



Open Communication versus Risk Management

By Laura Glithero



Communication has an important, and often underrated, role to play in conflict management. As many condominium managers already know, good communication is a key tool in resolving disputes and may even prevent disputes from arising in the first place. While transparency and open communication are important to help prevent and resolve conflicts, this must be balanced with the corporation's risk management processes to ensure that disclosures do not prejudice the corporation, breach confidentiality or disclose privileged information. Frequently where you can see these tensions between transparency and risk management is in the publication or distribution of the minutes of the Board's meetings.

There are several reasons for taking and recording minutes of your board meetings. The primary reason to take minutes of meetings is because it is required pursuant to the *Condominium Act* (the "Act"). A condo corporation can be penalized for failing to create minutes without a reasonable excuse (Barreto-Rivera v. MTCC 704, 2018 ONCAT 11). More importantly, minutes are needed to provide a record of what the Board decided and are used to protect the corporation and the board members from liability.

Good Communication Starts with Good Minutes

Board members are in a position of trust: they are making decisions about the condominium corporation's money and assets which impacts all

unit owners. Minutes are an important tool to communicate the context of the board's decision, but are not meant to be a verbatim transcript of the board meeting. Having said that, if minutes merely list the resolutions of the board, this may lead to disputes from unit owners who do not view the minutes as being the full or complete minutes of the meeting (see Berman v. YCC 99, 2018 ONCAT 2).

Good minutes should reflect the spirit of the discussion and, if a decision was not unanimous, the minutes should record which board members dissented, which abstained, and whether or not there was a conflict of interest. Ideally, the minutes should clearly demonstrate that the Board acted reasonably, in the best interest of the corporation, and without conflicts of interest. If a dispute arises, having

good minutes can help the board prove they acted in good faith and avoid personal liability for their actions.

From a communication perspective, minutes are an important tool to keep

corporation or the board, the condo corporation could be justified in denying the request (See *Bossio v. MTCC* 965, 2018 ONCAT 6), if the records requested were not core records.

having regard to the purposes of the Act ...” (emphasis added).

It may be challenging for the corporation to determine the sole purpose of the request because subparagraph 13.3(2) of the Regulation states that the person making the request “is not required to provide the corporation with a statement of the purpose of the request.” In fact, in the mandatory request form for records a unit owner must certify that the purpose of the request is solely related to that person’s interest in the corporation. Once the certification is made by the owner, it is up to the condo corporation to establish, on a balance of probabilities, that the owner is making the records’ request for purposes solely related to his interest as an owner, having regard to the purposes of the Act.

It is important to remember that records can play a dual role. Transparency and providing records to owners is an important communication tool to help prevent and resolve conflicts. This should always be balanced with the corporation’s obligation to act in the best interests of the corporation, including limiting the risks from the disclosure of privileged or confidential information. ■

Laura Glithero is a partner with Cohen Highley LLP in London. Cohen Highley LLP has offices in London, Kitchener, Chatham, Sarnia and Stratford. Laura provides risk management and regulatory compliance advice to housing providers and property management companies. Laura can be reached at glithero@cohenhighley.com or 519-672-9330 x 427. cohenhighley.com

As a best practice, anything that is privileged and confidential should be separate and clearly marked as “in camera” minutes. These minutes should be kept private.

owners informed about the steps that are being taken by the board and keep owners updated about the important work that the board is doing on behalf of all of the owners.

While transparency and proactive communication can play an important role in resolving or preventing disputes, condo corporations and managers must ensure there is a process in place to redact privileged and confidential information. As a best practice, anything that is privileged and confidential should be separate and clearly marked as “in camera” minutes. These minutes should be kept private.

How Much to Disclose when Records are Requested

As part of the condo corporation’s risk management practices, when providing records, condo corporations and condo managers should make sure that they ask themselves: what is the purpose for the request? For example, if the purpose of the request is to obtain evidence to support claims against the

Subsection 55(3) of the Act sets out the entitlement of unit owners to records of the condominium, including minutes of board meetings. This entitlement is designed to promote transparency. The right of a unit owner to the condominium’s records is not dependent on the owner’s good behaviour. However, the right to request records should not be used to obtain evidence against the condo corporation, including for actual or contemplated litigation. In fact, there are some express exceptions to the right to records established in the Act and in Ontario Regulation 48/01 to the Act (the “Regulation”) supports the corporation’s right to refuse records requested for this purpose.

Importantly, when responding to records requests, condo corporations should turn their mind to subparagraph 13.3(1)(a) of the Regulation. That provision requires that the request for records must be: “solely related to that person’s interests as an owner, a purchaser or a mortgagee of a unit, as the case may be,



Assessments, Restoration and/or Replacement:

Parking Garages | Exterior Walls/Balconies

Roof Assemblies | Windows

Reserve Fund Studies

Technical Audits

CONSULTING ENGINEERS

MomentumENG.com

Walid Habis, P. Eng

cell: 416.569.6300 | tel: 416.646.2283 | email: habisw@momentuseng.com

8-1445 Bonhill Rd. Mississauga, Ontario L5T 1V3

