

## **How does Condominium Governance function?**

### **Board of Directors**

A board of directors is elected in accordance with the Act and By-laws. The board consists of at least three persons or a greater number as specified in the by-laws. Directors are required to be a minimum age of 18 years and cannot be undischarged bankrupts or mentally incompetent persons.

A director ceases to be a director if either of the two latter events occur, or the individual concerned does not obtain a discharge for a lien (relating to the payment of common expenses), within 90 days of the registration of that lien. Directors are appointed for three years or such lesser period as specified in the by-laws. All business of the corporation is conducted at meetings of the board of directors.

### **Standard of Care**

Directors must adhere to a standard of care in their role by acting honestly and in good faith while exercising care, diligence and skill of a reasonable person in carrying out their function. Directors can rely in good faith on financial statements, reports or opinions of relevant experts (e.g., accountants, lawyers, or engineers) and not be liable should a breach of duty occur. Director may be indemnified and saved harmless by the corporation and the corporation may acquire appropriate insurance. However, such protections do not apply if the director acts dishonestly and/or not in good faith.

### **First Board**

A board of directors, appointed by the declarant, is required within ten days following condominium registration. The first board consists of at least three persons who hold office under the turn over meeting. The first board must call a meeting before the later of:

- The 30<sup>th</sup> day after the declarant transfers 20% of the units; or
- The 90<sup>th</sup> day after the first unit is transferred.

At this meeting, the owners may elect two directors who hold office, in addition to those appointed by the declarant. The first board must call a turn-over meeting to elect a new board.

### **Turnover Meeting**

The turnover meeting relates to the transfer of control from declarant to owners. The turnover meeting must be called not more than 21 days following the time when the declarant ceases to be the registered owner of the majority of units.

## **By-Laws**

By-laws are documented standard procedures and requirements regarding a condominium's internal operations that involve governance; e.g., establishing procedures for borrowing funds, setting director remuneration and other regulatory matters. By-laws are made, amended or repealed by the board of directors and must be consistent with the Act and the declaration. By-laws are not effective unless the owners of the majority of the units vote in favour. A copy must be registered in the land registry. Registered by-laws made by the declarant (i.e., the owner or developer) are valid until replaced.

## **Rules**

Rules are directives and regulations developed by a condominium corporation that promote the safety, security and welfare of owners, as well as the property and assets of the corporation. Rules also prevent unreasonable interference with the use and enjoyment of common elements.

Practitioners should be aware of rules impacting condominiums being marketed, as they can directly impact the purchaser. The board of directors can make, amend or repeal rules that are reasonable concerning the common elements. The board must provide owners with a copy of the rules (made, amended or repealed), the effective date and notice that they may requisition a meeting. Rules are not effective until approved by the owners at a requisitioned meeting within 30 days. If no meeting is requisitioned within that period, the rules become effective.

## **Common Expenses**

Common expenses involve costs relating to the performance of the objects and duties of the corporation, including all expenses specified as common expenses in the Act or in a declaration. The payment of common expenses and the amount of such expenses is an important consideration when purchasing a condominium. Owners contribute common expenses in proportions outlined in the declaration. Any default can result in a lien against the owner's unit (including legal costs and other expenses), which can be enforced in the same manner as a mortgage. No owner is except from this requirement, even if he/she has waived or abandoned the right to use the common elements, is making a claim against the corporation or is restricted from using such common elements. The right to register a lien for common expense arrears, previously limited to residential condominiums in prior legislation, now including non-residential condominiums.

## **Lien (Common Expenses)**

The *Condominium Act* provides that when a unit owner is in default regarding common expenses, the corporation has an automatic unregistered lien. The lien expires three months after the default occurs unless a certificate of lien is registered by the corporation. The owner must be given written notice of the certificate of lien ten days prior to registration. The lien, when registered, covers the amount of the default, the amount that the owner is in default following the registration of the lien, interest, legal costs and other reasonable expenses incurred by the condominium in collecting the debt. If the debt is paid, the corporation must register a discharge and provide notice of same to the unit owner. A lien has priority over every registered or unregistered encumbrance except a claim of the Crown, a claim for taxes, charges, rates or assessments under various provincial statutes or a lien that is prescribed.

## **Reserve Fund**

The reserve fund is used solely for major repairs and replacement of common elements and corporation assets; e.g, roofs, building exterior finishes, roads, sidewalks, electrical, heating and plumbing systems, and recreational/parking facilities.

Funds are collected from common expenses and must be held in trust. Interest or other income from the reserve fund forms part of that funds. If repair costs to common elements exceeds monies in reserve a special assessment may be required to meet such expenses. Repayment terms can vary considerably, but essentially the unit owners are required to contribute a specified sum in addition to normal monthly common expenses.

## **Statutory Fund Requirements**

When a condominium is first registered, and until a first reserve fund study and associated plan is completed, the reserve amount is the greater of money reasonably required for major repairs and replacements based on life expectancies and replacement costs, or 10% of the budgeted amount for contributions to the common expenses exclusive of the reserve fund.

Corporations are, thereafter, required to undertake reserve fund studies in accordance with prescribed time limits. Such ongoing studies, among other things, determine whether the existing funds in reserve and contributions collected are adequate. For new condominiums following proclamation of the *Condominium Act* in 2001, a reserve fund study must be completed in the year following registration. Within 120 days of receipt, the board must establish the plan for future funding; within 15 days of receipt, the board must establish the plan for future funding; within 15 days provide owners (and the auditor) with a summary; and within 30 days following, implement the plan.

## **Performance Audit**

A performance audit involves detailed examination and scrutiny of the common elements by an individual (with the qualifications as set out in the Act). This audit includes inspecting major building components, reviewing condominium documentation and conducting a survey of owners concerning damage or defects. The individual then prepares/submits a written report to the board of directors.

## **What is a Status Certificate and how does it protect me?**

The status certificate provides a wealth of information for the resale buyer. This certificate is a document containing information regarding the operational, legal and financial dimensions of the condominium corporation. The corporation is required to give each person, so requesting, a status certificate with respect to a unit in the corporation.

Practitioners should be familiar with all aspects of the status certificate. The certificate must be provided within ten days by the corporation to anyone who requests this document. A prescribed fee, not to exceed \$100 inclusive of all applicable taxes, can be charged.

The information contained within the status certificate and the accompanying documents are vital from a buyer's perspective in fully understanding both the status of an individual unit and the overall operation of the condominium corporation.

Certificate content includes, but is not limited to:

- Corporation's addresses for services; directors'/officers' names and addresses for services;
- Statement of common expenses (including default for the unit, if any).
- Amount payable to the unit for common expenses.
- Particulars if any increase in common expenses for the unit since the date of the current year budget. Reasons for the increase must also be provided.
- Statement concerning any assessments relating to the reserve fund since the date of the budget for the current year (including reasons for such assessments).
- Information concerning any applications regarding amendments to the declaration.
- Details of outstanding judgements.
- Status of legal action of being taken against the condominium corporation.
- Current budget and the most recent audited statement, including the auditor's report.
- Copy of the current declaration, by-law and rules.
- A listing of various current agreements; e.g., management and insurance.
- Statement that the person requesting the status certificate has the right to inspect agreements.
- Owner compliance with current agreements regarding modifications that relate to the unit; e.g., addition or changes to exclusive use common elements.
- Particulars concerning the most recent reserve fund study and the amount of the fund( no earlier than the end of the month within 90 days of the certificate), including any current plans to increase the fund.

- Number of units leased in the fiscal year preceding the status certificate date.
- Certificate or memorandum of current insurance policies.
- Any planned or proposed addition, alterations or improvements to the common elements; other assets of the corporation; or service.
- A statement if a court has appointed an inspector pursuant to the Act.