

PUBLICATION

Condominium Limitation Periods: When to Sound the Alarm

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Being a board member on either a Condominium Corporation or a Home Owners Association (“HOA”) board is often a thankless job: numerous late nights in meetings, never ending emails and phone calls, and constant decision making that sometimes never seems to please anyone. All this without remuneration! That being said, hard work and dedication of Board members is fundamental to the well-being and longevity of a successful and well-funded Condominium Corporation or HOA community.

As summer (finally) approaches, it is common for Boards to break until the fall. Decisions on important issues are also sometimes put on hold with a carry forward notation in the last meeting minutes to be readdressed in the fall. In many cases, a Condominium Corporation or a HOA will have their AGM in the fall, and the important legal issues are delayed either because of the AGM, or with the election of a new Board.

It is all too common that Boards will fail to address the important decisions of a legal nature in a timely manner. While Board members can take a well-deserved break over the summer months they should be mindful that the clock on Alberta’s Limitations Act (the “Act”) continues to tick. The Act specifically states:

3(1) Subject to section 11, if a claimant does not seek a remedial order within:

(a) 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,

(i) that the injury for which the claimant seeks a remedial order had occurred,

(ii) that the injury was attributable to conduct of the defendant, and (iii) that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding, or

(b) 10 years after the claim arose,

Whichever period expires first, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim.

We have seen too many times that a Board will become alerted to an issue with roofing repairs, landscaping, paving, water leaks, etc., and fail to pursue a cause of action to handle the situation, and in a timely manner.

We have experienced Boards trying to handle the situation themselves but lose the window of opportunity to commence an action due to Board turnover, vacations, AGM's, Special Meetings, etc.

Board members need to know that:

1. The two (2) year "clock" under the Act starts to tick from the date that the claimant knew or ought to have known that (a) the issue occurred; (b) the issue was a result of the defendant's conduct; and (c) the issue warranted bringing an action. This imposes a somewhat objective test, and in fact the clock can start ticking prior to the date of when the Board actually uncovered the root of the issue.
2. There is a ten (10) year limitation period in Alberta, of which is a complex rule that exceeds the scope of this article: if the Board complies with the two (2) year rule as described above, the odds of being offside of the Act are significantly reduced. When a Board misses a limitation period under the Act, the Condominium Corporation/HOA is effectively estopped from advancing a claim in Court. The Board members may become personally liable in negligence for failing to act in a timely and prudent manner and without the best interests of the Condominium Corporation/HOA: a situation to be avoided. Whether the Property Management company could also be held liable may depend on the facts of the matter, but it would not be a stretch.

Therefore, it is vital that your Boards are informed that they need to "sound the alarm" as soon as a legal matter arises: a quick call to one of our lawyers in the Condominium Group will greatly assist Boards in understanding their position, their avenues of recourse, and most importantly, the limitation periods.

For further information, please contact the author, Michael Kwiatkowski at 403.873.3706 or any member of our Condominium Law group.