

Status Certificates: The Secret Weapon for Condo REALTORS®

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Learning Objectives

- Case Law - Why is a Status Certificate crucial to your condominium deal?
- Identifying key items within the certificate
- Refresher on Governing bodies and key Condominium Resources

A graduation cap and diploma are shown on a dark wooden surface. The cap is black with a red tassel, and the diploma is rolled up with a red ribbon. The text "Status Certificates" is overlaid in white.

Status Certificates



What is a Status Certificate?

Navigating a condominium purchase in Ontario can be complex, but understanding the Condo Status Certificate will make all the difference. These are the essential details that consumers and real estate professionals should know:

- Section 76 of the Condominium Act states ‘that upon receiving a request from an owner, the corporation must give a status certificate with respect to a unit in the corporation’. There is government prescribed form.
- A Condo Status Certificate is a document that provides a snapshot of a condo unit's financial and legal status, as well as the overall health of the entire condominium corporation.
- The report is long and comprehensive and is prepared by the condo corporation or the Management company.
- It offers prospective buyers an opportunity to review critical information about the unit and the building/community,
- Essentially, it helps protect buyers from any hidden surprises or potential issues that may arise after the purchase, ensuring a smooth and well-informed transaction.

A pair of scales of justice is shown against a blue gradient background. The scales are positioned on the left side of the frame, with the pans hanging from a central beam. The right pan is higher than the left pan, suggesting it is lighter. The scales are made of a dark, reflective material, possibly metal. The background is a smooth, light blue gradient that transitions from a darker blue at the top to a lighter blue at the bottom.

Case Law

Why is a Status Certificate crucial to your
condominium deal?

Case Law

- In one of our recent cases, a judge ruled that the issuance of a deficient status certificate was oppressive and that the condo owner was exempt from having to pay their prorated share of a special assessment. This case contains important lessons for all corporations and managers who issue a status certificate.
- **Facts of this case:**
- Since 2017, this condo corporation had been experiencing serious issues with its watermain and lift station. This had been discussed at several condo board meetings.
- In 2019, the corporation obtained a \$415,000 quote for partial replacement work.
- In 2020, the corporation retained consultants for this project.
- In November 2020, the corporation's auditor flagged that:
 - The Corporation has tendered the water main repairs. It was unknown at the time of the audit the cost of this project, but it is estimated to be significant. The work is expected to commence and be completed in the following fiscal year. To fund this project, there is a possibility of a special assessment to the unit owners and/or an application for a loan.
- In March 2021, the corporation tendered the project.
- In June 2021, someone who wanted to purchase a condo at this corporation asked for a status certificate. The REALTOR® for the vendor handed over a status certificate that they (the vendor) had obtained from the Corporation on June 8, 2021.



Case Law Continued...

Paragraph 12 of the status certificate read as follows:

- The Corporation has no knowledge of any circumstance that may result in an increase in the common expenses for the unit. Except: the Corporation's fiscal year end is August 31, 2021. Therefore, monthly common element fees may be increased in accordance with the new budget which has yet to be determined.
- The status certificate package contained numerous other documents (as they always do). Buried in this pile of documents was a copy of the 2020 audited financial statement that flagged the need to repair the lift station and the fact that a special assessment/loan may be required.
- The purchaser's REALTOR® reviewed the status certificate and concluded that "the finances looked to be in order", that the reserve fund "seemed to be properly funded" and that there was "nothing to suggest there might be any special assessments any time soon".
- Relying on the status certificate, the purchaser made an unconditional offer to purchase the unit, which was accepted.
- Two days later, the corporation received a bid for the project, costing it at 2 Million dollars. The Corporation then looked into passing a borrowing by-law, which was the first time the purchaser became aware of the situation.

The Corporation's position:

- Amongst various arguments raised by the Corporation, they argued that:
- The status certificate contained all the required info, including a note about possible increases to the budget at the end of the fiscal year;
- The status certificate contained the auditor's comments which were sufficient to alert the purchaser;
- The corporation did not know the actual cost of the project until after the status certificate was issued;



Case Law Continued...

- A status certificate, even an erroneous one, cannot exempt an owner from the obligation to contribute to common expenses;
- The purchaser ought to have retained a lawyer to review the status certificate and advise them;
- Exempting the purchaser from the totality of the assessment could result in a windfall to the next purchaser when/if they were to sell their condo.

The court answered the following questions:

- Did the status certificate adequately disclose the project and the likelihood of the assessment? - No
- Is this owner exempt from the special assessment or loan? - Yes, for as long as he owns the unit
- Was the issuance of an inadequate status certificate oppressive? - Yes.



Case Law Continued...

Decision

- The court reminded the parties that the Condominium Act is a consumer protection legislation with features to safeguard the interest of current and future owners.
- A status certificate must bring to the attention of a prospective purchaser matters which may be of concern to them when contemplating buying a unit. The purpose of these certificates is to ensure that buyers have enough information to make an informed purchase.
- It makes no difference who requests the status certificate (in this case, the vendor had requested it and handed it to the purchaser). A status certificate binds whoever relies on it. [On this, we note that it is always best to get your own status certificate to ensure it is as recent as possible. The outcome of this case may have varied if the Corporation had become aware of a new situation between the issuance of the certificate and the purchaser's review of it].
- The Corporation knew since 2017 that the water main and lift station required a costly replacement. To state that it had "no knowledge of any circumstances that may result in an increase in common expenses" was clearly inaccurate.
- The obligation to disclose is not only triggered when the cost becomes known or certain. Condos must disclose when they have knowledge of any circumstances that may result in an increase.
- Condo corporations who issue inadequate or inaccurate status certificates are prohibited from claiming against a unit owner for the payment for an expenditure it had negligently failed to disclose.
- The court also concluded that inaccurate disclosure in the status certificate may result in a finding of oppression. In this case, it would be oppressive to impose on this owner the cost of a project that the Corporation had known for more than 4 years but had not disclosed.



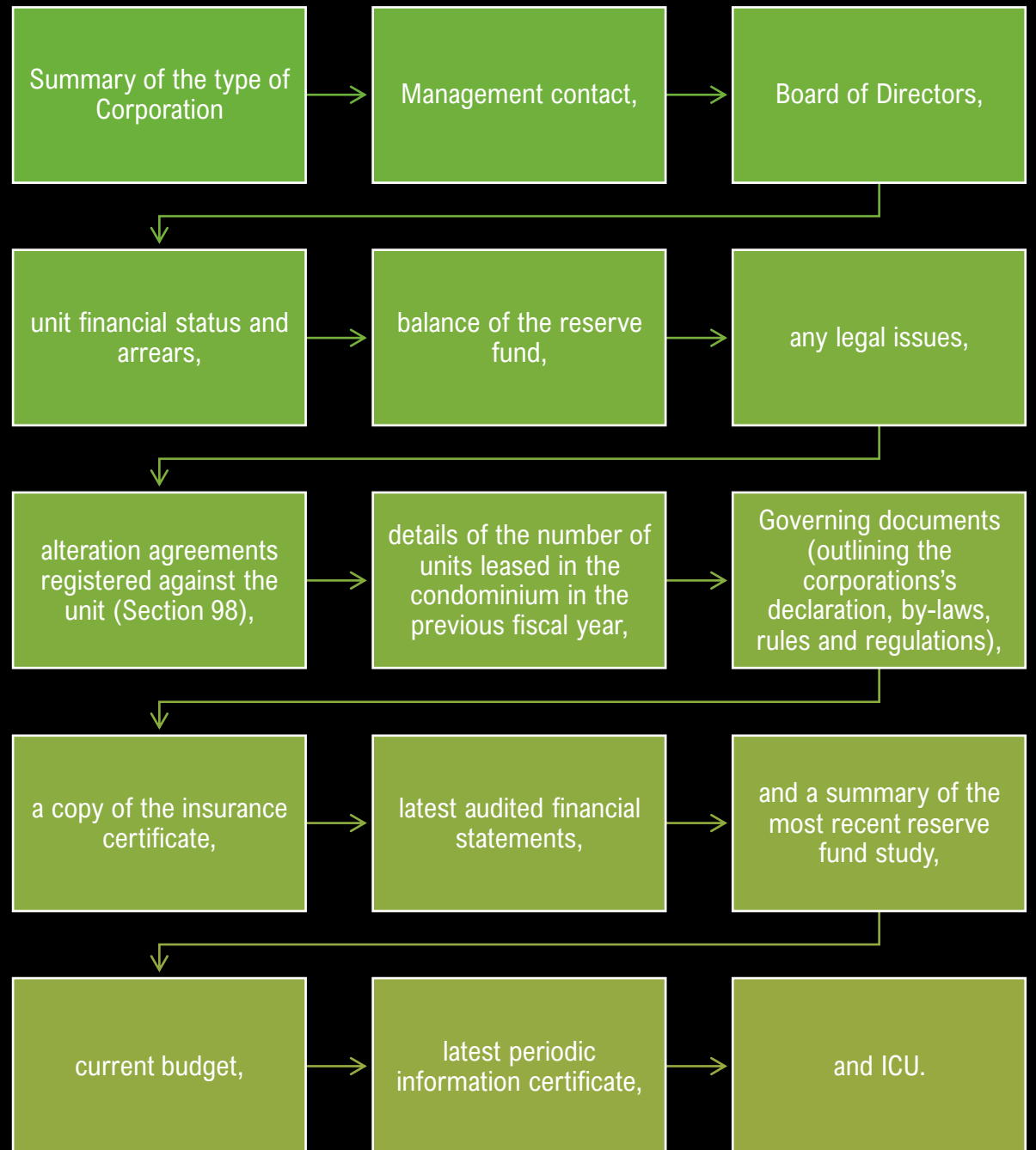
Case Law Continued...

Decision

- What about the audited financials? - So, what about the fact that the status certificate included a copy of the audited financials alerting owners to the special assessment or loan? Was that sufficient to alert the purchaser? - No.
- The status certificate is an overview for a prospective purchaser. It should flag in clear language any financial concerns that should prompt a prospective purchaser to dig deeper into the “fine print” of all of the attachments. It is unrealistic to assert that notwithstanding the summary “all clear” statement in paragraph 12 ... the purchaser should not have been expected to dig deeper.
- What if the owner sells his unit, does the next purchaser get the same break? - The court did accept the argument that this purchaser should not receive a windfall if/when he sells his unit. Basically, the judge exempted this owner, not the unit. When/if the unit is sold, the next owner must be advised of their requirement to pay a pro-rated portion of the special assessment. This must be flagged in.... you guessed it.... the status certificate.
- Full Decision can be read [here](#)




Whats Included?




Whats Included Continued...

Unit Information: This is the information about the prospective condominium unit itself, including the legal description and ownership details.



There will also be information about the monthly maintenance fees, parking spaces, storage lockers, and the use of common elements.



Buyers will want to check for any outstanding maintenance fees, property taxes, or violations. They will also want to understand if there are parking spaces and/or storage lockers associated with the unit, and whether they are owned or provided for exclusive use.

Whats Included Continued...



Financial Statements: The status certificate will also include comprehensive financial documents, including the corporation's operating budget, balance sheet, income statement, details about any special assessments, and information about the reserve fund.



A buyer will want to check for signs of potential issues, such as a depleted reserve fund or a history of special assessments. They will also want to compare the actual reserve fund with the reserve fund study and its recommendations. A new reserve fund study is required every 3 years in Ontario.

Whats Included Continued...

Bylaws, Rules, and Regulations: A copy of the condominium corporation's governing documents, such as the declaration, bylaws, rules, and regulations will also be included. These are important for understanding whether your lifestyle is compatible with the building/community.

Carefully read through these documents to comprehend the condo's policies and ensure you can abide by them. Look for any restrictions or requirements that may impact your lifestyle, such as pet policies, parking rules, smoking rules, and renovation guidelines.

What's Included Continued...



Legal Matters: The status certificate will also disclose any ongoing legal disputes, judgments, or liens involving the condominium corporation or the specific unit.



Tip: Be cautious of any legal issues that could have negative implications for the condo's value or the buyer's ownership experience.

Key Notes:



Key areas to review in the certificate include specific unit information, financial statements, rules & regulations, and legal matters.



Consult a knowledgeable real estate lawyer (with Condominium knowledge preferably) to help interpret the certificate's information and identify any potential issues before finalizing the purchase.



A condition including in the Agreement of Purchase and Sale allowing the buyer's lawyer to review the status certificate



Be proactive in ordering the certificate for timely reviews



Even if there is no condition of Status, its important one is ordered for review of key information for the protection of your client



Status Certificates are only valid for 90 days from the date of issuance. The information is only as good as of the date prepared. If over 90 days, a new one needs to be ordered.

Key Notes Continued...



Pre-construction units - remember the 10 day cooling off period. Status Certificates are typically not issued, however the information can be found in the 'Disclosure statement' issued by the Builder/developer



Note if there are any specific rules relating to leasing/rent of a unit. Summary of Lease (Form 5) is required to be prepared and provided to management/corporation



You'll want to check that none of the fees / lien status etc have changed at closing



Even if the Board of Directors are contemplating an increase in fees or special assessment, it must be disclosed that a potential levy is under consideration.

Requesting a Status Certificate



Who can request:

Anyone can order a condo corporation's status certificate by providing a written request and paying the fee.



When to request it:

This is typically only done when there is a prospective buyer of a resale condo unit. Whether the buyer or seller pays this fee is negotiable, and the standard varies by area. For instance, the seller typically pays for the status certificate in Toronto, but in London it's typical for the buyer to pay.

In a sellers market, it is typical for the status certificate to be ordered and ready for potential purchasers to avoid a status certificate condition.



Timing:

10 days is required timeline for the Corporation or management to provide the status

Some Corporation and management companies offer expedited services for an additional fee.

Ensure your Status condition takes into account these timelines



How to order

Lawyer (will arrange through the management company or Board of Directors if self managed)

Management Company (many companies now provide online service through the website (ie. Statuscertificate.com))

Condominium Governance



- Established in 2017
- Provide information and training about:
 - rights and responsibilities of condo owners
 - the roles and responsibilities of the board of directors and condo management
 - changes to the Condo Act that affect condo communities
- Provide information on common issues to assist condo communities in proactively resolving issues
- Provide a publicly available, searchable, online registry of all condominium corporations in the province, as may be required by regulation.
- Host and provide access to the condominium forms which have been delegated by the Minister of Public and Business Service Delivery
- Offer an online dispute-resolution process, called the Condominium Authority Tribunal and adjudicate disputes

Condominium Governance



- Established in 2017
- Condominium Management Regulatory Authority of Ontario
- Provide stronger consumer protection for Ontarians living and investing in condominiums
- Sets standards and enforces the mandatory licensing of condominium managers and condominium management provider businesses.

Key Resources



Public Registry - <https://www.condoauthorityontario.ca/condo-registry-search/>



Director Training - <https://www.condoauthorityontario.ca/boards-and-governance/become-a-director/director-training/>



Owners guide - <https://www.condoauthorityontario.ca/resource/owners-guide/>



CAO - <https://www.condoauthorityontario.ca/resource/status-certificate/>



Status Certificate - [CAO Forms \(adobemsbasic.com\)](https://www.adobemsbasic.com)



CCI London Chapter - <https://ccilondon.ca>



Questions?

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