



FINE & DEO's

Condominium Meeting

FAQs

TABLE OF CONTENTS

	<u>Page</u>
TERMINOLOGY	1
“rental record”	1
"owner-occupied unit"	1
“owners’ record”	1
“proxy”	1
“instrument appointing proxy”	1
BACKGROUND	2
Why is it so important to know so much about meetings?	2
How is a condominium corporation created?	2
Who initially serves as the board of directors?	2
When do unit owners get to vote and choose their board of directors?	2
What happens at that meeting?	2
When must the first annual general meeting be held?	2
When must subsequent annual general meetings be held?	2
What may be discussed at an annual general meeting?	3
PREPARATION	3
What should the Chairperson review or prepare prior to the meeting in order to prepare?	3
NOTICE OF MEETING AND RELATED DOCUMENTS.....	3
What records should be reviewed in order to prepare the meeting notices?	3
What other important dates should I be aware of before sending out the notice of meeting?...	3
AFTER THE MEETING.....	5
What information should be included in or with the notice of meeting?	5
Is it possible to raise a matter at a meeting if it is not on the agenda?	6
How are required notices given?	6

What is proper service if there are more than one unit owner ?..... 7

Other than to unit owners and to mortgagees, to whom must a notice of meeting be given?... 7

How does a condominium corporation know who to send notices to? 7

What happens if, for example, a non-resident owner or a mortgagee changes his or her address for service? 7

What happens if a unit is sold or remortgaged shortly before a notice of meeting of owners is to be sent? Who should the condominium corporation send the notice of meeting of owners to? 7

What about other notices i.e. a notice to owners that is not a notice of meeting of owners? Does the same rule apply?..... 7

What happens if the required notice is not given? 7

How does the condominium corporation prove that notices were properly served? 8

Who can attend a meeting? 8

What documents should be prepared for use at an owners' meeting? 8

QUORUM..... 8

What does "quorum" mean?..... 8

What happens if the meeting proceeds without a quorum ? 8

What is the quorum for a condominium corporation's meeting? 8

Is it possible to change the quorum?..... 9

What if such a bylaw already exists? 9

What are some ideas to ensure a quorum? 9

What happens if a quorum disappears?..... 9

PROXIES 9

Who decides if an instrument appointing a proxy is valid?..... 9

What are matters that the Chairperson must consider? 9

General Rules Regarding Proxies 10

What is a recorded vote? 10

Can proxies vote where the vote is taken by a show of hands? 10

Is a person who is entitled to vote able to demand a recorded vote? 11

Can a unit owner appoint as his proxy, someone who is not a unit owner? 11

Can a unit owner give a general instrument appointing a proxy applicable to all meetings, for example, to be held within a particular calendar year? 11

How does a corporate unit owner or mortgagee attend a meeting and vote? 11

Must an instrument appointing a proxy be in writing? 11

Is it possible to give instructions to a proxy to vote in a particular way? 11

Is it possible to vote for the election or removal of directors by proxy? 11

Are the forms of instruments appointing proxies in the regulations mandatory? 11

Should instruments appointing proxies be destroyed at the end of a meeting? 11

Are unit owners entitled to inspect the instruments appointing proxies after the meeting? 11

Can a unit owner demand copies of the instruments appointing proxies? 12

What happens if a condominium corporation does not permit a unit owner to inspect or copy the instruments appointing proxies? 12

CHAIRPERSON 12

 What are some of the duties of the Chairperson 12

 What are some practical tips for a Chairperson? 13

PROPER MEETING PHRASEOLOGY FOR THE CHAIRPERSON 14

 Stating The Question 14

 Putting The Question 14

 Stating The Result Of A Vote 14

 Moving On 15

 Taking Steps At The Meeting Without A Vote 15

 Or If There Is Objection 15

 Responding To The Floor 15

 Dealing With The Unruly Member 15

SPECIAL TYPES OF MEETINGS 16

How are special meetings called? 16

VOTING 16

Are mortgagees entitled to vote at a condominium corporation's meeting? 16

What about if the mortgagee intends to exercise the unit owner's right to consent in writing? 16

What happens if there are more than one mortgagee with respect to a particular unit and both notify the condominium corporation that they intend to vote or to consent? 16

Can the unit owner vote or consent in writing if the mortgagees elect not to? 16

Can a unit owner lose the right to vote? 17

If I own a dwelling unit, a parking unit and a locker unit, do I get three votes? 17

Are there any qualifications on a unit owner's right to vote at a meeting? 17

My unit has a greater percentage interest. Do I get more votes than my neighbour whose unit has a lower percentage interest? 17

I own a unit with my two sons. They want to vote for the removal of the board of directors and I do not. If voting is on the basis of one vote per unit, what happens to our vote? 17

Why is it important to keep a record of "owner-occupied" units? 17

Can an owner of an owner-occupied unit vote to elect or to remove members of the board of directors other than the "owner-occupied" director? 18

Are all unit owners entitled to vote for the removal of an "owner occupied director"? 18

Is voting on the basis of the majority of all of the units, or the majority of the units represented at a meeting? 18

What are examples of votes that are required to be of a certain percentage of all of the units? 18

MOTIONS 21

Subsidiary Motions 21

Incidental Motions 21

Closing Motions 22

What is the proper procedure for proposing a motion? 22

Seconding 22

Amendments 22

Point of Order22

Parliamentary Inquiry23

Point of Information23

Question of Privilege23

Discussion23

Interrupting Speaker & Discussion23

ELECTIONS.....23

 Nomination And Election Of Directors Generally23

 Does a person have to consent to being elected or appointed a director?24

 What happens if the person does not consent, as required, to being a director?24

MINUTES.....24

 Scrutineers24

 Procedure For Appointment Of Scrutineers24

DIRECTORS' MEETINGS25

 How does a condominium corporation transact business?25

 What is the quorum for the transaction of business at a board of director's meeting?25

 How is a removed director replaced?25

 How does a vacancy on the board of directors affect the ability of the board of directors to transact business?25

 If there is a vacancy on the board of directors, how is the vacancy filled?26

 What happens if there is a vacancy on the board of directors and there are not enough directors remaining in office to constitute a quorum?26

 What if there is a vacancy which results from an increase in the number of directors? How is that type of vacancy filled?26

 How are directors' meetings called?26

 How is notice of a directors meeting to be given?26

 What happens if the notice given doesn't comply with the Act but the director attends the meeting?26

Are directors' meetings by conference call legal?27

What is the procedure at a directors' meeting if a director has a conflict of interest?27

Minutes.....27

TRANSFER OF CONTROL BY DECLARANT27

How is the first board of directors of a condominium corporation formed?27

What is the size of the first board of directors?28

For how long is the first board of directors in place?28

Can the first board of directors transact business by written resolution even if no meeting is held to vote on the resolution?28

Is the first board of directors required to call and hold a meeting of owners by a certain date?28

What happens at the first meeting of owners?28

What if the election of these two directors results in more directors on the board than the declaration allows?29

How and when must the turnover meeting be called and held?29

What happens if the turnover meeting is not called?29

What is the declarant required to turnover to the new board of directors?29

Who pays for all of these documents and materials?30

Can the board of directors call a meeting of owners other than the yearly annual general meeting?31

Can unit owners require a meeting of owners?31

Are there technical requirements for the form of requisition?31

What should the board of directors do if it receives a requisition?31

What if the board of directors does not comply with its obligations regarding the requisition?32

Are there by-laws that can be passed regarding meetings?32

Do the owners ever have a say in the rules that are passed by the board of directors?32

What are joint by-laws and joint rules and how are they made?32

AUDITORS AND FINANCIAL STATEMENTS33

How is a condominium corporation's first auditor appointed? 33

How are subsequent auditor's appointed? 34

How are auditors removed? 34

What is the voting plurality to remove an auditor? 34

Are there any technical requirements that must be followed before an auditor can be removed? 34

Does the auditor have any rights to address the meeting? 34

Are there any technical requirements if an auditor resigns? 35

How are vacancies in the office of auditor filled? 35

Does an auditor have the right to attend a meeting of owners? 35

Can the condominium corporation's auditor be compelled to attend a meeting? 35

If the auditor or former auditor is requested to attend a meeting, is such person entitled to be paid? 35

Is a meeting required for condominium corporations to amalgamate? 35

TERMINATION 36

 What is termination? 36

 Is a meeting required to terminate a condominium corporation? 36

 Under what circumstances can the owners of a condominium corporation vote for termination? 36

SUBSTANTIAL CHANGES 36

 Is a meeting required to vote on substantial changes to the common elements or assets of the condominium corporation? 36

 What is a "substantial" addition, alteration, improvement or change to the common elements or assets of the condominium corporation? 36

AMENDING THE DECLARATION 37

 Are any meetings required to amend the declaration? 37

 Are there any other technical requirements to amend the declaration? 37

FOREWORD

In this manual, we have attempted to answer some of the most frequently asked questions regarding condominium corporate meetings by compiling the relevant sections of the *Condominium Act, 1998*, and presenting the content in the form of questions. We have also made use of *Wainberg & Nathan's "Company Meetings"*, 5th Edition, CCH Canadian Limited, and Joyce L. Stephens' *Guide for the Presiding Officer*, 3rd Edition, published by Frederick publishers, Clearwater, Florida, which we recommend highly as a valuable source of information regarding corporate meeting procedure.

Numbers following an answer refer to the relevant section or sections of the *Condominium Act, 1998*.

A word of caution - use this book not as the final reference, but rather as a reference tool to guide you to the relevant section of the *Condominium Act, 1998*.

Jonathan Fine

Mario Deo

FINE & DEO'S CONDOMINIUM MEETING FAQs

TERMINOLOGY

"rental record"

- is used in this manual to refer to the record a condominium corporation is required to maintain of the notices that it receives from unit owners who lease a unit or renew a lease of a unit.

"owner-occupied unit"

- is a unit of an owner who is entitled to vote in respect of the unit at a meeting to elect or to remove a director where:
 - the unit is used for residential purposes and,
 - the owner has not leased the unit within the 60 days before notice is given for the meeting, as shown by the rental record.

"owners' record"

- is used in this manual to refer to the record of the names and addresses for service that the condominium corporation must maintain of:
 - each owner who has notified the corporation in writing of the owner's name and address for service, and;
 - each mortgagee of a unit who, under the terms of the mortgage, has the right to vote at a meeting of owners in the place of the unit owner or to consent in writing in the place of the unit owner, and has notified the corporation in writing of the right and the mortgagee's name and address for service.

"proxy"

- means the person appointed to attend a meeting in the place of the votes.

"instrument appointing proxy"

- means the document which names the proxy and gives the proxy authority to act.

BACKGROUND

Why is it so important to know so much about meetings?

- Because as a general rule, anything that the *Condominium Act, 1998* requires to be approved by a vote of any of the owners must be approved *only at a meeting of owners duly called for that purpose* - 45(1).

How is a condominium corporation created?

- It is created upon registration of the declaration and the description by the declarant (the developer) - 2(3).

Who initially serves as the board of directors?

- Typically, representatives of the developer comprise the initial board of directors, although anyone the developer chooses may be appointed.

When do unit owners get to vote and choose their board of directors?

- Unit owners vote and elect their representative directors at the turnover meeting.
- The declarant is required to conduct the turnover meeting within 21 days after the declarant ceases to be the registered owner of the majority of the units in the condominium - 43(1).
- If the declarant does not call the turnover meeting within the required time frame, any owner or mortgagee, who has the right to vote at such a meeting, may call that meeting - 43(2).

What happens at that meeting?

- The declarant is required to turnover to the corporation certain documents and information at that meeting - 43(4).
- Within 30 days of the turnover meeting, the declarant is required to turnover further documents - 43(5).
- Within 60 days of the meeting, the declarant is required to deliver to the board, the audited financial statements of the corporation as of the last day of the month in which the turnover meeting was held - 43(7).

When must the first annual general meeting be held?

- The board of directors must hold a general meeting of owners not more than three months after the registration of the declaration and description - 45(2).

When must subsequent annual general meetings be held?

- Subsequent annual general meetings must be held within six months of the end of each fiscal year of the corporation - 45(2).

What may be discussed at an annual general meeting?

- At an annual general meeting, an owner may raise for discussion any matter relevant to the affairs and business of the corporation, but, no vote may be taken at a meeting of owners on any matter other than routine procedure unless that matter was clearly disclosed in the notice of the meeting - 45(3), 47(10).

PREPARATION***What should the Chairperson review or prepare prior to the meeting in order to prepare?***

- All files - or a summary thereof - pertaining to legal matters that the corporation/board has been required to address since the last annual general meeting.
- The minutes from the previous annual general meeting.
- The declaration, bylaws and rules: most importantly will be the corporation's operating bylaw, where the procedures for conducting such a meeting will likely be found, and any bylaw purporting to revise the operating bylaw in order to bring it into compliance with the new *Act*.
- Provisions of the new *Act* regarding, among other things, the election of directors, voting, notice, proxies and quorum - see sections 45-71 of the *Act*.
- Prepare a pre-scripted agenda if you feel this is necessary.
- Review parliamentary procedure.

NOTICE OF MEETING AND RELATED DOCUMENTS***What records should be reviewed in order to prepare the meeting notices?***

- The rental record to determine which units are owner-occupied and, therefore, which unit owners are entitled to vote for that position - 83(3), 51(5).

What other important dates should I be aware of before sending out the notice of meeting?**90 days prior to the AGM**

- Send a notice to owners which is referred to here as a "Directors Call Notice." This is not an AGM notice. This notice is not required by the New Act so it is not mandatory. The Directors Call Notice could advise owners of the following matters:
 - The date of the AGM. If the actual date is not known, give an approximate date;
 - Advise owners that the *Condominium Act* requires the formal AGM notice to contain a statement indicating the name and address of each person who has

notified the board, in writing, of his or her intention to be a candidate for the board. 28(2);

- Explain section 51(6) which reserves one position on the board where at least 15 percent of the units of the corporation are owner-occupied units. Explain that only the owners of owner-occupied units may elect a director to this reserved position on the board. State the number of owner occupied units at the time of the Directors Call Notice;
- State the date by which each candidate must advise the corporation of his or her intention to run for the board. The *New Act* 28(2) states that the candidates included on the AGM notice will be those who have notified the corporation of their intention to be a candidate, as of the fourth day before the AGM notice is sent to owners, and "owner-occupied" candidates, as of the day before the AGM, notice is sent to the owners - 28(3)(6);
- Explain that proxies under the new Condominium Act must specify who the proxy may vote for. Accordingly, all directors who inform the corporation in advance of their intention to be a candidate will have the advantage of being eligible to be listed on a proxy. Candidates who are nominated at the meeting obviously will not be listed on the proxy and therefore may not be able to obtain votes from any proxy holders.
- In the Directors Call Notice, you may wish to include a form which each candidate may sign and forward to the condominium corporation. This form may also serve as a nomination form if you wish. The Directors Call Notice is not required to be in any specific form and it is not required to be delivered in any specific way. Delivery by ordinary mail is recommended.

21 days prior to the AGM

- Since the notice of the meeting must be forwarded on day 17, this is the last day for candidates for the board to advise of their intention to run for the board, if they wish their names to be included in the notice of meeting. See section 28(2).

20 days prior to the AGM

- The notice of the meeting is forwarded to all persons in the corporation's records as at this day. See section 47(5).

18 days prior to the AGM

- This is the last day for any "owner-occupied candidates" to notify the corporation of their intention to be candidates for the board. Remember that this position is only available where at least 15 percent of the units of the corporation are owner occupied units. If this is the case, one position on the board is reserved for such a candidate. See section 28(3).

17 days prior to the AGM

- The notice of meeting must be given no later than this day. See section 47(1)(b).

AFTER THE MEETING

Day 10 after the AGM

- Anyone who was elected or appointed to the board and was not present at the meeting, must consent in writing to act as director by this date. If he or she fails to do so, he or she may not be a director. See section 30(3).

Day 91 after the AGM

- Proxies of the meeting may be destroyed, unless there is an ongoing dispute about the meeting. See section 52(7).

What information should be included in or with the notice of meeting?

- particulars regarding the place, the date and the hour of the meeting, as well as the nature of the business to be presented at the meeting - 47(9)(a);
- a copy of all proposed changes to the declaration, by-laws, rules or agreements that are to be discussed at the meeting - 47(9)(b)(i);
- a copy of the requisition, if applicable - 47(9)(b)(ii);
- a list of all candidates, along with their names and addresses, who have notified the board in writing of their intention to be a candidate at least four days before the notice of meeting is sent - 28(2);
- If one position on the board is reserved for voting by owners of owner-occupied units, the notice of meeting must include:
 - a statement that one position on the board is reserved for voting by owners of owner-occupied units; and - 28(3)(a)
 - a statement indicating which persons have notified the board in writing as of the day before the notice is sent that they intend to be candidates for the position on the board reserved for voting by owners of owner-occupied units - 28(3)(b);
- the agenda for the meeting;
- particulars regarding the specific business to be dealt with at the meeting - s. 47(9)(a);
- a instrument appointing a proxy;
- the financial statements as approved by the board - 69(1);
- the auditor's report - 69(1);
- all further information respecting the financial position of the corporation that the by-laws of the corporation require - 69(1).

Is it possible to raise a matter at a meeting if it is not on the agenda?

- **Yes.** At an annual general meeting, an owner may raise for discussion any matter to the affairs and business of the condominium corporation, but, no vote may be taken at a meeting of owners on any matter other than routine procedure unless that matter was clearly disclosed in the notice of the meeting - 45(3), 47(10).

How are required notices given?

- Any notice that is required to be given to owners must be,
 - in writing - 47(1)(a);
 - given **at least** 15 days before the day of the meeting if the notice is a notice of meeting of owners - 47(1)(b);
 - given to:
 - each owner who has notified the corporation in writing of the owner's name and address for service, and - 47(1)(c)(i);
 - each mortgagee of a unit who, under the terms of the mortgage, has the right to vote at a meeting of owners or to consent in writing in the place of the unit owner, and *who has notified the corporation in writing of the right and the mortgagee's name and address for service* - 47(1)(c)(ii);
- Unless the *Act* indicates otherwise, anything required to be given to an owner is sufficiently served if it is served on an owner by :
 - delivering to the owner personally - 47(7)(a);
 - sending it by prepaid mail addressed to the owner at the address for service that appears in the owners' record - 47(7)(b);
 - sending it by facsimile transmission, electronic mail or any other method of electronic communication if the owner agrees in writing that the party giving the notice may give the notice in this manner - 47(7)(c) or
- delivering it at the owner's unit or at the mail box for the unit unless:
 - the party giving the notice has received a written request from the owner that the notice not be given in this manner - 47(7)(d)(i) or
 - the address for service that appears in the owners' record is not the address of the unit of the owner - 47(7)(d)(ii);
- Unless the *Act* indicates otherwise, anything required to be given to a mortgagee is sufficiently served if it is served on a mortgagee by:
 - delivering it to the mortgagee personally - 47(8)(a);

- sending by prepaid mail addressed to the mortgagee at the address for service that appears in the owners' record - 47(8)(b) or;
- sending by facsimile transmission, electronic mail or any other method of electronic communication if the mortgagee agrees in writing that the party giving the notice may give the notice in this manner - 47(8)(c).

What is proper service if there are more than one unit owner ?

- Each owner must be served separately.

Other than to unit owners and to mortgagees, to whom must a notice of meeting be given?

- The corporation must give the auditor notice of all meetings of owners and all other communications relating to the meetings that the owners are entitled to receive - 70(2).

How does a condominium corporation know who to send notices to?

- A condominium corporation must maintain the owners' record of the names and addresses for service of unit owners' and voting mortgagees - 47(2).

What happens if, for example, a non-resident owner or a mortgagee changes his or her address for service?

- A person whose name is in the owners' record has the obligation to notify the condominium corporation in writing of all changes in the address for service - 47(4).

What happens if a unit is sold or remortgaged shortly before a notice of meeting of owners is to be sent? Who should the condominium corporation send the notice of meeting of owners to?

- The condominium corporation only need serve the notice of meeting on the persons whose names appear in the owners' record 20 days before the day of the meeting - 47(5).

What about other notices i.e. a notice to owners that is not a notice of meeting of owners? Does the same rule apply?

- The condominium corporation only need serve the notice of meeting on the persons whose names appear in the owners' record 5 days before the day the notice is given - 47(6).

What happens if the required notice is not given?

- An owner or mortgagee who attends a meeting or who is represented by proxy at a meeting is deemed to have waived the right to object to a failure to give the required notice, unless the person expressly objects to the failure at the meeting - 47(11).

How does the condominium corporation prove that notices were properly served?

- By a statutory declaration of service whereby the person serving the notices swears under oath that the notices were properly served.

Who can attend a meeting?

- Any person entitled to vote;
- The condominium corporation's auditor is entitled to attend a meeting of owners and to be heard on any part of the business of the meeting that concerns the office of the auditor - 70(1);
- Strangers may be admitted only with the consent of the meeting.

What documents should be prepared for use at an owners' meeting?

- Ballots - are special ballots need? Different coloured ballots?
- Agenda;
- Sign-In sheet;
- Financial statement, auditor's report, other information re financial position as by-laws require;
- Have common expense arrears accounts receivable records available to prove arrears of common expenses for voting purpose.

QUORUM***What does "quorum" mean?***

- A quorum is the minimum number of voters (unit owners, their proxies or mortgagees) required to permit the condominium corporation to transact business - i.e. the minimum number of persons qualified to vote.

What happens if the meeting proceeds without a quorum ?

- Business transacted at a meeting lacking a quorum is invalid.

What is the quorum for a condominium corporation's meeting?

- A quorum for the transaction of business at a meeting of owners is those owners who own **25 per cent** of the units of the corporation - 50(1);
- To count towards the quorum, an owner:
 - must have been entitled to receive notice of the meeting;

- must be entitled to vote at a meeting, and
- must be present at the meeting or represented by proxy - 50(2).

Is it possible to change the quorum?

- **Yes.** The condominium corporation may pass a by-law to increase the quorum to those owners who own 33 1/3 per cent of the units of the corporation - 50(1).

What if such a bylaw already exists?

- It depends when it was passed;
- The by-law is effective for this purpose only if it was passed after May 5, 2001 which was the date that the *Condominium Act, 1998* came into effect - 50(1).

What are some ideas to ensure a quorum?

- make sure there is a controversial topic on the agenda and request unit owner input;
- have a draw, a door prize or give a common expense credit;
- collect proxies;
- promote attendance prior to the meeting via notices, flyers, bulletins board postings, elevator conversations.

What happens if a quorum disappears?

- A meeting cannot continue once a quorum disappears and must be adjourned or it automatically lapses.

PROXIES

Who decides if an instrument appointing a proxy is valid?

- The chairperson decides on the validity of all proxies, but may delegate to scrutineers.

What are matters that the Chairperson must consider?

- The Chairperson must satisfy himself that:
 - The document appointing a proxy is in proper form and properly signed;
 - The person giving the proxy has the right to vote;
 - The proxy is present and qualified to act;
 - The instrument appointing a proxy has been deposited in a timely manner;

- There are no conflicting instruments appointing another proxy and that there has been no revocation otherwise.

General Rules Regarding Proxies

- Any objections to the acceptance or rejection of instruments appointing proxies must be made at the meeting;
- Each instrument appointing a proxy is presumed valid if on its face, the form is proper and appears to have been signed by the person entitled to vote;
- Instruments appointing proxies improperly obtained are invalid and votes based upon them are null and void;
- An instrument appointing a proxy must contain the date, appointment of a named proxy, signature of the voter and may contain revocation of previous appointment, voting instructions, expiry date, authority to act at meeting;
- A vote by any one of joint owners in person or by proxy in the absence of a contrary vote by any of the other joint owners in person or by proxy is acceptable;
- The proxy may fill in certain information, including date, name of proxy, date of meeting;
- Instruments appointing proxies may be filed with the condominium corporation up to the time of voting;
- Instruments appointing proxies may be revoked at any time before exercised even if the instrument provides that it is irrevocable, or by subsequent execution of another proxy containing a revocation or by death of appointer;
- Where there are two or more proxies from the same voter, the last proxy takes precedence;
- Where there is different handwriting on duplicate documents or revocations, the handwriting should be ignored, whether similar or different because there is a presumption that all signatures are valid.

What is a recorded vote?

- A **recorded vote** is a vote that is done in writing by ballot (including the new form of instrument appointing proxy which is in effect a ballot for certain purposes).

Can proxies vote where the vote is taken by a show of hands?

- **Yes.** On a show of hands or on a recorded vote, votes may be cast either personally or by proxy - 52(1).

Is a person who is entitled to vote able to demand a recorded vote?

- **Yes.** At a meeting of owners, a person entitled to vote at the meeting may request that a recorded vote be held on any item scheduled for a vote either before or promptly after the vote - 52(2).

Can a unit owner appoint as his proxy, someone who is not a unit owner?

- **Yes.** A proxy need not be an owner - 52(3).

Can a unit owner give a general instrument appointing a proxy applicable to all meetings, for example, to be held within a particular calendar year?

- **No.** An instrument appointing a proxy must be for a particular meeting of owners - 52(4).

How does a corporate unit owner or mortgagee attend a meeting and vote?

- An instrument appointing a proxy must be duly executed by such corporate unit owner or mortgagee.

Must an instrument appointing a proxy be in writing?

- **Yes.** An instrument appointing a proxy must be in writing under the hand of the appointer or the appointer's attorney - 52(4).

Is it possible to give instructions to a proxy to vote in a particular way?

- **Yes.**

Is it possible to vote for the election or removal of directors by proxy?

- **Yes,** but an instrument appointing a proxy for the election or removal of a director at a meeting of owners must state the name of the directors for and against whom the proxy is to vote - 52(5).

Are the forms of instruments appointing proxies in the regulations mandatory?

- **No.** The Act provides that an instrument appointing a proxy *may* be in the prescribed form- 52(6).

Should instruments appointing proxies be destroyed at the end of a meeting?

- **No.** The Act requires that the condominium corporation retain all instruments appointing proxies as a *record* of the corporation for 90 days following the date of the meeting - 52(7).

Are unit owners entitled to inspect the instruments appointing proxies after the meeting?

- **Yes.** Because the instruments appointing proxies become a *record*, upon receiving a written request and reasonable notice, the corporation must permit an owner to examine

the proxies, at a reasonable time for all purposes reasonably related to the purposes of the Act - 55(3).

Can a unit owner demand copies of the instruments appointing proxies?

- **Yes.** Again, because such instruments appointing proxies are *records*, within a reasonable time after a request is made, the corporation is required to provide copies of the proxies to a person examining them, if the person so requests and pays a reasonable fee to compensate the corporation for the labour and copying charges - 55(3),(6).

What happens if a condominium corporation does not permit a unit owner to inspect or copy the instruments appointing proxies?

- If without reasonable excuse, the condominium corporation must pay \$500 to the owner on receiving a written request for payment from the owner and may be sued for this amount in Small Claims Court - 55(8),(9);
- The Small Claims Court may order the corporation to produce the records for examination - 55(10).

CHAIRPERSON

- Usually the President presides as Chairperson unless there are specific provisions for another Chairperson;
- Failing the President, the Vice President presides;
- If no one having the right to act as Chairperson is willing to act, a Chairperson is elected or appointed;
- If elected, a temporary Chairperson asks for nominations and takes a vote;
- Chairperson can be disqualified, e.g. for preventing business from being considered, for acting in a biased way.

What are some of the duties of the Chairperson

- call the meeting to order in a timely manner;
- ensure that the meeting is constituted and conducted properly;
- declare the meeting duly constituted;
- proceed with the business according to the agenda;
- determine the consensus of voters;
- ensure that attendees are reasonably comfortable;

- all proper persons to attend;
- preserve order in the meeting;
- rule on procedural matters;
- eject unruly attendees;
- vote, but has no casting vote unless one specifically given;
- act fairly;
- duly recognize members who are entitled to speak;
- fairly state and put all proper questions before the meeting for a vote, conduct the proper discussion in the vote and announce the result of the vote;
- rule on points of order;
- maintain order;
- promote proper debate and decorum;
- keep the meeting moving;
- answer parliamentary inquiries;
- provide information, but not opinions;
- terminate the meeting at the proper time.

What are some practical tips for a Chairperson?

- anticipate problems that may arise and have the answer ready;
- take control of the meeting and keep it;
- keep control of yourself;
- don't let strong or obnoxious personalities take control of the meeting;
- be firm but fair;
- all discussions must be relevant to the pending question;
- don't partake in debate;
- keep the pace of the meeting lively - don't let it drag;
- if you make a mistake, correct it;

- give people a chance to “let off steam” but avoid repetition, personal attacks and antagonistic comments;
- allow pros and cons to be heard;
- don't take sides - be completely impartial;
- be polite;
- dress the part;
- use and insist upon appropriate language - e.g.
 - the person presiding over the meeting is addressed as Mr. or Madam Chairman and not by the persons name;
 - voters make their comments through the Chair, and not directly to each other.

PROPER MEETING PHRASEOLOGY FOR THE CHAIRPERSON

Stating The Question

- “It is moved and seconded that...”;

Putting The Question

- “Are you ready for the question?”;
- “As many as are in favour, say *aye*. Those opposed say *no*”;
- “Those in favour, say *aye*. Those opposed, say *no*”;
- “Those in favour of the motion will rise. Be seated. Those opposed will rise. Be seated”;
- “Those voting in the affirmative will rise. Be seated”. “Those voting in the negative will rise. Be seated”.

Stating The Result Of A Vote

- “The *ayes* have it and the motion is adopted.” or *carried*;
- “The *noes* have it and the motion is defeated.” or *lost*;
- “There are two-thirds in the affirmative and the motion is adopted”;
- “There are less than two-thirds in the affirmative and the motion is lost.” (*or defeated*);
- The affirmative has it and the motion is adopted”.

Moving On

- “The next business in order is ...”;
- “The question is on the motion that ...”;
- “The question is on the adoption of the recommendation of the committee that ...”;
- “The next business in order is unfinished business. At the August meeting, the motion... was pending at adjournment. The question is on the motion that... Are you ready for the question?”.

Taking Steps At The Meeting Without A Vote

- “If there is no objection ...”;
- “Without objection, the Chair appoints ...”.

Or If There Is Objection

- “There is an objection. Those in favour of ... say *aye*. Those opposed, say *no*.”

Responding To The Floor

- “State your point (of order)”;
- “State your question”;
- “the motion is not in order, as it is not germane to the pending question. The motion will be in order under new business”;

Dealing With The Unruly Member

- *First offence*: “The member’s remarks are out of order”;
- *Second offence*: “The member will refrain from personal remarks. Personal remarks are out of order”;
- *Third offence*: “The member will be seated!”;
- *Afterwards if offence continues*: “The Chair has warned the member three times that his remarks are out of order, and he has persisted. The member will be seated or the assembly shall vote on the discipline to be rendered for the disruption of this meeting”;

SPECIAL TYPES OF MEETINGS

How are special meetings called?

- The board may at *any* time call a meeting of owners for the transaction of *any* business, and the notice of the meeting shall specify the nature of the business - 45(4).

VOTING

- On a show of hands or on a recorded vote, votes may be cast either personally or by proxy - 52(1);
- At a meeting of owners, a person entitled to vote at the meeting may request that a recorded vote be held on any item scheduled for a vote either before or promptly after the vote - 52(2).

Are mortgagees entitled to vote at a condominium corporation's meeting?

- **Yes**, but the mortgagee must notify both the condominium corporation and the owner at least four days in advance;
- If the mortgagee of a unit is entitled to receive notice of a meeting of owners, such mortgagee has the right to vote at the meeting in the place of the unit owner or to exercise the right, if any, of the unit owner to consent in writing if the mortgagee gives notice to the corporation and to the owner at least four days before the date of the meeting of the mortgagee's intention to exercise the right - 48(1).

What about if the mortgagee intends to exercise the unit owner's right to consent in writing?

- The same. The mortgagee must notify both the condominium corporation and the owner at least four days in advance - 48(1).

What happens if there are more than one mortgagee with respect to a particular unit and both notify the condominium corporation that they intend to vote or to consent?

- The mortgagee who has priority may exercise the right, however, if such mortgagee fails to exercise the right, the mortgagee who is next in priority may exercise the right - 48(2),(3).

Can the unit owner vote or consent in writing if the mortgagees elect not to?

- Assuming a unit owner is otherwise entitled to vote or to consent, then if none of the mortgagees who have the right exercises the right, the owner has the right to vote at a meeting of owners - 48(4).

Can a unit owner lose the right to vote?

- **Yes.** An owner is not entitled to vote at a meeting if any contributions payable in respect of the owner's unit have been in arrears *for 30 days or more* at the time of the meeting, however, if the corporation receives payment of the arrears with respect to the owner's unit *before the meeting is held*, then the owner may vote - 49(1),(2).

If I own a dwelling unit, a parking unit and a locker unit, do I get three votes?

- Generally speaking *no*, but there is an exception;
- The general rule is that there is no vote in respect of a unit that is intended for parking or storage purposes or for the purpose of housing services or facilities or mechanical installations but the *exception is* where all the units in the corporation are used for one or more of those purposes - 49(3).

Are there any qualifications on a unit owner's right to vote at a meeting?

- To vote at a meeting of owners, an owner must:
 - have been entitled to receive notice of the meeting;
 - be entitled to vote at the meeting, and;
 - not have been in arrears of common expenses for the unit for 30 days or more - 49(1),(2), 51(1).

My unit has a greater percentage interest. Do I get more votes than my neighbour whose unit has a lower percentage interest?

- **No.** The rule is that all voting by owners shall be on the basis of one vote per unit - 51(2).

I own a unit with my two sons. They want to vote for the removal of the board of directors and I do not. If voting is on the basis of one vote per unit, what happens to our vote?

- The majority of the owners of a unit may exercise the right to vote in respect of the unit but the vote shall not be counted if there are two or more owners of the unit and they are evenly divided on how to exercise the vote. In your case, the vote would be 2 to 1 and therefore, your sons can exercise the right to vote - 51(3).

Why is it important to keep a record of "owner-occupied" units?

- If at least 15 per cent of the units of the corporation are owner-occupied units on or after the time at which the board is required to call a turn-over meeting, no persons other than the owners of owner-occupied units may elect a person to or remove a person from one of the positions on the board - 51(6).

Can an owner of an owner-occupied unit vote to elect or to remove members of the board of directors other than the “owner-occupied” director?

- **Yes** - 51(7).

Are all unit owners entitled to vote for the removal of an “owner occupied director”?

- **No.** An owner-occupied director may only be removed before the expiration of the director's term of office:
 - by a vote of the owners at a meeting duly called for the purpose;
 - where the owners of more than 50 per cent of all of the owner-occupied units in the corporation vote in favour of removal - 51(8).

Is voting on the basis of the majority of all of the units, or the majority of the units represented at a meeting?

- Unless otherwise provided in the *Act*, all questions proposed for the consideration of the owners at a meeting of owners shall be determined by a majority of the votes cast by owners *present at the meeting* in person or by proxy if there is a quorum at the meeting - 53.

What are examples of votes that are required to be of a certain percentage of all of the units?

SUBJECT: Termination of a tele- communications agreement by a corporation that includes one or more units for residential purposes.

VOTING MAJORITY: The owners of more than **50 per cent** of the units at the time the board passes the resolution consenting in writing to the termination of the agreement - 22(9).

SUBJECT: Removal of a director, other than a director on the first board.

VOTING MAJORITY: The owners of more than **50 per cent** of all of the units in the corporation voting in favour of removal - 33(1).

SUBJECT: Making a substantial addition, alteration, improvement to the common elements, a substantial change in the assets of the corporation or a substantial change in a service that the corporation provides.

VOTING MAJORITY: Owners who own at least **66 2/3 per cent** of the units of the corporation voting in favour of approving it - 97(4).

SUBJECT:

Amendment to declaration re:

- the proportions of the common interests appurtenant to the units;
- the proportions allocated to the units, in which the owners are to contribute to the common expenses;
- the parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;
- the allocation of obligations to maintain the units and common elements and to repair them after damage.

VOTING MAJORITY:

The owners of at least **90 per cent** of the units at the time the board approved the proposed amendment have consented to it in writing.

SUBJECT:

Amendment to declaration re everything EXCEPT:

- the proportions of the common interests appurtenant to the units;
- the proportions allocated to the units, in which the owners are to contribute to the common expenses;
- the parts of the common elements that are to be used by the owners of one or more designated units and not by all the owners;
 - the allocation of obligations to maintain the units and common elements and to repair them after damage.

VOTING MAJORITY:

The owners of at least **80 per cent** of the units at the time the board approved the proposed amendment have consented to it in writing.

SUBJECT:

The amalgamation of two or more leasehold condominium corporations or two or more freehold condominium corporations of the same type.

VOTING MAJORITY:

The owners of at least **90 per cent** of the units of each corporation as of the date of that corporation's meeting consenting in writing to the registration of the declaration and description within 90 days of the meeting - 120(1)(b).

SUBJECT: **Registration of a notice terminating the government of the property by the Act.**

VOTING MAJORITY: The owners of **at least 80 per cent** of the units, at the date of the vote, voting in favour of termination - 122(1)(b).

SUBJECT: **Termination where substantial damage.**

VOTING MAJORITY: The owners of **at least 80 per cent** of the units, at the date of the vote, voting in favour of termination - 123(7).

SUBJECT: **Sale of the property or a part of the common elements.**

VOTING MAJORITY: The owners of **at least 80 per cent of the units**, at the date of the vote, voting in favour of the sale - 124(2)(a).

SUBJECT: **Automatic renewal of leasehold interests.**

VOTING MAJORITY: The owners who own **at least 80 per cent** of the units cast a vote against the renewal no later than one year after the notice or the deemed notice, as the case may be, was given to the corporation.

SUBJECT: **Approval of a by-law.**

VOTING MAJORITY: The owners of a **majority of the units** of the corporation voting in favour of confirming it, with or without amendment - 56(10)(a).

SUBJECT: **Approval of joint by-law.**

VOTING MAJORITY: The **majority of the owners of the units of each corporation** voting in favour of confirming it, with or without amendment - 59(3)(a).

Closing Motions

- Closing motions have the highest priority.

What is the proper procedure for proposing a motion?

- Voter addresses the Chair and when recognized, proposes the motion by stating "I'm move that...";
- If seconding is required, the Chair requests a seconder. If there is no seconder, the motion is rejected;
- The Chair considers the relevancy and form of the motion and if satisfied, estates the motion and discussion follows;
- If necessary, the Chair may ask the mover of the motion to clarify;
- After all discussions, the Chairperson repeats the motion and calls for a vote in manner acceptable to the Chairperson;
- The vote is conducted;
- The Chair announces the result of the vote.

Seconding

- Not all motions require seconding;
- Seconding a motion does not mean that the seconder agrees with motion, but merely that the matter should be discussed.

Amendments

- The mover of a motion or an amendment may withdraw or modify it before it has been stated by the Chair or seconded. After it has been stated by the Chair or seconded, it can be withdrawn only with the consent of the meeting;
- Amendments are voted on before the motion and if the amendment is carried, the original motion is reworded to incorporate the amendment;
- Unless another amendment is moved, the original motion. is then proceeded with;
- If there is a sub-amendment, it is voted on before the amendment is voted on. If the sub-amendment is carried, the amendment is reworded to incorporate the sub-amendment;
- Unless another sub-amendment is voted, the amendment is then proceeded with in the normal fashion.

Point of Order

- A point of order involves compliance with the rules of order;

- Voters are entitled to question and insist upon strict compliance with the rules of order;
- Speaker and discussion may be interrupted for a point of order.

Parliamentary Inquiry

- A parliamentary inquiry means that a voter may ask the Chairperson regarding the procedure to be followed;
- A speaker may be interrupted for a demand of parliamentary inquiry.

Point of Information

- A point of information allows a voter to have basic questions answered so that the motion being considered may be understood;
- A speaker may be interrupted.

Question of Privilege

- Attendees have the right to insist that they are reasonably comfortable at the meeting and that they have a reasonable opportunity to be heard;
- The speaker and discussion may be interrupted.

Discussion

- Discussion on a point must be relevant;
- Chairperson should permit matters to be discussed fully, but not repetitiously;
- Chairperson may ask for a motion to terminate the discussion or vote immediately.

Interrupting Speaker & Discussion

- Speakers may be interrupted and the subject matter of discussion may be changed for some, but not all matters. Reference should be made to a manual such as *Wainberg & Nathan's* for details.

ELECTIONS

Nomination And Election Of Directors Generally

- Nominations do not require seconding;
- A nomination may be declined at any time;
- Nominations may be closed by the Chairperson after a reasonable time or by resolution of the voters;

- Motion to close nominations requires seconding and is not debatable;
- Consult bylaws for further provisions.

Does a person have to consent to being elected or appointed a director?

- **Yes.** A person is deemed to consent if the person is present at the meeting when elected or appointed and does not refuse to act as a director. A person who is not present at the meeting may be elected or appointed if the person consents in writing to act as director before the meeting or within 10 days after the meeting - 30(1),(2),(3).

What happens if the person does not consent, as required, to being a director?

- The election or appointment of a person as director is ineffective - 30(4).

MINUTES

- A condominium corporation must keep adequate records which includes minutes of all owners and board meetings;
- Minutes need not contain speeches, arguments or motions that were not passed;
- A minute is not a report. A report is what was said at the meeting, i.e. speeches, arguments; whereas, a minute is what was done or agreed upon, e.g. resolution and decisions.

Scrutineers

- Appointed by shareholders to assist chairperson in taking attendance, counting proxies and ballots;
- Scrutineers need not be qualified to vote;
- Duties of scrutineers include assisting the chairperson in taking attendance, reviewing and counting instruments appointing proxies, and control of ballots.

Procedure For Appointment Of Scrutineers

- Chairperson calls for motion for one name to fill the position in question;
- Motion dealt with in usual manner;
- If motion carried, appointment is completed, if motion is defeated, chairperson request another motion to appoint, and so on.

DIRECTORS' MEETINGS

- Although board meetings may be quite informal, adequate minutes must be kept;
- A certain formality is desirable and will help speed up the meeting;
- A written agenda is a must;
- A regular day each month should be set aside for the board meeting;
- The written agenda together with all desirable documentation and the manager's report, should be distributed to all board members a couple of days before each board meeting;
- Managers' report should contain the following:
 - items for information only;
 - items to be discussed and approved by the board;
 - monthly financial operating report detailing all transactions, corporation's current financial position in relation to budget and arrears list;
 - all proposed details and quotations for items to be approved by the board.

How does a condominium corporation transact business?

- The declarant's board of directors may transact business by written resolution prior to the time the owner's elect a director to the board of directors. Thereafter, the board of directors of a condominium corporation shall not transact any business of the corporation except at a meeting of directors at which a quorum of the board is present - 32(1).

What is the quorum for the transaction of business at a board of director's meeting?

- A quorum for the transaction of business is a majority of the members of the board - 32(2).

How is a removed director replaced?

- The owners may, at the meeting where a director is removed, elect any person qualified to be a member of the board for the remainder of the term of a director who has been removed - 33(2).

How does a vacancy on the board of directors affect the ability of the board of directors to transact business?

- If a vacancy arises in the board, the remaining directors may exercise all the powers of the board as long as a quorum of the board remains in office - 34(1).

If there is a vacancy on the board of directors, how is the vacancy filled?

- If a vacancy arises in the board and a quorum of the board remains in office, the majority of the remaining members of the board may appoint any person qualified to be a member of the board to fill the vacancy until the next annual general meeting at which the owners (or owner- occupiers as the case may be) must elect a person to fill the vacancy who shall hold office for the remainder of the term of the director whose position became vacant - 34(2),(3).

What happens if there is a vacancy on the board of directors and there are not enough directors remaining in office to constitute a quorum?

- The remaining directors must, within 30 days of losing the quorum, call and hold a meeting of owners to fill all vacancies in the board - 34(4);
- If the directors do not call and hold the meeting or if there are no directors then in office, an owner may call the meeting but, upon request, the corporation shall reimburse an owner who calls such a meeting for the reasonable costs incurred in calling the meeting - 34(5).

What if there is a vacancy which results from an increase in the number of directors? How is that type of vacancy filled?

- By election at a meeting of owners duly called for that purpose and the directors so elected shall not act until the by-law increasing the number of directors is registered - 34(7).

How are directors' meetings called?

- In addition to meetings of the directors required by the by-laws of the corporation, a quorum of the directors may, at any time, call a meeting for the transaction of any business - 35(1).

How is notice of a directors meeting to be given?

- written notice stating the time and place of the meeting and the general nature of the business to be discussed at the meeting;
- at least 10 days before the day of the meeting, unless the by-laws specify otherwise;
- by delivering it to the director personally or by sending it by prepaid mail, courier delivery or electronic communication addressed to the director at the latest address as shown on the records of the corporation, unless the by-laws specify otherwise - 35(2).

What happens if the notice given doesn't comply with the Act but the director attends the meeting?

- The director is deemed to have waived the right to object to a failure to give the required notice unless the director expressly objects to the failure at the meeting - 35(4).

Are directors' meetings by conference call legal?

- **Yes.** A meeting of the directors may be held by teleconference or another form of communications system that allows the directors to participate concurrently if:
 - the by-laws authorize those means for holding a meeting of the directors; and
 - all directors of the corporation consent to the means used for holding the meeting - 35(5).

What is the procedure at a directors' meeting if a director has a conflict of interest?

- Section 40 of the *Act* sets out a detailed code of procedure to be followed which includes in certain circumstances, disclosure in writing to the corporation of the nature and extent of the interest, the entering of such disclosure in the minutes of the meeting of the board at which the disclosure was made, the director not being present during the discussion at a meeting, and the director not voting and not being counted in the quorum on the vote with respect to such matter.

Minutes

- The corporation must keep adequate records which include directors' minutes - 55(1);
- Directors ought to place on record, either in formal motions or otherwise, the purpose and effect of their deliberations and conclusions;
- If they do this insufficiently or inaccurately, they cannot reasonably complain if false inferences are drawn;
- Minutes should contain date, time, place of meeting, persons present, names of Chairperson and Secretary, resolutions passed, appointments made and business conducted and should be signed by Chairperson;
- Minutes need not contain speeches, arguments, or motions that were not passed;
- A minute is not a report. A report is what was said at the meeting, i.e. speeches and arguments;
- A minute is what was done or agreed upon - resolution and decisions.

TRANSFER OF CONTROL BY DECLARANT***How is the first board of directors of a condominium corporation formed?***

- Within 10 days after the registration of the declaration and description, the declarant must appoint the first board of a corporation - 42(1).

What is the size of the first board of directors?

- The first board consists of three persons or such greater number as the declaration provides - 42(4).

For how long is the first board of directors in place?

- The first board of directors holds office until a new board is elected at the turn-over meeting, but the declarant may revoke the appointment of a director to the first board and appoint another director to the first board who shall hold office until a new board is elected at the turn-over meeting - 42(2).

Can the first board of directors transact business by written resolution even if no meeting is held to vote on the resolution?

- **Yes**, if:
 - the resolution is adopted by the first board;
 - before the owners elect a director to the first board, and
 - the resolution is signed by all the directors entitled to vote on the resolution at a meeting of the first board - 42(5).

Is the first board of directors required to call and hold a meeting of owners by a certain date?

- **Yes**, but only if the declarant has *not* advised first board in writing that it no longer owns a majority of the units, the first board of directors must call and hold a meeting of owners by the later of:
 - the 30th day after the day by which the declarant has transferred 20 per cent of the units in the corporation; and
 - the 90th day after the declarant transfers the first unit in the corporation - 42(6),(7).

What happens at the first meeting of owners?

- The owners, other than the declarant, may elect two directors to the first board - 42(8);
- The quorum for the election of directors at this meeting is those owners who own 25 per cent of the units in the corporation not owned by the declarant - 42(9);
- To count towards the quorum, an owner must have been entitled to receive notice of the meeting, must be entitled to vote at a meeting and shall be present at the meeting or represented by proxy - 42(10).

What if the election of these two directors results in more directors on the board than the declaration allows?

- The Act permits this - 42(11).

How and when must the turnover meeting be called and held?

- The board elected or appointed at a time when the declarant owns a majority of the units must, not more than 21 days after the declarant ceases to be the registered owner of the majority of the units, call a meeting of owners to elect a new board which must be held within 21 days after it is called - 43(1),(3).

What happens if the turnover meeting is not called?

- An owner or a mortgagee having the right to vote under may call the meeting - 43(2).

What is the declarant required to turnover to the new board of directors?

- At the turnover meeting:
 - the seal of the corporation;
 - the minute book for the corporation including a copy of the registered declaration, registered by-laws, current rules and minutes of owners' meetings and board meetings;
 - copies of all agreements entered into by the corporation or the declarant or the declarant's representatives on behalf of the corporation, including management contracts, deeds, leases, licences and easements;
 - copies of all policies of insurance and the related certificates or memoranda of insurance and all insurance trust agreements;
 - bills of sale or transfers for all items that are assets of the corporation but not part of the property;
 - the records maintained under subsection 47 (2) and subsection 83 (3); and
 - all records that the declarant has related to the units or to employees of the corporation - 43(4).
- Within 30 days after the meeting:
 - the existing warranties and guarantees for all the equipment, fixtures and chattels included in the sale of either the units or common elements that are not protected by warranties and guarantees given directly to a unit purchaser;
 - the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans;

- the as-built specifications, indicating all substantive changes, if any, from the original specifications;
- all existing plans for underground site services, site grading, drainage and landscaping, and television, radio or other communications services;
- all other existing plans and information not mentioned in clause (b), (c) or (d) that are relevant to the repair or maintenance of the property;
- if the property of the corporation is subject to the *Ontario New Home Warranties Plan Act*:
 - proof, in the form, if any, prescribed by the Minister, that the units and common elements have been enrolled in the Plan, and
 - a copy of all final reports on inspections that the corporation within the meaning of that *Act* requires be carried out on the common elements;
- a table setting out the responsibilities for repair after damage and maintenance and indicating whether the corporation or the owners are responsible;
- a schedule setting out what constitutes a standard unit for each class of unit that the declarant specifies for the purpose of determining the responsibility for repairing improvements after damage and insuring them;
- all financial records of the corporation and of the declarant relating to the operation of the corporation from the date of registration of the declaration and the description;
- if the meeting is held after nine months following the registration of the declaration and description, the reserve fund study that is required within the year following the registration of the declaration and description;
- all reserve fund studies that have been completed or are required to have been completed at the time the meeting is held, other than the reserve fund study that is required within the year following the registration of the declaration and description;
- a copy of the most current disclosure statement delivered to a purchaser of a unit in the corporation under section 72 before the meeting, and;
- all other material that the regulations made under the *Act* require to be given to the board - 43(5).

Who pays for all of these documents and materials?

- The declarant must pay for the preparation of all of such documents and materials except for any reserve fund studies mentioned above which shall be prepared at the expense of the corporation.

Can the board of directors call a meeting or owners other than the yearly annual general meeting?

- **Yes.** The board has the power to call a meeting of owners at any time for the transaction of any business, and the notice of the meeting shall specify the nature of the business - 45(4).

Can unit owners require a meeting of owners?

- **Yes.** It is done by requisition - 46
- 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 owners' record, and;
 - are entitled to vote - 46(1).

Are there technical requirements for the form of requisition?

- **Yes.** The requisition must:
 - be in writing and be signed by the requisitionists;
 - state the nature of the business to be presented at the meeting;
 - be delivered personally or by registered mail to the president or secretary of the board or deposited at the address for service of the corporation - 46(2);
 - If the nature of the business to be presented at the meeting includes the removal of one or more of the directors, the requisition shall state, for each director who is proposed to be removed:
 - the name of the director;
 - the reasons for the removal, and
 - whether the director occupies a position on the board that under subsection 51 (6) is reserved for voting by owners of owner-occupied units - 46(3).

What should the board of directors do if it receives a requisition?

- Upon receiving a requisition, the board must:
 - if the requisitionists so request in the requisition or consent in writing, add the business to be presented at the meeting to the agenda of items for the next annual general meeting, or;
 - otherwise call and hold a meeting of owners within 35 days - 46(4).

What if the board of directors does not comply with its obligations regarding the requisition?

- A requisitioner may call a meeting of owners which shall be held within 45 days of the day on which the meeting is called and upon request, the corporation must reimburse the requisitioner for the reasonable costs incurred in calling the meeting - 46(5).

Are there by-laws that can be passed regarding meetings?

- **Yes:**
 - to regulate board meetings, the form of board meetings and the quorum and functions of the board - 56(1)(b);
 - to provide that the quorum for the transaction of business at a meeting of owners is those owners who own 33 1/3 per cent of the units of the corporation, subject to subsection 50(2) - 56(1)(c).

Do the owners ever have a say in the rules that are passed by the board of directors?

- **Yes:**
 - The owners may amend or repeal a rule at a meeting of owners duly called for that purpose - 58(5);
 - the owners have the right to approve a rule at a meeting of owners, if the board receives a requisition for the meeting within 30 days after the board has given notice of the rule to the owners - 58(7);
- A rule or an amendment to a rule that has substantially the same purpose or effect as a rule that the owners have previously amended or repealed within the preceding two years is not effective until the owners approve it, with or without amendment, at a meeting duly called for that purpose - 58(8).

What are joint by-laws and joint rules and how are they made?

- The boards of two or more corporations may make, amend or repeal joint by-laws or rules governing the use and maintenance of shared facilities and services - 59(1);
- A joint by-law or rule is a by-law or rule, as the case may be, of each corporation - 59(2);
- A joint by-law is not effective until:
 - the majority of the owners of the units of each corporation vote in favour of confirming it, with or without amendment;
 - This vote may be at a joint meeting of the corporations duly called for that purpose, and
 - each corporation registers a copy of it - 59(3);

- Once a joint by-law is effective, it is effective until the owners of a majority of the units of each corporation vote in favour of repealing it and a copy of the repealing by-law is registered;
- The owners of each corporation may amend or repeal a joint rule at a joint meeting of owners of the corporations or at a meeting of owners of each corporation if the meeting has been duly called for that purpose - 59(5);
- Upon making, amending or repealing a joint rule, the board of each corporation shall give a notice of the joint rule to its owners that includes:
 - a copy of the rule as made, amended or repealed, as the case may be;
 - a statement of the date that the boards propose that the rule will become effective, and
 - a statement that the owners have the right to requisition a meeting and the rule becomes effective at the time determined by subsections 59(8),(9) and (10) of the *Act* - 59(7);
- If the board of any of the corporations receives a requisition for a meeting within 30 days after it gives notice of the joint rule to its owners, the joint rule is not effective until the owners approve it at a joint meeting of owners of the corporations or at a meeting of owners of each corporation - 59(8);
- If the board of none of the corporations receives a requisition for a meeting within 30 days after it gives notice of the joint rule to its owners, the joint rule is not effective until 30 days after the board of each corporation has given notice of the joint rule to its owners - 59(9);
- A joint rule or an amendment to a joint rule that has substantially the same purpose or effect as a joint rule that the owners have previously amended or repealed within the preceding two years is not effective until the owners of each corporation approve it, with or without amendment, at a joint meeting of owners of the corporations or at a meeting of owners of each corporation duly called for that purpose 59(10).

AUDITORS AND FINANCIAL STATEMENTS

How is a condominium corporation's first auditor appointed?

- At their first meeting, the owners shall appoint one or more persons qualified to be auditors to hold office as auditors until the close of the next annual general meeting and, if the owners do not do so, the board shall make the necessary appointments as expeditiously as possible - 60(1);
- If the board of directors does not do so then a court may do so on the application of an owner - 60(3).

How are subsequent auditor's appointed?

- Subject to certain exceptions, at each annual general meeting, the owners shall appoint one or more persons qualified to be auditors to hold office as auditors until the close of the next annual general meeting and, if the owners do not do so, the auditor in office continues in office until a successor is appointed - 60(2).

How are auditors removed?

- The owners may remove an auditor before the expiration of the auditor's term of office at a meeting duly called for that purpose, but at the same meeting they must appoint a person qualified to be an auditor to act as auditor for the remainder of the term of the auditor who was removed - 63(1), (2).

What is the voting plurality to remove an auditor?

- The majority of votes cast by the owners who are present at the meeting in person or by proxy - 63(3).

Are there any technical requirements that must be followed before an auditor can be removed?

- **Yes:**
 - At least 30 days before giving the owners notice of a meeting for the purpose of removing an auditor, the auditor must receive:
 - written notice of the intention to call the meeting, specifying the date on which the notice of the meeting is proposed to be mailed;
 - a statement of the name of the auditor who is proposed to be removed and the reasons for the removal; and
 - a copy of all material proposed to be sent to the owners in connection with the meeting - 63(4);
 - at the expense of the corporation, the notice of meeting must include:
 - a statement of the name of the auditor who is proposed to be removed and the reasons for the removal, and
 - a copy of all representations received - 63(7).

Does the auditor have any rights to address the meeting?

- **Yes.** An auditor may make written representations to the corporation concerning the proposed removal of the auditor or the appointment of another person to fill the office of auditor by sending them to the person calling the meeting at least three days before the mailing of the notice of the meeting. - 63(5),(6).

Are there any technical requirements if an auditor resigns?

- **Yes.** If an auditor makes written representations to the corporation concerning the auditor's resignation, then the corporation shall attach a copy of the representations to the notice of the next meeting of owners - 64(2).

How are vacancies in the office of auditor filled?

- If a vacancy arises in the office of auditor, the directors may appoint any person qualified to be an auditor to hold office as auditor to fill the vacancy who holds office until the close of the next annual general meeting or until a successor is appointed, whichever is later - 65(1),(2).

Does an auditor have the right to attend a meeting of owners?

- **Yes.** The auditor is entitled to attend a meeting of owners and to be heard on any part of the business of the meeting that concerns the office of the auditor - 70(1);
- The corporation must give the auditor notice of all meetings of owners and all other communications relating to the meetings that the owners are entitled to receive - 70(2).

Can the condominium corporation's auditor be compelled to attend a meeting?

- **Yes.** The corporation or an owner may require that an auditor or a former auditor attend a meeting of owners for the purpose of answering inquiries concerning the basis upon which the such person formed the opinion stated in such person's reports by giving written notice to the person whose attendance is required, at least five days before the meeting, that the person's presence is required - 70(3);
- At a meeting of owners, the auditor or former auditor, as the case may be, if present, shall answer inquiries - 70(6);
- Note: if an owner gives written notice to an auditor or former auditor requiring the auditor or former auditor to attend a meeting, then the owner must give a copy of the notice to the corporation - 70(4).

If the auditor or former auditor is requested to attend a meeting, is such person entitled to be paid?

- **Yes.** If an auditor or a former auditor is required to attend a meeting of owners, the corporation is required to compensate the auditor or former auditor, as the case may be, for expenses and pay the reasonable remuneration that it deems appropriate - 70(5).

Is a meeting required for condominium corporations to amalgamate?

- **Yes.** The board of each amalgamating corporation must hold a meeting and then, the owners of at least 90 per cent of the units of each corporation as of the date of that corporation's meeting must consented in writing to the amalgamation with 90 days thereafter.

TERMINATION

What is termination?

- Termination is when land ceases to be governed by the *Condominium Act, 1998*. In other words, the condominium corporation becomes in effect, de-registered.

Is a meeting required to terminate a condominium corporation?

- **Yes**, and among other requirements, the owners of at least *80 per cent* of the units, at the date of the vote, must vote in favour of termination -122(1)(a).

Under what circumstances can the owners of a condominium corporation vote for termination?

- If the board of directors determines that there is "**substantial damage**", which means damage for which the cost of repair is estimated to equal or exceed 25 per cent of the replacement cost of all the buildings and structures located on the property - 123;
- In this case, the owners have the right to requisition a meeting of owners to vote for termination instead of repairing the property. The required voting plurality is the owners of at least *80 per cent* of the units, at the date of the vote, voting in favour of termination - 123;
- Also, If the corporation sells the property or a part of the common elements, the *Act* ceases to govern the property being sold. Among other requirements, this also requires the owners of at least *80 per cent* of the units, at the date of the vote, voting in favour of the sale - 124;
- Upon expropriation of the property or a part of the common elements under the *Expropriations Act*, the *Act* ceases to govern the property or the part of the common elements, as the case may be - 126.

SUBSTANTIAL CHANGES

Is a meeting required to vote on substantial changes to the common elements or assets of the condominium corporation?

- **Yes**. A condominium corporation is not permitted to make a substantial addition, alteration, improvement to the common elements, a substantial change in the assets of the corporation or a substantial change in a service that the corporation provides to the owners unless the owners who own *at least 66 2/3 per cent* of the units of the corporation vote in favour of approving it at a meeting duly called for the purpose - 97(4).

What is a "substantial" addition, alteration, improvement or change to the common elements or assets of the condominium corporation?

- An addition, alteration, improvement or change is *substantial* if:

- its estimated cost, based on its total cost, regardless of whether part of the cost is incurred before or after the current fiscal year, exceeds the lesser of:
 - 10 per cent of the annual budgeted common expenses for the current fiscal year, and
 - the prescribed amount, if any; or
- the board elects to treat it as substantial - 97(6).

AMENDING THE DECLARATION

Are any meetings required to amend the declaration?

- **Yes.**
 - a meeting of the board of directors which approves the amendment by resolution - 107(2)(a);
 - a meeting of owners for the purpose of considering the proposed amendment prior to which the board must give the owners a notice of the meeting which shall include a copy of the proposed amendment - 107(3),(4).

Are there any other technical requirements to amend the declaration?

- **Yes:**
 - the consent in writing of *at least 80 or 90 per cent* of the owners of the units (depending on the subject of the amendment) at the time the board approved the proposed amendment is required - 107(2)(d),(e);
 - the condominium corporation must send a notice of the proposed amendment to all mortgagees whose names appeared in the owners' record at the time the board approved the proposed amendment - 107(2)(f).

Notes:



3100 Steeles Avenue West, Suite 300
Vaughan, Ontario
L4K 3R1

(905) 760-1800 or 1-888-FINEDEO (phone)
(905) 760-0050 or 1-888-CONDO55 (fax)

Copyright © 2003 FINE & DEO
All Rights Reserved
Printed in Canada

Without limiting the rights under the copyright reserved above, no part of this publication may be reproduced, stored in or introduced into a retrieval system, if transmitted in any form or by any means (electronic, mechanical, photocopying, recording or otherwise), without the prior written permission of **Fine & Deo**.

