

## Dealing with Dissident Groups

- Community Emergencies Causing Dysfunction:
  - Board Member Misbehaviour
  - Aggression of Unit Owner(s), Tenant(s) to manager or Board member(s)
  - "Homeowners' Associations"
  - Requisition Meetings
- The Role of the Property Manager

## Board Member Misbehaviour

- Rare but destructive to governance and sometimes lasts years
- Solutions are not great and take much effort - what are they?
  - Communicate with Director - usually works
  - Communicate with owners (careful - this is politics)
  - Get support and proxies to elect another director
  - Requisition meeting to remove the director
  - Director resolution to remove the problem director

## Aggression of Unit Owner(s), Tenant(s) to Manager or Board

- Immediate action usually required
- Check harassment issues – Harassment policy?
- Use progressive steps
  - Letter(s) to offending person
  - Many intervening options
    - Deactivate fob, ban from office, suspend communication
    - Action taken is different in each case
  - Court order – where necessary

## “Homeowners’ Associations”

- Progressive action is required – use least difficult methods first, consider options
  - Meeting/communication directly with HOA – attend their meetings
  - Written communication with unit owners
    - Distinguish/distance HOA from Board + Corp
  - Meeting with unit owners setting record straight
  - Board and manager must choose the options – they know community best

## Requisition Meetings

- Very destructive if not handled properly
  - Every requisition must be handled according to the facts involved
  - Contents of Notice of Meeting are crucial
    - Must contain requisition information, but put in board's story
    - Chair must have an excellent "Sense of the Meeting"

## The Role of the Property Manager

- Property Managers **should not** involve themselves in the politics of the corporation
- The role of the property manager is to provide advice to the board, to carry out the board's instructions, and to attend to the day-to-day functions specified in the management contract.
- If approached by a dissident group, manager should advise that any concerns should be put in writing and will be reviewed by the board at its next board meeting

## Repeated Record Requests

- Section 55 of the *Act*
  - Specific exemptions to the right to require an inspection of the records
  - The inspection must be for a purpose reasonably related to the purposes of the *Act*
- Condominium is permitted to refuse to produce records if it has a reasonable excuse – though Courts can still order production of the records

## Reasonably related to the purposes of the *Act*?

- When request for documents is received, the person requesting must provide the purpose for the request and board must determine if the purpose is reasonably related to the purposes of the *Act*
- If unsure, call the corporation's lawyer for assistance

## Purposes NOT Reasonably Related to the Purposes of the *Act*

- To communicate with owners
- The unit owner is on a fishing expedition
- Request infringes on the privacy rights of others
- The unit owner is acting as a self-appointed watchdog over the board of directors
- Is an attempt to fetter the discretion of the board

## *Lahrkamp v. MTCC 932*

- Judge found that not every request needs to provide a purpose, because sometimes the purpose may be self-evident or inferred

## Request for Records or Request for Information?

- Owners can request records
- Owners cannot demand *explanations, responses or information*
  - Example – An owner demands to know why the board entered into a contract with a particular contractor. Owner cannot demand an explanation from the board, but can ask for a copy of the minutes of the meeting where the contract was approved and for a copy of the contract.

## How to Deal with Repeated Requests

- Require that the request have a purpose
- Ensure that the owner requesting pays for photocopying charges in advance
- If repeated requests are for records the owner is not permitted to review or if they are for information/explanations, then advise owner they are not permitted to same and that if a similar request is received in the future, the matter will be referred to the corporation's lawyer

## Proxies

- Basics of form
- Three (3) forms
  - general
  - election
  - removal/election
- prior instructions for by-laws, and any other matter that is not a director election are optional but not required.

## Proxies (cont'd)

- significance of registering the proxy
- use of proxies as ballots
- fraudulently obtained proxies
  - Questions to proxyholder and owners at or before meeting – chair may invalidate
- revocation
- presumption of valid signatures
- are the forms mandatory? 52(6)

## Names of Candidates on Proxy

- Names of candidates don't have to be on proxy
- If putting names, put a note that the names are the individuals who gave notice of their intention to run, in accordance with S. 28(2), and that the insertion of these names is not an indication that the corporation or board endorses these candidates.
- Blank spaces should be left for further candidates that may be nominated at the meeting

## Proxies (cont'd)

- **Important Caselaw (PCC 449 & others)**
  - serious & fraudulent misrepresentations made to obtain proxies
  - problem was proven by affidavit evidence
  - **Court: no one could use proxies at meeting to remove directors**
  - very first condo case of its kind