



# About Condo

## MAKING RULES

The *Condominium Act, 1998*, (the “Act”) provides:

58. (1) *The board may make, amend or repeal rules respecting the use of common elements and units to,*
- (a) *promote the safety, security or welfare of the owners and of the property and assets of the corporation; or*
  - (b) *prevent unreasonable interference with the use and enjoyment of the common elements, the units or the assets of the corporation.*
- (2) *The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.*

A series of condominium cases in Ontario<sup>1</sup> directs courts to defer to rules that are duly and reasonably made by a condominium board of directors. So, how does one go about doing that?

The following procedure and explanations should assist.

### 1. ***The Board Proposes a Rule***

No action by the corporation is to be undertaken except by resolution made at a duly called meeting of the board.

When a need is identified that can be addressed by a rule (i.e., where the need relates to the safety, security or welfare of the owners and the property and assets of the corporation, or to preventing unreasonable interference with the use and enjoyment of the common elements, units or assets of the corporation), the first step is for the board to meet and discuss what the proposed rule should be.

The board may seek legal or other counsel to ensure its rule is reasonable and is not contrary to the Act or the declaration and by-laws of the corporation.

A resolution is to be recorded in the minutes of the meeting noting:

- i. the text of the rule, and
- ii. the proposed effective date of the rule;

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<sup>1</sup> Beginning with the Ontario Court of Appeal decision in *York Condominium Corp. No. 382 v. Dvorchik*, [1997] O. J. No. 378.

and directing the board to deliver notice of the proposed new rule to unit owners in accordance with the Act.

## 2. ***The Board sends a Notice of New Rules to Owners***

The next step is to prepare and deliver notice of the proposed new rule to the owners and mortgagees on the corporation's section 47(2) record<sup>1</sup> in accordance with the resolution.

Pursuant to the Act, the notice must include:

- i. a copy of the proposed rule; (*not merely a summary or explanation of it*)
- ii. a statement of the date on which the board proposes that the rule will be effective; (*the proposed effective date must be at least 30 days after the date on which notice is sent*)
- iii. a statement that the owners have the right to requisition a meeting in accordance with section 46 of the Act and that the rule will become effective at the time determined by subsections 58(7) and (8) of the Act.

There is a deficiency in the instructions in the Act. As indicated, the notice of new rules is required to state that the owners have a right to requisition a meeting. However, in one case (explained in the next section) a rule cannot take effect *unless* approved at a meeting of owners "*duly called for that purpose.*" This means that in that one case a meeting *must* be called by the board without waiting for a requisition of owners, if the new rule is to become effective. It appears that in order to duly enact rules in such a case, the board must *both* send the prescribed notice of new rules that indicates the right to requisition a meeting *and* actually call a meeting of owners with respect to such proposed new rules regardless of such notice.

## 3. ***The Rule Becomes Effective in Accordance with the Act and Notice***

The notice of new rules is to state the date on which the proposed new rule become effective. This date cannot be earlier than 30 days after the date of the notice. This is due to subsection 58(7) of the Act, which provides the rule is not effective until 30 days after the notice is sent, if, in the interim, no requisition for a meeting of owners is received in accordance with section 46 of the Act.<sup>2</sup>

If the board receives such a requisition within 30 days of the notice being sent out, then it must call the meeting of owners in accordance with section 46 of the Act and the vote of the owners at the meeting will determine whether the rule is passed.

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<sup>1</sup>Subsection 47(2) of the Act requires condominium corporations to maintain a record of the names and addresses for service of all unit owners and eligible mortgagees that are sent to it in writing by such owners and mortgagees. A mortgagee is considered eligible to be included in the record if the terms of the mortgage provide the mortgagee with a right to give consent or vote in place of the unit owner at a meeting of owners.

<sup>2</sup> Section 46 of the Act provides that a meeting of owners can be requisitioned by the owners of at least 15% of the units who, at the time, are listed on the corporation's section 47(2) record and have the right to vote.

Otherwise, if no requisition for a meeting is received within the said 30 days, the rule can be in effect from the 30<sup>th</sup> day after notice of the proposed rule was sent to owners.

Note that it is not necessary for the rule to be effective on the 30<sup>th</sup> day after the notice is sent. In appropriate circumstances, the board may wish to have the rule become effective at a later date. The Act does not specifically prohibit this, but only prevents the proposed rule from coming into effect on a date that is earlier than the end of the 30-day period during which a meeting can be requisitioned.

In one case, it is necessary for the board to call a meeting of owners to approve a proposed rule even though no meeting is requisitioned.

Subsection 58(8) of the Act states:

*A rule or an amendment to a rule that has substantially the same purpose or effect as a rule that the owners have previously amended or repealed within the preceding two years is not effective until the owners approve it, with or without amendment, at a meeting duly called for that purpose.*

Therefore, if the board has sought to re-enact (in substance or form) a rule that was already amended or repealed by the unit owners within the two years prior, there must be an owners meeting called in accordance with the provisions of the Act for the purpose of voting on the proposed rule. Presumably this is to prevent a new board from arbitrarily changing rules that a previous board had enacted without the clearly expressed approval of the unit owners.

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