

DIRECTOR'S RESPONSIBILITIES ARE YOU AT RISK?

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If you are a Director of a condominium corporation, ask yourself the following questions:

do you regularly attend Board meetings;

if you know that you will miss a Board meeting, do you ask to be supplied with copies of the agenda, financial reports, and other information that is to be presented at the meeting;

if a decision has been made at a meeting that you have questions about, do you ask those questions as soon as you are in a position to do so;

if a decision has been made at a Board meeting from that you disagree with, do you make your objections known before the decision is acted upon;

do you always fully understand the issues to be decided upon by the Board;

do you understand that some discussions or decisions made by the board must be kept confidential;

are you familiar with the Condominium Act and your Corporation's Declaration, By-Laws and Rules.

If you have answered "no" to any of these questions, you may be placing yourself at risk.

If you know that you will miss a series of Board meetings because you are on an extended vacation or because of employment or business obligations make arrangements for agendas, financial reports, documents and other information to be dealt with at those Board meetings to be forwarded to you. Keep in touch in a regular basis with your Property Manager and/or another Board member. While you cannot appoint another Director to act as your proxy at the Board meeting, you can at least express your opinions to the other Directors prior to the meeting being held.

Under the Ontario Business Corporations Act, it is possible for corporate Board meetings to be held by way of conference call provided the Directors can all communicate with each other at the same time. In that case, the absentee Director can be included in the quorum for the meeting. While there is no similar provision found in the current Condominium Act the new act will permit conference calls if the other directors do not object and your By-Laws make provision for them. In order to establish an effective conference call, the location at which you hold your Board meetings must be equipped with a hands-free speaker phone so that the absentee Director(s) can communicate at all times with all of the other Directors.

If you are absent from a meeting, ensure that you are still supplied with the draft minutes for the meeting before they are approved. If there is anything in the Minutes that you strongly disagree with, you should immediately make your concerns known to the other Board members, (and Manager). If you are not satisfied with the response you receive you might consider distancing yourself from that decision, in writing, either by letter or by having it recorded in the minutes of the next Board meeting. This also applies to decisions made at meetings where you are present. It is also a good idea to keep your own notes of what went on a meetings especially if you have disagreed with a decision.

Make sure you thoroughly review the draft minutes of each Board meeting before you approve them. Once they are approved they become a corporate record and any owner may review their contents.

If you find as a Director that you routinely miss 40 or 50 percent of all Board meetings, then perhaps you should consider resigning as a Director and instead make your contribution to the Corporation as a volunteer when you are available.

In some cases, a Board may find that one of its Directors is continually absent from meetings, shirks their responsibilities by failing to come to the meetings prepared, refuses to take on any particular assignments or is undermining the Board's position by discussing Corporation business outside of the confines of the meeting. In this case, the Board of Directors may wish to consider going "on record" by asking that Director to

resign. The Board of Directors does not have the authority to force the resignation of a Director however a non-confidence vote would certainly undermine that Director's position with the owners at the next election. The owners themselves have the right to remove a Director from office by following the procedures set out in the Condominium Act. Removing a Director from his or her position is a drastic measure and should only be considered in the most serious circumstances.

Generally speaking the owners are entitled to be made privy to the same information that the Board is as it relates to the affairs of the corporation. However, you must be aware that some of the matters discussed at Board meetings must remain confidential. As a director you will have access to information that, if made public, could be quite damaging to the corporation, its employees, one or more residents, or other persons who have some relationship with the corporation. Most issues that you deal with will only have to remain confidential until they are resolved or where the information is no longer relevant or damaging. In a few cases information may have to remain confidential for a significant length of time. Matters that may have to remain confidential include but are not limited to:

information relating to lawsuits or insurance claims involving the corporation;

personal information relating to residents, such as unlisted phone numbers, spousal problems, financial difficulties, etc...;

employee records;

negotiations in respect of contracts or the contents of bids for work to be done for the corporation where the final contract has not been let;

If you discuss confidential matters outside the board room doors you run the risk of incurring personal liability should your action cause the corporation to incur a loss. At the very least it would be considered unprofessional and may reflect not only on your integrity but the remaining board members as well. Even where you strongly disagree with a decision of the Board you must resist broadcasting your concerns to

other residents if the issue is one that should remain confidential. You should also understand that you have no immunity from a libel or slander suit simply because you are a Board member.

Notwithstanding that it may have been another Director or committee's responsibility to gather the information relating to a particular decision of the Board, it is still the obligation of all of the Directors to fully satisfy themselves that they have all the information necessary to make an appropriate decision. The Director who shrugs his or her shoulders when asked for their opinion and suggests that they will go along with the group is asking for trouble.

Make sure you have a working knowledge of the Condominium Act as well as your Corporation's Declaration, By-Laws and Rules. The Act imposes many obligations on a Board of Directors. Additional obligations are imposed in your Declaration and By-Laws. The Rules of the corporation must be followed and enforced. If you make a decision that is in violation of a provision found in the Act or your corporate documentation, claiming ignorance will not be a defence. Also be aware that there are many other statutes, regulations and by-laws that affect the day to day operation of a condominium corporation many of impose additional responsibilities on directors, (eg. the Income Tax Act and employment legislation). While you do not have to become an expert in condominium law and administration you should recognize your own limits and know when you need to ask for advice whether it be from the Corporation's solicitor, accountant, insurance broker, engineer or your manager.

Under the Condominium Act and your corporate By-Laws, you as a Director are usually indemnified by the Corporation, (check your by-laws and insurance coverage to determine the degree of protection they afford you) for any claims that may be made against you in the course of carrying out your obligations. However, that indemnification does not extend to you if you have been found to be in breach of any duty or responsibility imposed upon you under the Condominium Act or any other statute, (eg. environmental legislation or the Human Rights Code) if you do not achieve complete or substantial success in defending yourself. Directors who ignore their

responsibilities will have a tough time arguing that they were fulfilling their obligations to the Corporation.

Directors of Condominium Corporations, like the Directors of any corporate entity must understand their obligations to the Corporation and be prepared to dedicate the time and effort that is necessary to fulfil those obligations.

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