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### Maria Durdan

Maria Durdan is the head of the Condominium Practice Group at SimpsonWigle LAW LLP; she specializes in condominium law, development and administration. Maria supports over 650 of the firm's residential and commercial condominium clients throughout Ontario. Maria has also obtained her Associate of Canadian Condominium Institute (ACCI) designation in law, which recognizes that she has achieved a high level of knowledge and skill of condominium law. Maria is a Director on the Canadian Condominium Institute – Golden Horseshoe Chapter and the Chair of the Education Committee. Maria's practice includes advising boards of directors, property managers and developers on all areas of condominium law.

# Q

**Is the Board of Directors of my condominium required to obtain owners' approval prior to increasing monthly common element fees?**

# A

No. This decision is entirely within the Board's purview. The Board is not even required to obtain owners' input. This, however, does not mean that the Board can make this decision arbitrarily – far from it. The Board's authority to make decisions is always subject to compliance with the *Condominium Act*, 1998 and the condominium's governing documents.

A Board is elected by owners to fulfill the objects and duties of the condominium as set out in the Act, and in doing so, Directors are required to comply with the legislated minimum standard of care. Specifically, Directors must act honestly and in good faith and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In making their decisions a Board also usually relies on various professionals, including lawyers, engineers, accountants and property managers.

One of the many decisions a Board is required to make is whether it is in the condominium's best interest to increase monthly common element fees. This is undoubtedly a very difficult decision for a Board to make as it will have a direct financial impact on all owners.

Although it may seem obvious, owners often forget that Board decisions also impact individual Directors, as most Directors are owners themselves. No owner, including owners that are Directors, is exempt from a Board's decision, including the decision to increase monthly common element fees. This means that if monthly common element fees increase every owner at the condominium will be financially impacted by such increase.

A Board considers several factors before making its decision to increase monthly common element fees. Most notably, the Board reviews the operating fund with its property manager and reserve fund with its engineers to determine whether they are being adequately funded. The Board also considers the impact an increase will have on its community as a whole and owners individually.

As long as a Board complies with the Act, the condominium's governing documents and relies on qualified professionals in making its decisions, owners should trust their Board's decisions as the Board was elected to make them on behalf of owners.



**SimpsonWigle**  
LAW LLP

**HAMILTON**  
1 Hunter St. E., Suite 200  
905-528-8411

**BURLINGTON**  
390 Brant St., Suite 501  
905-639-1052

[www.simpsonwigle.com](http://www.simpsonwigle.com)