

# TALES FROM THE TRENCHES

## BY BARRY C. MCGUIRE

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December, 2009

### THREE CONDOMINIUM CONUNDRUMS

#### RULES..., WHAT RULES?

One of our members is a long-time property manager with a lot of condominiums under management. He is amazed by the lack of knowledge amongst investors about how condominiums run, and the investor's responsibilities as owners who rents out units. Fortunately, he says that REIN members are much better about knowing, understanding and managing their units. **NOT !!**

Folks, apparently we are just as bad, or worse, than the general public. We don't know squat and if we do, we aren't implementing and maximizing our knowledge about the relationship between our tenants and the Condominium Corporation. Here's a quick rundown on essential knowledge if you are renting out a condominium unit.

A. Condominiums are legally governed by:

1. Condominium Property Act and Regulations, and;
2. Bylaws of the Condominium Corporation

You, as a landlord, must be in compliance with both of these or you may be considered in breach of either one. The Condominium Corporation can hold you accountable for any breach of either the Act and Regulations or the Bylaws.

B. Section 44 of the Condominium Property Act sets out the minimum that you as a landlord must provide to the Condominium Corporation:

1. The address at which the Condominium Corporation can serve you with notices or documents,
2. Amount of rent charged for your unit,
3. Contact information for your tenants. You are supposed to provide all of this information before you rent the property and put a tenant in your unit.

C. **YOU** as owner are responsible for damages caused by your tenant to common property or any other units in the building. The Condominium Corporation won't chase your tenant. If there is a problem with a tenant, usually the Condominium Corporation will contact you first to let you as owner try and resolve the tenant problem. The Condominium Corp. doesn't want to have anything to do with your tenants; they generally will only deal with you.

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If that doesn't work the Condominium Corporation will take care of it on their own and all the costs of taking care of the problem, (management, legal fees, repair and maintenance), will be charged back to you as owner. It can be way more expensive for the Condominium Corporation to solve a problem then for you to solve, so keep your address current. If you don't pay the bill, the Condominium Corporation can file a caveat against your title.

- D. The Bylaws of the Corporation apply to your tenants . Tell your tenants they are bound by those bylaws. Make sure your tenant has a copy of the Bylaws. Even more important, make sure they read the bylaws to understand their responsibilities. At the minimum, give your tenants written notice of common complaints that Condominium Corporations have. Those are things like pets brought in without permission, noise complaints, loud and disturbing parties, illegal parking on the property, misuse of common areas, tenants who do not meet age restrictions. This is a non-exhaustive list.
- E. The Condominium Corporation can evict your tenant for breach of the Act and Bylaws and do not have to pay attention any of provisions of the Residential Tenancies Act.

### CAVEAT ON MY CONDOMINIUM TITLE

This is the text of an e-mail I got from a member:

*"Hi Barry. I have a question I hoped I could get a quick answer on. I have an outstanding special assessment on a condominium unit and I am overdue on paying that special assessment. Money is a little short right now and I am trying to find enough to pay the assessment but haven't done so yet. The lawyers for the condo board sent me a letter and said they have already filed a caveat on the property. The letter says that they will start foreclosure proceedings shortly unless I pay the special assessment and all their legal fees and costs which are already \$800! I thought only a bank could foreclose on the property? I am paying the mortgage, so does the Condominium Corporation have the power to do that? I don't mind paying penalties and still have the caveat in place until it is paid, but I will need to take other action if the foreclosure is imminent. Can you please let me know your quick thoughts?"*

Banks can foreclose on mortgages. Condominium Corporations can foreclose on caveats. Well, it's not exactly like a normal mortgage foreclosure, but in the end it's near enough that you don't care about the difference. If you ignore the legal action launched by the Condominium Corporation, the end result will be that they can sell your property to pay the costs claimed and collect all of their legal fees and other expenses for launching the court action. If that isn't just like a foreclosure, I don't know what is. And, they can do this if you are one month behind on your condominium fees. It's a very powerful tool, probably the sharpest arrow in the Condominium Corporation quiver.

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### SUMMARY:

1. Failure to pay condo fees and assessments may result in a caveat on your title.
2. Legal action on the caveat is like a foreclosure.
3. When the Condo Corp. wins, you will pay their claim plus huge legal fees

### RENTAL POOL MYSTERIES

Here's another e-mail I got from a member about a Rental Pool issue:

*"Hi Barry. I closed on a condominium in Fort McMurray on October 1. We had an original closing date of December 1, but my joint venture partner decided that an October 1 date would work better. There was an existing tenant. So, due to tenant's rights we had to assume the Rental Pool tenant and the balance of her lease for the months of October and November. That's why I wanted a December 1 date, so we didn't have to assume the tenant.*

*Anyway, the tenant moved out in the middle of November and left a carpet and the unit in very dirty condition which was what I thought she would do and that's why I wanted a December 1 closing date, the end of her lease. I'm going to have to be firmer with my joint venture partner.*

*There is a clause in the Rental Pool agreement that says, "Property Manager to ensure that the property is cleaned and carpets are steamed cleaned as per the lease agreement with the tenant". But, the On-Site management is now saying that their responsibility as manager ended once we assumed the lease. The management company did not access the unit at closing and are refusing to access and clean it now. What can I do to encourage them to implement the details in their agreement?"*

Rental Pools and Rental Pool Agreements are tricky. In this particular case what happened was that our member did not join the Rental Pool. That is a formal process and involves signing the extremely detailed Rental Pool Agreement with the Rental Pool manager. Since the Rental Pool Agreement wasn't signed, no one was managing our members unit and there was no agreement to implement. They were on their own. If our member did not want to be part of the Rental Pool they should have obtained their own property management and had that property manager do a formal transition on management of the unit from the Rental Pool to the new manager. This involves getting assignments of existing leases and making sure that security deposits are properly transferred to the new manager.

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As an aside and not relevant to this Tale but important, many Rental Pool Agreements say that if you list your property for sale while a member of the Rental Pool, as soon as your unit goes vacant the rental Pool manager will not re-rent it. Remember this one if you are going to list your Rental Pool unit for sale.

### **SUMMARY:**

1. When buying a condo unit, ask, "is there a Rental Pool?"
2. If yes, are you joining the Rental Pool? If you are joining, get the Pool details, ask lots of questions.
3. If you aren't joining the Rental Pool, be very careful of the details transitioning Pool tenant to you.