

MAKING RULES

The *Condominium Act, 1998*, (the “Act”) provides:

58. (1) *The board may make, amend or repeal rules respecting the use of the units, the common elements or the assets, if any, of the corporation to,*

(a) promote the safety, security or welfare of the owners and of the property and assets, if any, of the corporation; or

(b) prevent unreasonable interference with the use and enjoyment of the units, common elements, or the assets, if any, of the corporation.

(2) The rules shall be reasonable and consistent with this Act, the declaration and the by-laws.

A series of condominium cases in Ontario (beginning with the Ontario Court of Appeal decision in *York Condominium Corp. No. 382 v. Dvorchik*, [1997] O. J. No. 378) directs courts to defer to rules that are duly and reasonably made by a condominium board of directors. So, how does one go about doing that?

The following procedure and explanations should assist.

1. The Board Proposes a Rule

No action by the corporation is to be undertaken except by resolution made at a duly called meeting of the board.

When a need is identified that can be addressed by a rule (i.e., where the need relates to the safety, security or welfare of the owners and the property and assets of the corporation, or to preventing unreasonable interference with the use and enjoyment of the common elements, units or assets of the corporation), the first step is for the board to meet and discuss what the proposed rule should be.

The board may seek legal or other counsel to ensure its rule is reasonable and is not contrary to the Act or the declaration and by-laws of the corporation.

A resolution is to be recorded in the minutes of the meeting noting the text of the rule, the proposed effective date of the rule, and directing the board to undertake the next steps that are required in accordance with the Act.

2. The Board sends a Notice to Owners

Once the board has decided upon the Rule, it must determine which of two procedures under the Act have to be followed. In both cases, the procedure starts with a notice to the unit owners.

THE FIRST SITUATION, described in subsection 58(8) of the Act, is where the new rule “*has substantially the same purpose or effect as a rule that the owners have previously amended or repealed within the preceding two years*”. In other words, where the new rule is not really new.

In this case, the board is required to call a meeting of owners to vote on the new rule. Therefore, the notice the board sends out will be a notice (or pre-notice) of meeting. The proposed new rule will be included as an attachment or enclosure with the notice, and the agenda for the meeting will indicate that the business for the meeting includes a vote on the proposed new rule.

THE SECOND SITUATION is where the rule is genuinely new (or, at least, is not a rule that was already amended or repealed within the past two years). This is the more common situation.

In this case, the board must prepare and deliver notice of the proposed new rule to the owners that must include:

- i. a copy of the proposed rule; (not merely a summary or explanation of it)
- ii. a statement of the date on which the board proposes that the rule will be effective; (the proposed effective date must be at least 30 days after the date on which notice is sent)
- iii. a statement that the owners have the right to requisition a meeting in accordance with section 46 of the Act and that the rule will become effective at the time determined by subsections 58(7) and (8) of the Act; and
- iv. copies of section 46 and section 58 of the Act.

3. The Rule Becomes Effective in accordance with the Act

If the situation is the first one noted above, then the rule immediately comes into force and effect if it is approved by a majority of the owners at the meeting.

In the second situation, note that the date set out in the notice for the new rule to become effective cannot be earlier than 30 days after the date of the notice. This is due to subsection 58(7) of the Act, which requires the board to give unit owners 30 days in which to respond to the notice of the new rule with a requisition for meeting, if they want to. Section 46 of the Act provides that a meeting of owners can be requisitioned by qualifying owners of at least 15% of the units. If the board receives such a requisition within 30 days of the notice being sent out, then it must call the meeting of owners in accordance with section 46 of the Act and then the vote of the owners at the meeting will determine whether the rule is passed.

As in the first situation, the rule immediately comes into force and effect if it is approved by a majority of the owners at the meeting. However, if no requisition for a meeting is received within the 30 days after the notice is sent, the rule will be in effect from either the 30th day after notice of the proposed rule was sent to owners or whatever other, later effective date the board set out in the notice.

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