

# TALES FROM THE TRENCHES™

## BY BARRY C. MCGUIRE

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May, 2012

### Rubik's Cube Condo: An Investor's Near-Miss.

Diligence can be tough work, and it's tougher than normal for condominiums.

Condos are creatures of the legislature, and in Alberta they are governed by the [Condominium Property Act](#) and its regulations. There are multiple owners, competing interests/agendas, common property, management companies, and layers of bureaucracy that sometimes make it difficult to try and figure out just what the heck you are buying!

Here's an e-mail from a very diligent member of the Real Estate Investment Network (REIN):

Hi Barry,

Here are the details regarding my near-miss at Grandin Village in St. Albert.

Our first concern was special assessments. I reviewed the condo docs and doing the calculation and the total is \$25,200 (3mill/10,000 X 84) (assessment/10,000 X unit factor)!!!

The property was a bit older (1968) but it appeared in decent quality to the eye and cash flow \$117-217 depending on rent \$1300-1400. There were some minor flaws such as 60w service aluminium wiring and original insulation in the attic which had deteriorated to about an R4 but Park was willing to ensure and hey I wasn't going to be paying the heat bill.

There was also a special assessment of \$2898.00 that the Seller was going to pay before sale of the building. This my first of two offers for me and my REIN partner that we put in on the same day so we were excited but quite cautious.

After the property inspection we had the condo docs inspected by Sharyn Basler of [Revington Condominium Management & Consulting Inc.](#) It is not her job to tell us to take or not to take a property only to review and inform as impartially as possible.

Turns out there were a number of problems. I may have been able to find some of them on my own but I shudder to think what would have become our brand-new JV partnership if we declined professional help in this case.

Here are the other problems that were uncovered:

There had been no change of Board members registered since 1995. This goes to show that condo board had let proper protocols slide considering Section 28(5) of the Condominium Property Act states that the corporation shall, within 30 days of the Annual General Meeting, file at Land Titles a notice stating the names and addresses of the members of the Board.

The [Reserve Fund Study](#) had several flaws. The effective lives of some components were increased inappropriately, 'contingency only' costs for several components also inappropriately assigned, some components just omitted, and a 0% inflation rate factored into future replacement costs.

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A Study Provider incorrectly noted that caulking around windows and door is the Owner's responsibility. Several Owners paid for the repairs before this was brought to general attention of Owners.

An auditor noted that financial statements indicated co-mingling of trust and general funds for the past 3 fiscal years. This is in violation of the Regulations to the Act, Section 27(2). Also there were no contributions made to the Reserve Fund for fiscal year ending March 31, 2011 as funds were 'not available to make the transfer.'

Condo Bylaws indicate that the windows and door are the responsibility of the Owner, as was amended in 2001. However, it appears that this amendment was not registered at Land Titles, and therefor is not enforceable. Minutes indicate that approximately 50% of Owners have already paid.

Special Assessment of \$345,000 is noted in the minutes of December 5, 2011. One Board member stated that the Assessment 'was not really about the infrastructure repairs but about getting the Reserve Fund up to the proper amount.' However at the same meeting the Board noted that underground infrastructure would be the primary concern. Other notes indicate \$1.6million in assessed repairs. Yet other notes indicate \$3 million in assessed repairs.

One Special Assessment of \$345,000 has already been levied, as mentioned, but a loan of \$3 million has been approved (5 year amortization)... it is unclear what the Board intends to do because request for further information was ignored.

The cost to repair the sewer lines far exceeds the Reserve fund.

It is unclear who has signing authority on the Corporation's accounts.

Current reserve fund balance \$6,072.00 on Nov 30, 2011.

The condo infrastructure was so ignored that sewer, roads, walkways, roofs all need to be repaired immediately.

Some other notes uncovered but not listed in the report:

An accountant/book keeper was asked to create financial statements without any access to bank statements or records.

It seems that the former Property Manager ran the property so poorly that it was only a matter of time before the proverbial sh\*t hit the fan. The board members met but didn't appear to read any reports or notes handed in by reserve fund assessors or accountants. So they were unaware of co-mingling of funds.

It appears that the Board intends to begin repairs to sewers, roads/sidewalks, roofs March/April 2012 (with a reserve fund balance of \$6,072.00) total assessed cost \$1.6~\$3 million dollars. How will this

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be paid for?? Hmmmm maybe with a loan with a 5-year amortization period to be paid by more special assessments (to the tune of \$13,440-25,200 + interest) and dramatically higher condo fees. Provided all contracts are within budget.

We wondered about spending money on getting the condominium documents reviewed. Well, I will tell you... it was the best \$440.00 we ever spent. We never would have been able to do the diligence/find out the horrible details. Diligence helped us avoid what would have been an absolutely devastating purchase.

### Lessons Learned:

1. Make sure your offer to purchase uses a current MLS condominium property schedule. It requires the seller to provide you documentation. If s/he doesn't, you can obtain it yourself and the seller has to pay for it.
  2. Read that documentation yourself and make copious notes. Get the documentation reviewed by an expert, like this REIN member did by using Revington. When you get your report, review it with your expert and compare against your notes. Make sure you understand all the issues.
  3. Condominium diligence really is tougher. Use your checklist. Never skip any steps. If you can't get answers or there are holes in information, walk away.
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