



# About Condo

## ANNUAL CHECKLIST

### WHAT THE CONDOMINIUM BOARD SHOULD BE CONSIDERING EVERY YEAR

There is no real end to the projects and activities that can be undertaken by the board of directors of a condominium created under the *Condominium Act, 1998* (the "Act"), although there are limits. The ultimate limit is that the board should do nothing that is not in accordance with the Act or extends beyond its mandate to manage the affairs of the corporation honestly and in good faith, exercising the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (see sections 27 and 37 of the Act).

Having said this, it never hurts to have a checklist that covers the issues that generally matter most. To help the board to organize its calendar and remember every important thing, here is our short-list of just a few key annual considerations.\*

#### ANNUAL BUDGET

Budget planning for the next year should begin well before the conclusion of the current year. The budget should be set before the beginning of the year to which it applies.

The budget should cover all the regular costs of operating the condominium, plus known or anticipated increases in such costs, such as administrative/ office expenses (phones, supplies, etc.), bank charges, meeting costs, management fees (if any), amounts to be paid under any service contracts (such as landscaping, snow removal, cleaning, maintenance and so forth), salaries and deductions if the corporation has any employees, and legal and auditing fees.

A sufficient cushion should be built in for unforeseen costs, such as unexpected maintenance and repairs that are not payable from the reserve fund, or legal fees, especially if there are existing or anticipated disputes with unit owners or escalating enforcement issues.

When budgeting, the board should also ensure it includes an amount to cover directors' and officers' education – such as membership in the Canadian Condominium Institute and attendance at courses. The board might also plan special educational events, such as bringing professionals in to speak with the board or owners at meetings about topics of interest or to clarify points of concern.

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\* Note that wherever in this memorandum we refer to the board doing this or that, we recognize that such work is very often carried out by the property manager, although it is the board that must ultimately make any decisions.

(NOTE: An additional consideration for newly registered condominiums is the declarant's obligations pursuant to section 75 of the Act for the first-year budget of the corporation. The board will want to ensure it engages its auditor immediately when the first-year budget period ends and plan with legal counsel to deal efficiently and effectively with any amounts the declarant is responsible to pay, if any.)

#### **AUDIT AND A.G.M.**

Mentioning the annual general meeting and annual audit of the corporation seems as if it should be unnecessary. However, a good annual checklist would be incomplete without them.

Under the Act, the corporation is required to hold its annual general meeting within 6 months of the end of the fiscal year to which it relates. The annual general meeting will deal with such matters as:

- auditor's financial report
- new budget
- election of directors (if any positions are open)
- board's and/or manager's reports on the previous year
- discussion of upcoming significant matters, projects or goals
- appointment of the new auditor (or reappointment of the old)
- other matters raised by owners for discussion (only) during the meeting

Since the annual general meeting includes the auditor's report, having the audit completed is an essential component of planning for the meeting.

In preparation for the audit, the board should ensure all relevant documentation is accurate, up-to-date and available, since the auditor has a right of full access to all documents of the corporation.

Board members must also make themselves available to speak with the auditor, if explanations of different expenses or other occurrences will be wanted. If there is an audit committee, they may oversee all of this.

Finally, the board must review the auditor's report prior to the annual general meeting.

With respect to the annual general meeting itself, the board should take time to prepare a meeting that is not only effective and efficient from the "business" perspective, but also provides an opportunity to build trust between the board and the unit owners, and to solidify the sense of community within the condominium.

This means the board should not simply consider (or delegate to management) the task of planning the meeting's technical elements, but also give consideration to the atmosphere and attitude to be represented at the meeting. These should be reflective of the kind of community the board would like to encourage.

Ensure that a pre-notice of meeting goes out early enough for candidates to be declared and included in the notice of meeting, and that the notice of meeting goes out to the owners listed in the section 47(2) record of the corporation within the time frame required by the Act.

## RESERVE FUND STUDY & PHYSICAL REVIEW

A new reserve fund study is required *at a minimum* every three years; but it needs to be considered that the board need not wait a full three years before holding the subsequent study. It is often necessary to have reserve fund studies completed sooner than every three years. Therefore, the board needs to consider annually whether a reserve fund study is required for the coming year and plan when it should take place.

The sorts of events or circumstances that might have arisen or occurred in the last year which would indicate the need for an earlier reserve fund study include such things as:

- (a) unexpected damage occurring in the prior year that could shorten the expected life-span of a part of the common elements or assets;
- (b) evidence of significant wear and tear of any common elements or assets beyond what was anticipated in the last reserve fund plan; or
- (c) significant changes (reductions, additions or alterations) to the common elements or assets.

If there are any circumstances that cause the board to believe that its reserve fund plan is no longer adequate or otherwise needs to be revised, a new study should be contracted.

In conjunction with determining whether any changes are need to the reserve fund plan, it would be reasonable to have at least annual (preferably semi-annual or more frequent) walk-about inspections of the property, to help identify both minor and major repair issues, and for the board to consider whether any of the services or facilities of the condominium require changing or upgrades.

(NOTE: If yours is a new condominium corporation still within its first year of operation, then in addition to a reserve fund study, you will need to plan for a performance audit of the common elements pursuant to section 44 of the Act. These can generally be conducted together. As part of your planning, you will then need to consider when and how to deal with any deficiencies revealed by the study, including whether and to what extent you might be able to rely upon Tarion warranties.)

## INVESTMENTS REVIEW

Section 115 of the Act sets out the requirements for investments of operation or reserve fund monies. The board should ensure there have been no changes, or that no changes are required, to the corporation's investments, to comply with the Act.

Since the Act requires that investment of reserve fund monies be done only in accordance with an investment plan based on anticipated case requirements of that fund, the board will need to review its investment of those monies if it is anticipated any changes will need to be made on account of a new reserve fund study and plan.

There may also simply be new investment options available that the board should consider. An annual review of the status of investment accounts and new investment options is simply a part of prudent financial management.

**☑ INSURANCE REVIEW**

Even if the insurance policy of the corporation does not come up for renewal during the coming year, the board should review its policy to ensure that there are no circumstances (known or anticipated) that could render the insurance inadequate or prevent a claim from being successfully processed.

The board might also speak with its broker about any riders or other additional coverage that the corporation should consider, or whether the circumstances of the corporation have changed in any way so as to require other changes.

**☑ CORPORATE RECORDS REVIEW**

It is important for the board to ensure that effective and accurate corporate records are maintained. An annual review of the minute book and other records can assist in ensuring important resolutions, agreements and other transactions are accurately recorded before personal and institutional memories fully fade. As discussed in our memorandum on corporate minute books, the board may consider engaging the assistance of its solicitor, and advice from the solicitor and/or auditor, on identifying and dealing with deficiencies in the documentation.

The Board should seek to determine whether the records kept pursuant to subsections 47 (2) and 83 (3) of the Act appear to be up-to-date. If they are not, then the board should consider approaching those owners whose information is missing to complete the record well before the next Annual General Meeting. This is particularly important with respect to the section 47(2) record, since failure to be included there would mean such owners are technically not entitled to notice of or attendance and participation at this very important meeting of the condominium. (Not being included in the section 47(2) record can affect other rights of the unit owners as well, and can inhibit exercise of the corporation's lien rights.)

As part of its documentary review, the board should ensure that:

- (a) all corporate records are retained in a safe and accessible location; and
- (b) all confidential materials (particularly relating to individual unit owners and to employees of the corporation) are both stored and handled in a manner consistent with applicable privacy legislation and the privacy policy of the corporation.

Michael H. Clifton (December 2008)