



# It all comes back to the Documents

TUESDAY NOVEMBER 18<sup>TH</sup>, 2014

CCI LONDON, MOCHA SHRINE CENTRE

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# Overview

## 1. Condominium Documents

- ❖ What are condominium documents?
- ❖ Amending condominium documents
- ❖ Legal issues related to the documents

## 2. Enforcing Condominium Documents

- ❖ Mediation
- ❖ Arbitration
- ❖ Court
- ❖ Costs



# Condominium Documents

WHAT ARE CONDOMINIUM DOCUMENTS?

WHY ARE THEY IMPORTANT?

# Condominium Documents

## ▶ **Condominium documents:**

1. Declaration
2. Description
3. By-laws
4. Rules

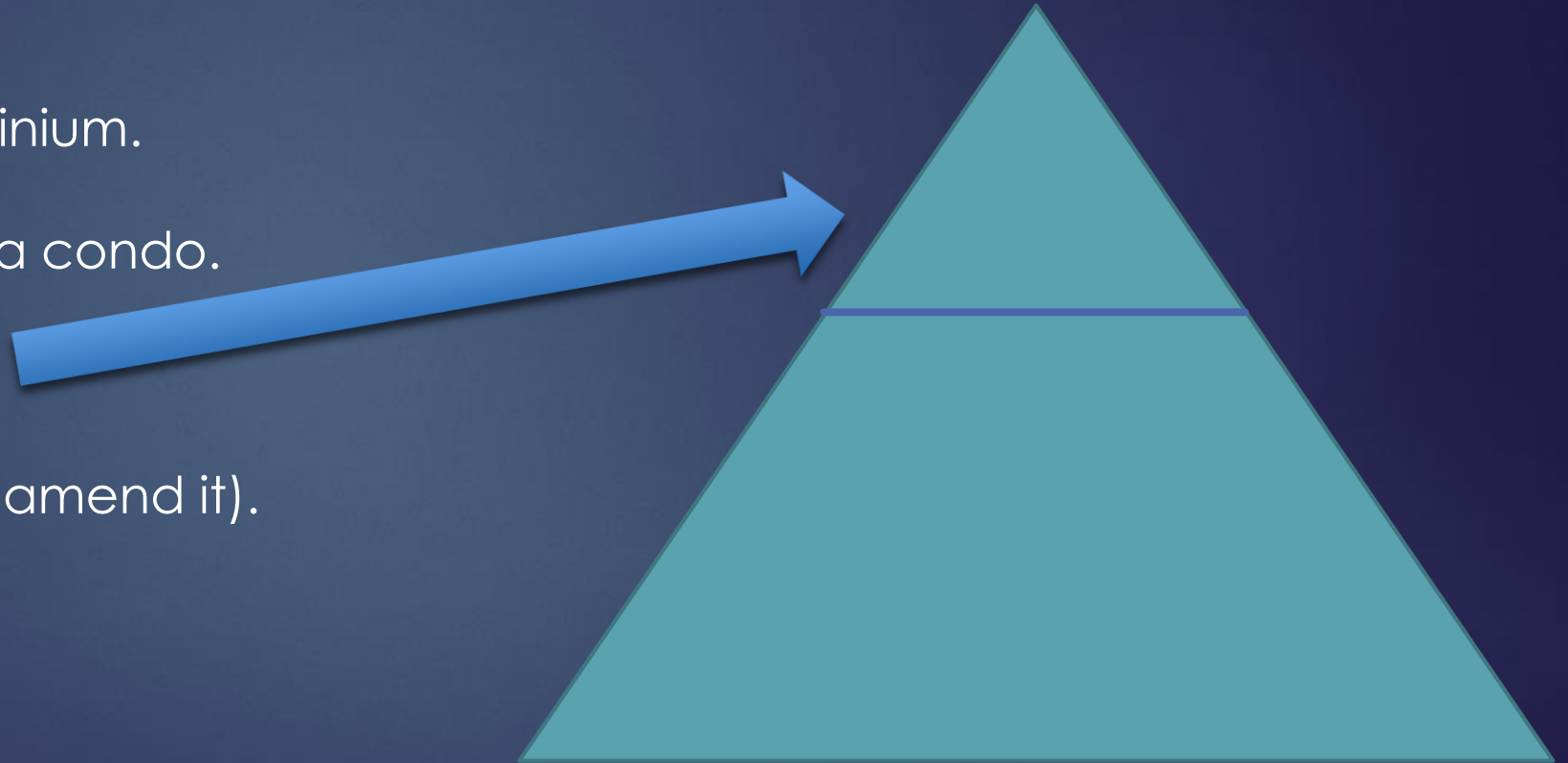
## ▶ **Other important documents:**

- Shared facilities agreements, insurance policies, reserve fund studies, financial statements, contracts and agreements, etc.

# Condominium Documents

## 1. Declaration

- ▶ Creates the condominium.
- ▶ The “constitution” of a condo.
- ▶ Top of the pyramid.
- ▶ Only have one (may amend it).
- ▶ Registered on title.



# Condominium Documents

## 1. Declaration (cont'd)

### ❖ Section 7 of the Act

#### □ Must have:

- percentages of ownership and contributions toward common expenses; and
- exclusive use areas.

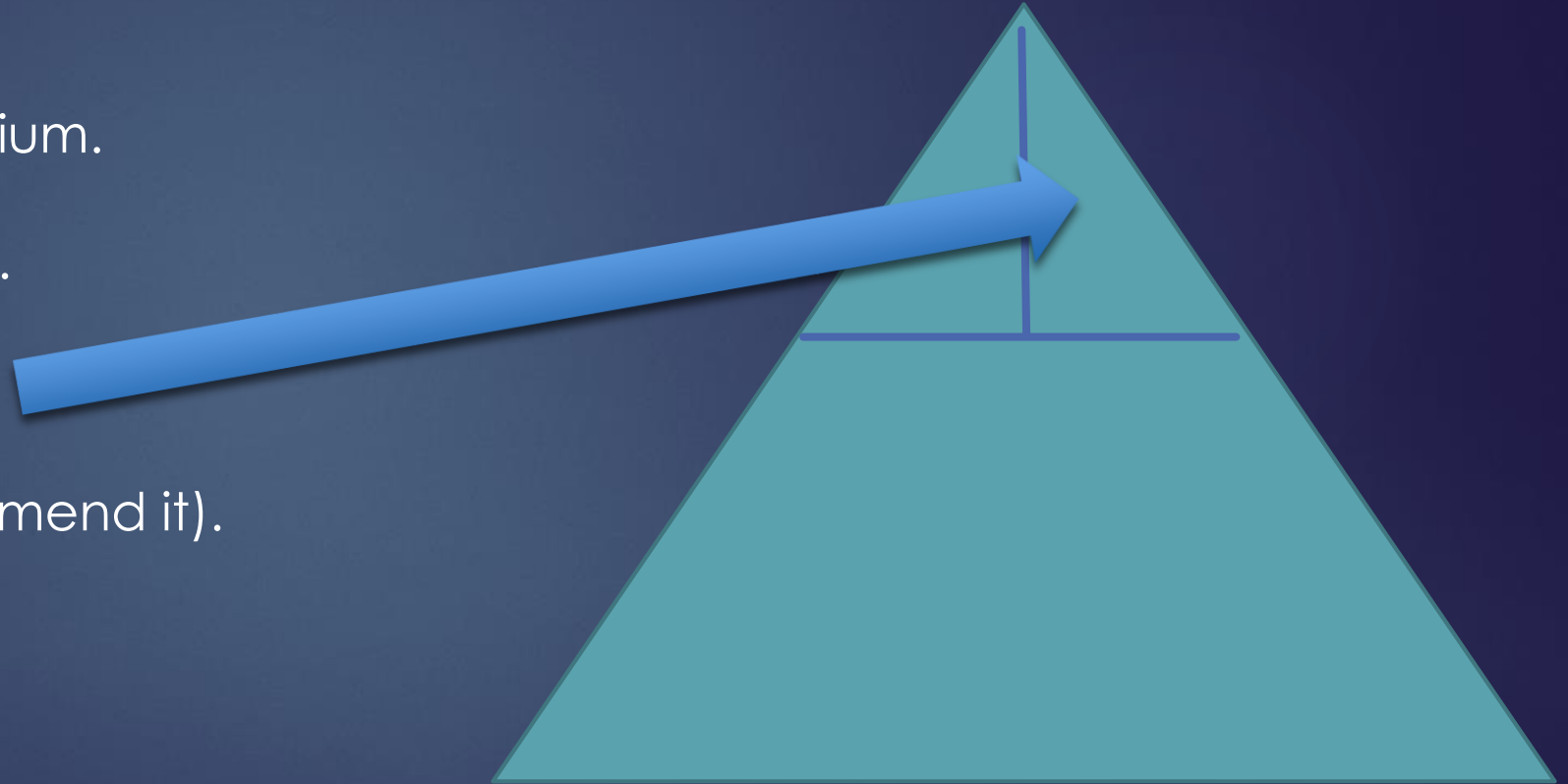
#### □ May have restrictions or conditions on:

- leases and sales of units;
- occupation and use of units and common elements; and
- maintenance and repair obligations.

# Condominium Documents

## 2. Description

- ▶ Creates the condominium.
- ▶ The “map” of a condo.
- ▶ Top of the pyramid.
- ▶ Only have one (may amend it).
- ▶ Registered on title.



# Condominium Documents

## 2. Description (cont'd)

- ❖ Section 8 of the Act
- ❖ Four parts:
  - ❑ Part 1 – plan of survey and description of units;
  - ❑ Part 2 – exclusive use common elements;
  - ❑ Part 3 – architectural plans, if any; and
  - ❑ Part 4 – structural plans, if any.
- ❖ May be a few pages or thousands.



# Condominium Documents

## 3. By-laws

- ▶ Defines governance & other specific matters.
- ▶ The “laws” of a condo.
- ▶ Middle of the pyramid.
- ▶ May have many, or none.
- ▶ Registered on title.



# Condominium Documents

## 3. By-laws (cont'd)

- ❖ Section 56 of the Act, including:
  - ❑ Director and officers;
  - ❑ Meetings;
  - ❑ Borrowing of funds;
  - ❑ Remuneration of directors (up to 3 years);
  - ❑ Standard unit definitions & insurance deductible chargebacks;
  - ❑ Mediation; and
  - ❑ “to govern the conduct generally of the affairs of the corporation.”

# Condominium Documents

## 3. By-laws (cont'd)

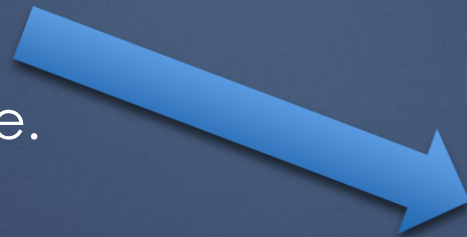
### ❖ Section 57 of the Act:

- ❑ Occupancy standards.
- ❑ Standard – municipal by-law or based on building design.
- ❑ Prohibit conduct that does not meet standard.
- ❑ May levy extra charges against unit does not meet standard.
  - ❑ increased repair, maintenance, and utility costs.

# Condominium Documents

## 4. Rules

- ▶ Day-to-day issues.
- ▶ The “regulations” of a condo.
- ▶ Bottom of the pyramid.
- ▶ May have many, or none.
- ▶ NOT registered on title.



# Condominium Documents

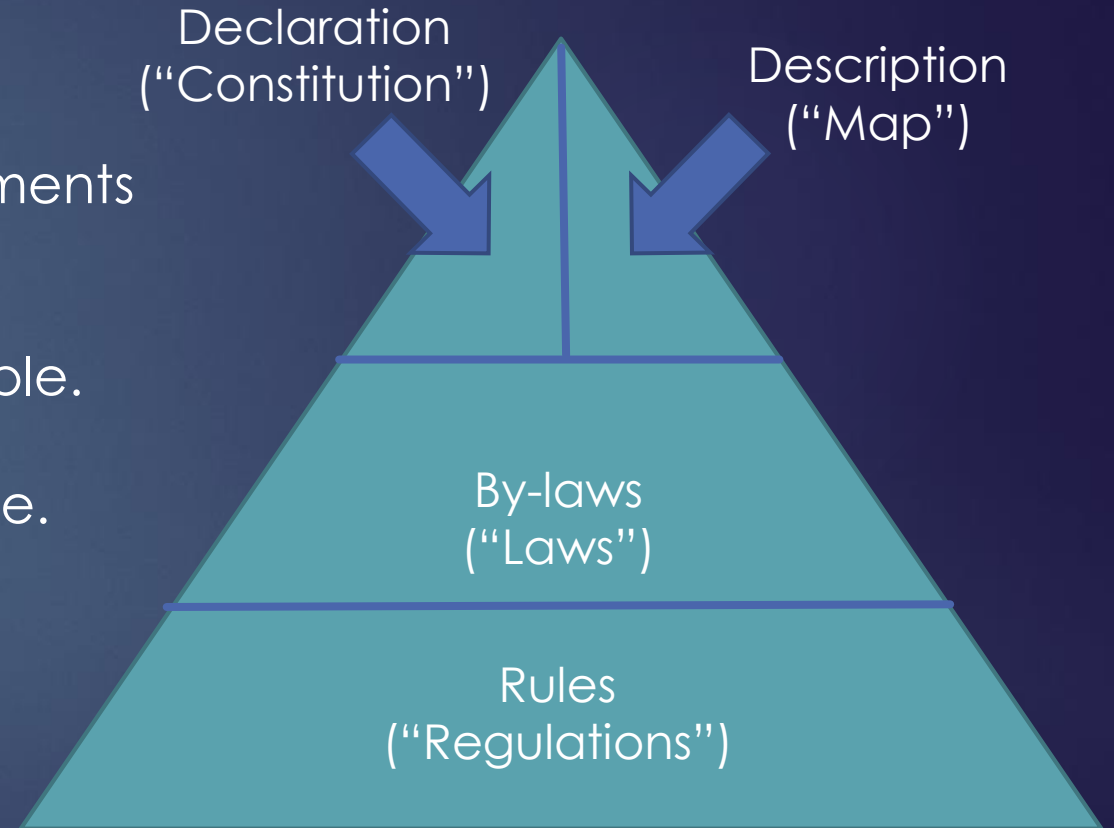
## 4. Rules (cont'd)

- ❖ Section 58 of the Act.
- ❖ Two purposes:
  - ❑ Promote safety, security or welfare of owners and assets of corporation; or,
  - ❑ Prevent unreasonable interference with use and enjoyment of common elements, units or assets of corporation.
- ❖ Section 59 of the Act:
  - ❑ Joint by-laws and rules for shared facilities and services.

# Condominium Documents

## Condominium Documents

- ▶ All of them must be consistent with documents above them in the pyramid.
- ▶ All, except declaration, must be reasonable.
- ▶ All, except rules, must be registered on title.
- ▶ All may be amended.
- ▶ Only by-laws and rules can be repealed.





# Amending Condominium Documents

HOW DO YOU AMEND CONDOMINIUM DOCUMENTS?

# Amending Condo Documents

## 1. Declaration / Description

- ❖ Consent (s.107)
  - ❑ Declarant (if applicable);
  - ❑ Owners – 90% (change to % of ownership or contributions, exclusive use areas or maintenance and repair) all other times it is 80%; and,
- ❖ Process: Board resolution → send notice of meeting to owners and mortgagees of record → hold owners' meeting → collect consents → register amendment.
- ❖ Relevant time – when approved by Board.



# Amending Condo Documents

## 1. Declaration / Description (cont'd)

- ❖ Notice of Change of Address (s.108)
- ❖ Court order from judge of Superior Court of Justice
  - ❑ Error or inconsistency that appears or arises out of carrying out the intent and purpose of the declaration or description (s.109).
  - ❑ Oppression claim (s.135)
- ❖ Order from Director of Titles
  - ❑ Clear error or inconsistency (s.110)

# Amending Condo Documents

## 2. By-laws

### ❖ Consent (s.56)

- ❑ Owners of majority of units (50% plus 1 person).
- ❑ Make, repeal or amend.

### ❖ Process:

- ❑ Board resolution → send notice of meeting to owners and mortgagees of record → hold owners' meeting → majority vote in favour at meeting (with or without amendment) → register by-law.

# Amending Condo Documents

## 3. Rules

- ❖ Two ways under section 58:
  - ❑ Owners requisition meeting to amend or repeal an existing rule; or
  - ❑ Board sends out proposed change (new rule, or repeal or amend existing).
  
- ❖ Rules becomes effective when:
  - If a requisition is received within 30 days of the notice from Board, or owners requisition meeting for existing rule, when the owners approve it (with or without amendment); or
  - Owners do not requisition a meeting within 30 days of the notice.

# Amending Condo Documents

## 4. Joint By-laws & Rules

### ❖ Joint By-laws

- ❑ Make, amend or repeal – majority of owners of units of EACH condominium vote in favour of it and it is registered.

### ❖ Joint Rules

- ❑ Same process as one condominium, but requires approval of majority of units in each condominium.

# Legal Issues

CAN WE PROHIBIT STUDENTS? WHO HAS TO MAINTAIN THE  
BALCONIES? WHO INSURES THE FLOORING IN THE UNITS?  
CAN WE CHARGE THAT BACK TO THE OWNER?

# Legal Issues

## #1 – Occupation & Use of the Units & Common Elements

- ❖ A declaration may have conditions or restrictions on:
  - ❑ The occupation and use of the units and common elements; and
  - ❑ Gifts, leases and sales of the units and common interests.
- ❖ A rule may restrict or control the use of the common elements or units as long as it is aimed at one of the two purposes:
  - ❑ Promoting safety, security or welfare of owners and the property.
  - ❑ Preventing unreasonable interference with use and enjoyment.

# Legal Issues

## #1 – Occupation & Use of the Units & Common Elements

### Enforceable

- ▶ “Single family” use of units.
- ▶ Approval for alterations within units.
- ▶ Pet prohibitions or limits on number, breed, etc.
- ▶ Only owners of residential units may own parking units.

### Unenforceable

- ▶ “Adult only” buildings.
- ▶ Pet prohibitions and conditions where an owner has a disability that requires the animal.
- ▶ Parking designations may be trumped by human rights.

### New Types

- ▶ Limit on number of students in units.
- ▶ Owner must seek prior approval of board to lease and/or use a rental manager.

# Legal Issues

## #2 – Repair & Maintenance Obligations

- ❖ Section 91 of the Act
  - ❑ Default repair and maintenance obligations.
- ❖ Section 7 of Act
  - ❑ Declaration may alter repair & maintenance obligations.
- ❖ Section 56 of Act
  - ❑ By-laws may set out maintenance and repair standards.
  - ❑ May define standard unit for insurance purposes.



# Legal Issues

## #2 – Repair & Maintenance Obligations

### ❖ Section 92 of Act

- ❑ Condominium may do work on behalf of an owner if:
  - The owner has an obligation to repair after damage the unit or maintain the common elements and fails to do so within a reasonable time; or
  - The owner has an obligation to maintain the unit and fails to do so within a reasonable time, and such failure presents a potential risk to property, assets or persons.
- ❑ The owner is deemed to have consented.
- ❑ The cost becomes a common expense for the unit and may result in a lien if the owner does not pay.

# Legal Issues

## #2 – Repair & Maintenance Obligations

### ❖ Dealing with Repair or Maintenance Issues

- ❑ Safety first.
- ❑ Contact insurer to see if insurance applies.
- ❑ If insurance, and within unit, turn to standard unit by-law to determine coverage by condominium's insurer. Owner's insurance for improvements. Check declaration for repair after damage obligation for repair work. Check Act, declaration and by-laws for deductible chargeback.
- ❑ If insurance, and common elements, condominium's insurance covers cost of repairs. Check declaration for repair after damage obligation. Check declaration for deductible chargeback to owner.
- ❑ If no insurance, check declaration for obligations, cross-reference with unit boundaries, and check for indemnification clauses.

# Legal Issues

## #3 - Chargebacks

- ❖ Must have a legal entitlement.
  - ❖ Act – collection and legal costs for arrears (s.85), repair or maintenance on behalf of owner (s.92), and court orders (s.134).
  - ❖ Declaration – increased insurance premiums, damage to condominium property (i.e. broken window, pet waste, garbage removal) or enforcement costs (i.e. letter from lawyer, mediator, or court).
  - ❖ By-law – insurance deductibles (s.105) or occupancy standards (s.57).
- ❖ Lien – 3 months from default (date payment was due) so make sure you put a date in the demand letter!



# Enforcing Condominium Documents

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# OVERVIEW

- ▶ 1) Enforcement – Court Proceedings
  - ▶ Who can use this option?
  - ▶ When is this option appropriate/available?
  - ▶ What is involved? What are the steps?
- ▶ 2) Mediation and Arbitration
  - ▶ Mediation vs. Arbitration
  - ▶ When is it mandatory?
  - ▶ What is involved?
- ▶ 3) Specific Legal Issues and Examples

# 1. ENFORCEMENT – COURT PROCEEDINGS



# 1. ENFORCEMENT – COURT PROCEEDINGS

## Who can use this option?

- ▶ Available to the following parties, generally:
  - ▶ Condominium corporation
  - ▶ Lessor of leasehold condominium corporation
  - ▶ Owner
  - ▶ Mortgagee of a unit

# 1. ENFORCEMENT – COURT PROCEEDINGS

When appropriate/available?

- ▶ If not urgent (e.g. health and safety), try to resolve without court
- ▶ Options:
  - ▶ Write letters
  - ▶ Meet with parties to discuss
  - ▶ Liens (if applicable)
- ▶ If cannot be resolved, court may be necessary/appropriate



# 1. ENFORCEMENT – COURT PROCEEDINGS

When appropriate/available?

- ▶ Section 130 of the *Condominium Act, 1998*
  - ▶ Appointing an inspector
  
- ▶ Section 131 of the *Condominium Act, 1998*
  - ▶ Appointing an administrator

# 1. ENFORCEMENT – COURT PROCEEDINGS

When appropriate/available?

- ▶ Section 134 of the *Condominium Act, 1998*
  - ▶ Compliance Order for compliance with:
    - ▶ Act, Declaration, Rules, By-Laws, and/or an Agreement between two or more condominium corporations

# 1. ENFORCEMENT – COURT PROCEEDINGS

When appropriate/available?

- ▶ Section 135 of the *Condominium Act, 1998*
  - ▶ Oppression Remedy
  - ▶ Available where conduct of one of these parties is/threatens to be oppressive or prejudicial to, or unfairly disregards of interest of, another one of these parties
  - ▶ **NOT** available to tenants

# 1. ENFORCEMENT – COURT PROCEEDINGS

What is involved in a court application?

- ▶ Purpose: resolve dispute quickly
  - ▶ E.g. no discoveries, extended trial, etc.
- ▶ Streamlined process
  - ▶ Quicker and more cost-effective
- ▶ Parties are Applicant and Respondent
- ▶ Generally just one hearing date where all matters are discussed, decision is made

# 1. ENFORCEMENT – COURT PROCEEDINGS

## Steps in an Application

- ▶ Prepare – prepare court materials
- ▶ Issue – Notice of Application must be issued by court
- ▶ Serve and File – Serve and file application materials
- ▶ Respond – Respondent can file responding materials

# 1. ENFORCEMENT – COURT PROCEEDINGS

## Steps in an Application

- ▶ Cross-Examinations – parties can examine each other on affidavits
- ▶ Hearing – attend before judge on day scheduled with court
- ▶ Judgment/Order - Judge will make an decision
- ▶ Enforce – successful party enforces the Judgment/Order

## 2. MEDIATION AND ARBITRATION



*Jameson, the mediator, uses his last remaining negotiating tool in an effort to break the stalemate.*

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## 2. MEDIATION AND ARBITRATION

### Mediation vs. Arbitration

#### Mediation

- ▶ Collaborative
- ▶ Informal
- ▶ **Parties** must **agree** on final resolution
- ▶ Faster and less expensive than other dispute resolution processes

STEP 1

#### Arbitration

- ▶ Adversarial
- ▶ Formal
- ▶ **Arbitrator** makes final decision
- ▶ More costly and time-consuming than mediation.

STEP 2



## 2. MEDIATION AND ARBITRATION

When is mediation/arbitration mandatory?

- ▶ Agreements – ss. 132(1) and 132(2) of the Act
  - ▶ Between declarant and condominium
  - ▶ Between two or more condominiums
  - ▶ Between condominium and owner under s. 98(1)(b) – changes to common elements
  - ▶ Between condominium and property manager

## 2. MEDIATION AND ARBITRATION

When is mediation/arbitration mandatory?

- ▶ First Year Budget – s. 132(3) of the Act
  - ▶ Contents of budget for first year after registration
  - ▶ Declarant's obligation re deficiency between budget and actual costs to condominium during first year

## 2. MEDIATION AND ARBITRATION

When is mediation/arbitration mandatory?

- ▶ Disputes between condo and unit owner(s)
  - ▶ Section 132(4) of the Act
  - ▶ Dispute re Declaration, By-Laws, and/or Rules
  - ▶ Includes dispute re validity, interpretation, application of condo documents
  - ▶ Includes claim for damages arising from dispute

## 2. MEDIATION AND ARBITRATION

When is mediation/arbitration mandatory?

▶ **Not** required when:

- ▶ Dispute with tenant/occupant who is not unit owner
- ▶ Dispute re breach of the *Act* – e.g. s. 117 (dangerous activity) or 135 (oppression)

## 2. MEDIATION AND ARBITRATION

### Step 1 - Mediation

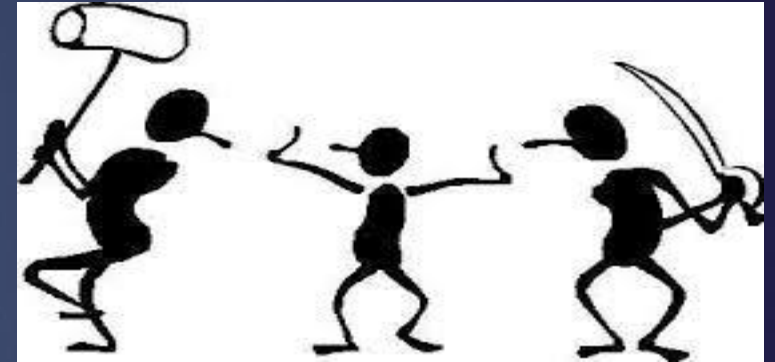
1. Prepare notice of mediation
2. Agree on mediator
3. Prepare mediation briefs
4. Attend mediation
5. Board ratification of any settlement (if applicable)
6. Finalize settlement or request notice of failed mediation



## 2. MEDIATION AND ARBITRATION

### Step 2 - Arbitration

1. Prepare notice of arbitration
2. Select arbitrator
3. Prepare arbitration briefs
4. Attend arbitration
5. Await award from arbitrator
6. Enforce the award/convert to court Order



## 2. MEDIATION AND ARBITRATION

### Keys to a Successful Med/Arb

- ▶ Be prepared
- ▶ Take it seriously
- ▶ Be fair and consistent
- ▶ Don't look at mediation as just a step to arbitration – try to resolve if possible
  - ▶ Cheaper
  - ▶ Faster
  - ▶ Less stress and time for all parties
- ▶ Remember arbitration is **binding**

### 3. SPECIFIC LEGAL ISSUES





### 3. SPECIFIC LEGAL ISSUES

#### 1) Compliance Order - Costs

- ▶ Section 134(5) of the *Condominium Act, 1998*
- ▶ If a condo obtains a damages award against a unit owner in an application for a Compliance Order, those damages and any additional costs of the application can be added to the common expenses for the unit
- ▶ BUT courts have recently been more cautious about this section

### 3. SPECIFIC LEGAL ISSUES

#### 1) Compliance Order Costs cont...

*YCC No. 301 v. James*, 2014 ONSC 3360

Condo asked for:

- ▶ over \$125,000.00 in legal costs
- ▶ over \$27,000.00 in other costs
- ▶ Judge found that # of hours/fees claimed was excessive, condo would not actually be expected to pay for it all
- ▶ Awarded \$58,000.00 in legal fees, no other costs

### 3. SPECIFIC LEGAL ISSUES

#### 2) Single-Family Dwellings

- ▶ *Nipissing Condominium Corporation No. 4. v. Kilfoyl, 2009*
  - ▶ Can state in Declaration that condo units are restricted to a 'one family residence'
  - ▶ Does **not** infringe *Human Rights Code*

### 3. SPECIFIC LEGAL ISSUES

#### 2) Single Family Dwellings cont...

- ▶ *Chan v. Toronto Standard Condominium Corporation No. 1834, 2011*
  - ▶ Requirement for single-family use can be in the Rules
  - ▶ Doesn't have to be in the Declaration to be enforceable
  - ▶ Easier to amend/create Rules than to amend Declaration

## 4. SPECIFIC LEGAL ISSUES

### 3) Hoarding

- ▶ First step: try to resolve
  - ▶ Write a letter from the Board, including date for entry to unit
  - ▶ Provide deadline for compliance
- ▶ Next step: get experts involved
  - ▶ Fire department, health department, fire safety specialists, lawyers!

## 4. SPECIFIC LEGAL ISSUES

### 3) Hoarding cont...

- ▶ If can't be resolved through above steps, may have to do an application to court
- ▶ Try to restrict to most serious cases – risk of damage to property or persons
- ▶ Grounds:
  - ▶ S. 92 – repair and maintenance obligations
  - ▶ S. 117 – dangerous activities
    - ▶ Need expert evidence as to why it's dangerous
  - ▶ S. 119 – obligation to comply with Act
  - ▶ S. 134 – compliance order

## 4. SPECIFIC LEGAL ISSUES

### 4) Entry to Unit

- ▶ S. 19 – Right of Entry
  - ▶ If condo gives reasonable notice, has right to enter unit to carry out duties of condo
  - ▶ Reasonable notice depends on circumstances (less notice if serious issues)
  - ▶ *Waterloo North Condominium Corp. No. 37 v. Silaschi, 2012*
    - ▶ Application along with s. 98 – court found breach of s. 98, order permitting condo to enter and remove items in breach of s. 98

## 4. SPECIFIC LEGAL ISSUES

### 5) Costs Against Directors

- ▶ Possible, but only in very specific and serious circumstances – very rare
- ▶ Court needs to find that the directors breached their duties under the Act
- ▶ If directors acted honestly and in good faith, even if breached duties, still likely will not have costs awarded against them



## 4. SPECIFIC LEGAL ISSUES

### 5) Costs Against Directors cont..

- ▶ *Boily v. Carleton Condominium Corp. No. 145*
  - ▶ Owners brought application preventing Board from moving forward with landscaping plans that the owners didn't like
  - ▶ Court ordered condo to restore common elements to previous design
  - ▶ Owners then brought motion for contempt of court, as condo hadn't obeyed order to restore
  - ▶ **Court ordered directors to pay \$400,000.00 personally** (costs of restoration)

## 4. SPECIFIC LEGAL ISSUES

### 5) Costs Against Directors cont..

- ▶ *Boily v. Carleton Condominium Corp. No. 145*
  - ▶ Court of Appeal – upheld contempt order, but reduced costs to \$7,500.00 fine per director, and \$35,000.00 in legal fees
  - ▶ Reasons why directors personally liable:
    - ▶ 1) Refused to recognize legitimacy of owners' requisition for a special meeting
    - ▶ 2) Decided on their own that Minutes of Settlement had been breached and the condo no longer had to comply, rather than having court decide

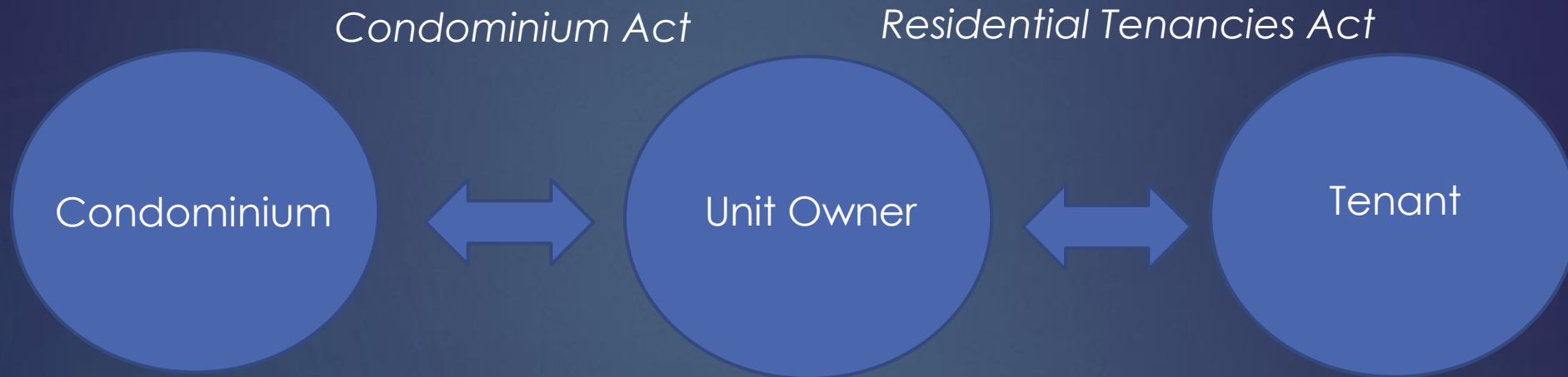
## 4. SPECIFIC LEGAL ISSUES

### 6) *Human Rights Code* Matters

- ▶ Matters dealing complaints re Human Rights Code violations generally dealt with through the Human Rights Tribunal of Ontario – not court
- ▶ Separate and specific process and procedure
- ▶ *Human Rights Code* ‘trumps’ Condo Act and condo documents
  - ▶ Condo has a duty to accommodate, short of undue hardship

# 4. SPECIFIC LEGAL ISSUES

## 7) Landlord/Tenant



# 4. SPECIFIC LEGAL ISSUES

## 7) Landlord/Tenant

- ▶ *Condominium Act* governs relationship between condo and unit owner
- ▶ *Residential Tenancies Act* governs relationship between unit owner and tenant
- ▶ Condominium not bound by *Residential Tenancies Act* (at least as far as state of the law is now)
- ▶ BUT condo is required to take reasonable steps to enforce the *Condo Act* – *RTA* may influence condo
  - ▶ E.g. if asking unit owner to evict tenant, keep in mind that *RTA* has certain notice requirements – even if condo isn't bound by those requirements, condo more likely will be found to be reasonable (if matter goes to court) if were keeping *RTA* in mind



Questions?

Thank you!