



So you got elected to the board ... Now what?

A first-time condo board director has much to learn post-election. Simply put, these “newbies” don’t know what they don’t know.

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There are a number of important questions to address right away: How does a director carry out good governance? What obligations, risks and protections come with the role of a board member?

What follows are answers to these questions, based on the framework of governance outlined in the current Condominium Act and common corporation bylaws, along with some practical tips.

Obligations

Section 27 of the Condominium Act sets out that the board of directors shall “manage the affairs of the corporation.” This includes maintaining and repairing the common

elements and providing certain services for the benefit of the owners and residents. (Services will vary from condominium to condominium.) These activities require the board to budget for all of these anticipated expenses, accounting for known increases for such items as utilities, multi-year contracts and payroll.

In carrying out these duties, directors must uphold the “standard of care” spelled out in the Condominium Act. Specifically, section 37 of the Act requires directors to act honestly and in good faith, and exercise the care, diligence and skill that a reasonably prudent person would.

Act honestly and in good faith

It is often easy for directors to forget that they were elected “by the people for the people.” It is important for directors to serve owners selflessly rather than to fulfill their own agenda. This maxim, embedded in the Condominium Act, requires directors to prioritize the interests of the owners and the corporation over their personal interests.

Acting honestly means that, as caretakers of the maintenance fees collected from owners, directors are in no way benefitting financially from their responsibility. As a matter of good governance, some boards have enacted a bylaw requiring directors to comply with a code of ethics addressing



matters such as personal gain and breach of confidentiality as well as grounds for disqualification.

Exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

New board members should make every reasonable effort to attend board and owners meetings. Not only should board members make every effort to attend all meetings, but they should also be well-informed on issues and agenda items in advance of meetings to fully and effectively participate in the decision-making process.

Good governance is not only about making the “right” decisions, but also about following a process to make decisions on matters that are before the board in the best interest of the corporation. A director has one vote on the board. Directors will sometimes disagree with the decisions made, but, once made, all directors should abide by and support the decision of the majority.

If a corporation has professional management, the manager normally executes the board’s decisions. Although responsible for managing their corporation’s affairs, volunteer board members usually

lack the time and management experience to oversee day-to-day operations despite their professional or work experience. As a matter of good governance, most condominiums retain the services of a professional condominium management firm.

Micro-managing management is generally not considered good governance. However, effective self-management in smaller condominiums, though more burdensome, may also result in good governance.

Risks and protections

Remember that board members may not act unilaterally and, for the most part, all decisions must be made by the board at properly constituted board meetings. At any other time, board members are solely owners. Board members need to feel that they can speak freely in meetings with the strict expectation that what is discussed in a board meeting stays in the board meeting. As such, board discussions and disagreements are normally confidential

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— even though the Act doesn't require it. Revealing sensitive information to others often causes or fans problems within the community.

Board decisions or resolutions are, subject to certain exceptions, not considered confidential and remain publicly available since they are documented in meeting minutes. Good governance includes preparing proper meeting minutes and ensuring they are readily available to owners upon reasonable request.

Maintain good communication with owners by keeping them up to date on what is going on in their condominium. Distribute newsletters, hold regular owners' information meetings or town halls, and generally make sure that owners feel that their interests are being heard and considered. The expression "no news is good news" does not apply in condominiums when it comes to informing owners, as they usually interpret silence with suspicion that "something is up" and they don't know about it!

Condominium owners have an inherent right to examine the records of their corporation. The Act sets out which records

corporations must keep, but the right to examine records extends to all of the corporation's records, and not those just set out in the Act, subject to certain exceptions which are also set out in the Act.

Most corporations have bylaws in place that protect, indemnify and hold harmless directors for any liability the director incurs in relation to the affairs of the corporation (per section 38[1] of the Condominium Act). Section 39 of the Act also requires that, if available, a corporation must secure insurance to protect the board of directors against liability. The only exception to this is liability incurred as a result of a breach of the duty to act honestly and in good faith. Failing to act honestly and in good faith can expose a director to significant personal liability.

Even if they think they have expertise, volunteer board members are compelled to follow the advice of professionals — lawyers on legal questions, accountants on finance questions, and so on. The Act specifically provides that a director will not be liable for a breach of the standard of care where the director relied in good faith upon a report or opinion of a professional whose expertise lends credibility to the report or opinion.

The above framework of good governance, and the obligations, risks and protections that come with it, will hopefully better equip first-time directors to serve their condominium community. Keep in mind that practicing good governance never ends. It is something that directors should always strive to improve on. If possible, take directors' courses and read articles related to serving as a board member. □

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