

Lash / Condo Law

— OUR CONDO EXPERTISE

THE ROLE OF CONDOMINIUM DIRECTORS

— PRACTICAL ADVICE, CREATIVE SOLUTIONS,
COST EFFECTIVE

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BEST PRACTICE TIPS

Become familiar with the Condominium Act and your Corporation's documents

- These set out all your responsibilities and powers

Attend educational seminars, including Canadian Condominium Institute courses and seminars

Read publications such as condominium industry magazines and blogs

Comply with code of ethics

- Boards should have a code of ethics and require directors to agree to be bound by the provisions

Maintain confidentiality

- Some board information should be kept in strict confidence

Prepare for, attend and actively participate at board meetings

- Inactive and unprepared directors are counterproductive

Use professionals as needed and rely on their opinions

- Do not "shop around" for preferable opinions
- Do not finagle the reserve fund study

Make the decisions that need to be made, even if controversial or unpopular (e.g. special assessments)

Seek approval for decisions where necessary

- **No approval required:** special assessments, budget, reserve fund repair or replacement, changes to the common elements which costs less than 1% of the budget
- **Approval required:** changes to the common elements which cost more than 10% of the budget
- **Notice required:** changes to the common elements which cost between 1% and 10% of the budget

- **Communication recommended:** changes to the common elements that do not represent significant cost, but that may be politically significant (e.g. pool closure)

Let the property manager manage

- Director's job is to supervise management, not micromanage

Listen to property management, other directors and owners

Communicate with owners in a timely fashion, especially with controversial issues

- Most common complaints from owners relate to communication and transparency
- Do not lie

Try to avoid litigation

- Litigation can be costly for both sides – even if you win, you are rarely fully recompensed
- Courts want to ensure that corporations act reasonably – there may be cost implications for those that do not

Ensure your by-laws and rules are up-to-date

- Good by-laws and rules are the most effective enforcement tools

Respect democracy

- Board members have a right to dissent on a vote, but the majority rules
- Present a unified board
- Do not go "rogue"

Remember that you are all volunteers

Conduct yourself with a view to the best interests of the corporation

- Try to avoid an "us vs. them" mentality
- Do not use director's position for personal gain

DIRECTOR'S DUTIES

s. 17(1) – Manage the property and assets of the corporation on behalf of the owners

s. 17(2) – Control, manage and administer the common elements and assets of the corporation

s. 17(3) – Take all reasonable steps to enforce compliance with the Act, declaration and by-laws

s. 119 – Owners and occupiers of a unit have the right to require that other owners and occupiers comply

Delegate day-to-day executive responsibilities to property manager, who works under the board's supervision

STANDARD OF CARE

A fiduciary responsibility to act in the best interests of the corporation and the owners as a whole (duty not owed to individual owners)

s. 37(1) - Objective standard of care

Acting honestly and in good faith

Exercising the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances

Actions may be compared against other corporations, not just other directors of your corporation

s. 40 - Free from conflicts

Directors have duty to disclose all conflicts, which should be reflected in minutes

s. 38 - Indemnification

Directors are not indemnified if they have breached the duty to act honestly and in good faith

- Directors and officers liability insurance will not cover those breaches
- s. 37(3) - Reliance on professional opinions
- Give all information required for professional to adequately assess the situation
- Base decisions on professional opinions



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Small But Mighty

**“WE BELIEVE IN THE
OLD FASHION VIRTUE OF
VALUE FOR MONEY. WE
UNDERSTAND CONDO
BECAUSE IT IS PART OF OUR
EVERYDAY LIVES AT WORK
AND AT HOME. AS BOARD
MEMBERS, CONDO OWNERS
AND CONDO LAWYERS WE
UNDERSTAND OUR CLIENTS’
NEEDS. WE’RE HIGHLY
EFFECTIVE, RESPONSIVE
AND AFFORDABLE.”**

LASH CONDO LAW

Practical Advice, Creative Solutions, Cost Effective

We are committed to helping our clients make informed decisions and create strategies to successfully resolve condominium issues.

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