

Getting Started: What the First Owner-elected Board in a New Condo Needs To Do

By Michael Clifton, LLB, and Craig Robson, LLB

First-time boards are required to absorb a great deal of new information about their condo corporation. Part I of this article covers organizational issues, documentation and finances. Part II will address insurance, performance audits and reserve fund studies. Watch for it in the spring 2008 CM.

THIS ARTICLE sets out a brief (and likely not exhaustive) list of things that a board of directors (the “Board”) that is elected at the turnover meeting of a condominium should (or in some cases must) consider doing in the first year of its term to be in compliance with the *Condominium Act, 1998* (the “Act”). The presumption is made that the turnover meeting takes place shortly after registration of the condominium. If this does not occur (i.e., if unit sales are slow so that the circumstances requiring a turnover meeting do not arise early within the first year), a number of the things listed here may need to be done by the declarant’s (developer) appointed Board instead.

■ Organizational Issues

1. Appoint or elect officers. Most condominiums require at least a president, secretary and treasurer. The Act provides that the board “shall” elect a president from amongst its number and appoint or elect a secretary, and “may” also appoint or elect a treasurer; however, all of these provisions are qualified by the statement, “Subject to the bylaws”. Therefore, the bylaws of the corporation should be reviewed to verify what officers are actually required to be elected or appointed. The bylaws can also specify additional offices that are to be filled, though in most cases these will be optional.

2. Determine the appropriate address for service for the corporation. An address for service and mailing address are set out in the declaration of the condominium. Often the declarant will have inserted its own address for these purposes. If this is the case, the board should have its lawyer change the address for service and mailing address by registration of the appropriate form at the Land Registry Office where the declaration was registered.

■ Documentation

3. Obtain all documentary information that the declarant is required to provide. Notwithstanding the apparent goodwill and honesty of the declarant, the newly elected board should confirm, either by review of the Act or by consultation with an experienced property manager or condominium lawyer, exactly what was to be turned over to the board of directors by the declarant and when. These items will include corporate documentation (minute book, seal) for the newly formed condominium corporation, as well as certain plans, agreements and warranty documentation (if there is any) pertaining to the condominium property. If there has been incomplete turnover, follow-up with the declarant should start immediately and continue until all turnover documentation that is required to be delivered has been delivered.

4. Each board member should carefully review the declaration, bylaws and rules. Anything that is not clearly understood should be questioned and should be able to be explained by the condominium’s lawyer.

5. The board should familiarize itself with the obligation to keep a record pursuant to subsection 47(2) of the Act. This record is made up of the names and addresses for service of owners and entitled mortgagees who have notified the board in writing of this information. Note that, the

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way section 47 of the Act is drafted, this record cannot be developed using information that can be ascertained in any other way: there has to be written notification to the board from the owner or mortgagee in question. The importance of keeping this record, and keeping it properly, should not be understated. If the subsection 47(2) record is improperly compiled it sets up the corporation to have its decisions challenged. For example, an owner whose name and address for service are not properly (or at all) recorded in the subsection 47(2) record is not entitled to receive notice of meetings, to count toward quorum at a meeting and is not entitled to vote. Therefore, if owners who are not properly on the record participate and are counted toward quorum or vote in meetings, the authority and enforceability of decisions reached at those meetings is questionable.

6. Retain condominium records in a safe and accessible location. All board members should know where the records are. It is not recommended the records be kept in a board member's private closet if a more suitable location is available.

The records need to be both safely stored and conveniently accessible to all board members at all reasonable times. Some of the records are looked at very rarely and over time will likely become lost if they are not kept in a central location.

■ Finances

7. Ensure at least two bank accounts are set up for the corporation. One is for the general operating account. The other is for the reserve fund. It is possible that the declarant will have done this, but it is more likely that it has not. Also, if the board does not wish to bank at the bank chosen by the declarant it can change banks. The board should be aware that many banks do not understand condominiums and before setting up accounts will often seek the "incorporating documents" such as Articles of Incorporation or Letters Patent. The condominium does not have such incorporating documents. The Act provides that registration of a condominium declaration automatically creates the condominium corporation, which is a non-share capital corporation. If

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your bank still insists on other incorporating documents, you may wish to have your legal adviser discuss this issue with the bank.

8. With respect to the reserve fund account, the monthly contributions to the reserve fund that are collected as part of the monthly common expense collection should be put into the reserve fund account every month effectively as soon as they are collected. Many condominium corporations have an automatic withdrawal system in place to move the reserve fund portion of the common expenses into the reserve fund every month. No matter how it is arranged, the board must ensure that no part of the reserve fund is left in the general operating account for any period of time other than during a prompt transition from there to the reserve fund account.

9. Verify that all utility meters for utilities provided to the common elements have been put in the name of the condominium corporation and that the bills are being sent to the board or in care of the property manager.

10. Ensure that the declarant has made all required common expense payments for each of the units in the condominium starting from the day of registration of the condominium. Some declarants do not think they have to make contributions to the common expenses for the units; however, on the day of registration of the condominium the declarant is the owner of all units and has an obligation to contribute to the common expenses in accordance with the budget that was handed out with the disclosure package and the schedule in the declaration that sets out the per unit percentage contributions. This obligation continues until the unit is sold (i.e., it ends once title to the unit is transferred to a new owner, who then takes over responsibility for the common expenses). In some very unique circumstances this is not the case but the exceptions are extremely rare.■

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