

# THE BOARD OF DIRECTORS & BOARD MEETINGS

## Board of Directors

### Constitution

- All corporations must have a board of directors, s.27 (1)
- Every corporation must always have at least 3 directors but may have more if it is permitted in the by-laws, s.27(2)
- If the by-laws are amended to increase the number of directors, the new directors can be elected at the same meeting the by-law is passed but they cannot take office until a copy of the by-law is registered on the corporation's title, s.34 (7) & s.56 (9)
- One position on the board must be reserved for voting by owners who actually occupy their unit (see notes below), s.51 (6)

### Qualifications

- To qualify as a director a person must: be at least 18 years old; cannot be an undischarged bankrupt; be mentally incompetent, s.29 (1) (a) (b) & (c); and must comply with any other "reasonable" qualifications that may be contained in the corporation's by-laws (ie. be a unit owner) s.56 (1) (a)
- A person ceases to be a director if: they become mentally incompetent; become an undischarged bankrupt; have a lien registered against their unit that isn't discharged within 90 days from its registration date, s.29 (2) (a) & (b); or they cease to comply with any other reasonable qualifications contained in the by-laws (if the by-laws require it), s.56 (1) (a)

### Term

- The term of office of a director is 3 years unless a lesser term is provided for in the by-laws, s.31 (1)
- Directors can continue to act beyond their term until their successor is elected (ie. this covers the "gap" between the end of a director's term and the date on which their successor is elected), s.31 (2)
- The Act does not limit the number of times that a director may stand for election, however, a limit may be imposed in the by-laws (ie. a person won't "qualify" if they have served 2-3 prior terms), s.56 (1) (a)

### Quorum

- A quorum for the transaction of business will be achieved when a majority of the board is present, s.32 (2)
- Directors are deemed to be present at a board meeting if they participate by teleconference or other form of communication system if it is authorized in the by-laws and the other directors agree, s.35 (5) (a) & (b)
- A board member may not give a proxy to another person to vote at board meetings

### Removal or Vacancy

- Board members can be removed prior to the end of their term by a vote of owners' representing at least 51% of all of the units in the corporation, s.33(1); if a board member is removed the owners may elect another person to fill the vacant position for the remainder of the director's term, s.33 (2); in this case a Form 10 Proxy should be used, O. Reg. 48/01
- If a vacancy occurs on the board other than by a vote of owners, the remaining board members may continue to act so long as a quorum remains, s.34 (1)
- If a vacancy arises the remaining board members may appoint a person (who would qualify as director) to fill the vacancy until the next AGM at which time the position would be open for election and the person elected to fill it would serve for the remaining term allocated to that position, s.34 (2) & (3)
- If the number of vacancies cause a loss of quorum the remaining members of the board must, within 30 days of losing the quorum, call a meeting of the owners to fill the vacancies, s.34 (4)
- If there are no directors left or if the remaining directors don't call a meeting, a unit owner may call one and they are entitled to be reimbursed for the expenses they incur in calling it, s.34 (5) & (6)

### Compensation

- Directors may not receive remuneration, including so-called "honorariums" unless it is authorized in a by-law; such by-laws must state the amount to be paid and fix it for a period of no longer than 3 years, s.58 (1) & (2)



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## **Board Meetings**

### **Business of the Corporation**

- It is the responsibility of the directors to manage the affairs of the corporation, s.27 (1)
- The board cannot conduct any business of the corporation unless it is done at board meeting where a quorum is present, s.31 (1)

### **Notice of Meeting**

- The by-laws of the corporation may provide for holding regularly scheduled board meetings as well as the type of business to be dealt with at such meetings (NOTE: If such meetings are provided for in the by-laws it would appear that the notice requirements set out below may not have to be strictly followed), s.35 (1) & s.56 (1) (b)
- If the by-laws do not provide for regular meetings or if a special meeting must be called the following procedures must be followed:
  - (i) the meeting must be authorized by a quorum of the directors, s.35 (1);
  - (ii) written notice of the meeting must be given to every director, s.35 (2);
  - (iii) the notice must be given “at least” 10 (meaning 12) days before the day of the meeting unless the by-laws state otherwise, s.35 (2) (a);
  - (iv) notice must be delivered to the directors personally, by prepaid mail, courier, fax, or e-mail at the address shown in the records of the corporation unless the by-laws state otherwise, s.35 (2) (b); and
  - (v) the notice must state the time and place of the meeting and contain a general description of the business to be dealt with at the meeting, s.35 (3).
- A director who attends a meeting is deemed to have waived notice unless the director expressly objects to it at the meeting (it should be noted in the minutes) s.35 (4)

### **Officers**

- All corporations must have a president and secretary and may have any other officers that the by-laws provide for or the board appoints by resolution, s.36 (1)
- Unless the by-laws state otherwise the directors must elect from among them a president as well as appoint or elect a secretary
- They may also appoint or elect one or more vice-presidents or other officers (ie. treasurer), s.36 (2) (a) (b) & (c)
- The same person may hold more than 1 office, s.36 (3)

### **Minutes**

- The minutes of board meetings are considered to be “records” of the corporation and therefore owners are entitled to review them, s.55 (2) (NOTE: It is this author’s opinion the minutes of a board meeting do not become a record of the corporation until they have been approved by a majority of the directors at a duly constituted board meeting provided the approval is done in a timely fashion)
- Minutes need not be a verbatim transcript of all that was discussed at the meeting; directors should remember that untoward statements included in the minutes are not privileged and may constitute slander
- The minutes form a permanent record of the board’s deliberations and decisions, they should include:
  1. the names of each director present (some may want to also list those who are not) as well as any invited guest (ie. the manager);
  2. that a quorum was present and if applicable, that no director objected to another participating by conference call;
  3. the kind of meeting (regular or special) and its date, time and location;
  4. identify the chair and the recording secretary and the person who called the meeting to order;
  5. that the minutes of the previous meeting have been approved as read or as corrected;
  6. the name of the person who makes any motion or seconds it and what the motion states (or as amended); it is not necessary to record motions that are withdrawn;
  7. a summary of what was discussed in respect of all pertinent items of business, unless they must remain “off the record” due to their confidential nature (ie. matters pertaining to on-going litigation); in this case only the motion and the final decision, if applicable, need be recorded;
  8. any points of order, objections or appeals and how they were disposed of;
  9. a copy of any, by-law, rule, policy, etc, .... that was approved at the meeting (affix by schedule); and
  10. do not affix documents/letters to the minutes that should remain confidential (ie. legal opinions given in anticipation of litigation) as they may lose their confidential status once the minutes are approved.

### **Owner Occupant Director Position**

- If 15% or more of the units in a residential corporation are occupied by their owners (“owner-occupied units”) 1 position on the board must be reserved for a director who is elected only by the owners of those units (“owner-occupants”), s.51 (6)
- An “owner-occupied unit” is a unit that has not been leased by its owner within the 60 days prior to the date on which notice of a meeting called to elect a director to the owner-occupant position is issued, s.51(5)
- A director may be removed from the owner-occupant board position prior to the end of the director’s term of office by a vote of owners who own a majority of all of the owner-occupied units in the corporation as of the date of the meeting, s.151(8)