could be provided to owners in response to owner requests on an individual basis, however, it is likely more expedient for most condominium corporations to prepare the statement and send to all owners at the same time.

Condominium corporations should keep all supporting documentation concerning the work or goods in question on file such as agreements, invoices, receipts, cancelled cheques in case there are any inquiries from the Canada Revenue Agency. Of course, such documentation would almost certainly be kept by condominium corporations in any event as part of prudent record-keeping in the normal

course.

Condominium Unit Owners – Condominium unit owners may also claim the HRTC for work performed within the unit, in addition to any amounts claimable for the common element expenditures of the condominium corporation as discussed above. Documentation similar to that which would be maintained by a condominium corporation (agreements, invoices, receipts, cancelled cheques, delivery slips etc.) must be kept by the owner to support a claim for the HRTC. The Canada Revenue Agency has also created a yellow HRTC envelope, available at various retailers, for individuals to organize their receipts.

As you can see from the foregoing discussion, the HRTC imposes an indirect obligation on condominium corporations to prepare a statement for the unit owners for the purpose of the HRTC. Now is the time for condominium corporations to start compiling the information necessary for the statement to owners so that the form and content of the statement can be easily finalized in early February 2010.



Directors' Code of Ethics – Many Shades of Grey

By Lou Natale, B.A., LL.B.



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September, 2009

"Ethics" is a very strange thing. Although everyone can agree that being ethical is important, not all situations involving ethical questions are "black and white". As with many things, ethics involves differing personal opinions, the use of common sense and sometimes the need to address complex moral questions, all of which can create "many shades of grey".

In recent years, there have been some high-profile and precedent setting Court cases involving "white-collar" crimes committed by individuals motivated by greed, power and self-interest. Some law enforcement agencies have narrowly defined "white-collar" crimes as "those illegal acts which are characterized by deceit, concealment or violation of trust and which are not dependent upon the application of threat of physical force or violence".

Like most "white-collar" crimes, such as those involving Conrad Black, Bernie Madoff and Garth Drabinsky, the perpetrators of these crimes have failed, in one way or another, to abide by the basic elements of trust, good corporate governance and fiduciary duties. Although there are only a few reported decisions in Ontario involving condominium directors failing to comply with their standard of care, there is no doubt many other "unreported" instances where a condominium director has acted dishonestly and in bad faith.

Why should condominium unit owners care whether their directors abide by a basic "code of ethics"? Left unchecked, it is quite possible that the greed and actions of one or more directors can cost unit owners in a condominium thousands of dollars in any given year. To act in an unethical manner does not necessarily mean that a director has stolen or misappropriated condominium funds. Acting unethically can also include conduct of a Board member in a situation involving non-monetary issues. The following are some obvious examples of what I would consider to be unethical behaviour by a condominium director:

1. Asking for and/or accepting money and/or a gift from a contractor as a condition of awarding or renewing a contract;

2. Failing to disclose that a director has a direct or indirect financial interest in a contract or transaction involving the condominium in contravention of Section 40 of the *Condominium Act*.
3. Stealing Corporation's money (ie. "skimming laundry room money") or asking the corporation's contractor to make repairs and improvements to a director's unit at no charge.
4. Allowing another director to knowingly ignore the Rules of the condominium (install a hot tub; violate the pet and/or visitors' parking rules);
5. Disclosing to a unit owner confidential and private information discussed at a Board meeting (ie. personal information about another unit owner; the possibility of a large special assessment; litigation privileged information, etc.); and
6. Purporting to make a decision on behalf of the corporation (ie. hiring a contractor) without having the matter discussed and approved at a duly called Board meeting.

There are many other examples of situations where the conduct of a director could be considered to be "unethical" or falling below the standard of care required of a condominium director. To help guide Board members with maintaining a basic level of good governance (much of which is common sense), it is highly recommended that condominium corporations establish a formal "**Code of Ethics**" for which all directors must abide by and acknowledge.

The Canadian Condominium Institute has created a form of Code of Ethics which can be adopted by condominiums (preferably by passing a by-law to include the requirement for each director to execute and acknowledge the "Code of Ethics"). The following is a brief overview and explanation of the CCI Code of Ethics:

Honesty and Good Faith - Directors must recognize that they owe a fiduciary duty to the corporation which requires in all instances that directors not put their personal interests (or those of their friends and family) ahead of the interests of the corporation and unit owners. When dealing with corporation matters, directors must take off their "unit owner hat" and make decisions in the best interest of the

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corporation, whether or not such decisions are in the director's personal best interest.

Care, diligence and skill – A whole article can be written on the obligation set out in Section 37 of the *Act* which requires directors to "use the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances". In my view, to meet this standard, a director should use their best efforts to attend all Board meetings, become familiar with the Declaration, By-laws, Rules and the financial affairs of the corporation, and to understand the basic requirements of the *Condominium Act* and other related legislation. It is also critical that directors seek and obtain, when appropriate, the necessary professional advice prior to making a decision which may potentially have some material impact on the condominium. In a 2004 Supreme Court of Canada case (*Peoples Department Stores Inc.*) involving directors of a business corporation (who are governed by similar standards of care as a condominium director) the Court made it clear that in order to meet a director's standard of care a level of perfection is not expected. However, the Court did state that decisions made by directors must be reasonable business decisions made in light of all the circumstances about which the director knew or ought to have known. In my view, it is simply not good enough for a director to say they were not aware of certain matters before making a poor decision. It is imperative for all Board members to ask questions of fellow directors and property managers if they have any questions or concerns or if they feel that they need more information before making a decision.

Conflict of Interest – Directors are required to make immediate disclosure in all cases of actual or potential conflict of interest (Note: Section 40 of the *Act* requires disclosure only in cases where directors' personal interest in a contract or transaction is "material".) Directors shall only act in the best interest of the corporation as a whole and shall not favour the interests of any individual or group of owners. In my view, the previous point is important in order to avoid conflict within the condominium community and to give the Board of Directors a level of independence from any one owner or group of owners.

Confidentiality – Directors shall not disclose to any person (including family members) information which the Board decides is privileged or confidential or which reasonably ought to be deemed confidential. When in doubt, a director should seek guidance from the Board to determine if information is confidential or privileged. Rumours caused by information leaks arising from Board meetings can be extremely harmful for a corporation and often undermines the Board's ability to properly function.

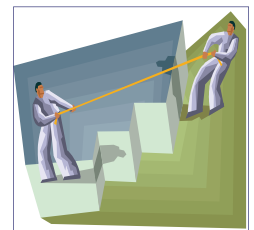
Good Conduct – A director should act professionally and in a business-like manner at meetings of directors and owners and while dealing with condominium-related matters. Common courtesy and respect should be followed – no name calling, yelling or demeaning comments are permitted. Directors shall adhere to good governance and procedural rules of order, allowing for open and frank discussion. Directors should avoid being too controlling and authoritative with other board members and unit owners. No matter how well intentioned, a "condo commando president" is harmful for the entire condominium community.

Support – All directors must abide by decisions made by the majority of the Board even though a director personally disagrees with the decision. A dissenting director is permitted to express their views and to have their objection noted in the Minutes of the Board meeting. Although in the case of "non-confidential" matters, a dissenting director has a right to express his or her views to the owners, however, the dissenting director should not be seen to be undermining the majority decision of the Board or otherwise causing harm to the corporation.

Defamation – Directors must avoid making false or defamatory statements about the corporation, other directors, owners, manager, staff and contractors. Personal liability may result from such statements. A director will likely not be protected by insurance if the statements made are found to be defamatory.

Directors should "think" before making a potentially harmful statement - whether such statement is made verbally at an owners' meeting, in a letter to a manager, or in an email to a fellow director.

Minimize Conflict – Directors should avoid creating conflict and disruption within the condominium community. Directors are also expected to promote good relations and to promote a "first class image" (whatever that means!)



Education – Directors should strive to educate themselves with condominium legal requirements and issues by reading condominium related magazines and publications. When possible, the Board should support attendance by one or more Board members at condominium seminar presented by the Canadian Condominium Institute.

Needless to say, there is no such thing as a perfect director. However, by adhering to the fundamental and basic elements of the CCI Condo Code of Ethics, directors should be able to fulfill their legal and ethical obligations owed to the corporation and unit owners.



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News & Notes

- **Harmonized Sales Tax:** The legislation to implement the proposed Harmonized Sales Tax (HST) in Ontario received first reading in mid-November 2009. The HST looks to be on track to be effective July 1, 2010 as originally contemplated.
- **Increase to Small Claims Court Monetary Jurisdiction:** A reminder – as of **January 1, 2010**, the maximum claim in Small Claims Court in Ontario will be increased from \$10,000 to \$25,000.
- Also in January, the **Simplified Procedure Rules claim limits** will be increased from \$50,000.00 to \$100,000.00 and will be mandatory, as opposed to elective. Other changes to the Simplified Procedure include a more focused documentary discovery and extremely limited oral examinations to a maximum of two hours.