

Condo Insights #22 – A Condo Board Primer

A condominium association is governed by a Board of Directors whose authority is derived from the recorded Master Deed and By-Laws. Board members are elected by their fellow owners to serve in positions of authority and leadership for the association.

Simply stated, board members are responsible for managing the association. Managing the association encompasses many duties, but in simple terms, it means to preserve, protect, and enhance the common elements for association members. It involves managing the association's finances and maintaining the association's common property, including the grounds, building and all common facilities and amenities. Board members are charged with the responsibility to manage and operate commonly owned real estate, often worth millions of dollars. The objective is to provide services, maintain the building and increase property values for the benefit of all unit owners.

Condominium associations are non-profit corporations. As such, the objective is not to make a profit, rather for condo fees to cover expenses while setting aside a portion of condo fees to build cash reserves for the eventual replacement of common elements. Serving on the board involves cost-effective spending. It isn't about cutting costs for the sake of cutting costs

How does one become a board member? Elections for board positions occur at the association's annual meeting which is required by the association's governing documents. The majority of associations in southern New Jersey have an odd number of board positions, with two-year alternating terms of office to prevent a complete turnover of board positions in any year. There are generally two paths to candidacy: either self-nomination or being nominated by other members. As part of the election process, ballots and candidate information forms are distributed to all owners to vote for the members to serve on the board.

When a condo owner seeks a position on their condo board, they are essentially applying for an unpaid job and asking their fellow owners to put their trust in them. (Note: in most associations board members are prohibited from receiving compensation). Condo board elections are frequently regarded as popularity contests when in fact they should be treated as job interviews. Condominium owners should evaluate candidates as to experience they have that qualifies them to serve. Experience in accounting, finance, construction, management and real estate apply well to the duties and work of a condo board.

There is more to serving on a condo board than just participating in meetings. Condo owners should also evaluate candidates as to why they want to serve on the board because to govern the association, board members are placed in a position of trust and authority with control over association funds and assets. Serving on a board is not the same as volunteering for the PTA.

There are some essential roles on a condominium board. Board members serve as officers. There is a president, vice president, secretary and treasurer. Board members must be dedicated. Board members must understand their roles and responsibilities. Board members must respect each other and have a sense of cooperation to work together. They must approach their association as a business. They must understand their obligation to protect all the owners' investments and interests.

Board members have many responsibilities. The board makes sure that all owners comply with the governing documents. The board must ensure the association abides by federal, state, and local laws. The board must make sure policies, rules & regulations are fair, neutral, and non-discriminatory and promote harmony between people living in a multi-family environment. The board has to establish a realistic budget that estimates operating costs, utilities, insurance and reserve contributions. Based on the budget the board will determine maintenance fees, and then has to ensure collection of fees from each owner. The board is responsible for the maintenance and upkeep of common areas and must create plans for maintenance tasks, duties, and responsibilities. Board members or property management should perform routine inspections to ensure that community facilities and assets are in good working condition and to avoid breakdowns and costly repairs. The board has the responsibility to protect the general well-being of the community.

Board members have a fiduciary duty. Fiduciary duty means that board members have a legal duty to act in the best interests of their association. There are several components to fiduciary duty. Board members must have sound judgment and take time to research before making decisions. They must be familiar with the association's governing documents. Board members must make decisions which promote the best interests of their association, and not for personal gain. Board members must act in accordance with their authority and powers which are defined and limited in the By-laws. Many associations require board members to acknowledge their fiduciary responsibilities by requiring a confidentiality agreement.

Fiduciary duty also prevents board members from abusing their power and authority. Board members should be accessible and board contact information should be available to all owners. Such fiduciary duties help ensure board members fulfill their responsibilities. For most board members, the time component is at most a few hours per week. However, in some unique and unusual situations board duties can become a very time-consuming obligation.

Board members should rely on the advice of professionals for guidance as they carry out their duties and fulfill their obligations. Boards can hire property managers and other service providers to make sure the operating and maintenance duties are being performed and that obligations and expected service levels are being satisfied.

Responsible board members fairly represent the owners they have been elected to serve, deliver services that meet owner expectations, maintain a high standard of living, and preserve property values for the entire association.

Jim Yost owns Elite Management and Advisory Services, LLC and is managing partner for Ocean Property Management Corporation, based in Wildwood. The firms manage numerous community, condominium and homeowner associations in southern New Jersey. He can be reached at yostopmc@comcast.net. Past columns are available online at www.oceanpropertymgmt.com.

Karim Kaspar, Esq. is Senior Counsel with Lowenstein Sandler LLP. He serves as general counsel to numerous community and condominium associations throughout New Jersey. He specializes in complex commercial litigation and real estate matters and has been active and instrumental in the firm's pro-bono activities. He can be reached at kkaspar@lowenstein.com.