



Condominium Board Governance

Property Management Companies and Directors Must be Willing to Roll Up Their Sleeves



The Challenges And Realities

In the condominium universe, unlike in the corporate world, where boards are focused on strategy and long term planning, directors are, by design or necessity, far more involved in day-to-day operations.

To add to this difference, condominium board members are not vetted or selected through a process that evaluates qualifications or “job fit” in any meaningful way. They are “elected volunteers” who bring with them an assortment of skills, work experiences, cultural backgrounds, and sometimes, truth be told, their personal agendas. On arrival, they receive little, if any, orientation or training, and typically no one hands them a job description. Yet, they are expected to “manage the affairs of the corporation”, work together as a team, and provide direction and leadership.

A tall order!

The Condominium Act does set out some general requirements with respect to the duties of the board of directors. As indicated above, it tells us that boards are re-

sponsible for “managing the affairs of the Corporation” (s.27(1)). But, it does not provide the scope and boundaries of this obligation. It tells us that duties must be carried out with “care, diligence and skill” (s.37(1)) but does not specify where the bar is set for such qualifications. Neither is there any definition in the Act as to the meaning of “a reasonably prudent person” (s.37(1)) or “comparable circumstances” (s.37(1)). It is left up to the courts to make that determination, after the fact, once issues have escalated to legal status, when it is too late.

The interpretation of the terms of reference set out in the Act is pivotal to how effectively a board operates, yet it is left up to the incumbent members to decide their meaning, if they refer to them at all.

Some condominium industry stakeholders do expand on requirements in the Act. They provide additional guidance through their codes of ethics or conduct and are often cited as a source of prevailing standards for board performance.

Both the Act and these codes, speak to a

moral high ground and strong work ethic – a great start!

But none does a very good job of translating these concepts into a clearly defined set of expectations for how board members should go about fulfilling all of their day-to-day obligations.

To add to this deficiency, the responsibilities assigned to the officers of the corporation are dispersed across the corporation’s governing documents (i.e. declaration, by-laws) and other records (i.e. minutes), assuming all responsibilities for such positions have been articulated, at all. At a minimum, the Act stipulates that a “*corporation shall have a president and a secretary*” and that it may have other “*officers that are provided for by by-law or by resolution of the directors*” (s.36 (1)).

However, there is not, at this time, and to my knowledge, one source document – job description - that integrates, in meaningful terms, the performance requirements set out in the Act, by-laws, the standards of conduct and ethics found in code docu-

ments and the duties assigned to officers of the corporation.

To be of consequence, this job description must list performance expectations across the spectrum of all responsibilities, must set clear boundaries and must do so in terms of observable behaviours and expected results, rather than philosophical concepts or intent. This is a critical step in ensuring that all stakeholders – directors, officers, owners, residents, property management – have a clear understanding of standards of performance. This is also the

first step in building a performance model that can be operationalized.

To effect positive change, boards also require tools to help them objectively assess directors' and officers' performance vis-a-vis their new job description, and processes that will help them take the necessary steps to address performance gaps, constructively.

Today, many boards do sign off on codes of conduct put in front of them by management companies. But the reality is that the

performance standards these documents are intended to set are not monitored or evaluated and are quickly forgotten. There are no checks and balances for board conduct unless that conduct creates extreme outcomes – when, once again, it tends to be too late.

Role ambiguity and lack of accountability will always contribute, to a greater or lesser degree, to undesirable outcomes - dysfunctional boards, or inefficient operations, or high management and staff turnover, or unnecessary expenses, or compliance issues, or deteriorating standards of care, or disgruntled owners, staff and contractors, or some combination thereof.

Need For A New Approach

Where to begin?

Boards often look to property management for guidance, as they should in most matters. However, asking property management to take the lead in addressing board performance is not realistic - boards are, after all, the paying client. Property management can recommend, but it is the board that must take a leadership role in acknowledging the need for better governance and a higher standard of individual performance. It is the board that must take the necessary steps to implement the process changes required to achieve this goal.

The Way Forward

For those who are waiting for new regula-

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tions to address these challenges and realities, I would caution that comprehensive solutions will not be forthcoming.

To close this substantially significant gap in the current condominium operating model, both property management companies and directors must be willing to roll up their sleeves (and / or tap into external expertise for assistance) to develop robust policies and procedures, that are meaningful universally and at site level, and can effect and sustain positive change.

These policies and procedures must include:

1. job description for directors and officers, listing:

- a. universal responsibilities (from the Act, by-laws and codes)
- b. site specific responsibilities (from the corporation's documents)
- c. the performance expectations - what the job does (the expected outcomes) and how the job is done (the observable behaviours), for each responsibility listed in (a) and (b) above

2. process for review and acknowledgment of performance expectations:

Role ambiguity and lack of accountability will always contribute, to a degree, to undesirable outcomes - dysfunctional boards, or inefficient operations, or high management and staff turnover

- a. at time of election or appointment
- b. annually thereafter

3. process for annual performance evaluation including:

- a. a simple tool for completing performance evaluation vis a vis the job description
- b. a process for reviewing results and agreeing on steps to be taken to close performance gaps

4 process for communication to all owners – will add value by:

- a. setting the bar higher for aspiring directors and officers
- b. broadening owners' understanding of board obligations and providing greater context for rules, decisions and interactions

Property management companies, being at the hub of the condominium industry wheel, could take a leadership role in developing the "universal" portions of these policies and procedures and in creating templates that can be customized by boards for their site.

However, in an industry in which rapid and continuing growth drives priorities and resource allocation, this may not happen for some time.

Regardless of who does the work, the output would provide a roadmap for improved overall performance for current and future boards, and it would set important standards and boundaries for interactions with owners, management, staff and contractors. **CV**

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