



SimpsonWigle
LAW LLP

The Use of Units

Rights and Obligations of the Corporation

Maria Durdan
Simpson Wigle LAW LLP

1 Hunter Street East, Suite 200
Hamilton, Ontario, L8N 3R1
905.528.8411 ext. 305
DurdanM@simpsonwagle.com



SimpsonWigle
LAW LLP

1. **The typical “Use of Units” provisions**
2. **Recent case law**
3. ***The Condominium Act, 1998***
4. **Carrying out your duties and protecting yourself**



Use of Units

The occupation and use of the Units shall be in accordance with the following stipulations:

- (a) Each of the Units shall be occupied and used only as a single family residence and for no other purpose.
- (b) No business, occupation or commercial activities of any type or kind will be conducted on or from any Unit.



HCC No. 59 v. Howard, 2009 (Ont. S.C.J.)



SimpsonWigle
LAW LLP

HCC No. 59 v. Howard, 2009 (Ont. S.C.J.)

Declaration

“only a private single family residence and for no other purpose”



NCC No. 4 v. Kilfoyl, 2010 (Ont. C.A.)



NCC No. 4 v. Kilfoyl, 2010 (Ont. C.A.)

Declaration

“ Each unit shall be occupied only as a one family residence. For the purpose of these restrictions “one family residence” means a unit occupied or intended to be occupied as a residence by one family alone, including guests and containing one kitchen, provided that no roomers or boarders are allowed. A “boarder” for the purpose of these restrictions is a person whom room and board are regularly supplied for consideration and a “roomer” is a person to whom room is regularly supplied for consideration. ”



NCC No. 4 v. Kilfoyl, 2010 (Ont. C.A.)

Declaration

“ Family,

*A social unit consisting of parent(s) and their children,
whether natural or adopted and includes other relatives if living
with the primary group. ”*



NCC No. 4 v. Kilfoyl, 2010 (Ont. C.A.)

By-Law No. 1

“ No person shall occupy or visit any part of a unit or a combination of units under circumstances where such person is being charged for occupation, for board, or otherwise but this provision shall not prevent the leasing of any unit. ”



Chan v. TSCC No. 1834, 2011 (Ont. S.C.J.)



Chan v. TSCC No. 1834, 2011 (Ont. S.C.J.)

“ The role of the court hearing an application is not to substitute its own opinion for that of the Board of Directors, but to ensure the Board has acted in good faith and in compliance with the Act, the declaration, bylaws and rules. In deference to the rules, the court should not pronounce on the propriety of a rule except where the rule is clearly unreasonable or contrary to the legislative scheme. The court should accept the board’s decision unless it has acted capriciously or unreasonably. ”



Declaration and Description

Part II – Registration and Creation → Sections 7 (4) (b) (c) – *Additional contents*

“ ...a declaration may contain,

- (b) conditions or restrictions with respect to the occupation and use of the units or common elements;
- (c) conditions or restrictions with respect to gifts, leases and sales of the units and common interests. ”



SimpsonWigle
LAW LLP

The Condominium Corporation – Rights, Powers and Duties

Part IV – Compliance → Section 17 (3) – *Ensuring compliance*

“ The corporation has a duty to take all reasonable steps to ensure that the owners, the occupiers of units, the lessees of the common elements and the agents and employees of the corporation comply with this Act, the declaration, the by-laws and the rules. ”



Sale and Leasing of Condominium Units

Part V – Sale and Lease of Units → Section 83 (1) – *Notification by owner*

“ The owner of a unit who leases the unit or renews a lease of the unit shall, within 30 days of entering into the lease or the renewal, as the case may be,

- (a) notify the corporation that the unit is leased;
- (b) provide the corporation with the lessee’s name, the owner’s address and a copy of the lease or renewal or a summary of it in the form prescribed by the Minister; and
- (c) provide the lessee with a copy of the declaration, by-laws and rules of the corporation. ”



Amendments, Other Agreements and Miscellaneous Operational Issues

Part VI – Operation → Sections 119 (1) (2) – *Compliance with Act*

“ (1) A corporation, the directors, officers and employees of a corporation, a declarant, the lessor of a leasehold condominium corporation, an owner, an occupier of a unit and a person having an encumbrance against a unit and its appurtenant common interest shall comply with this Act, the declaration, the by-laws and the rules.

Responsibility for occupier

(2) An owner shall take all reasonable steps to ensure that an occupier of the owner’s unit and all invitees, agents and employees of the owner or occupier comply with this Act, the declaration, the by-laws and the rules. ”



Carrying Out Your Duties

Step 1: *REVIEW* the Corporation's declaration, rules and bylaws

Step 2: *REASONABLY ENFORCE* the Corporation's declaration, rules and bylaws

□ **Specific compliance**

~ OR ~

□ **3 strikes you're out!**

- **Friendly first letter, Stern second letter, Lawyers letter**
- **Gather evidence: pictures, patterns, inspections, complaints, compliance letters, advertisements**



Also...

Minimizing potential litigation claims against the Property Manager, Board of Directors and the Corporation

Don't Forget About!

- **Status Certificate (section 76(1) of the Act)**
- **Insurance (Part VI of the Act & the Corporation's declaration)**
- **Dangerous Activity (section 117 of the Act)**



SimpsonWigle
LAW LLP

Thank You

Maria Durdan

Simpson Wigle LAW LLP

905-528-8411 ext. 305 ■ DurdanM@simpsonwigle.com