

Q: I own a townhouse condo in Waterloo, Ontario. I am currently running a babysitting service out of my home. I now have the board breathing down my back stating that I am causing extra liability to the corporation due to extra children and parent traffic. As well I am making profit from common expenses. The water is part of my condo fees; I do not pay for it separately. They have told me I have until June 06 to close down my babysitting business. They are putting together a new rule and bringing up at the annual general meeting. Can they do this to me? What is my legal right as a home owner? Can a rule do this or do they need a bylaw? How many must be in favour?

A. Your legal rights as a home owner are set out in the *Condominium Act, 1998* and your Condominium's Declaration, By-laws and Rules. Most condominiums have a provision in their Declaration that addresses the use of the condominium unit. Accordingly, the first place you should review is your Condominium's Declaration to see if there are restrictions regarding the use of the unit. The "use" allowed in your Condominium's Declaration may be described as "single-family residential" which is designed to prohibit the operation of a business from a residential unit.

Normally, there would be no commercial use allowed for a residential unit largely because of the reasons mentioned in your question. The increased traffic and extra use of utilities places a burden on the balance of the residential units. There may also be a prohibition against your business in your municipality's by-laws. If the Declaration or municipality prohibits this kind of use, then it would appear that you should not operate your business from your residential unit.

If your Declaration does not address the use of the unit and your municipal by-laws do not prohibit this type of use, then your business may be grandfathered. What I mean by this is that implementation of an amendment to your condominium's governing documents may not be enforceable against existing uses as you could raise the defence that you are grandfathered. Moreover, I believe that an amendment that would place a restriction on use of the residential unit should be made by changing the Declaration. Such an amendment would require 80% owner approval. A by-law or rule of this nature may not be enforceable.

There may also be other areas in the Declaration, By-laws and Rules that you may be breaching. For example, there could be a section in these governing documents that prohibits unit owners from causing a nuisance. Typically, this language is broad enough to cover the actions described in your question, such as, increased traffic. It is also standard for condominiums to have an indemnification clause in their governing documents that requires unit owners to reimburse the condominium for costs related to the enforcement of these governing documents.

Despite the technical legal review that this matter requires, you may wish to consider the problems that you raised in your question. You seem to acknowledge the additional burdens being placed on the condominium. Whether or not you are legally able to continue your business may not be the central concern. Rather, you may find that living in a condominium unit while operating a babysitting service are two uses that do not complement each other. I would recommend talking

to the Board of Directors and reviewing these issues with them so that you may reach a reasonable resolution in advance of any owners meeting scheduled to deal with this matter. If you are planning to continue your babysitting services in the face of the Board's objection, I would recommend that you retain a condominium lawyer who can assist you with the technical legal review of your condominium's governing documents that this matter requires.

By: Andrea M. Thielk, BA, LLB, JD, ACCI (Law)
Clarks Barristers & Solicitors