

Sonja Hodis, Barrister, Solicitor & Notary
62 Camelot Square, Barrie, Ontario, (705) 737-4403
sonja@hodislaw.com

Other areas of practice include estate administration and disputes, property law disputes and employment law issues.

Changes to Common Elements by the Corporation

When a condominium corporation wants to make a change to a common element or asset there is a 4 step process that the Board must engage to understand what steps, if any the Board must follow before making the change.

Section 97 of the *Condominium Act, 1998*, addresses the 4 step process. Below is a summary of the 4 steps:

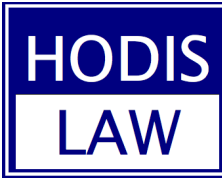
Step 1 - Is the work the Board wants to undertake an addition, alteration, improvement or change in assets?

The Board must look to s. 97(1) for the definition of “addition, alteration, improvement or change”. If the Corporation has an obligation to repair or maintain the common elements and the Corporation carries out this obligation using materials that are reasonably close in quality to the original as is appropriate in accordance with current construction standards, the work is not deemed to be an addition, alteration or improvement or a change in the assets of the corporation and the remaining subsections of s. 97 do not apply. The work is considered to be part of the Corporation’s maintenance and repair obligations and the Board can proceed to have the work done.

Step 2 - If the answer to Step 1 is yes, do you have to give notice to owners?

s. 97(2) applies if the work to be done is not part of the Corporation’s repair and maintenance obligations or the Corporation uses materials that are not reasonably close in quality to the original in accordance with current construction standards. If the Corporation is making an addition, alteration or improvement or change in assets or service the Board can do so without notice to the owners if change is:

- a) necessary to comply with a mutual use agreement (see s. 113 of the Act) or any requirements imposed by legislation, or
- b) the Board is of the opinion that it is necessary for the safety and security of the persons using the property or assets of the corporation or to prevent imminent danger, or
- c) the cost in any given month for the work is no more than \$1,000.00 or 1% of the annual budget for the current fiscal year.



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Step 3 – If notice is required, will a meeting need to be called and vote taken?

If none of the above 3 noted exceptions in s. 97(2) apply you are required to give notice of the change to the owners. The notice must contain the information listed in s. 97(3)(a). If the owners do not requisition a meeting in accordance with s. 46 within 30 days of receiving the notice or if they do requisition a meeting and have not voted against the proposed addition, alteration, improvement or change in assets or service by a majority vote, the Board can then go ahead with the work provided that the change is not considered to be “substantial”.

Step 4 – Is the work a “substantial” change requiring an owner’s meeting and 66^{2/3} vote in favour of the work?

s.97(4) only applies if the work being done is deemed “substantial”. Section 97(6) defines what is substantial. If the work is substantial then a meeting of owners must be called and 66^{2/3} of owners must vote in favour of the addition, alteration, improvement or change in assets or service.

Section 97(6) defines “substantial change” as a change where the estimated total costs of the change is more than 10% of the current annual budget or if the board elects to treat it as substantial.

Making sure you follow the right steps when making changes to common elements can be difficult. It is advisable for a Board to seek a legal opinion on whether a proposed change requires notice, whether an owner’s meeting must be called and the type of vote that must be conducted. In recent years, the complexities and misunderstandings of s. 97 have lead to many costly disputes.



Sonja Hodis is a litigation lawyer based in Barrie that practices condominium law in Ontario. She advises condominium boards and owners on their rights and responsibilities under the *Condominium Act, 1998* and other legislation that affects condominiums. She represents her clients at all levels of court, various Tribunals and in mediation/arbitration proceedings. Sonja can be reached at (705) 737-4403, sonja@hodislaw.com or you can visit her website at www.hodislaw.com.

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