

# 10 STEPS TO BECOMING A GREAT DIRECTOR

By **Andrea M. Thielk**, BA, LLB, JD, ACCI (Law) \*

*\*Accredited by the Canadian Condominium Institute in Condominium Law*

## 1. Know your duties.

Section 17 of the *Condominium Act* says that the objects of the condominium are to manage the property and assets on behalf of the owners. This is facilitated through the board of directors.

As a director, you will not be expected to perform your duties with a *greater skill* than can be reasonably expected (you won't be expected to prepare financial statements) nor will you be expected to make your position a full-time occupation and you may rely upon others to help with your position. Keeping current and educating yourself is very important in order to fulfill your requirements under **section 37 the Condominium Act** to manage the affairs of the Corporation...

*"Every director and officer of a corporation shall exercise the powers and discharge the duties of his office honestly and in good faith and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances."*

**TIP:** *Become familiar with the Declaration, Bylaws and Rules - each director should be familiar with what the owners get to vote on, the procedure for the meetings and the day-to-day responsibilities set out in the Condominium Rules.*

*Purchase a Condominium Act Handbook For Directors through CCI.*

## 2. Attend board meetings and ask questions.

As was mentioned, a director need not make his position full-time but it would be prudent to attend and actively participate in as many meetings as possible.

If you do not agree with a position taken, make sure your objection is recorded in the Minutes of the Board Meeting.

You may avoid being sued, if your name is not part of the Minutes that supports the action in question.

**TIP:** *Be Prepared. Read the meeting agenda and accompanying documents and know what is happening in your condominium in advance of the meeting.*

### 3. Learn how to read Financial Statements and Budgets.

This is admittedly a difficult one. Keep an eye on the Bank and remember it's just like your personal finances; you shouldn't spend more money than you have. You have a duty to act in the best interests of the entire condominium when spending money.

*TIP: Ask for a lesson from your auditor, property manager or bookkeeper.*

### 4. Don't go it alone.

Even self-managed condominiums needn't go it alone.

The day-to-day operation of a condominium is increasingly complex and the expectations of unit owners have increased with new technology thus increasing the level of skill that would be described as reasonable.

When in doubt, seek professional advice.

The *Condominium Act* allows you to avoid liability by relying in good faith on written reports and opinions provided by your professionals. Recognizing when to obtain assistance from engineers, insurance brokers, accountants, lawyers, contractors and maintenance personnel is the sign of a great director.

*TIP: Hire Professionals that know condominiums.*

### 5. Consider hiring a property manager.

Hiring a property manager helps maintain good order and good neighbours. It is often difficult to send enforcement letters to your neighbours.

It is also difficult to try to do everything yourself.

Having a third party to oversee your condominium also provides perspective.

*TIP: Hire property managers that know condominiums.*

### 6. Make sure you are protected.

Liability issues are a big concern of directors.

Some areas where directors may be vulnerable are inadequate **reserve funds and reserve fund investment**. It would be wise to stick to safe investments despite the fact that there may be a low return. Any loss of reserve fund money would surely attract a liability claim.

See section 115 of the *Condominium Act*, before making investments.

**Enforcement of Rules** is another problem area. Enforcement must be consistently applied or a lawsuit is invited. To be enforceable, the rules should be reasonable and be in the interest of the safety, security, welfare and enjoyment of the owners.

**Records** must be maintained and available for review. The decisions of the Board should be well-documented. Future Boards may criticize your decisions, if not well-documented and carefully explained. We remind you that as a director if you object to a decision of the majority make sure your objection is recorded.

**Disclosure of Conflicts of Interest** is critical and required pursuant to section 40 of the *Condominium Act*. Remember your duty is to act in the best interests of the condominium and not your personal interests.

**Policies**, such as Human Rights, should be adopted by the Board and reviewed annually.

It is of utmost importance, therefore, for a director to "keep on top of things" and document all decisions.

***TIP:** Make sure you have Directors and Officers Liability Insurance and that your premiums are promptly paid. Review your insurance coverage with your Broker from time to time to ensure adequate coverage and make sure you have coverage to defend human rights claims made against the condominium and its directors and officers.*

## **7. Know the law.**

Ignorance of the law is no excuse. Stay informed. Choose a property manager that stays active in updating himself with seminars. Attend seminars yourself.

Use professionals that are well versed in condominiums.

Be aware of new legislation that may affect your condominium.

There could be areas that affect your condominium other than those covered by the *Condominium Act*. For example Human Rights, Occupational Health and Safety and Employment Standards, Taxation, Occupiers' Liability *etc.*

For example, in dismissing an employee, the board must be well aware of its obligations under the ***Employment Standards Act*** regarding severance pay. In a case where a building manager was fired from the condominium, a lawsuit for wrongful dismissal followed and the building manager was able to show that he performed his job in accordance with the job description. It was revealed at trial that a board member forced the termination because she wanted her husband to be the building manager. What she did not count on is that the condominium would be responsible to pay the building manager his full salary for the duration of the balance of his 2 year contract.

Remember that the condominium is liable under the **Occupier's Liability Act** for the safety of persons using the common elements and grounds of the condominium.

**Section 26** of the *Condominium Act* makes the condominium responsible "as the occupier of land" for the common elements. The *Occupier's Liability Act* is used in situations concerning slip and falls from improperly maintained parking lots, sidewalks *etc.* and for failure to ensure adequate security measures are taken to protect owners on the common elements.

In a **British Columbia case**, the court ruled that the condominium and the property manager were largely accountable for injuries sustained by a child who fell in a pot hole. It was revealed that the child's parents complained about the pot hole to the property manager and no action was taken.

In a **Toronto case**, a landlord was held responsible for damages resulting from an assault against a woman in the underground parking garage. The court reviewed the security measures in place for the building and found it sorely lacking. There was no adequate lighting, no surveillance cameras, no patrols and no closure to the garage entrance.

These examples clearly show that condominium boards and management have a positive duty of care. If they see a potential problem, they must act to correct it.

A Corporation may also be charged under the *Fire Code* for not ensuring that smoke alarms are installed as prescribed and are working in each unit. In the ***City of Toronto v. York Condominium Corporation No. 60***, a fire started in a condominium unit which did not have a smoke alarm. The provisions of the Fire Code stated that an "owner" is defined as any person or corporation "**having control over any portion of the building or property**". However, the *Condominium Act* clearly states that the unit owner owns the individual unit. The Court based its decision on the definitions in the *Fire Code* and stated:

*"This case being about smoke alarms is about fire. **Fire does not respect the division of control in condominium law.** The purpose of the smoke alarm regulation is to carry out the intent and purpose of the **Fire Marshall's Act.**"*

Please also note that **Section 92 (3) of the Condominium Act** provides the condo **with the power to act** when it states:

*"If an owner has an obligation under this Act to maintain the owner's unit and fails to carry out the obligation within a reasonable time and if the failure presents a potential risk of damage to the property or the assets of the corporation or a potential risk of personal injury to persons on the property, the corporation **may** do the work necessary to carry out the obligation."*

**Section 19 of the Condominium Act** gives the board or its authorized representatives, the power to enter a unit on reasonable notice to carry out its objects and duties at any reasonable time.

Insurance policies should be carefully reviewed on a regular basis and a plan for risk management should be put in place. It is better to be safe than sorry.

## **Human Rights Code and Condominiums**

Condominium boards and management companies are subject to the Human Rights Code (the “Code”).

The Code provides that *every person has a right to equal treatment in services, accommodation with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.*

Section 47(2) of the Code provides primacy over other acts or regulations. This means that whenever any other law, rule, or regulation conflicts with a provision of the Code, the Code takes precedence.

It should be noted that not all discrimination is obvious, even an agreement which does not explicitly authorize discrimination could be unenforceable and/or a violation of the Code, if it tends to inadvertently discriminate.

Liability under the Code arises when accommodations are not made to the point of undue hardship.

Three relevant factors for determining undue hardship include: costs; health and safety; and sources of outside funding. However, for these defences to be considered, the condominium would be required to produce evidence in support.

**TIP:** *Make sure you have a Human Rights Policy and undertake to review this policy yearly.*

## **And now Negligence may mean Jail...**

**Bill C-45** amended the *Criminal Code* to impose a duty on directors and officers to take reasonable steps to ensure the safety of employees, workers and other persons, while work is undertaken on the condominium’s property.

**Section 217** states: *“Every one who undertakes, or has the authority to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person arising from that work or task. Convictions can result in jail time or serious fines for criminal negligence causing bodily harm or death.”*

A condominium that is convicted can be charged with the following:

- i) fines up to \$100,000 on summary conviction;
- ii) fines, with no stated limits, for a conviction by indictment;
- iii) probation orders that can include orders for restitution for losses, and orders requiring the condominium to publish its conviction, sentence and remedial measures being taken.

There could also be charges laid under the *Provincial Offences Act* and monetary damages from a civil claim from the injured person.

Boards should review their work place safety protocol and inspect the common areas where the work will be completed to ensure it is safe.

Employees should be properly trained to carry out the work, including safety training. Staff should never be asked to complete any work that is dangerous or which they are not trained to do.

**TIP:** *Join the Canadian Condominium Institute.*

## **8. Watch for violations and enforce consistently.**

You are charged with the duty to enforce the Condominium Act and the Corporation's Declaration, Bylaws and Rules.

If you don't ensure compliance with the governing documents, you could be held personally liable.

There have been cases where Judges did not allow the condominium to enforce a rule, if the owner could show that the board did not consistently enforce the rule in the past.

Make sure that the rules are applied consistently.

**TIP:** *Be watchful but reasonable. A polite warning may be all that is needed. Sometimes a letter written to every owner asking for compliance is more effective than singling one owner out.*

## **9. Periodically review your governing documents.**

Some provisions may be obsolete or unenforceable.

For example, a rule written twenty five years ago may have said no trucks parked in the garage assuming that they would be commercial vehicles. Today, they are often luxury vehicles or sports utility vehicles.

**TIP:** If you decide to amend the Declaration, Bylaws or Rules, review the entire document in order to save costs in case other areas need to be changed.

## 10. Be Proactive - Develop a risk management plan.

Establish risk management goals.

For example, what inspections are needed and how often.

Keep a log of the inspections completed and any remedial action taken.

Have an orientation meeting for new directors, so the new directors understand their responsibilities as directors.

Develop Human Rights policies and procedures for handling complaints and ensure that all parties understand the condominium's obligations to comply with the Human Rights Code.

**TIP:** Adopt an ounce of prevention philosophy. Create a Safety Committee responsible for carrying out the Risk Management Plan, which includes a Human Rights Policy, an Occupational Health and Safety Policy and an Anti-Harassment and Anti-Discrimination Policy in the Workplace.

These ten steps are important to achieve the goal of Being a Great Director but every step has this last overriding component: **LISTEN AND RESPOND TO OWNERS.**

Communication is the key to success.

Listen and respond to your owners.

While you may not always agree, you will likely have a mutual respect for each other.

If you exercise your duties, respectfully, fairly and consistently, you will be A Great Director.



**Andrea M. Thielk, BA, LLB, JD, ACCI (Law) \***

**\*Accredited by the Canadian Condominium Institute in Condominium Law**

This article has been prepared by Andrea M. Thielk in summary fashion. Please do not rely on this article without consulting with your professionals. Andrea M. Thielk is a condominium lawyer and is a frequent contributor to CCI.