

HOW TO HANDLE PROBLEMS WITH A CONDOMINIUM'S BOARD OF MANAGERS

Sometimes owning a condominium can present problems. Not only can your neighboring unit owners cause you concern, but the Board of Managers can be difficult to deal with, too. This pamphlet is intended to address the questions most frequently asked of the Attorney General's office by New Yorkers who live in the condominiums regarding problems with their Boards of Managers.

Q. I'm confused about how much power the Board of Managers of my condominium has. What can it do and what can't it do? Are there any legal standards it must meet?

A. Boards of Managers in condominiums have two basic legal obligations. The Board must follow the condo's internal rules (as set forth in the by-laws, the condominium declaration and the house rules). It must also exercise prudent business judgment in making decisions, just like any corporate board.

Q. Where can I find the condominium's internal rules?

A. Copies of the original by-laws and declaration (plus house rules, if any) can be found in the offering plan that was distributed when the building first converted.

Q. What if there have been changes in the rules since then?

A. Any changes should be contained in amendments to the offering plan. But if there are no unsold units in the building or if no units are being offered for sale, it is possible that the offering plan is not current and might not contain an updated version of the condo's documents.

Q. If I can't find an offering plan, where can I find the by-laws and declaration?

A. The Board of Managers is required by law to make copies of the declaration, by-laws, floor plans, and any rules and regulations available for inspection in its office.

Q. What kind of information is contained in these documents?

A. The by-laws, declaration and rules will set forth the following:

The powers and duties of the Board of Managers.

Dates when annual unit owner meetings and elections to the Board of Managers are held, and how notice is given.

The number of seats the sponsor can have on the Board of Managers and when the sponsor must give up control.

Whether unit owners have the right to call extra or special meetings (a very valuable right if you wish to ask the board to focus on particular matters).

The quorum for voting.

Sublet provisions although, generally, there are no restrictions.

How the declaration can be amended (including percentage required).

The method of adopting or amending rules.

The procedure for amending the by-laws.

The restrictions on the use of units and common elements.

The obligation to repair.

Pet restrictions, if any.

Q. If something isn't specifically addressed in these documents, can the board do whatever it wants?

A. No, there are legal restrictions. The Condominium Act is the New York State law which governs the establishment of condominiums. The decisions made by courts in cases involving the Condominium Act are the case law which interprets the statute.

Q. Where can I find a copy of the Condominium Act?

A. The Condominium Act is Article 9-B of the Real Property Law, which is published as volume 49 of McKinney's Consolidated Laws of New York Annotated ("McKinney's"). It can be found in law libraries, many lawyer's offices and in certain public libraries. Included in Article 9-B of volume 49 are brief descriptions of case decisions.

Q. What does the Condominium Act Provide?

A. Important provisions of the Condominium Act, and the sections in which they are found, include the following:

Requirement that unit owners comply strictly with the by-laws, regulations, resolutions, and decisions of the condominium. Failure to do so is grounds for a lawsuit for money due, damages, and/or an injunction by the Board of Managers or by an individual owner. (Section 339-j)

Declaration that the common interest appurtenant to each unit shall remain permanent, and subject to change only with the consent of all unit owners affected. Any such change would necessitate amending the declaration. (Section 339-i[2])

Provision that expenses will be charged to unit owners according to their respective common interests, with specific exceptions. (Section 339-m)

Copies of the declaration, by-laws, floor plans, and any rules and regulations shall be available for inspection in the office of the Board of Managers. (Section 339-q)

Contents of the by-laws (Section 339-v):

election of managers and terms (with at least one-third ending annually);

powers and duties of the board;

method of removing members of the board, election of the president, secretary and treasurer;

operation of the property, including hiring and firing of employees;

adoption and amendment of rules;

amendment of by-laws by at least 66 2/3% of unit owners;

restrictions on use of property (units and common elements).

Detailed records of receipts and expenditures must be kept by the board and made available to owners. A written report must be rendered annually. (Section 339-w)

Right to file a lien for unpaid common charges (may be exercised by any member of the Board of Managers). This is a key provision if a sponsor has defaulted on its payments. (Section 339-aa)

Q. What's the best approach when the Board of Managers is not complying with either the Condominium Act or the condominium's own declaration, by-laws or rules and regulations?

A. A unit owner should point out this lack of compliance in a tactful way, expressing the expectation that the matter will be corrected. Sometimes this is all that is needed to solve a problem.

Q. What if the board won't respond to an oral request?

A. You should write a letter to the board. It should be factual, brief and not hostile. Keep copies of any letters that you send, and notes of telephone conversations (date, time, who called whom, and the gist of the conversation) in case the matter is not quickly resolved.

Q. Should I do this on my own or get together with other unit owners?

A. An attempt to influence the board is always more persuasive if it is presented by a significant number of unit owners. If your problem is one that will affect others too, it is worth organizing the other unit owners. If you do, and the attempt to change the situation is not successful, the organized group can always seek to elect new managers at the next annual meeting.

Q. What if the board still doesn't respond to my complaint? Should I hire a lawyer?

A: If the situation is serious enough, you may want to retain a private attorney. However, the following should be kept in mind:

It is a good idea to select someone with experience in handling condominium unit owners' problems. You could begin looking for an attorney by talking with unit owners in your condo or other condos or with attorneys in other specialty areas. If this fails, you may wish to contact a local Bar Association for referrals.

Some lawyers will not charge for a single initial consultation or will charge only a minimal fee.

Most lawyers will attempt to resolve any matter through negotiation before considering litigation, as litigation is costly and usually lengthy. Litigation against the board of a condominium, people with whom one lives, can also be very unpleasant.

Q. How long can a sponsor control the Board of Managers?

A. Condominiums are generally established by a sponsor which files an offering plan with the Attorney General's office and then can sell condo units to the public. When the condominium becomes effective (established), the sponsor usually owns most of the units and thus controls the Board of Managers. In most cases the Attorney General requires sponsors to promise, in the offering plan, that they will give up their control of the Board of Managers after they sell over fifty percent of the common interest, or after five years have passed since the first closing, whichever comes first. This may not be true, however in a newly construction or vacant condominium where sponsor may control the board for a longer time.

Q. What does giving up control of the Board of Managers actually mean?

A. It means that the sponsor cannot designate or nominate the majority of the managers. But a sponsor is not prevented from voting its percentage of common interests for unit owners who have similar views, as long as the unit owners are not on the sponsor's payroll or otherwise given money by the sponsor.

Q. How can the Attorney General's office help me?

A. The Attorney General's office regulates the offer and sale of real estate securities (which includes condominium units) by the sponsor. If the sponsor of the condominium is still controlling the Board of Managers or is not keeping the commitments which it made in the offering plan, the Attorney General's office may intervene on your behalf.

Q. How should I contact the Attorney General's office?

A. Send a letter to: Real Estate Finance Bureau
 New York State Department of Law
 120 Broadway, 23rd floor
 New York, N.Y. 10271

We hope that the above answers have been helpful in figuring out solutions to problems with a condominium's Board of Managers. However, keep in mind that if serious problems arise, which the board is not addressing, such as a sponsor's failing to pay common charges on unsold units, it is important to act swiftly. Often such problems can be resolved, relatively simply, if unit owners organize and act right away.

Remember that members of condominium boards are usually other unit owners who are serving without pay. They generally want to resolve problems and keep peace in the building or development.

Good luck!

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Attorney General of the
State of New York

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QUESTION AND ANSWERS

**State of New York
Office of the Attorney General
Real Estate Finance Bureau
120 Broadway, 23rd floor
New York, N.Y. 10271
(212) 416-8121**

<http://www.ag.ny.gov/realestate/realestate.html>