



About Condo

CONDOMINIUM RECORDS: THE CORPORATE MINUTE BOOK

In some regards, it is appropriate to have a measure of resistance to the formalization of a condominium corporation. After all, except for the relatively small number of commercial condominium plans, most condominiums are first and foremost residential complexes and should be handled with greater sensitivity to developing a real sense of community, which is usually (and often appropriately) lacking in the governance of most other types of corporate organization. However, there are some aspects of corporate administration that should not be ignored if the corporation is to be operated in accordance with law and prudence. Amongst these is the keeping of the corporate minute book.

A MINUTE BOOK IS A REQUIREMENT

Keeping a minute book is not optional, although it is not evident that all condominium corporations in Ontario are doing it (or doing it well). The reasons for keeping a minute book of a condominium corporation are similar to the reasons that a minute book is required for other kinds of corporation, including businesses.

Under section 140(1) of the *Business Corporations Act* (Ontario) a corporation is to maintain, at its registered office or at another place in Ontario designated by the directors, certain corporate records. It becomes essential that these records are diligently maintained. This is very important when a corporation is looking to obtain financing, is involved in an asset purchase or an asset sale, or is involved in a share purchase or sale, an amalgamation or dissolution. In these cases, the corporate records will need to be reviewed and a corporate opinion, indicating such things as chain of title and authority to act, is typically requisite in order to complete these types of transaction.

Likewise, condominium corporations are required to maintain certain corporate records – including a minute book – that provide evidence of the proper organization and administration of the corporation, and can justify its decisions, acts or agreements.

Section 55(1) of the *Condominium Act, 1998* (the “Act”) sets out the following records a condominium corporation is required keep:

1. The financial records of the corporation.
2. A minute book containing the minutes of owners’ meetings and the minutes of board meetings.
3. Copies of the registered declaration, by-laws and rules.

4. The seal of the corporation.
5. Copies of all agreements entered into by the corporation or the declarant or the declarant's representatives on behalf of the corporation, including management contracts, deeds, leases, licenses and easements.
6. Copies of all policies of insurance and the related certificates or memoranda of insurance and all insurance trust agreements.
7. Bills of sale or transfers of all items that are assets of the corporation but not part of the property.
8. Records relating to units.
9. Records relating to employees of the corporation.
10. All plans, warranties, studies and other documentation provided by the declarant thirty days after turnover, pursuant to 43(5) of the Act.
11. The report as described in subsection 44(8) from the person performing the performance audit.
12. The names and addresses for service of all unit owners that have been provided pursuant to section 47(2) of the Act.
13. The name and address for service of each mortgagee of a unit who, under the terms of the mortgage, has the right to vote at a meeting of owners in the place of the unit owner and has notified the corporation of the same pursuant to section 47(2) of the Act.
14. A record of all units that are leased in the condominium pursuant to section 83(3) of the Act.
15. A record of all reserve fund studies and all plans to increase the reserve fund.
16. A copy of all agreements entered into by or on behalf of the Corporation.
17. The report of an inspector in accordance with subsection 130(5), if any.
18. All other records as may be prescribed or specified in the by-laws of the corporation.

It should be noted that this list represents the minimum requirements for condominium corporation records. In order to meet the requirements of the Act – which are that the corporation maintains “adequate” records – additional documentation might also need to be maintained.

CONTENT AND IMPORTANCE OF MINUTE BOOKS

Regardless of what else might be needed, a minute book is always required. It is not only one of the items specifically included in the list in section 55(1), but that list also mentions several of the other records – such as the names and addresses for service of unit owners and mortgagees (the section 47(2) record), the record of leased units (the section 83(3) record), constating documents (i.e., declaration, by-laws and rules) and key agreements – that are types of record to be properly maintained *in* the corporation's minute book.

It also almost goes without saying that the minute book of the corporation is to contain the minutes of meetings of the board and the corporation as a whole. It must further

provide evidence of the election, appointment and terms of the directors and officers of the corporation, and their acceptance of or removal or resignations from those positions as applicable.

As a result, the minute book is one of the corporation's most important sources for recording, clarifying and verifying the authority, acts and decisions of the corporation and its board.

Accordingly, just as financiers, partners and purchasers of business corporations will look to their minute books to confirm that the organization is properly run and constituted, it should be expected that the condominium's bankers, contractors and others will want to rely upon its accurate and up-to-date minute book to ensure their relations with and reliance upon the corporation are well founded.

In particular, proper maintenance of the corporation's minute book may be essential when opening bank accounts, obtaining loans or investments, entering into agreements of any kind and any other time when the actions of the corporation require evidence of proper authorization. Without a properly maintained minute book the corporation could find that the validity of current and past deeds of the corporation cannot be supported and might easily be undermined.*

WHO MAINTAINS THE RECORDS?

Typically the keeper of the records of the corporation is the Secretary. However, if a condominium corporation has a property manager, at times this responsibility gets delegated to such property manager. However, it should be noted that, in principle, a delegate is not entitled to delegate his or her authority; therefore, in principle the Secretary should maintain oversight and control of the corporation records, including regularly checking on them, even if the tasks of actually filling them in and storing them are carried out by the property manager.

Condominium corporations might also consider the practice of many business corporations to have corporate minute books maintained at the offices of the solicitor for the corporation. Whether or not this is done, the solicitor could be charged with reviewing the minute book annually and assisting the board in identifying deficiencies in order to help ensure the minute book is always accurate and up-to-date at the time that the annual audit is completed. Solicitor's fees for these types of service are typically not extravagant.

In any event, appropriate record keeping and up-dating procedures and policies should be discussed with the corporation's solicitor and auditor.

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* This is especially of concern in regard to contracts of the corporation. Under current law, a contract with a condominium corporation may not be valid unless supported by a resolution of the board of directors. An individual director acting alone does not have authority to bind the corporation. This is different than for business corporations, and can (*read*: should) cause contractors to feel insecure about entering into any contract with the corporation unless they obtain evidence (i.e., from the minute book) that the contract is properly authorized.

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