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Condo Alert!

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CO Detectors – See no CO, smell no CO, taste no CO

An Nguyen, BA (Hons), JD

Carbon monoxide ("CO") is an odourless, colourless and tasteless gas that can block the flow of oxygen to vital organs and potentially kill or permanently disable a person. Because of its invisible nature and since most homes contain items that can emit dangerous levels of CO, leaks often go undetected while people are sleeping.

To address the need for CO safety, Ontario enacted a new regulation that came into force on October 15, 2014, making CO alarms mandatory in almost all homes, including condominiums.

Application
CO alarms are now mandatory in all residential homes or buildings that contain a fuel-burning appliance, fireplace or a storage/parking garage. This means all types of condominiums (i.e. town house, high-rise and houses converted into condominiums) that have at least one of these three items must install CO alarms.
Examples of fuel-burning appliances include furnaces, space heaters, kitchen stoves or grills, gas/charcoal barbeques, hot water heaters, gas refrigerators and automobiles.

Installation Requirements
CO detectors must be installed in the following areas:

- If a fuel-burning appliance or fireplace is installed in residential house or suite, a CO alarm must be installed adjacent to each sleeping area in the suite;
- If a fuel-burning appliance is installed in a service room, a CO alarm must be installed in the service room and adjacent to each sleeping area in the suites that share a common wall or floor/ceiling with the service room;
- If a house or building contains a parking or storage garage, a CO alarm must be installed adjacent to each sleeping area in the suites that share a common wall or floor/ceiling with the garage.

While there are a variety of alarms manufacturers, CO alarms must meet either one of the two industry standards referenced by the Ontario Fire Code and the Ontario Building Code – CAN/CSA-6.19 ("Residential Carbon Monoxide Alarming Devices") and UL 2034 ("Single and Multiple Station Carbon Monoxide Alarms") and should be installed as per manufacturer's instructions to ensure it can detect the toxic gas effectively. The alarms can be hardwired, plugged into the wall or battery-operated.

Compliance Schedule
All installations and replacements of CO alarms must be completed by April 15, 2015 if the building contains 6 or less residential suites and October 15, 2015 if the building contains more than 6 residential suites.
However, for those properties with CO alarms already installed, maintenance and testing of those alarms must already comply as of October 15, 2014. This means these CO alarms must be in operating condition and tested annually (or after the battery is replaced or a change is made the electrical circuit, and after every change in tenancy) by the compliance deadline. Records of tests must be kept at the building premises and the Chief Fire Official may examine these records.

Responsibilities
In most cases, the owner is responsible for the installation and maintenance of CO alarms in the house or suite. However, for condominiums, unit owners and condominium boards should check their condo's declaration and by-laws to determine if there are any provisions requiring the condominium corporation to take on this responsibility on behalf of the owners.

Enforcement
Failure to comply with this regulation by the compliance deadlines may result in charges and penalties if convicted. Violations can also be addressed by local fire departments issuing Inspection Orders.

Good Practices
While CO alarms are an effective detection measure, the first line of defense against CO leaks is proper care and maintenance for fuel-burning appliances and garages. Similarly, CO alarms can only work if they are maintained and tested regularly. It's also a good idea to ensure CO alarms have a secondary source of power. Finally, condo boards should implement steps on how to address CO emergencies into the condo's safety or emergency plan.

Given that most if not all homes have items that pose a threat of CO poisoning, effective preventative measures should be taken seriously. And to help raise awareness, the first Carbon Monoxide Awareness Week kicks off on November 1-8, 2014.

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Editor:
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Watch Out: Developers limiting their liability for building defects!

Christopher J. Jaglowitz, B.A., J.D., ACCI

As the buying frenzy for new condos continues, a growing trend threatens to leave purchasers poorly protected against construction deficiencies. Purchasers and their lawyers should pay attention.

In recent years, some developers' agreements of purchase and sale for new units began including limits on the developers' warranties for those units. But that wording would usually not prevent the condo corporation from making claims for construction defects in the common elements. That has changed.

More recently, some developers will make agreements between themselves and the condo corporations under their control in the early days after registration, where the corporation releases the developer from all warranties and claims for construction deficiencies except for the minimal coverage under the Tarion new home warranty. Those agreements might be authorized and registered on title to all the units using a condo bylaw.

The result is that the condo corporation turned over to its purchasers has no legal recourse against its developer for construction deficiencies, other than to make claim under the Tarion warranty, known for its many shortcomings and limitations. This leaves the condo corporation having to pay the cost to repair most construction deficiencies from its own funds, leading to rapid increases in common expenses and surprise special assessments.

What makes this slick practice legally acceptable is that the release agreements and the authorizing bylaws are disclosed to purchasers as part of the disclosure documents and the bylaws are registered on title following the condominium's registration, thereby giving the world fair notice. But is fair notice enough?

As it now stands, the key consumer protection component of the *Condominium Act, 1998* is the concept of disclosure. So long as a condition or state of affairs is disclosed, no matter how insane, improvident or unfair, it is fair game. The problem with disclosure being the consumer protection lynchpin for condo buyers is that most purchasers typically don't read the disclosure materials, don't understand what it means, or don't care.

They should start, because a recent court decision confirms that the condo corporation has no ability to overturn those agreements or bylaws if they are clearly disclosed.

In a decision released October 22, 2014, the Ontario Court of Appeal affirmed a lower court ruling upholding an agreement and its authorizing bylaw whereby TSCC 2095 (through its developer-controlled board of directors) released the developer from construction deficiency claims other than for the Tarion warranty. The court concluded that:

> Nothing in the *Condominium Act*, the *Ontario New Home Warranty Plan Act*, or any other provincial legislation, precludes a developer from limiting its liability in respect to common elements.

The court also rejected arguments that the by-law or release agreement were beyond the powers of the declarant-controlled board or unreasonable as per section 56(6) of the *Condominium Act, 1998*. Last, the court decided that even if the bylaw authorizing the execution of the agreement were subsequently repealed by the unit owners, the underlying agreement remains valid, making it impossible for the condo corporation to sue over construction deficiencies.

Buyer beware.

Aside from purchasers being saddled with the cost of their condominium corporations repairing construction deficiencies, an even worse potential outcome is that the more reputable developers may begin adopting these questionable practices. Given that our condo market is as hot and competitive as ever, a good developer may be tempted to follow suit after watching its competitors reap the financial benefits without negative consequences.

In a race to the bottom, developers will push the envelope until the Condo Act is amended to prohibit certain questionable practices or until consumers wise up and steer clear of one-sided, risky deals. Neither is likely to happen soon.

Short-term leasing—problems and solutions

Gerald T. Miller, B.A., LL.B.

Recently, condominium unit owners have taken it upon themselves to make money using internet resources to offer their unit up for daily and weekly use. Sites have even popped up for short term rental of parking and locker units. When purchasing a condominium, buyer's expectations are set out in the declaration. If a condominium is not specifically built and designated for short-term rentals, this creates a problem for the entire community. We are seeing a trend of new developments whose declarations are allowing short-term leasing. As real estate advisors, we must be vigilant to advise potential purchasers of the implications, as witnessed from properties where unregulated and illegal short-term rentals occur.

Properties with permitted short-term leasing usually budget additional staff and common expenses for the expectation of dealing with high occupancy turnover. The wear and tear on condominium units, common elements and on the staff who keep up with short term rentals is high.

The owner/tenant ratio of a condominium can set the tone for the entire community. Higher tenancy based condominiums may have a more transient feel, sometimes have trouble getting quorum for owner decisions and foster a community where anonymity is more prevalent. Unbeknownst to some property owners, tenants re-rent properties as short-term rentals to make extra money. To most condominium residents, knowing one's neighbours is important for that sense of safety. Unlike legitimate tenancies, short-term renters are often not prequalified by the property owner/ tenant, known to anyone in the community and almost always remain unknown and unregistered with property management. The shortsighted goal of quick cash may result in unforeseen and sometimes disastrous consequences such as; damage to property, voiding of insurance, neighbor complaints, refusals to leave and disorderly/criminal activity. There have been reports of short-term rentals used by the criminal element for short-term stays for the purpose of prostitution, stag parties, drug deals and the storage of stolen property.

Boards have a duty to enforce their declarations to protect owner expectations. However, there may be other legal implications of short-term rentals.

The hotel and B&B industry in Ontario is heavily regulated: Health and safety compliance, licensing and the registering of guests feature prominently. Municipal licensing is also usually required to operate hotels and B&Bs. Noncompliance with municipal and provincial requirements can result in substantial consequences to the owner of a condominium unit and possibly the corporation.

Changing the designated use of a condominium from single family residential to a short-term rental can also change the tax compliance obligations of the owner. When selling a unit that has been used as a short-term rental, HST may have to be charged on the sale if the use has changed from residential (HST doesn't apply) to commercial (HST may apply). Municipal land taxes are significantly higher for commercial use properties compared to residential purposes.

Cities zone areas and specific properties before they are built and a change to the designated use of a property must be approved by the municipality. The consequences of short-term rentals may impact the zoning of a community.

Short-term leasing may also impact on a corporation's or owner's insurance. This risk materializes when the use of the condominium is designated and insured for a single family or residential use. Any variance to that designation may void insurance (this argument has been successfully used to terminate short-term use in corporations where the declaration allows "residential" use, is silent on short-term leasing, but prohibits any activity which may increase the risk of cancellation of insurance).

What to Ask Yourself as a Board or Property Manager

Do we have a plan in place to deal with short-term rentals?
Does short-term tenancy contravene the declaration or rules?
Did the owner/tenant register their tenant with property management? Does the owner even know?
Might the short-term rental void the condominium's insurance / owner's insurance?
How is the area zoned?
Are their any tax implications (e.g. change to commercial from residential) if short-term rentals are allowed to exist?

Action Plan / What to do When You Find a Short-Term Renter

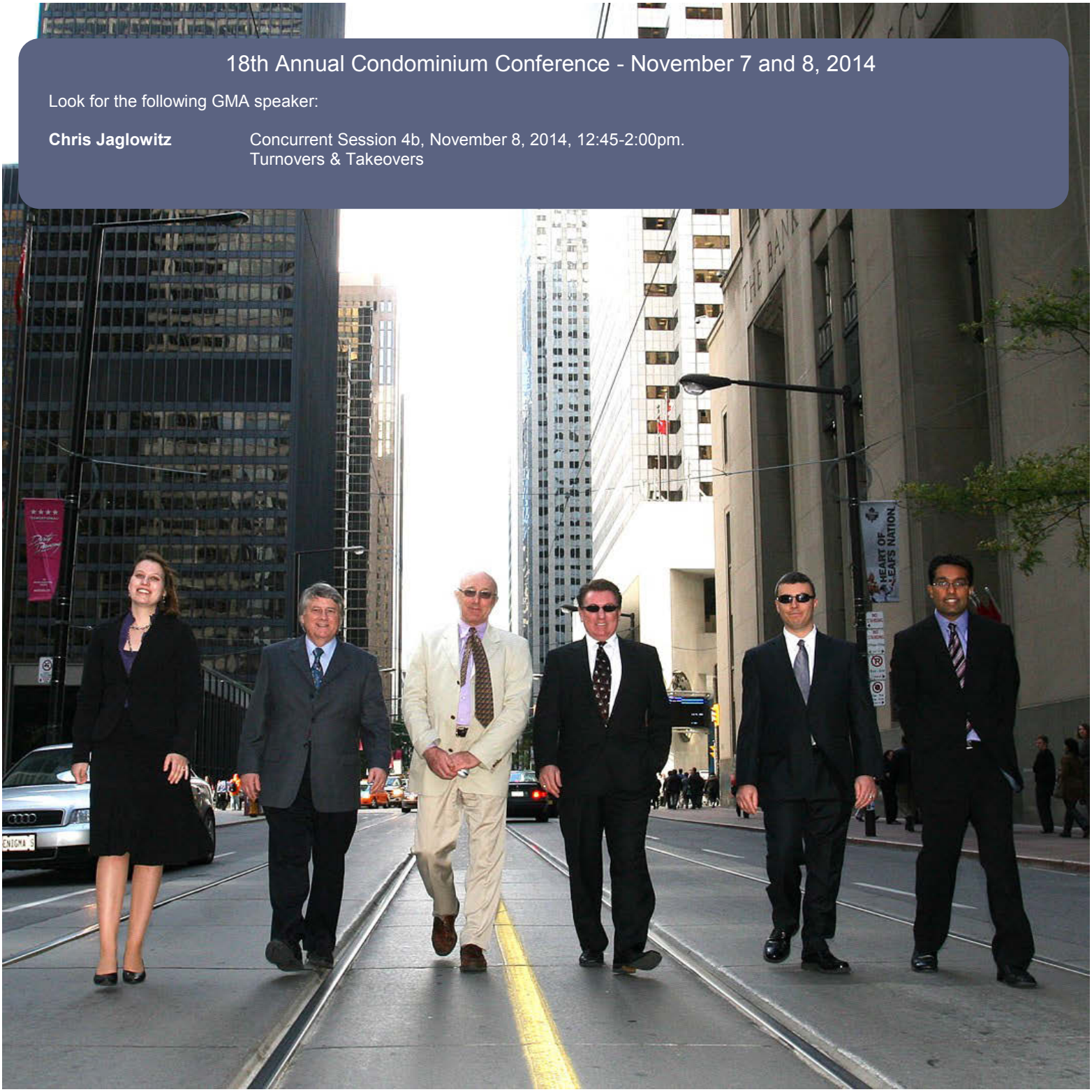
Investigate the legality of short-term rentals in your condominium
Warn the community in advance about enforcement: give notice that use will be investigated and otherwise not tolerated going forward
Investigate, get the facts and document fully if a non-compliant owner is found
Set a process for dealing with short-term rentals:
- First offence - cease and desist letter from property management
- Second offence - lawyer's letter
- Further offences – escalate to legal action or mediation/arbitration, depending on circumstances

We would like to thank Quintin Johnstone, President of Samsonshield Inc., for his research and insight into short term rentals. Samsonshield Inc. is a security company that offers security and other services to condominium corporations.

18th Annual Condominium Conference - November 7 and 8, 2014

Look for the following GMA speaker:

Chris Jaglowitz Concurrent Session 4b, November 8, 2014, 12:45-2:00pm.
Turnovers & Takeovers



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