



The Role of a Condominium Board

Governance vs. Management



Ontario has experienced rapid growth in the number of condominium residences in recent years and much has been written about the issues and challenges facing condominiums. They have been described as the fourth level of government and politics certainly plays a role when there are two or more home owners sharing common facilities. However, a condominium is also a corporation with responsibilities to its shareholders (i.e. its owners) and it also has the attributes of a club, as many condominiums provide shared facilities and organize activities on behalf of its residents. The reality is that a condominium likely has all of these attributes.

Whether for-profit or not-for-profit, the Board of Directors (the Board) assumes the critical role of directing the affairs of an organization on behalf of its shareholders, members or owners. While the extent of this responsibility varies according to the nature and objectives of an organization, the fundamental essence of the role is consistent across all types. This is true for condominium Boards.

The authority and responsibility of a Board is normally set out in the statute that re-

lates to the nature of each organization. For condominiums here in Ontario, under the authority of section 27 (1) of the Condominium Act, 1998 (the Act), “a board of directors shall manage the affairs of the [condominium] corporation”. The key word in this section is “manage”. What does this really mean?

The Condominium Board

Before we explore the meaning of “manage”, it is important to understand the makeup of a condominium Board.

The Act states that a Board must have at least three members, or a higher number as required in the corporation’s by-laws, and each member must be over seventeen years of age, may not be an undischarged bankrupt and must be mentally competent. Any further qualification requirements (i.e. the director must be a unit owner in the condominium) would be set out in the by-laws of each condominium corporation.

As a practical matter, Board members are normally owners in the condominium who have volunteered their time and effort. They may have had prior experience with other boards or this may be a new role. The

motivation to seek a position on the Board may range from a simple desire to serve the community in which they live over to a burning personal agenda.

Role of the Board

The primary role of a condominium Board is to represent the collective and individual interests of owners and residents to achieve organizational objectives, including overseeing the management of condominium affairs. This is governance, not management.

This definition could apply to most organizations, including condominiums, but its meaning needs to be explained in the condominium context.

Representing the collective... interests

This statement may imply that the role of the Board is to represent the majority views of owners. In many decisions this may be the case. For example, the Board may decide to make major repairs and replacements to the entrance foyer which has the support of a significant majority of owners.

Representing the collective interests, however, may go beyond the views of the current majority of owners. Take for in-

stance the roof, which is a major asset in Condominium A that has just incurred a major repair and waterproofing. Annual contributions to the reserve fund are being increased for the future repair of this roof, say thirty years from now. Current owners may challenge the need to pay now for a repair that is many years ahead. But it is in the collective interests of current and future owners that contributions for this repair be made as the asset is being used, not when the roof is repaired in the future.

Finally, representing the collective interests essentially means that Board members must leave personal biases and agendas at the Board Room door. This is challenging as board members may feel, because they were elected, that they therefore have the right to push personal views and agendas. However, their responsibility is to represent and make decisions on behalf of the entire community setting aside what they may want personally.

Representing... individual interests

A condominium Board also has an obligation to represent individual interests of owners even when they may conflict with majority views. Many successful legal actions by unit owners against condominium corporations relate to the failure of boards to properly protect individual interests. Two examples:

A unit owner resides above a party room that is regularly used at night. Some of these events are very noisy. The majority benefits from use of the party room but this conflicts with the unit owner's right to quiet enjoyment of his or her unit, particularly in the evening. The Board could support the majority secure in the view that they represent most of the residents. However, the Board has an obligation to find a balanced solution that accommodates the individual interest of the unit owner likely requiring some restrictions on how the party room is used.

Another example relates to the use of common elements. A condominium corporation may have a by-law that restricts the use of the Games Room by children under the age of fourteen to 2pm to 4pm daily. School age children of a unit owner are therefore limited to weekends in their access to this room and this restriction may be strongly supported by a significant majority of other unit owners. Here again the Board must find a more reasonable balance to accommodate the children of the unit owner, who contributes financially to the upkeep of the room, in the face of opposition by the majority.

Achieving organizational objectives

Organizations should have a framework to assist with the decision making process. This may range from a set of specific operational objectives to much broader organizational goals. While this may seem unnecessary for condominiums, setting organizational objectives can assist the Board as it grapples with difficult issues and decisions.

For example, a key objective might be to maintain a clean air and odour free environment throughout the common elements. This will help the Board to engage the condominium community in this objective as the Board faces decisions for investments to improve make-up-air systems or perhaps to present a resolution to owners



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to make their building smoke free. It would also help management as odour creating issues arise with a unit owner.

Organizational objectives are unique to each condominium and they can be specific or aspirational in nature.

Governance versus management

Taken literally, the word 'manage' implies that the entire Board, as a group, is responsible for the day-to-day administration of all of the affairs of a condominium corporation. This means, again if this requirement of the Act is literally interpreted, a quorum of the Board should be continuously available as decisions from the routine to the most important are required. No Board member of any organization signs up for this duty, particularly volunteers. Not to mention the practical challenges this would provide as business can only be conducted at duly constituted Board meetings.

To suggest that this is impractical and unnecessary is an understatement. It is also dangerous as there is then no further effective oversight and control of the "doers" of management (i.e. the Board). It is also unlikely that a property management firm would agree to work under this structure.

So, not unlike for-profit and other not-for-profit organizations, condominium management is delegated. This could mean

certain Board members assuming management duties and, as is the case for most mid-sized and larger condominiums, an independent property manager or firm is engaged to take on many or most of these functions. The role of the Board then moves from management to governance where it should be... So, what is governance?

Governance is the formation of strategic, operational and financial goals for a condominium corporation. It is also oversight of management, who is responsible for achieving these goals and for administration of the day-to-day affairs of the condominium within the requirements of the Act and in accordance with appropriate operational and control standards.

Governance is above the management process - setting policies and strategy, approving major projects and related expenditures and otherwise ensuring that the interests of owners are being addressed by management. Instead of performing, the Board is overseeing and evaluating the performance of management.

Closing the gap

A key governance role of the Board is to assess the management needs of the condominium. This requires an evaluation of the gap between what the Board believes is required as compared to the services provided by the property management firm. This gap could include ongoing li-

aison with the property manager, event organization, owner communications, financial management and interim financial reporting to owners. Assignment of these responsibilities may be to executive members of the Board, such as the President, Vice-President and Treasurer. The important aspect of this delegation is that these officers are acting in a management and not in a Board governance capacity.

Part of the gap may be closed by seeking help from external experts for a variety of special needs including legal, engineering and financial services. These services go beyond the requirements of the Act for annual financial statement audits and tri-annual reserve fund projections and likely relate to highly technical issues.

Understanding the role of a Board by directors is essential to its success. This understanding is also critical to the success and contribution of those who provide management services.

The role of a condominium director is challenging, time consuming and not without reputational and financial risk. But the role can also be very rewarding as it provides an opportunity to uniquely contribute to the community and the enhancement of the property in which he or she lives. It also provides the rewards and the opportunity to work with similarly dedicated individuals. **CV**



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