LATHEM'S LEGALS

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THE MYSTERY OF STATUS CERTIFICATES

When I first started practicing Law some 20 years ago obtaining a Status Certificate or as it was then called Estoppel Certificate was done by the lawyer typically after there was a firm deal. However, after the sinking of the famous Cedar Mac Condo building not far from my office in Richmond Hill it became the “norm” to make the purchase of a Condominium conditional upon the review of the Status Certificate.

The purpose of this particular newsletter is to let the clients and agents know the reasons for this review and an idea of what the lawyer is looking for.

What is a Status Certificate

A Status Certificate is a Certificate issued by a Condominium Corporation setting out the Status of a particular unit within a Condominium Corporation, including all relevant legal and financial information.

Condominium Act

The Condominium Act sets out specifically the requirements for the Status Certificate including:

1. The Cost which is $100.00;
2. The time frame the Condominium Corporation has to produce it in, which is ten (10) days; and
3. The contents and accompanying documents that must be provided, for example, budget, last audited financial statement, by-laws and declarations. Typically any rule books and Reserve Fund Studies are enclosed.

I mention the time frame and what is required because these details should be reflected by the conditions in the Agreement of Purchase and Sale. I would recommend that it has to be produced within ten (10) days and then reviewed by the buyers’ lawyer within two (2) business days of receipt.

Basic Information

Sometimes we are given Status Certificates without the Agreement of Purchase and Sale. I find that in order to do a proper review we really need to compare the Agreement of Purchase and Sale and if available the listing the information in the Status Certificate. What we are looking for is:

1. Does the seller own or have exclusive use of the units they are selling. We later check this a second time when we do a title search, but we try to pick up these problems at the time of reviewing the Status Certificate and Declaration.
2. We are verifying that the amount of the Condominium Fees are correct;
3. We are verifying the financial condition of the Condominium Corporation;
4. We are verifying the adequacy of the Reserve Fund; and
5. We review for any Lawsuits that could have a financial or other impact on the

Condominium Corporation.

Analyzing the Reserve Fund

Often the main issue with any Status Certificate review is ensuring there is an adequate reserve fund. For those not familiar with reserve funds, it is a savings funds required by the Condominium Act to ensure that when major repairs are needed to the building, the funds are saved up ahead of time. The bottom line being is the fund should be sufficient that the Condominium can complete all its repairs without having to borrow money. If the Condominium has to borrow money it has a major impact on the market value of the unit and potential liabilities to the owner.

This process has gotten much easier after the latest revisions to the Condominium Act that came into force in 2006. With these changes came the requirement that Condominiums must do a Reserve Fund Study within the first three (3) years of being built and must update the Reserve Fund Study every three (3) years. The Reserve Fund Study is a report prepared by an Engineer which sets out the expected life span of various key building components, then estimates the repair cost and schedule into the future 30 years. On this basis a funding plan is recommended and in most cases adopted by the board and approved by the members.

Rather then simply take the Status Certificate at its word that the Reserve is fine, I usually compare the Status Certificate information about what is in the Reserve to what is recommended. What I usually want to see is the Reserve Fund recommendation in terms of balances and contributions match the information in the Status Certificate. If it is deficient of what is recommended then I usually want an explanation from the Management Company. The Reserve Fund Study will also indicate that increases in the Reserve Contribution are required for the balance of the study period, i.e. next 30 years. The Reserve Contribution on average is between 20% to 30% of the total Condominium Fee and usually and ideally Condo Fees including Reserve Contributions should increase at a rate about equal to inflation. So the “ideal” is typically less the 5% increase. My experience is that less then 10% of all buildings meet the recommended balance and show required increases less then 5%. From my own experience in the GTA any building that recommends an increase in reserve contribution under 15%, but otherwise has the recommended balances is in good shape for what is typically available in the market.

Any careful analysis of the Reserve Fund and where it differs from the Status Certificate should give some indication of whether the fee increases will be consistent with inflation or otherwise. What I am typically seeing in the majority of Certificates that I have reviewed in the last two years is that with a requirement that the Reserve Contribution needs to increase typically between 7 to 15%, which means an increase of 2 to 3% per year beyond the inflation rate. To me this indicates that most Condominiums in today’s market have their Reserve Funds slightly underfunded. Those that show a requirement of 6% or less are quite simply hard to find.

Quantifying Problems

My view is even with a problem pretty well all Condominiums have a value and it is a matter of quantifying the “cost” of the problems disclosed in any Status Certificate.

Any problem disclosed on a Status Certificate that is not unit specific is going to be the responsibility of all the unit owners to pay for. So it is a matter of figuring out the likely cost or maximum cost and then determining what the potential liability is to a particular unit on the basis of the percentage of common expenses they are responsible for.

There are often 2 scenarios where this comes into play. First, where there is a large discrepancy between what the Engineer has recommended for the reserve fund and what is actually there. Second, where this is litigation involving the building that is not covered by the insurance. In both cases it is fairly easy to determine what the maximum liability is for either of these types of problems and what the specific share is for this unit owner. I have often been able to quantify on this basis what sort of reduction in price a buyer should receive in order to be fairly compensated for assuming this possible liability.

Some Rules of Thumb

1. Less than 1 in 10 Condominiums could be characterized as perfect.

2. Never use as a comparison a Condominium Less then 3 years old that has not completed its Reserve Fund Study as a comparison. The fees are often too low until the Reserve Fund is formally adopted. Put this in the category of “if it’s too good to be true it probably is”.

3. Conversely to 2, if you are buying a Condominium less then 3 years old that has not completed its Reserve Funds Study it is most likely that it will see a big bump in fees once this is done.

4. A building with problems is still usually worth something, you just have to quantify the value of the problems.

5. No matter how old the building the services seem to end up costing the same in the end.

6. The financial information disclosed in Status Certificates on buildings generally more then 5 years old is essentially more reliable then those under 5 years old.

7. Condominium Fees will always go up, ideally it should be no more then inflation, but at least inflation must be expected.

We hope that you find this issue of our newsletter interesting and we look forward to suggestions regarding what other issues you may want covered in upcoming newsletters.

Yours sincerely,

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