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The court-appointed administrator A Practical Perspective!



Robert Buckler

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THE CONDOMINIUM industry has evolved since 2001 when the *Condominium Act, 1998* (the “Act”) came into force. One aspect of the Act that has become more prevalent, is the interesting matter of the court appointment of an Administrator, whose mandate is to govern the affairs (or a portion thereof) of a condominium corporation.



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■ Background

This article details the author, Robert Buckler’s, first-hand experience of being appointed Administrator (of two corporations) by the Ontario Superior Court of Justice, pursuant to Section 131 of the Act. The appointment is typically a result of the efforts of a group of owners or the initiative of the condominium corporation’s board of directors. Once approved by a Judge, the appointing order includes the framework for the Administrator’s mandate as an officer of the Court. Once appointed, the Administrator’s role shifts from one of a candidate to that of a neutral decision-maker objectively planted into a sometimes fractious and often financially precarious condominium community.

The mandate typically includes a limit on holding elections for directors of the corporation. Other than the loss of this single (albeit fundamental) democratic right, owners typically retain the right to re-appoint the auditor at the Annual General Meeting, and, if necessary, can also still vote on proposed bylaws or rules. The Judge also defines the specific mandate of the Administrator in terms of urgent items requiring immediate action, such as municipal work orders, fire safety violations or urgent repairs, as well as the Administrator's reporting obligations to the court.

Notwithstanding the details in any given appointing order, the Act and the order do not contain a prescribed method or approach that the court-appointed Administrator must follow to guide the community back to self-governance. Although the growing number of cases on this topic has made it clear that the Administrator's ultimate objective is to return a revived and stable corporation back to self-governance, it is up to the Administrator to navigate the community towards this goal.

■ No Board of Directors

Imagine waking up as an owner to the "new reality" of no longer having a democratically elected board of directors (comprised of your neighbours) governing your condominium community. This new reality affects equally the corporation's property manager in that s/he will no longer work with a board with whom the manager has become close. Understandably, from a unit owner's perspective, this drastic change to the community dynamic can be shock, and, as such, the Administrator needs to be highly sensitive to the negative perception his/her role may evoke within the community. Equally important is the fact that as an "outsider" or non-owner who is compensated for his/her time, the Administrator must recognize (as the courts have) that his/her actions will be scrutinized far more closely and critically than those of any board member.

■ Setting the Stage

Within this fragile environment, the Administrator needs to keep in mind that s/he must always act in the

best interests of all unit owners, and not on behalf of the (former) board members and/or the group of owners who initially proposed the Administrator. Typically, the Administrator is appointed to initially deal with the most difficult and urgent circumstances, such as to address the financial distress of corporations with large deficits, outstanding payables, significant (and highly overdue) repair projects that must start immediately, and drastically inadequate reserve funds. Each situation often requires hard-nosed decisions and measures that will not be "popular." However, as a professional "troubleshooter," the Administrator must formulate a strategy to restore the condominium corporation back to health in as short a time as possible.

■ Data Gathering

Just like the initial weeks when a new management company takes over a condominium property, in the early weeks of the mandate, it is crucial for the Administrator to conduct a detailed "property review," or an in-depth investigation, to un-

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derstand the history of the corporation's problems, what is pending and what must be dealt with urgently. The main cornerstones of this initial analysis mirror those of the RCM courses taught by ACMO, namely: legal, financial/accounting, human resources/administration, and physical aspects; however, superseding the above is a community rebuilding strategy that must inform and reassure owners that the "new reality" is only temporary and meant to get the corporation back on the self-governance track. All of the aforementioned is to be approached in partnership with the property manager to ensure that the community knows they have a united and effective team working on their behalf.

■ Communication

As mentioned above, in order to have a successful launch of his/her mandate, the Administrator develops a communication strategy and implements it as soon as possible. Understandably, owners are nervous, uncertain and unaware what this will mean for their community. They

are worried that they have lost their ability to make democratic decisions regarding the governance of the affairs of (in the vast majority of cases) their biggest and most sentimental assets – their homes. As a result, the Administrator needs to communicate often and in different forms, whether by posting notices, holding Information Meetings or other formats. The key is that this must happen quickly to reassure owners that the court-appointed professional will act in their collective best interest.

Posting notices in a secure bulletin board will help get the message out and reinforce the fact that the property manager, not the Administrator, will manage; however, it may be perceived by many that the Administrator is acting in a quasi-managerial role, particularly at the outset. Most of the time, the problems that led a corporation to a court-appointed Administrator have nothing to do with the property manager. The cause is typically a divided condominium community whose board of directors is unable to effectively manage the affairs of the corporation, resulting

in dire financial, legal and political straits. The property manager is often caught in the crossfire of this progressive decline. Nevertheless, it is the manager who has the information that the Administrator must understand in order to diagnose the problems. It is only during this initial due diligence period that the Administrator may appear to be acting in the capacity of management; however, this level of involvement is only temporary such that once the Administrator has his/her finger on the "pulse" of the corporation, the routine will transition to a more typical format of regular meetings between the Administrator and the property manager, who then advises the Administrator and executes based on the Administrator's direction.

Explain the situation to residents and communicate with suppliers who service the property so that both are aware of what the appointment of an Administrator means to them. By explaining, for example, that their payments may take longer than usual to be paid, or that they should make every effort to reduce

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their rates and additional charges to the property, will help set expectations right from the beginning.

Action Plan

With initial formalities out of the way, the Administrator and manager begin to develop the Action Plan to address the urgent issues first. This approach may mean obtaining second or even third opinions to make sure that decisions that are made have been double and triple-checked so as to avoid the Administrator being accused of making hasty or premature decisions. Formal tendering for large repair projects becomes even more important to ensure that appropriate procurement procedures are followed. Ideally before major work begins, the communication directive must take precedence so that the community is given the opportunity to learn about upcoming construction or other major activities within the building. With open lines of communication between the community and the Administrator, “fronted” by

management, residents will feel reassured that the appropriate decisions are being made to address the urgent needs of the building. With communication comes transparency, which is so crucial to the successful tenure of an Administrator. ■

Beredan Management and Consulting Inc., is Robert Buckler's condominium consulting company. Robert has managed condominiums, attained his RCM in 2006 and has taught the ACMO Condominium Law. He is currently a Court-Appointed Administrator for two condominium corporations and is a realtor with Century21-Heritage Group.

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