



Email your questions or situations that you need advice on to editor@acmo.org. Or, if you prefer, mail your questions to the Association of Condominium Managers of Ontario, c/o Editor, 2121 Argentia Road, Suite 101, Mississauga ON, L5N 2X4.

Introducing “Dear ACMO”

Remember those popular advice columns “Dear Abby” and “Ask Ann Landers,” where anonymous readers would write in with their problems about work, relationships, life, etc.? Not only were they entertaining and insightful, but they made us realize that other people have the same issues and questions and that we were not alone with our problems. It touched many as we remembered the advice from something we read that helped us in our own situation.

We’re taking a page from Abby and Ann and are happy to introduce CM Magazine’s latest feature, “Dear ACMO.” An advice column where you can ask any question or share a difficult situation relating to condominium management anonymously, and we will endeavour to find an appropriate expert in the field and publish an answer with some advice. Ask the hard questions you may have been afraid to ask for fear of repercussions. Your full name or company will never be published or shared; just your first name or pseudonym, if you prefer.

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If you are a lawyer, engineer, auditor, or another expert in the condominium management industry and wish to be included in our panel of experts that we draw upon to give free advice, please let us know by sending an email to editor@acmo.org. To ensure transparency, your name and company will be published as the trusted source of the advice. Here is the first reader in need of advice:

Q: Dear ACMO,

I’m a new manager and owner of a small management firm with only one large condominium client at the moment. This is a well-established condominium community with a volunteer board. I recently found out that the previous manager had issues with this board and sometimes felt bullied. Some board members often threatened to fire her if she didn’t do what they wanted. The board eventually did fire her and ended the contract with the firm she worked for, and my firm was hired as a replacement. I am now experiencing the same high-pressure tactics by the bullies on the board. I feel they are pressuring me to overlook questionable activities. Although I remind them that we need to follow the laws of the Condo Act, and that if there is confusion, we should seek legal advice for clarity, the bullies on the board refuse to approve the expense and expect me just to follow their instructions. Even

the other board members are afraid of them and won’t speak up against them. I feel as if I cannot stand up to them for fear of being fired like the last manager, and with this being my only client at the moment, I can’t afford to lose the contract. How do managers deal with this? Is there any way bullies like this can be removed from a board? What are my rights if I refuse to go along with unethical practices and they fire me because of it?

Signed, Under Pressure

A: Dear Under Pressure,

We are sorry to hear about your circumstance, which is, unfortunately, more common than we would like to admit.

You are on the right side of the law in objecting to unethical practices. All board members owe a statutory duty to comply with the *Condominium Act* 1998, together with the declaration, by-laws and rules of the corporation [section 17(3)]. They are also required to act honestly and in good faith and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances [section 37(1)].

Stay Cool. The first thing to remember when dealing with a bullying board is always to remain calm and professional. No director has ever been persuaded by a manager who has lost their temper and become overtly angry and aggressive.



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Gently Educate and Encourage Professional Advice. Directors will rarely view their position on the board as an opportunity to breach the law blatantly. When questionable activities occur, it is usually because of ignorance of the rules or a reluctance to alter behaviour that has become customary. Gently remind the board about its obligations under the *Condominium Act* and the corporation's governing documents. To the extent there is any further resistance, suggest (as

you have) that the directors obtain an opinion from the corporation's relevant professionals – lawyers, engineers or auditors, as the case may be. Remind the directors that reliance on an opinion from a professional in this regard absolves them from any liability, which is in their best interest.

Communicate and Keep a Journal. If bullying behaviour persists, you should have a face-to-face meeting with either the bullying or the non-bullying directors (depending on your comfort

level) to advise them of your discomfort. Firmly tell them that the intimidating conduct has to stop. Encourage the board to write to the bullying director(s) to remind them that bullying behaviour is illegal and will not be tolerated. Keep an up-to-date journal of any bullying or harassing behaviour, including the date, time and place of any objectionable conduct, with as many particulars as possible.

When All Else Fails – Removal and Termination. Some corporations have by-laws respecting the qualifications and disqualifications of directors, including the requirement for directors to adhere to a Code of Ethics. A director who bullies management in breach of the Code of Ethics could be removed from the board by a majority of the board, depending on the wording of the by-law.

If your management contract is ultimately terminated as a reprisal for your complaints, you would have the right to sue the corporation and the bullying director(s) for damages. Regardless of what is written in your management agreement, the corporation must act in good faith when terminating the contract, which means that the termination should not be a reprisal for calling out bullying or harassing behaviour. In addition, to the extent that the bullying was related to an enumerated ground under the Human Rights Code (for example, sex), there could also be a successful application to the Human Rights Tribunal for general damages. The Tribunal has held that the term “with respect to employment” in the Human Rights Code covers a broad range of workplace relationships, including contractors. ■

Deborah Howden is a Partner in the Condo Law Group at Shibley Righton LLP. Her practice involves all aspects of condominium law issues, with a particular emphasis on human rights and labour and employment matters. Deborah is actively involved in the condominium community and frequently writes about condominium law topics. She teaches condominium law to managers and directors in-house at various conferences and management companies. shibleyrighton.com

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