

CondoChronicle

NEWSLETTER OF THE CCI NEWFOUNDLAND AND LABRADOR CHAPTER

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**CANADIAN
CONDOMINIUM
INSTITUTE
NEWFOUNDLAND AND
LABRADOR CHAPTER**

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Front Cover Photo:
Windermere Condominium

MESSAGE FROM THE BOARD OF DIRECTORS

CAROL BURKE | PRESIDENT
CCI NEWFOUNDLAND AND LABRADOR CHAPTER

Welcome to the CCI-NL newsletter.

Our Chapter has had a successful and busy year. We have seen our membership numbers increase by 20% over last year. We welcome our new members and we are very happy and grateful for the loyalty of our renewing members.

Our Annual General Meeting was held this past November and we combined it with an educational seminar on Risk Management for Condominium Corporations. The turnout for both events was attended by many of our members and the feedback was quite positive.

And back by popular demand from our membership, was our Seminar this past winter on The New Act, which saw attendees of more than 50 members at the Capital Hotel.

This year has brought with it two looming deadlines for all Corporations in Newfoundland and Labrador as a result of the New Act. Standard Definition of a Unit must be completed before the end of May 2012 and a Reserve Fund Study must be completed before the end of December 2013. In spite of the increased workload and expense for Corporations as a result of these deadlines, most members we talk to agree that the New Act will result in greater financial stability for Corporations in the long term and enhanced consumer protection.

We congratulate Windermere Condominium Corporation in being chosen as our Feature Condominium for this issue. We thank them for letting us share their information with our membership.

On behalf of our Board of Directors, thank you for your support and we hope you enjoy this issue.

Carol Burke, President
CCI Newfoundland and Labrador Chapter

FEATURE CONDO

THE WINDERMERE CONDOMINIUM

CCI - NEWFOUNDLAND AND LABRADOR CHAPTER



In this edition of the Condo Chronicle we visit The Windermere Condominiums, one of CCI-NL's first and longest standing members.

The Windermere is a 39 suite adult only building which is centrally located in the City of St. John's at 170 Portugal Cove Road. Constructed and registered in 1990 its suites range in size from 1,022 sq. ft. to 1081 sq. ft. Each owner occupied suite has two bedrooms (or a single bedroom and a family room) a kitchen, large living and dining room, 1 ½ bathrooms and a utility room with washer and dryer. Extra storage space is available to owners on the second and third floors of the building. We are told that the value of the suites has doubled over the last 10 years.

Our tour guide on this visit was Board member, Mr. Dave Edwards who many will know as an active and interested participant in all CCI-NL seminars and events. Mr. Edwards points out that one of the most attractive features of the Windermere is its very close proximity to Kenny's Pond and its walking trails. Residents often take advantage of fine weather with a peaceful stroll or by sitting pond side to feed the ducks and swans or just to relax.

Another feature of the Windermere that owners enjoy is its common room. Here, owners can exercise with a selection of gym equipment, play games or sit and read. The common room is regularly used for socials and the Corporation uses it to host its annual Christmas dinner party. We are also told that there are designated "Ladies Nights" and "Gentlemen's Nights". Windermere also features a gazebo where owners can enjoy a barbeque.

Both inside and outside, the Windermere certainly appears well maintained. The Corporation employs a

live-in superintendent who takes good care of the building. Dave Edwards reports that there have been building upgrades over the last 5 years, including a new roof and installation of vinyl windows. These additions will certainly contribute to the value of the building and the comfort of its residents.

Professionally managed by Burke Realty, the Corporation has two general meetings per year. The very active 7 member Board meets on a monthly basis to deal with the business of the Corporation. Over the years the Board has developed a detailed safety and security policy which should be the envy of all other condominium corporations. The policy includes provisions regarding fire prevention and control, detailed emergency escape plans and crime control and prevention.

We would like to take this opportunity to thank Dave Edwards for talking to us about the Windermere. We also thank the Board and all residents for their continued support of CCI-NL. ■



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HUGE GROWTH IN ST. JOHN'S CONDO MARKET

JOANNE HAYES | SENIOR CONSULTANT | ALTUS GROUP
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The condominium market within St. John's started its baby steps in the 1970's and was still only learning to walk right up until the millennium. From 1972 to 1990 there were a total of 488 condominium units brought to market and only 635 units developed between 1990 and 1999 with the majority of development, approximately 312 units, occurring in 1990. This 30 year period saw mortgage interest rates climbing to almost 20%, sagging local economies and outflow of population from the Province. Hardly surprising that only a few brave developers tried bringing the condominium lifestyle into the local market. This period also saw an unusual phenomenon whereby a large number of older

apartment buildings were upgraded and converted as affordable condominium units. The apartment conversions helped ease the demand for low priced residential ownership and had an unforeseen advantage of vastly reducing apartment inventory which had a huge vacancy at the time.

Now some owners might complain that their fees are too high. Some might complain that their fees are too low (I'm not expecting to see many hands here). Some may have an issue with how the fees are spent. Still others may feel justified in withholding payment of their share as a silent protest against a perceived injustice. One would



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hope that owners ultimately would understand and appreciate the level of services that condo fees afford them.

The reason for this huge growth trend is not clear, but from our research and from talking to developers and realtors active in the market, the reasons include:

- A much greater acceptance of condominium ownership, now part of the mainstream
- A greater variety of condominium choices throughout the City and surrounding communities
- Pricing that competes well with the standard single family housing market
- More people looking for a condominium lifestyle which allows for ease of maintaining a residential unit and building amenities that subdivision living doesn't provide for (particularly attractive for younger and older denizens of the population)
- The flexibility of renting as an investment with the possibility of relocating to your unit on retirement
- The rapidly increasing price of single family homes making condominium units an attractively priced alternative

With 2011 being a banner year for condominium development and sales, we don't expect the market to slow down any time soon. There are presently several new buildings under construction, both in the suburbs and also in the downtown area. We estimate there are approximately 550 units under, or slated for, development in 2012. We'll be watching closely the supply and absorption factors and will report again.

Joanne Hayes, B.Comm, B.A., AACI

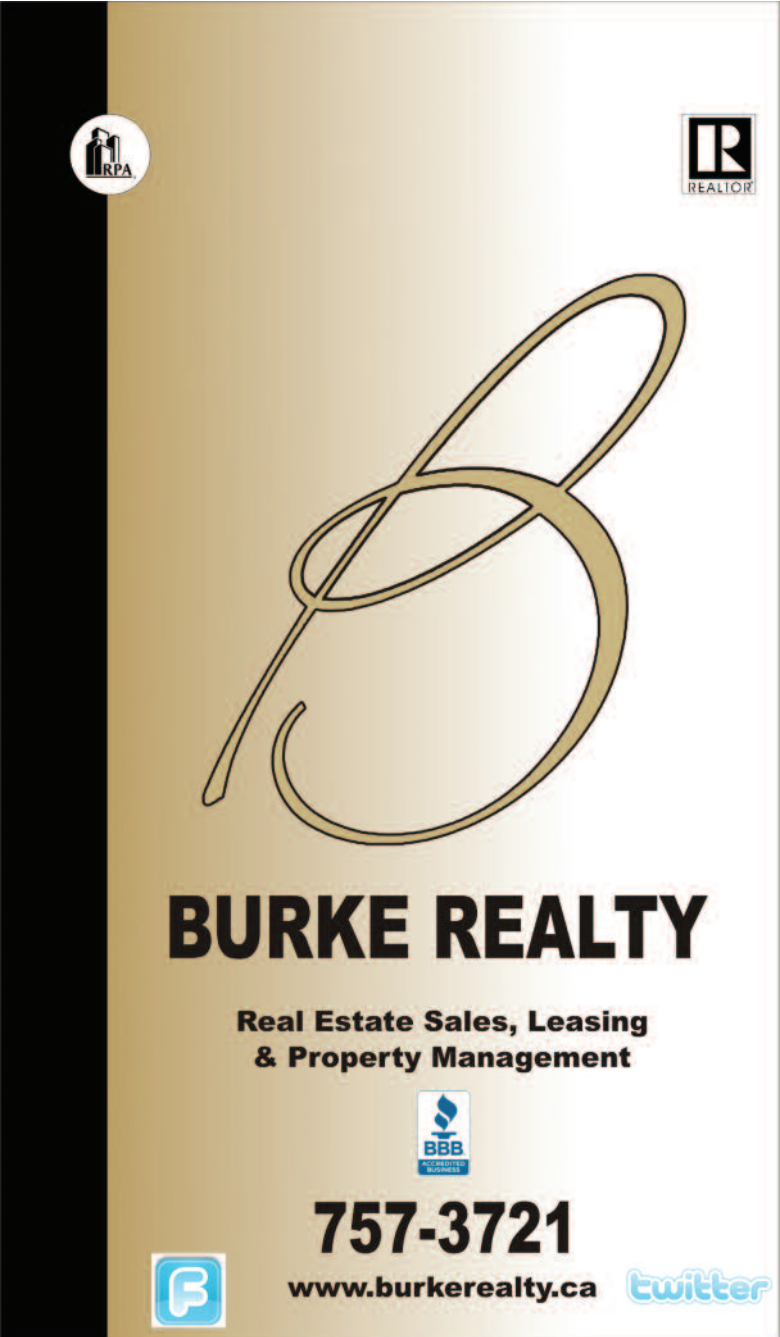
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Absorption													Registered sales per Bldg
2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Q1 2012	
62	51	11	10	25	52	8	33	90	93	40	150	4	
									3	74.3			
							5	81.2					
				8	61.375								
52.08													

CRA Audits and Your Non-Profit Status

May/June 2012

Dear CCI Member:

As some of you may be aware, the Canada Revenue Agency (CRA) has been conducting country wide audits on condominium corporations. The CRA is focusing on income generating activities which are common to condominium corporations, including, but not limited to:

- Leasing cell phone tower space
- Guest room or party room rentals
- Leasing unused property or parking spaces

In a number of instances, the CRA has taken the position that such activities have the effect of precluding the corporation from maintaining its non-profit status under the Income Tax Act (ITA).

CCI is concerned that the CRA is taking an overly restrictive approach to its interpretation of the ITA and we have solicited the advice of legal counsel experienced in the area of tax dispute resolution. A preliminary review of the matter indicates that the CRA may be taking an unduly aggressive position, and one that may be supported by the applicable jurisprudence, in determining that a corporation's operation as a whole is considered "for profit" in instances where only a single activity provides relatively minor revenue as compared to the entire non-profit operation.

Thus far we have received reports of the CRA concluding that such activities render a corporation's status "for profit" with a warning that continuing with the activity will result in an adverse reassessment of tax. If the CRA is ultimately successful in its initiative, any operating surplus in a given year may be subject to income tax.

We are not aware of the CRA issuing any formal reassessments yet. However, the CRA has made its position clear and we are seeking to deal with this matter proactively and in a manner that advances the interests of our membership as a whole. In particular, if the CRA's position in this matter is to be challenged it is in the interests of our members that the best case is put forward in order to establish an advantageous precedent on this issue. We have been advised by counsel that, given the nature of the tax appeals process, and the large number of potential assessments being of a similar nature, it is possible to coordinate the appeals process in such a way as to proactively advance one or more appeals while holding others in abeyance.

While we will be issuing further communiques on this matter as it develops, we ask that if you have been audited by CRA on these issues, please notify the CCI office, if you have not already done so, attention Diane Gaunt, CCI National Executive Director, at cci.national@taylorenterprises.com. Thank you.

Yours truly,



Jim MacKenzie

National President, Canadian Condominium Institute

BUYERS BEWARE! DIRECTORS BE 'MORE' AWARE!! PROFESSIONALS BE 'MUCH MORE' AWARE!!!

BY CHARLIE OLIVER, OWNER, MARTEK MORGAN FINCH INCORPORATED



As we all know, December 1, 2011 was a significant transition date for those of us who ply our trade in the world of condominiums. The Province enacted its new Condominium Act which is characterized as true consumer protection legislation. So what does it mean to Directors, unit owners, property managers, realtors, accountants, insurers, bankers, lawyers, developers and related professionals? Simply put ... a lot!!!

The core structure of the new Act is designed to ensure that unit owners are protected while buying and owning their Condominium Homes. To achieve this, Directors now have more clearly defined roles and responsibilities. There is more accountability to unit owners. Mandated Reserve fund studies. More comprehensive Estoppel Packages. Audited financial statements. For Realtors and vendors, much more disclosure. For buyers, a cooling off period of 10 days. For some key decisions, power has been wrestled from Boards and reverted back to the unit owners where it belongs. All in all, the industry has shifted significantly and all players need to refocus on educating themselves in this new world.

From our perspective, sitting here 6 months after the new Act came into force, it is simply amazing that so few of the organizations 'plying their trade' in the condominium industry have even read the new Act, much less set in play any education for their staff. Condominiums are still trading without completed Estoppels Packages, cooling off periods are not

BUYERS NEED TO QUESTION THEIR
REALTORS AND LEGAL COUNSEL TO
ENSURE THE NEW RULES ARE REFLECTED
IN THEIR TRANSACTION.

defined, Reserve Funds are not intact and a myriad of other legalities are unknowingly being missed. While all of this may be truly innocent, we are in an industry that is growing exponentially and needs the comfort of knowing the new Act is being used as the template and guide for transactions within the industry.

Buyers need to question their realtors and legal counsel to ensure the new rules are reflected in their transaction. Demand the new Estoppels Packages and, where required, Reserve Fund Studies. Ensure you are comfortable with the reserve fund accounting.

Directors need to review their current Declarations and By-laws to ensure they harmonize with the new Act and, where necessary, converse with their legal counsel on such matters as Standard Unit Definition (due date for completion is May 31, 2012), reserve fund requirements and other 'housekeeping changes'. They need to ensure their accounting firms are aware of the new changes and that their statements now reflect them.

The Provincial Chapter of the Canadian Condominium Institute (CCI) has been a strong supporter of the new legislation. Leading up to its enactment, it held several sessions providing interested parties with the forum to become informed. A base of knowledge was created.

As we are now nearing 6 months under the new Act, we should all be aware of the Act and its Regulations and have adjusted our practices to reflect this new environment. The professionals guiding the industry should step up to the plate with an educational focus in order to move the industry in alignment with the new Act. Till that happens ... at the expense of repetition ... simply put ... BEWARE!!! ■



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WHAT IS THE STANDARD UNIT?

GEOFF PENNEY | OTTENHEIMER BAKER
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When the new *Condominium Act, 2009* was proclaimed in force on December 1, 2011, it introduced a new concept for condominium corporations in Newfoundland and Labrador – the Standard Unit. Standard Unit definitions have been a feature of condominium legislation in other provinces for many years, and therefore have been part of condominium declarations and bylaws in those jurisdictions. It is now time for condominium owners in this province to become familiar with this important change.

What exactly is a Standard Unit? Why is such a definition required and how is it used? How does a condominium corporation go about creating a proper definition? All of these questions will be addressed in this article.

The *Condominium Act, 2009* requires that all new condominium corporations have a Standard Unit definition included in their declarations or bylaws. All existing condominium corporations are required to have a Standard Unit bylaw passed not later than June 1, 2012. In order to be effective, any bylaw or amendment there-to addressing the Standard Unit has to be registered in the Condominium Registry.

The *Condominium Act, 2009* attempts to separate the repair and insurance obligations of the condominium corporation versus those of the unit owner. The corporation is required to repair both the units and the common elements after “damage”. However, the corporation’s obligation to repair units after damage does not extend to any improvements made to the units. The corporation is still responsible for maintaining the common ele-

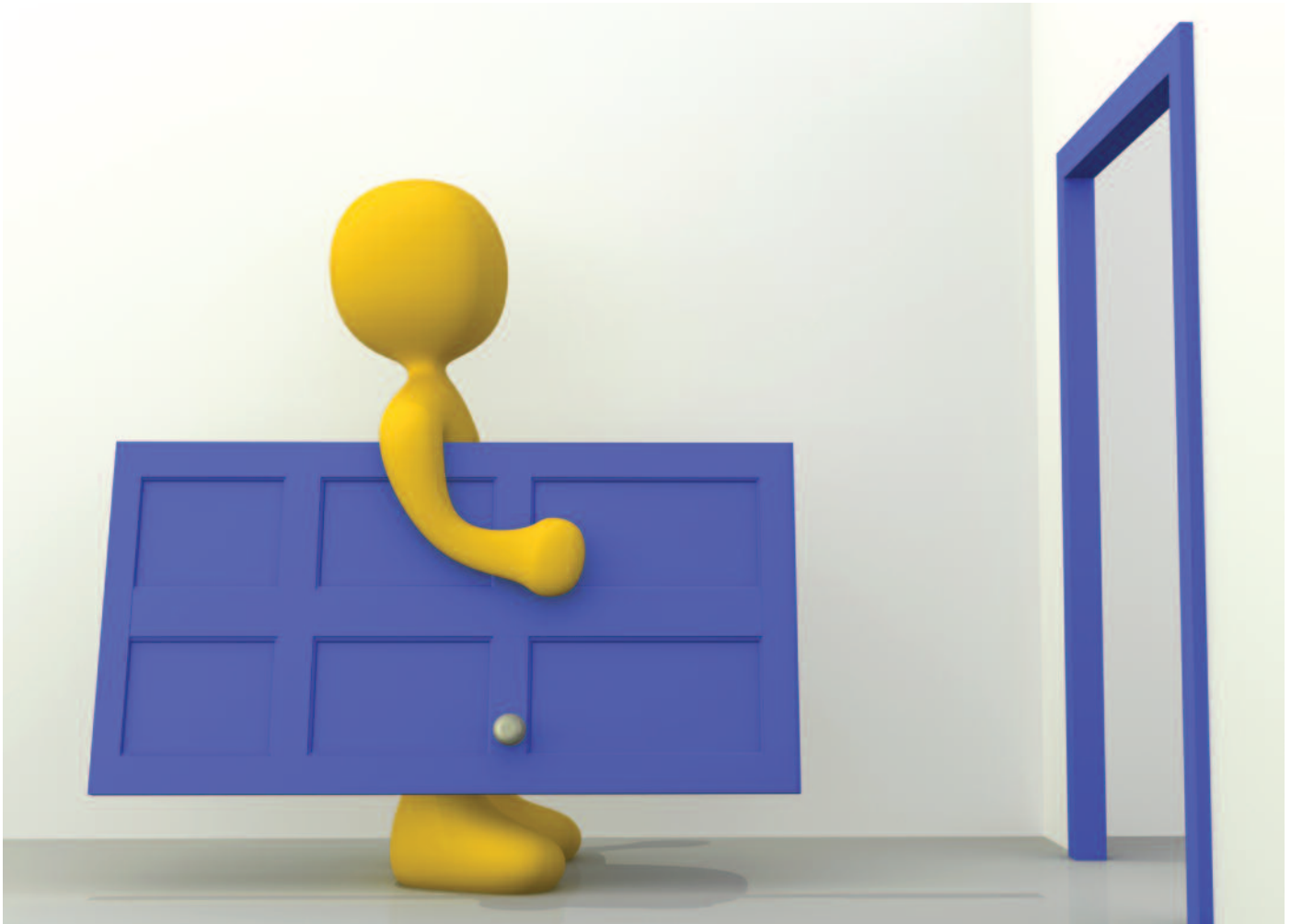
ments, while the unit owner is still responsible for maintaining his or her unit after normal wear and tear. It should be noted that the concept of the Standard Unit has no bearing on the common elements or the corporation’s obligations to repair and insure these areas or components.

Unlike its predecessor, the new *Act* also addresses the insurance obligations of the condominium corporation. The corporation is responsible for insuring both the units and the common elements against damage caused by any of the listed “major perils”. These include: fire, lightning, smoke, windstorm, hail, explosion, water escape, strikes, riots or civil disturbance, impact by aircraft or vehicles, vandalism or malicious acts. The corporation’s obligation to insure the units also does not extend to any improvements made to the unit.

Therefore, when determining the corporation’s responsibility to repair and to insure versus the responsibility of the unit owner, it comes down to a question of what is considered an “improvement”. Is a particular component such as a hardwood floor or a marble counter top an improvement or is it part of the average or “standard unit”? The answer to this question will dictate where the cost of repair or replacement will lie. Hence, the critical importance of a carefully drafted Standard Unit definition.

The purpose of a standard unit definition is to determine those components that are improvements, thereby establishing them as the unit owner’s responsibility and not that of the condominium corporation. The corporation will be responsible for all components that fall within the standard unit definition. Anything falling outside this definition will be the unit owner’s responsibility. The unit owner would therefore be strongly encouraged to make sure that his or her personal insurance policy has sufficient coverage for any improvements to his or her unit.

From the corporation’s perspective the importance of defining the Standard Unit is that it protects the corporation from having to spend significant amounts of money when there is a loss affecting expensive components of a particular unit such as imported hardwood floors, marble countertops and crystal chandeliers. As the associated expenses are “common expenses”, such



claims have an impact on all members of a condominium community.

It is recommended in all circumstances to have one definition that is applicable to all units, unless there are different classes of units within the condominium. Traditionally perhaps standard unit definitions attempted to identify the particular components or features of a unit at the time that it was built and first purchased from the developer. However, this practice becomes difficult when you are dealing with an older condominium where there have been so many changes to the units over the years that it's anyone's guess what the original components may have included. Likewise the more modern practice of a developer letting the first purchaser of a unit choose his own components through a flooring or cabinetry allowance also creates problems. This could result in a variety of components from one unit to the next and real difficulty in determining what the common "standard" should be.

It is the writer's opinion that it does not necessarily matter what the original components of the unit were

nor does it matter that units might have a variety of components. The standard unit definition is usually incorporated as a bylaw. Pursuant to the new *Condominium Act, 2009*, passing or amending a bylaw requires the approval of 66% of the members. Therefore, so long as a corporation can meet this threshold in a vote, the members can agree on any form for a standard unit. There are certainly ways to draft the definition so it addresses the differences in units within a condominium complex to arrive at a definition that is fitting for all.

The important thing to keep in mind is that the broader the definition of a standard unit, the more obligation the corporation has to repair and insure the units. Conversely, the more narrow the definition of the standard unit, the more obligation the unit owner has to repair and insure.

If condominium corporations do not already have a standard unit bylaw passed, they should certainly consider it a priority to do so. ■

CONDO CHRONICLE

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