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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

**I live in a condominium and received notice of a special assessment. What does this mean?**

# A

This means that your condominium requires additional funds to perform the objects and duties of the condominium.

The objects and duties of a condominium include managing the property and assets of the condominium and controlling, managing and administering the common elements and assets of the condominium. For example, depending on the particular provisions contained in the condominium's Declaration, the condominium may be responsible for the maintenance and repair of common elements such as roofs, roadways, sidewalks and fencing. In order to carry out its objects and duties a condominium must have adequate funds.

The funds necessary to carry out the objects and duties are obtained by a condominium in three ways.

The primary manner in which a condominium obtains funds is through the common element fees paid by the unit owners which are collected by the condominium on a monthly basis. The common element fees paid by unit owners is determined in accordance with Schedule "D" to the condominium's Declaration, which provides the percentage contribution to the common expenses and proportionate common interest. Each year the Board of Directors must prepare a budget for the condominium. The budget together with Schedule "D" is used to determine unit owners' common element fees. The budget is divided between an operating account and reserve account, with the former being used for every day expenses, such as landscaping, and the latter being used for major repair and replacement items, such as the replacement of a roof.

A condominium may also obtain funds by way of loan from a financial institution. If the loan is not included in the condominium's current budget a borrowing-by-law must be passed to specifically authorize the loan. Like all by-laws, a borrowing-by-law is made by resolution of the Board of Directors, approved by a majority of all of the unit owners at a duly constituted owners' meeting and registered on title.

The third most common manner in which a condominium obtains funds is by special assessment. The amount of the special assessment owed by a unit owner is determined by Schedule "D" to the Declaration, the percentage contribution to the common expenses and proportionate common interest. This means that, unless all of the units have the exact same percentage allocated to them, the special assessment amounts will not be identical for each unit.

In exercising the powers and discharging their duties, the Board of Directors of a condominium is required to act honestly and in good faith and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. This means that, if a condominium requires additional funds, for example to repair a roof that was damaged during a windstorm, and the condominium does not have sufficient funds in their reserve fund (which is funded by unit owners as part of their contributions to the common expenses and may only be used for the major repair and replacement of the common elements and assets of a condominium), then the Board must determine whether it is in the condominium's best interest to fund the project by special assessment or loan. The Board should consider a number of factors, including the amount of the funds necessary to complete the project, the nature of the project and the unit owners overall financial position. But for unit owners' right to vote for or against a borrowing-by-law, unit owners do not have a right to vote on how a project will be funded; it is the Board's ultimate decision to determine how a project will be funded. If unit owners do not agree with the Board's decision to complete a repair and/or how such repair will be funded, or believe that the Board is not acting in the condominium's best interest, the only recourse is to requisition a meeting to remove the Board and to get elected in their place.



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