

REMEDIES

Mandatory Mediation and Arbitration

Agreements:

- The Act provides that the following agreements shall be deemed to include a provision to submit a dispute between the parties to the agreement to mediation or failing that to arbitration, s.132 (2):
 - (i) agreements between a declarant and a corporation;
 - (ii) agreements between two or more corporations (ie. Shared Facilities Agreements);
 - (iii) section 98 agreements between owners and the corporation made under s.98 (1); and
 - (iv) management agreements.
- If a dispute arises the matter must first be submitted to mediation by a person selected by the parties, unless the parties have already had the same issue dealt with by mediation, s.132 (1)
- If the mediator fails to obtain a settlement, an arbitrator is appointed under the *Arbitrations Act of Ontario*:
 - (i) 60 days after the parties have submitted the disagreement to mediation, if the parties have not selected a mediator; or
 - (ii) 30 days after the mediator that was selected delivers a notice to the parties that the mediation has failed.
- Each party pays the share of the mediation cost, as may be agreed on in the settlement if one is reached, failing which the mediator will determine who pays the costs of the mediation, s.132 (6)
- Once a settlement has been reached the mediator must make a written “record” of the settlement agreement, s.132 (7)

The Declarant:

- Any disagreement between the corporation and the declarant relating to the declarant’s budget contained in the disclosure statement must be resolved through mediation or arbitration s.132 (3)
- Disagreements between the corporation and the declarant involving the declarant’s accountability for a deficit in the first year budget (s.76) must also go to mediation or arbitration, s.132 (3)

Disputes with Owners:

- Every declaration shall be deemed to contain a provision that the corporation and the owners agree to submit a disagreement between the parties with respect to the declaration, the by-laws or rules (NOTE: this section does NOT refer to a breach of the Act) to mediation and arbitration using the same methods as outlined above for “Agreements”, s.132 (2)
- This means that a corporation may not be able to apply for an order of compliance under s.135, (see notes below) until it has exhausted its obligations to mediate or arbitrate
- This section does not apply to disputes between a corporation and a tenant of a unit owner

Other Remedies

Inspector

- An Inspector can be appointed by a Judge, upon application by the corporation, a lessor of a leasehold Corporation or an owner or a mortgagee of a unit to investigate the financial affairs of the corporation, s.130 (1)
- The Inspector has authority equivalent to those provided to a commission created under the *Public Inquiries Act* and has the ability to review the financial records of any person or company that has received moneys on behalf of a purchaser of a new unit and/or the corporation
- The corporation must send a summary of the Inspector’s report to the owners, s.130 (5)
- Such reports would become a record of the corporation but might be temporarily kept confidential if litigation arises because of the contents of the report



SimpsonWigle
LAW LLP

Hamilton Office

1 Hunter Street East, Suite 200
HAMILTON, Ontario
L8N 3W1
Tel (905) 528-8411 Fax (905) 528-9008

Burlington Office

390 Brant Street, Suite 501
BURLINGTON, Ontario
L7R 4J4
Tel (905) 639-1052 Fax (905) 333-3960

CONTACT MARIA DURDAN @ EXT. 305 OR durdanm@simpsonwigle.com FROM OUR CONDOMINIUM GROUP FOR FURTHER ASSISTANCE

The Condominium Group gratefully acknowledges the contributions of the originator of this guide, the late Ronald S. Danks.

Administrator

- An Administrator can be appointed by a Judge, upon application by a corporation, a lessor of a leasehold corporation or an owner or a mortgagee of a unit to assume some or all of the powers of the board provided at least 120 days have passed since the date of the turn-over meeting, s.131 (1)
- The order can specify the powers of the Administrator, the duties the Administrator is to assume and any other direction or terms the court considers just, s.131 (3)
- The Administrator can apply to the court for advice or directions on issues affecting the Administrator's duties, s.131 (4)

Compliance Orders

- A compliance order (formerly referred to as a "section 49" application) by a Judge can include an order for monetary damages and legal costs, s.134 (4)
- These costs and damages can be added to the common expenses of the unit belonging to the owner involved in the application (even if it was the owner's tenant who caused the problem) and enforced by way of a lien in the event the costs remain unpaid
- A compliance order cannot be applied for if the mediation/arbitration processes provided for in the Act are available, s.134 (2)

Oppression Remedy

- Available to the corporation, a declarant, mortgagees and owners to apply for an order where the conduct of another party is or threatens to be oppressive or unfairly prejudicial to the applicant or unfairly disregards the interests of the applicant, s.135 (1)
- The Judge can make any order that is deemed proper including an order prohibiting the conduct and/or for compensation for damages, s.135 (3)

Quasi - Criminal Fines for Directors

- Directors and officers are liable if they knowingly, "...cause, authorize, permit participate in or acquiesce in the commission by the corporation of an offence..." mentioned in s.137 (1) of the Act (ie. directors who fail to invest corporate moneys in the manner prescribed by the Act, s.137 (2))
- On conviction fines of up to \$100,000.00 can be made against corporations and up to \$25,000.00 for individuals, s.137 (1)
- The limitation period for bringing a complaint is two years from the date on which the facts that gave rise to the offence were discovered, s.137 (4)
- A compliance order can be also be made after a conviction, s.137 (4)

Court Actions by the Corporation

- The Act continues the power formerly contained in s.14 of the old Act to allow the corporation to sue for damages to the common elements the assets of the corporation, or individual units or with respect to a contract involving the common elements or a unit (even though the corporation may not have been a party to the contract), s.23
- Before commencing an action the corporation must give prior written notice to the owners listed in the records of the corporation, s.23 (2)
- Notice is not required to commence lien enforcement or Small Claims Court claims, s.23 (2) (a) & (b)