

Alpine Village II Condominiums
Box 2067
Moose Jaw, Sk.
S6H 4P1

City of Moose Jaw
The Mayor & Councillors
228 Main St. N.
Moose Jaw, SK.

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Sept. 24,2019

Without prejudice

Your Worship Mayor Tolmie

We wish to dispute the ruling by city council in the presentation by Ms. Kathi Hagman against the Condo Board of Alpine Village II Condominiums. We are not appealing the compliance order and are trying another lighting option but feel that Council erred in their decision in a matter beyond their authority due to flawed information and lack of due diligence.

We are of the opinion that a more prudent option would have been to return the issue to City Administration for further review rather than make a less than fully informed decision without complete knowledge or understanding of the situation at hand. Condominiums are gray areas in many ways and the issue of ownership is only one.

In reaching your decision the conversation dwelled on the word "property" and the Mayor stated, "we have to have the wisdom of Solomon here". As a Condo Board, we have had to try to achieve that wisdom and to have the patience of Job as well. After almost 10 or more years, we're not there yet but haven't given up. Without exception though, due diligence is always done to ensure that we continue to reach a higher standard of performance and ethical conduct.

Two definitions under the Act for clarification:

"Unit" - A type of property ownership, not a style of building. In a regular condominium corporation, the owners own their individual unit (interior wall to wall) as well as a fractional interest in the common property.

"Common Property" - the part of the land and buildings included in a condominium plan that is not included in any unit shown in the condominium plan.

An example is the light in question is on the common property(which is owned by all 23 condo owners) of Building E and lights the common property parking area(owned by all 23 condo owners) and the attached light is not directed at any building, does light a portion of the outside of Building F and fenced exclusive use yard area of #19(common property) owned by all 23 owners. All maintenance and repair of common property as well as the property tax of all common property in Condominiums is shared by all owners based on their share of ownership. All 23

owners paid for the existing light and will pay again for the new light and labour associated with it.

As a Condominium Corporation we are governed by the 1993 Condominium Property Act; (the "**Act**") contains 115 sections (with hundreds of sub-sections) and is supplemented by approximately 70 regulations and 36 prescribed forms. Virtually every aspect of condominium law and administration is affected by the content of the *Act* and its supporting regulations, the 2001 Condominium Regulations, and we must also follow *The Saskatchewan Human Rights Code*, PIPEDA, Federal, Provincial and Municipal laws and our own Bylaws.

A board's role and responsibilities are not subjective; they are clearly identified in the Act and it is the Act that should be referred to for guidance. Section 17(4) of the Standard Bylaws, found in the Regulations, states: "**All officers of the corporation shall act honestly and in good faith and with a view to the best interests of the corporation, and each member of the board shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.**"

Acting "honestly and in good faith" encompasses many things, such as an honest belief in the action one takes, the absence of malice and the absence of intent to defraud or to seek an unconscionable advantage over another.

Acting in the best interest of the condominium corporation involves a **fiduciary duty** which is often misunderstood. A fiduciary is a person who has agreed, or has undertaken, to act for, or on behalf of, or in the interest of, another person in a manner that will affect the interest of that other person in a legal or practical sense. **In common law**, board members of business corporations have long been held to owe a fiduciary duty to the corporation itself. **Similar considerations apply to condominium corporations. A board member does not owe a fiduciary duty to individual unit owners but does owe this duty to the corporation.**

The Act requires that not only must board members act, "honestly and in good faith", but **they must also, "Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances"**. This is identical to the standard of care imposed upon the board members of Corporations under *The Business Corporations Act* (Saskatchewan). This is an objective standard, as it relates to corporation administration, that the degree of care of a board member in one corporation may be compared to the degree of care exercised by board members in other corporations who are faced with similar circumstances.

Section 35(1) of the Act states that "A corporation is responsible for the enforcement of its bylaws and the control, management and administration of the units, and of the common property and common facilities.". At **Section 39(1)**, it furthers states that "subject to any restriction imposed or direction given at a general meeting, a board shall exercise the powers and perform the duties of the corporation.". It is suggested that a board member should read sections 35 and 39 on a regular basis as a reminder of their purpose as a member of the board, for often the purpose gets lost in the politics and social fabric of the community.

A condominium corporation is the "occupier" of the common property for the purposes of liability under *The Occupiers' Liability Act*. The occupier of a premises owes a duty to take such care in all circumstances as is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.

Good governance includes making informed decisions, taking proactive measures to rectify existing or potential problems. We feel we did this by consulting with a professional for advice and not acting without it. We are continuing to do this.

We don't "just do our own thing" unlike how Ms. Hagman described her actions.

We are members of CCI. The Canadian Condominium Institute ("**CCI**") is the voice of condominium in Canada. It is a national, independent, non-profit organization dealing exclusively with condominium issues. Formed in 1982, CCI represents all participants in the condominium community. Interested groups are encouraged to work together toward one common goal -- creating a successful and viable condominium community. CCI is a unique organization. It is member run, and member focused. For local information, find us on the internet at <http://cci-southsaskatchewan.ca> and <https://ccisouthsask.geniepad.com/>.

Several comments made by Ms. Hagman were taken out of context and contrary to the full facts.

Discussion re having keys to vehicles and units did occur when arriving at Bylaws which would allow smooth operation for governance and maintenance of our newly established self managed Board of Directors in 2010. This was based on fact that power meters for each owner were in one unit of each of the three buildings and access had to be available for Sask Power for readings. As to vehicles, we discussed how to handle snow removal if an owner was away or not able to be reached for vehicle removal to allow parking lot clearance.

The statement about **having to arrange her own snow removal**-fact as with many homeowners and businesses we are on a contractor list and snow removal is not necessarily done first thing in the morning. The arrangement made by Ms. Hagman involved having her friend who was working clearing the parking area at Regal Villa (presumably paid by the City) come down the alley and clear her parking use area with his front-end loader.

She did not find the grass cutting done by various individuals or the equipment used over the years to her satisfaction and has decided to cut her exclusive use small area.

These were choices she decided to follow to satisfy her wishes.

We did ask by phone, if she would like to meet with the Board to discuss the situation and to send us an email outlining her concerns, but this never materialized.

Conflict and discord- All communities have conflict at some point, and we are not exempt. Conflict can take on many faces including inter-personal conflict and it is often said that Condo living isn't for everyone. We hear about dysfunctional organizations and Condo corporations can become exactly that if the conflict becomes deep rooted. When your community has ongoing systemic conflict where bullying tactics are commonly engaged, this usually represents the efforts of individuals or groups to secure a more favourable long-term power position. We have found that *Enduring conflict* never really goes away, it just keeps recurring... *Enduring conflict* can relate to the structure of the Condo corporation

including issues such as limited financial resources, conflicting roles, personality traits, owners' values and identity; we have had all of these. Condo boards are made up of people. People make mistakes. To address conflict some Condos, use avoidance, thinking that if they ignore it the problem will go away. However, the head in the sand approach doesn't work and can escalate the conflict and/or distill it into *enduring conflict*. Another poor approach is to stop all communication with the owner who the dispute is with; thinking that by not communicating the dispute will not escalate. Often, we forget that by not responding to communication our silence is making a statement. We have erred in our approach at times in the past due to just not knowing how to handle the situation. We may not be able to ever resolve the conflict, only manage it. There are no easy answers but, in an effort, to gain deeper knowledge and tools to handle this our Board participated in a Condo Conflict Workshop Sept. 28 with a leading Canadian Mediator, Mark Bhalla.

Email from Condo Board- This referenced email from the Condo Board after the Correspondence from the City is an unknown document. We will be demanding to see this as no such document exists.

We are providing the correspondence concerning the light issue and the work the volunteer owner Board has done to arrive at our original plan and to try to resolve Ms. Hagman's concerns. We have spent hundreds of hours researching, in meetings, consulting legal and other professional advice. We had numerous Special Board meetings dealing with this issue. We offered a meeting and ADR (Alternate Dispute Resolution or mediation) but received no response.

Again, we don't have the liberty to "just do our own thing".

We are also including a drawing of our property, The Saskatchewan Government Fact Sheet, "introduction to Condominiums", The Code of Ethics we use as our Standard of Conduct and the Complaint Policy we adopted to allow more consistent handling (which was not used by Ms. Hagman).

We are far from perfect and always try to do the best for our small community despite views to the contrary.

If more information is required, we will be willing to provide more.

Thank you for your time and willingness to hear our side of the issue presented at the Sept. 9 council meeting of which we had no prior knowledge or any consultation on actions we had taken. We would have wished that we be given the same public discussion at that time with a more unbiased informed decision.

Thank you,

Dawna Matthews for the Alpine Village II Board

Lise Corbett, Brent Wapple, Deb Hill, Kenny Chan

DIRECTORS' CODE OF ETHICS

RE: CONDOMINIUM CORPORATION NO. _____

I have consented to act as a Director of the Corporation and I agree to comply with the following Directors' Code of Ethics throughout my terms as a Director:

Honesty and Good Faith – I will act honestly and in good faith. I will do nothing to violate the trust of the unit owners I serve.

Care, Diligence and Skill – I will exercise the degree of care, diligence and skill of a reasonably prudent person in comparable circumstances. I will make a concerted effort to attend all Board and owners' meetings. I will act responsibly and with due diligence to become familiar with the affairs of the Corporation and to uphold its Declaration, Description Plans, By-Laws, Rules, Resolutions, Policies, Agreements and Requirements of the Condominium Act and other legislation.

Conflict of Interest – I am not currently aware of any actual or potential conflict of interest with respect to any contract, transaction, building deficiency claim, warranty claim, legal action, proceedings or any matter detrimental to the Corporation. If I become aware of any conflict, I will immediately disclose it to the Board. I will not promote my own interests or those of any owner, resident, family member, friend or contractor to the detriment of the Corporation. I will not seek any special benefits or privileges as a Director or Officer or accept any compensation either personally or on behalf of any other person except as permitted by a By-Law. I will act only in the best interests of the Condominium Corporation as a whole and I will not favour the interests of any individual or group of owners or residents.

Confidentiality – I will not disclose to any person (including my spouse) information decided by the Board to be confidential or privileged or which reasonably ought to be deemed confidential. When in doubt, I will request determination by a resolution of the Board.

Good Conduct – At all times, I will conduct myself in a professional and businesslike manner at meetings of Directors or Owners. I will approach all Board issues with an open mind, preparing to make the best decisions on behalf of the Corporation. I will act ethically with integrity and in accordance with legal criteria. I will comply with rules of good conduct and will deal with others in a respectful manner. I will comply with principles of good governance and procedural rules of order.

Support – I will abide by decisions of the majority of the Directors even though I may disagree, but I reserve the right to express my own views to owners upon non-confidential issues.

Defamation – I will not make erroneous or defamatory statements about the Corporation or any owner, resident, director, officer, manager, staff or contractor of the Corporation.

Minimize Conflict – I will attempt to prevent or minimize conflict and disruption and will promote good relations amongst persons involved in our Condominium Community. I will promote a first class image for our Corporation, its units, owners and residents.

Education – recognizing that governance of a Condominium Corporation involves complex and changing requirements, I will continue to educate myself by reading relevant magazines (such as any publication published by your local CCI Chapter, CM Magazine or Condominium Business Magazine). I will support attendance by one or more Board members at any condominium seminars presented by the Canadian Condominium Institute (CCI), including CCI's various levels of courses for Directors at the cost of the Corporation.

Agreement – I hereby agree to comply with the provisions set out in this Directors' Code of Ethics.

Dated at _____ this _____ day of _____, 20 _____

WITNESS:

SIGNATURE

PRINT NAME OF DIRECTOR

UNIT NO.

[You are free to use this Code of Ethics in its current form; if you alter this document in any form, you must note it is modified from the CCI original document.] If your Condominium uses this code, please let CCI know – e-mail: cci.national@associationconcepts.ca

CONDOMINIUM FACT SHEET:

INTRODUCTION TO CONDOMINIUMS

What is the applicable legislation?

The current Act is [*The Condominium Property Act, 1993*](#).

The current Regulations are [*The Condominium Property Regulations, 2001*](#).

Both the Act and the Regulations contain all recent amendments and are available on the Queen's Printer website at www.qp.gov.sk.ca.

What is a condominium?

A condominium is a type of property ownership rather than a physical structure or style of building. This means that the full range of housing types can be included in a condominium, whether apartment, townhouses or semi- or fully detached houses. There are also condominiums used for commercial, agricultural and mixed use properties.

In a condominium development:

- each owner of a condominium unit (for example, the townhouse) has individual ownership of that unit; but
- all owners of the condominium units collectively own the common property.

Clause 2(1)(i) and Sections 6 and 7 of the Act

What is a condominium unit?

A condominium unit is a space described as a unit on the condominium plan. A condominium unit can have a variety of uses including commercial, agricultural, services, parking and residential. Each condominium unit has individual ownership of that unit and is titled in the Land Registry.

What is common property?

It is any land and buildings included in a condominium plan that is not included in any unit shown in the condominium plan. Examples of common property can include landscaping, hallways, paving and elevators. Common property benefits all owners.

Clause 2(1)(h) of the Act

The contents of this factsheet are intended to convey general information only. It is not intended to be and should not be relied upon for legal advice in any circumstance. You should always seek the advice of legal counsel.

How is the common property of a condominium corporation held?

All owners of condominium units collectively own the common property. Each unit owner owns a share of the common property and this share of the common property is shown on the title to the unit. A share in common property cannot be disposed of separately from the unit.

The owner's share of the common property is proportional to the unit factor for the individual unit. The unit factor is important because it affects each owner's contribution to the condominium for common expenses and the reserve fund.

Section 6 of the Act and Subsection 12(2) of the Regulations

How many shares of common property are in a condominium corporation?

All unit factors in a complex must total 10,000.

Section 6 of the Act and Subsection 12(2) of the Regulations

Who is the condominium corporation?

A condominium corporation consists of all persons who own the units shown on the condominium plan. This means that the owners are the condominium corporation.

Clause 34(3)(a) of the Act

How is a condominium corporation set up?

A condominium corporation is set up in the Corporate Registry at [Information Services Corporation](#) when the first titles are issued to the units on the condominium plan.

What are the powers of a condominium corporation?

A corporation may:

- sue with respect to any damage or injury to the common property or losses to the corporation or any damage, injury or losses that affect unit owners jointly caused by any person, whether an owner or not;
- be sued with respect to any matter connected with the parcel for which the owners are jointly liable;
- by passing a special resolution, acquire or dispose an interest in real property;
- subject to the bylaws, borrow money for the purpose of carrying out the objects and performing the duties of the corporation; and
- subject to the bylaws, grant a security interest in real or personal property that is owned by the corporation or in any amount that is due or has been collected from an owner for the reserve fund or the common expense fund.

Section 34 of the Act

What are the duties of a condominium corporation?

A corporation is responsible for:

- the enforcement of its bylaws;
- the control, management and administration of the units, and of the common property and common facilities;
- keeping the common property, common facilities and services units in a state of good and serviceable repair and to maintain them properly;
- complying with notices or orders by the local authority or any other public authority requiring repairs to the buildings or work to be done with respect to the parcel;
- complying with any reasonable request for the names and addresses of the persons who are members of the board; and
- filing any prescribed returns with the Director of Corporations.

Section 35 of the Act

How is owning a condominium unit different from owning a single home dwelling?

Although condominium ownership is often thought of as care free living, ownership of a unit does come with some unique responsibilities that differ from a single home dwelling. When you own a condominium corporation, you share collective responsibility with all other unit owners for the operation of the condominium corporation. This means you:

- have to live in close proximity to others in the condominium corporation;
- share ownership of the common property;
- have to become familiar with and abide by the obligations set out in *The Condominium Property Act, 1993* and Regulations;
- have obligations to the condominium corporation that you must meet, for example:
 - share responsibility to elect a board of directors for the condominium understanding that the board is then entrusted to make many decisions that affect all unit owners;
 - responsibility to contribute financially to the common expense and reserve funds for the maintenance, repair, insurance and operation of the common elements or elements that the bylaws require the corporation to maintain; and
 - have to comply with the bylaws; and
- have given power to the condominium corporation to make some decisions that affect all unit owners, for example:
 - setting contributions including increases for common expense and reserve fund contributions that you may not always agree with; and
 - passing bylaws that you must abide by which you may not always agree with.

How do I know what I own?

You can determine what you own by reviewing a search of your title and your plan. This is relevant as it will assist you in determining what you are responsible to maintain and repair.

The contents of this factsheet are intended to convey general information only. It is not intended to be and should not be relied upon for legal advice in any circumstance. You should always seek the advice of legal counsel.

How do I locate my condominium title?

Titles are available for a fee at [Information Services Corporation](#). You can obtain assistance in how to search for a title by calling ISC toll free at 1-866-275-4721 or submitting an email to ask@isc.ca. If you need assistance in the interpretation of the title, you could seek legal advice.

How do I locate my condominium plan?

Plans are available for a fee at [Information Services Corporation](#). You can obtain assistance in how to search for a plan by calling ISC at 1-866-275-4721 or submitting an email to ask@isc.ca. If you need assistance in the interpretation of the plan, you could seek legal advice or advice from a land surveyor.

Who is responsible for maintenance of items that are not clearly within my unit such as decks, doors, windows, air conditioners etc.?

There is not a generic answer to this issue for all condominiums. The answer depends on a number of factors, including:

- what type of condominium unit you have - bare land or regular;
- the time frame in which your condominium was built;
- any descriptions or limitations noted on the condominium plan;
- the physical location of the items in question;
- whether the bylaws for your condominium corporation have been amended to take on the maintenance of any part of an unit; and
- the application of *The Condominium Property Act, 1993* given the content of the above.

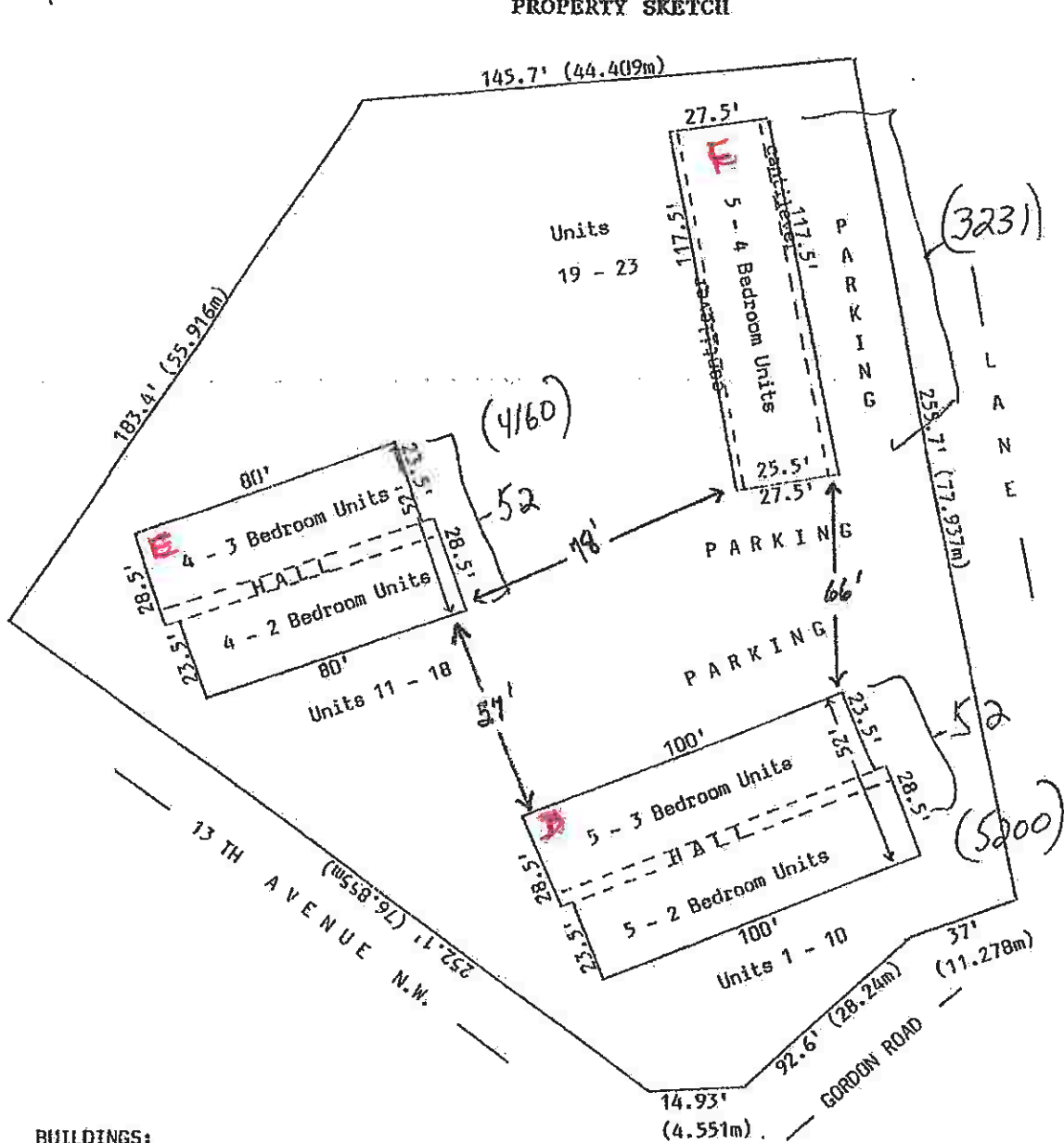
You should obtain a copy of your condominium plan and bylaws from the Condominium Corporation or [Information Services Corporation](#). If you require assistance in the interpretation of a plan or your bylaws, you could seek legal advice or advice from a land surveyor.

Can the corporation or its agent enter my unit?

Yes. The corporation or its agent can enter the unit at any reasonable time after giving a 24 hours notice for carrying out the object and perform the duties of the corporation. The notice is not required if the board or any person authorized by the corporation ascertains that an emergency exists.

Section 36 of the Act

PROPERTY SKETCH



BUILDINGS:

Units 1 - 10:

52' x 100' x 2 = 10,400 sq. ft.
(15.85m x 30.48m x 2 = 966.16m²)

Units 11 - 18:

52' x 80' x 2 = 8,320 sq. ft.
(15.85m x 24.38m x 2 = 772.928m²)

Units 19 - 23:

25.5' x 117.5' x 1 = 2,996 sq. ft.
27.5' x 117.5' x 1 = 3,231 sq. ft.
(7.77m x 35.81m x 1 = 270.328m²)
(8.38m x 35.81m x 1 = 300.16m²)

TOTAL 24,947 sq. ft.
(2317.58m²)

Site:

Approximately 66,300 sq. ft. (6159.27m²)
or 1.52 acres (.615 ha)

Site Coverage:

Building Ground Floor Area = 12,356
Site Area = 66,300 = 19%

Alpine Village II

Complaint Policy

In a multi-family property that can house many people, one must deal with owner complaints when personalities clash and patience wears thin. Demographically speaking, there is usually a range of ages in the complex which adds fuel to the fire. For the most part we have been very fortunate with the number of issues we have had to handle.

Complaint and request management can be a tough aspect of a self managed Board's job. It requires a great degree of investigation, correspondence and communication to determine the serious complaints from the less serious, petty complaints made and focus on the problem, not the person.

The Board discussed setting consistent policies to make things easier to process and to keep track. This isn't our most favourite thing to do, but it's important to keep track of resident complaints and requests and resolve them quickly. As a condo board, keeping track of complaints can help identify possible troublesome situations. Without clear records, it's next to impossible to follow up with condo residents or establish accountability. When resolution doesn't happen promptly or at all, we could have some angry residents. To keep complaints and requests organized, and to mitigate owner clashes, we plan to follow the three tips below:

1. **Establish Standards:** How will condo residents submit their requests or complaints? We don't want to be opening the door and be taking complaints and requests or during random encounters; but resident questions and complaints deserve to be answered. If the information is written down, it's easier to organize, remember, and act. Therefore, to keep processes organized and vital information together, we have created a standardized form for owners to fill out. If they have a request, fill out the form. If someone's venting about a noisy neighbour, direct them to the form. This will save us from having to go back to clarify information. Including specifics such as date and nature of the complaint, the reason for the request, etc., will help us understand the situation better and determine our course of action. This form will also make it clear to all residents how they must proceed when an issue arises.
2. **Create a Spreadsheet:** Once we have all the details collected by the form, we will input them into a spreadsheet for easy reference. It involves a lot of work at the start, but it will save us time if we must look back on them. Having a system to track and resolve resident complaints and requests helps spot reoccurring problems and allows organizing them based on severity. It's important to note in the spreadsheet the date when anything occurs—when you received the form, when you acted, when there was a resolution, etc. You should also note what form of action you took, whether you personally talked with the individual or sent them a letter. If the person who filed the complaint or request, later, asks you specific details, you can easily tell them what the result was and when it happened.

3. **Keep Transparency Going:** If there's a reoccurring complaint or request, like a maintenance issue or a request to keep a service running longer, bring it to the attention of the rest of the condo board. We will **keep** our residents and board members in the loop about all maintenance issues and property repairs and keep the resident who made the complaint or request in the loop, so they know things are getting handled and fixed.

What is an accepted complaint?— "Accepted complaint" means a complaint received by the Board containing enough documentation and addressing a subject within the control of the Board,

Filling Out the Complaint Form— Enter your name, Unit #, telephone number(s) and e-mail address, date.— Indicate the nature of the complaint

- If you have a complaint, please contact us with the details in writing, addressed to the Board.
- **What will happen next?**

1. We will send you an e-mail acknowledging receipt of your complaint within three days of receiving it.

2. We will then investigate your complaint. This will normally involve discussing your complaint at a meeting of the Board who will review the matter and speak to the members involved or research the issue.

3. The Board will endeavour to send you a detailed written reply to your complaint, including suggestions for resolving the matter, within 28 days of sending you the acknowledgement letter. Alternatively, we will invite you to a meeting to discuss and hopefully resolve the matter. We will endeavour to do this within 14 days of sending you the acknowledgement letter/e-mail.

4. Within five working days of the reply/meeting, we will e-mail you to confirm what took place and any solutions agreed upon with you.

5. If you are still not satisfied, you can then contact:

[http://publications.gov.sk.ca/documents/9/81987-InformationDispute Resolution
March2016.pdf](http://publications.gov.sk.ca/documents/9/81987-InformationDispute%20Resolution%20March2016.pdf)

Submit a Complaint Form

Are you a tenant? Yes _____ No _____

Are you an owner? Yes _____ No _____

Name: _____

Phone: _____

Email: _____

Unit # _____

Date: _____ Time: _____

Describe the issue or complaint and expected resolution:

In case of water, flooding or sewage, please phone the President immediately.

Signature of complainant: _____

Photos/documentation of problem:

Date received by the Board _____ Title _____

***Please note that if you are a tenant, your landlord will be advised of the complaint.**

Alpine Village II Condominiums
Box 2067
Moose Jaw, Sk. S6H4P1

September 30, 2019

City of Moose Jaw
228 Main Street North
Moose Jaw, SK. S6H 3J8

Re: Sept. 09, 2019 Council Ruling

We are writing to request the opportunity to appear before city council. We wish to discuss background and legal information which led to our decision **and not to dispute the compliance order.**

While the basis for Councils' decision was on the interpretation of property as pertains to the Property Maintenance and Nuisance Bylaw Light

12 No owner of a property shall cause or allow "any" light fixture attached to that property or illuminated signage to "shine directly" into or cause a nuisance to an adjacent property.

The interpretation was flawed as applies to Condominiums as the complaint does not have Separate title to the property. We wish to provide information which may assist Council in future dealings as applies to Condominiums; the act which governs us and the processes we must follow to manage the Corporation.

Thank you for your consideration of this request.

Dawna Matthews, Vice President, Treasurer
306-690-5019
Jodawn1@sasktel.net

Lise Corbett, President
306-630-9033
ldranch@hotmail.com