

Avoid a Gridlock - Educate, Communicate & Plan

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When strangers come together as a new board of directors for a community association, they may find they have such differing views on what is best for the building that they can feel as though they are in a no win scenario. While working to find a creative solution to the problem is something we as lawyers work on every day, it is not always quite as natural for board members, especially when they have never served in this capacity before.

Serving as a new board member has, among its challenges, a steep learning curve. I think it is safe to say that condominium law and governing documents for a given community can, at times, be less than easy to understand.

Community Association law uses some unique terminology and there are sometimes subtle, but hugely important, differences on what something means depending on whether a particular word is used. Consider the terms officers and directors. While many people understand that a director is someone who is elected by the membership to serve on the board of directors and officer is a position that a director may hold, others may confuse the two terms. Reading the Condominium Act, that person may read the provision that states that “Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration” and misunderstand that directors can be removed at any time on a board vote.

Another common confusion that arises is the use of the word “By Laws” instead of Declaration. These are two very different documents and certain provisions *must be* in the Declaration in order to be valid. Similarly, the use of the word “maintenance” instead of the word “assessments.” A review of the Condominium Act will show that nowhere is an owner required to “pay maintenance” but they *are* required to pay “assessments” and their unit can be lienied for failure to pay “assessments” timely.

When you couple the unfamiliar language that can be used in community association law, with the misunderstanding of what the documents require and years of a particular administration doing something a certain way, a brand new slate of directors intent on making changes can clash spectacularly and cause what Washington D.C. deems “gridlock.”

The first thing to do in a situation like this is to make sure that everyone becomes educated on the issues. The statutes require “newly elected or appointed directors to certify in writing to the secretary of the association that he or she has read the association’s declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association’s members.” Instead of this certification, the newly elected or appointed directors may attend an educational curriculum administered by a division-approved condominium education provider and submit a certificate of having satisfactorily completed the educational curriculum.

If new board members feel comfortable reading and certifying their knowledge of all of the information after reading the required documents, then by all means, they should do so. However, for those who feel less than comfortable with the self-teaching that could be required in the first option, attending a class is a great option. Many free classes are available to new board members and there are a myriad of ways to attend. Live classes not only offer the opportunity to ask questions, but also to listen to other people ask questions. Many times, this can be just as educational. Also, if the new board of a condominium goes *together* to the class, it can provide a team building opportunity as well as ensure they are all getting the same information and can understand where the others are coming from. It is important also in helping people to understand that just because the building next door does something in a particular way, does not mean that the law allows for this, or that your building should be doing it. From a management perspective, attending these classes with new board members is also helpful to create realistic expectations and help all parties understand the division of labor and responsibilities that exist between a manager and a board.

Once the new board is educated, the communication is the key to understanding and working together. Holding frequent board meetings to discuss condominium issues will help not only inform the unit owners, but also keep the lines of communication open on a regular basis. The new board may find that frequent exchanges of ideas and concerns will facilitate an understanding that they are all working toward a better community and that there can be many paths that lead to the same place. While email is a useful tool for our everyday lives, new (and experienced) board members should refrain from email exchanges when possible, as that can inadvertently lead to email decisions. The statutes now expressly prohibit email “voting”, even though that was not necessarily authorized before. The better goal is to have the discussions on the issues in front of the unit owners that may want to attend

the meetings, rather than arrive at the meetings only to state the motion, hold a summary vote, and close the meeting.

Finally, creating and agreeing on a list of priorities can help shape the tenure of the new board. As we all know, time flies when you are having fun. Although a year can seem like a long time, in the world of projects, construction, maintenance and day to day operation of a condominium, a year can go by much faster than many people expect. Rather than wasting the year debating on which project is most important, taking the time at the beginning of the year to decide the order and importance of necessary projects, maintenance, and issues to address can not only help shape the budget and expenditures in a fiscally responsible way, but also help temper unrealistic expectations of owners and board members alike.

In summary, educate, communicate, and plan before acting.