

Dealing With Questions About a Status Certificate

By Gerry Bourdeau

What manager hasn't been here: your phone goes off, you pick it up, and it's a real estate lawyer or a realtor saying "hey, I just have a few questions about that status certificate you sent." A few questions could mean a lot of things. It could mean "what time does the pool open," or it could mean "hey, could you explain to me the corporation's lawsuit and assure me that no special assessment is coming out of it?" I'm not very worried about answering the former question verbally, but the latter? **Absolutely not.**

Remember, status certificates are consumer protection documents and anything that might increase common expenses for the unit is to be disclosed in paragraph 12 of the certificate. The contents of a status certificate are deemed to bind the corporation on the date it is issued (section 76.6 of the Condominium Act). That means managers have a duty of care. If a purchaser completes a sale and is unhappy with a special assessment levied, or some condition that the purchaser feels was not disclosed, and chooses to start a claim against their lawyer and the condominium, then it is not ideal for the corporation to rely on the recollection and interpretation of a phone call as a defense.

I am not implying that real estate lawyers or realtors are intentionally taking steps to nefariously interpret what they're told so they can induce a sale. I am not making that claim at all. Condominiums are complex and not every buyer understands what they're purchasing, even if it is explained to them reasonably. Further, honest misunderstandings happen and it's important to have a record of communications so that a third-party can interpret the meaning of an exchange.

I have received occasional flak as a manager when some parties are in a rush to close a sale, or they're plainly accustomed to transacting over the phone, and I demand a written record of questions. I will happily put up with that kind of criticism instead of attempting to explain to a judge my interpretation of a phone call.

Generally, I support buyers that want to get an update on their status certificate before closing. It's a prudent idea, and one that allows for sober reflection from the condominium when making disclosures and one that clears up and records what the condo is representing as well as who can rely on those representations.

Another point of caution is to be careful not to interpret the status certificate or its attached documents for a potential buyer. The documents say what they say and if you need to clarify something on the certificate, then do it on the certificate. The buyer (and the seller) should consult their own lawyer for a legal interpretation.

Sometimes, during a sale, managers (on behalf of the condo) receive a request for a record. It might be a request for AGM minutes or a construction schedule. Whatever it is, I strongly recommend using the Request for Records form provided by the CAO as a way of formalizing the request, recording it, and allowing the board of directors to deliberate about whether there is an obligation to provide the record. Using such a method also allows for time and consideration as to whether the corporation's lawyer should be consulted for more contentious records requests.

I have sometimes encountered an attitude that the condominium corporation is there to support the sale of units. The foregoing is incorrect. The condominium has the duty to provide disclosures in the

status certificate under section 76(1) of the Condominium Act whether those disclosures support or hinder the sale of units. Still, a careful balancing act is required so that the condominium meets its transparency obligations without unfairly prejudicing a unit owner's sale. The foregoing is one reason it is so important to keep discussions about status certificates in writing and to take the time necessary to contemplate every response.

Status certificates are one of the easiest ways for a condominium to get into trouble and when they're not treated with the respect they deserve – including the considered replies that should be made in writing when substantial enquiries are made – the potential for a costly mess arises for all parties involved. Treat those status certificate questions carefully!