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About Condo

INFORMATION MEETINGS

From time to time, condominium corporation boards deal with issues in respect of which the *Condominium Act, 1998*, (the "Act") does not mandate a meeting, but that the board would like to share with owners in a manner more personal than a distributed notice without waiting until the next annual general meeting or other regularly scheduled event.

As a result, boards will sometimes wish to call special meetings to discuss such issues. These "information meetings" might introduce new budgets, or discuss proposed changes to common elements, assets or services (that fall within the exemptions with respect to notices and meetings, set out in section 97(2) of the Act), or other matters or projects about which there are or could be common questions, concerns, confusion or misapprehension.

Some condominium directors and managers hold the opinion that since such information meetings do not involve the transaction of any formal business of the corporation – no votes, no consents, no elections, etc. – there is no need to observe the formalities of the Act with respect to such matters as the manner in which notice of the meeting is distributed or the conduct of the meeting. While there might be legitimate disagreement on this point, in our view this is incorrect.

While the Act does not appear to include provisions specific to information meetings, or use that term, this does not mean that such meetings are not governed by it. In fact, it could be argued that if the Act does not govern information meetings, the board has no authority to call them: Since condominium corporations are creatures of statute, they and their boards have only those powers and authority that are given to them under the Act; therefore, whatever the Act does not clearly allow therefore cannot be done. However, contrary to this possibility, it would appear that the following provisions of the Act do relate to, and govern, condominium corporation information meetings:

1. Subsection 45(4): Authority to Call Information Meetings

As noted immediately above, condominium boards have only the authority that is given to them in the Act. Therefore, boards do not have authority to call meetings of the corporation that are not authorized under the Act.

The authority of boards to call meetings is primarily set out in section 45 of the Act. Subsection 45(4) of the Act grants directors the authority to call any meeting of owners that are not otherwise authorized by the Act, "for the transaction of any business". Such "other meetings", as we might call them, would not include the following meetings:

(a) meetings to deal with "anything that this Act requires to be approved by vote" (these meetings are called pursuant to subsection 45(1));

(b) the initial "general meeting" and subsequent "annual general meetings" of the corporation (authorized under subsections 45(2) and (3)); and

(c) meetings required pursuant to other sections of the Act, such requisitioned meetings and those relating to amalgamation or amendments to the declaration and/or description (these meetings are called pursuant to such other sections of the Act).

In our view, there is little left for the category of meeting permitted to be called under subsection 45(4) of the Act other than information meetings. It is also our view that, if this provision of the Act is interpreted so as to exclude information meetings on the basis that no "business" is "transacted" at such meetings, then boards of directors of condominiums might be unable to call any such meetings that are not otherwise specifically authorized by the Act.[1] In our view, this would be an over-technical reading of this provision and not consistent with the manner in which the Act should be interpreted.

The Act is to be interpreted liberally in a manner that is consistent with the aim of "consumer protection". While it is by no means required (and in some cases would not be advisable) for boards to call meetings simply to provide unit owners with additional information about their corporation and/or the opportunity to give input about specific issues, it is clearly not inconsistent with the aim of consumer protection for boards to so. In fact, it seems more reasonable and consistent with such aim to presume that this kind of information sharing and dialogue could be included under the generic label, "transaction of any business".

2. Section 47: Notice of Information Meetings

With respect to meetings called pursuant to the board's authority under subsection 45(4), both that subsection and section 47 provide direction with respect to providing the notice of meeting.

Subsection 45(4) states that the notice of meeting must "specify the nature of the business" to be carried out at the meeting. This merely reiterates a requirement set out in subsection 47(9)(a).

In regard to an information meeting, it would be advisable to specify (a) that the meeting is solely an information meeting, such that no votes or other formal decision making will be included, and (b) generally what the meeting is about: e.g., "new budget," "introducing our new security guard", "possible landscape changes".

Section 47 deals with when and where the notice must be delivered.

Subsection 47(1)(b) provides that a notice of meeting must be given to the owners "at least 15 days before the day of the meeting". This subsection does not relate to a particular kind of meeting (such as the AGM), but to *all* owners' meetings. In addition,

[1] For example, the meeting required under section 107 with respect to proposed amendments to the declaration and/or description is essentially an information meeting.

the various other parts of section 47 will require that the notice of an information meeting:

(a) be in writing;

(b) specify the place, date and hour of the meeting;

(c) be given to each owner and mortgagee whose name and address for service have been provided for the corporation's record of the same at least 20 days prior to the date of the meeting;

(d) be delivered to each person personally, or by prepaid mail to the record address, or by fax or email if the owners has agreed in writing to receive notices in this manner, or, in the case of the unit owner, to the owner's unit if not otherwise prohibited.

It is also recommended that the notice should contain an agenda for the meeting.

3. Section 52 and Subsection 56(1): Conduct of Information Meetings

While it could be preferable that there be a degree of informality to a condominium information meeting, it is not desirable for the meeting to be without any form or procedural controls. The more controversial the issue up for discussion, the more such controls may need to be relied upon to help guide the meeting effectively. It is therefore advisable that relevant provisions of the Act, and the condominium's usual rules of parliamentary procedure, be applied to the meeting to the extent they are relevant.

Since the information meeting is one at which no votes are to be taken, the provisions of sections 52 and 53 of the Act with respect to voting are not relevant.

If a "straw vote" or "poll" is taken for the purposes of giving the board of directors an idea of what the owners think about a particular issue, there should be no confusion that this is not a formal vote of the corporation and has no binding power whatsoever. It is not necessary for the board of directors to act in compliance with the will of the unit owners as expressed by such a "straw vote".

The provisions of section 52 relating to proxies might not seem relevant for an information meeting, but it is still advisable to issue and accept a form of proxy that owners can use to attend the meeting. The main purpose in doing this would be for owners who cannot attend themselves but wish to have someone (other than another unit owner or board member) attend in their place to ask questions and/or obtain information for them.

It is also advisable for the board to take attendance at the information meeting, although the necessity to count quorum would seem to be diminished.

Since the meeting would not be one that the Act requires to be held and is not one at which a binding decision on any issue can be made by or for the corporation, it could be argued that meeting quorum is not necessary. While we cannot agree that quorum becomes entirely irrelevant simply because the meeting is an information meeting, we agree that there would be little need for it. It is doubtful a board would be faulted for

failing to consider quorum at an information meeting, or continuing with the meeting even if quorum is not present.

However, the board should count attendance even if the question of quorum is being overlooked, if for no other reasons than to assist in measuring the success of the meeting as a means of sharing information with the unit owners and measuring the interest of the unit owners in the issue at hand. There could be other reasons (i.e., relating particularly to future dispute resolution) that it could benefit the board or corporation at times to have evidence as to the number and names of persons who attended the information meeting.

It does not appear any other provisions of the Act would be relevant to the conduct of a condominium information meeting, but reference should also be had to the by-laws of the corporation in case they contain specific relevant provisions. Such by-law provisions would be authorized pursuant to section 56(1)(p) of the Act. (A by-law made pursuant to subsection 56(1)(c) of the Act is also relevant, but only to the extent that counting quorum matters.) It is generally in the by-laws of the corporation that the rules of parliamentary procedure for meetings of the corporation are specified.

The principle that underlies the foregoing discussion is something most of us learn from our parents or at least at some opportune point in life: *if something is worth doing, it is worth doing right*.

In particular, if an issue is deemed important enough by a condominium board of directors that they desire to call a meeting about it, then why not ensure that the meeting is done right, that proper notice is given and proper procedures are observed?

It might be considered that to do any less could send conflicting messages to the owners about the importance with which both the issue and the discussion of it are being treated.

Michael H. Clifton (December 2008)