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About Condo

REQUISITIONED MEETINGS

Section 46 of the *Condominium Act, 1998* (the "Act") permits groups of unit owners to requisition meetings of the corporation. This is not a power of owners individually, and does not apply to any kind of meeting other than an owners' meeting.

The right to requisition a meeting is general: it can be done in respect of any issue of concern. The Act also specifies cases where a requisitioned meeting has special impact on the affairs of the corporation.

For example, section 58 of the Act provides that when a notice of new rules is issued, the owners may hinder the coming into force of such rules by requisitioning a meeting in accordance with section 46 to vote on the new rules, provided such requisition is issued within 30 days of the date of the notice of new rules.

Likewise, under sections 97 and 98 of the Act, for certain (not all) proposed changes to the common elements, assets or services of the corporation (whether proposed by the board or a unit owner), owners may requisition a meeting requiring a vote on the same pending which such changes must not be done.

WHO CAN REQUISITION THE MEETING?

Section 46(1) of the Act states:

> *A requisition for a meeting of owners may be made by those owners who at the time the board receives the requisition, own at least 15 per cent of the units, are listed in the record maintained by the corporation under subsection 47 (2) and are entitled to vote.*

Therefore, to validly requisition a meeting, the unit owners signing the requisition must:

1. each be entitled to vote;
2. each be listed in the section 47(2) record;[1] and
3. together constitute ownership of at least 15% of the units (or, in the case of a common elements condominium corporation, 15% of the common interests).

[1]To be in this record, the owner must have provided his or her name and address for service to the condominium. It is not sufficient that the corporation simply be "aware" of the name and address of the owner or obtain it independently from some other source of information. Provision of a name and an address for service *by the unit owner* is a specific requirement for entry into the section 47(2) record of the condominium.

ENTITLEMENT TO VOTE

Entitlement to vote is primarily dependent on two factors:

(1) arrears of common expenses, and

(2) entitlement to receive notice of a meeting.

There is no way of knowing at the time a requisition is received whether a unit owner will be entitled to vote at the requisitioned meeting, since disentitlement based on either of the foregoing factors can generally be cured between the time that a requisition is delivered to the board and the notice of meeting is issued by the board. However, this is not what the Act requires. It states that the requisitionists must, "at the time the board receives the requisition…be entitled to vote." Therefore it appears that what was intended by the legislature is that for the purposes of determining the validity of a requisition, the requisitionists' entitlement to vote is to be assessed *as if the date of receipt of the requisition by the board were the date of a meeting*. This seems to be the only reasonable way to make sense of these criteria.

If a unit owner is in arrears of common expenses for 30 days at the time of a meeting, the owner is not entitled to vote at the meeting. Therefore, based on the foregoing reasoning, if a unit owner is 30 days or more in arrears at the time the requisition is delivered to the condominium corporation, the owner should be treated as disentitled to vote and therefore not a valid requisitionist.

With respect to entitlement to receive notice of a meeting, an owner is only entitled to receive such notice if he or she was listed in the section 47(2) record of the condominium at least 20 days prior to the date of the meeting. Therefore, again applying the reasoning above, if the owner was not listed in the section 47(2) record of the condominium at least 20 days prior to the date on which the requisition was delivered, that owner does not qualify as a valid requisitionist.

Another factor that might affect entitlement to vote is whether an owner signing the requisition bears sufficient voting authority for the unit. The Act states that where there are multiple owners of a single unit, only a majority of them may validly exercise the right to vote. Where they are evenly divided, "the vote shall not be counted" (see section 51(3) of the Act). Therefore, if there are three owners of a unit, and only one of them has signed the requisition, it is arguable that unit should not be counted in determining whether 15% of the units are represented on the requisition. The same could be true if there are only two owners of a unit since one of them alone cannot constitute a majority; therefore, it should be a requirement that both of them have signed the requisition (unless one of them indicates he or she signs under a Power of Attorney for the other).

The effect of being disqualified as a valid requisitionist on account of not being entitled to vote is to reduce the number of owners, and therefore units, represented on the requisition. If the number of units properly represented is less than 15% of the units within the condominium, the requisition is not valid and therefore no meeting need be called.

As to the other two criteria, being included in the section 47(2) record is redundant since it is also requirement to be entitled to vote, and determining whether the requisitionists

represent ownership of at least 15% of the units is merely a mathematical exercise once the validity of each requisitionist has been confirmed.

FORM OF REQUISITION

General Requirements

The Act imposes very specific criteria for the form of requisition itself that apply to all requisitions for meeting (including requisitions made in respect of such things as a notice of new rules or proposed changes to the common elements). It must:

a. be in writing;

b. be signed by all the requisitionists;

c. state the nature of the business to be presented at the meeting; and

d. be delivered personally or by registered mail to the president or secretary of the board or deposited at the address for service of the condominium.

Since the board will be required to determine who the requisitionists are in order to determine whether the requisition is valid, it would be prudent to ensure the names of the requisitionists are carefully printed or typed by or under their signatures. Adding unit numbers would also expedite the work of the board. Although such measures benefit the requisitioning owners as well as the board, it may behoove the corporation to include such requirements in its by-laws to help ensure they are done and so that a failure to comply with these requirements could invalidate a requisition.[2]

Removal of Directors

In addition to the foregoing requirements, if the requisitioned meeting is for the purpose of removing one or more of the directors of the corporation, the requisition must also set out:

a. the name(s) of each of the directors whose removal is proposed;

b. the reasons for the proposed removal; and

c. whether a director whose removal is proposed is the "owner-occupied" director.

REACTING TO A REQUISITION

It is not uncommon, or unnatural, for a board of directors to have an initial negative reaction to a requisition. Typically, a requisitioned meeting is an indictment of the board by the owners submitting it – a strong and unequivocal complaint. It is also usually indicative of other problems (often relating to communication within the community) than just those that are the subject of the requisition.

[2] Of course, notwithstanding such provisions in a by-law, the board must act in good faith. Therefore, if despite a failure to print or type names it is very clear who the requisitionists are, the board should acknowledge the validity of an otherwise valid requisition.

If a group of owners feels strongly enough about holding a meeting that they are prepared to requisition it, the board should, in most cases, respect the concern that those owners have and call the meeting in a reasonable period of time. This should be done even if it is determined that the form of requisition or qualifications of the requisitionists are deficient.

Oftentimes there are deficiencies in a requisition. Generally owners do not have legal counsel, and the requisition can easily be picked apart by the condominium's solicitor. In most cases it is advisable for the board *not* try to avoid calling and holding the requisitioned meeting, even if the requisition for meeting has technical flaws. Doing so could cause the board to appear as if it has something to hide or is trying to avoid allowing the owners to have a voice in a matter of concern.

There are, as always, exceptions to this advice. For example, there are sometimes small groups of owners with some "agenda" on an issue that has already been fully dealt with by the unit owners and the board. In such cases, the board might justifiably reject a deficient requisition. Of course, the likelihood is that an aggressive group of owners will simply come back later, having received advice, with a proper one. But it is not unfair of the board to put them to the task of doing so. It is possible that in seeking legal counsel the requisitionists will also obtain advice as to whether their "agenda" is a proper one to pursue.

Regardless, it is our usual advice that in most cases it is appropriate for the board to call and hold a requisitioned meeting regardless of technical deficiencies in the requisition.

CALLING A REQUISITIONED MEETING

By the Board

The board is to call and hold the requisitioned meeting within 35 days of receipt of a valid requisition. This deadline applies notwithstanding how much time it might take to confirm that the requisition is valid.

Note that the requirement is to call and hold the meeting within 35 days. Since notice of the meeting must be provided at least 15 days prior to the meeting, this really gives the board just over 2 weeks to determine if the requisition is valid, set a date and make all other necessary arrangements for the meeting.

The only exception to these requirements is if the requisitionists consent in writing (or set out in the requisition itself) to have the matters added to the agenda of the next annual general meeting of the corporation.

By a Requisitionist

Notwithstanding the Act states that the board must call the meeting, it also provides that if the board does not do so, any one of the requisitionists may call the meeting. If a requisitionist calls the meeting, it is to be held within 45 days of the day on which it is called. The costs of calling the meeting are to be reimbursed to the requisitionist upon request.

Generally, requisitionists should wait until at least 20 days have passed since the requisition was delivered before calling the meeting themselves. Even then, they should ensure the board does not intend to call the meeting before doing so. It is not clear that a requisitionist would be entitled to reimbursement of the costs of calling a meeting unless the board had clearly refused to do so.

Note that only the costs of calling the meeting are to be reimbursed to the requisitionist. The Act does not address the costs of *holding* the meeting. It is likely the legislature presumed that every condominium has an available meeting room, which is decidedly not the case. It is possible, but not entirely certain, that a court would order a corporation to reimburse a requisitionist for such costs. It would likely exemplify good faith on the part of the board to provide such reimbursement in any event. However, it is not assumed these recommendations will apply in every case.

When calling the meeting, the requisitionist will need to observe the same requirements as the board would need to do with respect to who is entitled to receive the notice of meeting and when the notice should be delivered. The requisitionist may require some assistance of legal counsel to ensure he or she understands the rules that apply.

The requisitionist calling the meeting should request (and the board should willingly provide) a copy of the section 47(2) record of the condominium in order to ascertain who is entitled to notice of the meeting and where to deliver them. Although it is certain that the board must release the section 47(2) record to the requisitionists for this purpose (if request) despite the restriction in section 55(4)(c) of the Act against releasing information about specific units or unit owners, it is possible that this section and other privacy legislation could prohibit release of contact information for any owners who have not submitted their names and addresses for service to be included in the section 47(2) record of the condominium. This should be explored with legal counsel at the time.

WHAT CAN BE DECIDED AT A REQUISITIONED MEETING

A requisitioned meeting of owners can only deal with matters that can properly be decided at an owners' meeting. For example: a meeting of owners can amend or repeal rules on account of Section 58 of the Act; owners' meetings may address the issue of proposed changes to common elements, assets or services under Section 97(3) of the Act; however, as with any other meeting of owners, a requisitioned meeting cannot deal with matters which are the exclusive jurisdiction of the board of directors. For example, it is not for a meeting of owners to vote to fire or hire a property manager or to implement a budget for the upcoming fiscal year of the condominium.

Where the requisitionists hope to implement changes or measures as are really within the sole discretion of the board, the requisitioned meeting can only be used to discuss the same and not to make any effective vote. Often a "straw vote", to illustrate the mood or desires of the community, is recommended. However, in the end, the decision as to whether to implement the requested course of action will rest with the board.

The remedy of the owners if the board will not act as desired by them is to requisition a further meeting for, and vote on the issue of, the removal of the board. Of course, this entails that there are other owners willing to stand for election thereafter.

A further consideration for a board receiving a requisition for meeting is that the agenda for the meeting (or for the portion of the annual general meeting devoted to the requisition) should not be altered from what the requisitionists have requested. The board should respect the requisitionists' wishes and, subject to the foregoing proviso relating to what can or cannot be done at the meeting, allow their proffered agenda to stand. (Amendments to give proper effect to what the requisitionists want – i.e., to make their requested agenda work – should be generally acceptable.)

This does not mean, however, that the board cannot combine the requisitionists' meeting with another meeting on other issues it wishes to put before the owners at that time. However, this should be done with prudence (and probably with the consent of the requisitionists for good measure) and in a manner that ensures adequate time is given to fully deal with the issues being raised by the requisitioning unit owners.

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