

Condos Q&A

What to do when a valued board member moves out?

BY ROBERT NOCE, EDMONTON JOURNAL SEPTEMBER 17, 2014

Q: One of our board members has put his condo unit up for sale. Is he still allowed to sit on the board, or does he have to resign his position once his unit has been sold? Our bylaws state that a person must be an owner to be elected to the board. It also states that notwithstanding the above, at all times at least one of the members of the board must be either an owner or a mortgagee. Does this mean there is any leeway to keep him on? Can the board appoint him to fill a vacancy if he has to resign? He is an integral part of the team as treasurer and we do not want to lose him.

A: The Condominium Property Act states that at least two-thirds of the membership of the board of directors of the corporation shall be unit owners or mortgagees unless the bylaws provide otherwise. Your summary of the provisions of your bylaws on this issue does not help me answer your question. Without reading your bylaws, I cannot give you a definitive answer. You should seek an opinion from your legal counsel on retainer.

Helpful hint: People come and go on boards, and you will no doubt find someone capable to fill the position. As well, it is unlikely this person would want to remain on the board after he has sold his unit.

Q: We live in a bare land condo complex of 40 semi-attached units in groups of three or four units with a separate amenity building (clubhouse). The clubhouse is used for group functions, and individual owners can use the facility for their own private functions. At some of the private functions, alcohol is consumed. Can the condominium corporation be held liable if someone attending a private function consumes alcohol and is involved in a motor vehicle accident?

A: Possibly; this question would require a thorough analysis of the facts to give you a definitive answer. You may want to speak to your insurance agent about obtaining “social host” or other type of insurance to protect the condominium corporation. The additional cost to the corporation could be passed on to the owners who book the clubhouse for private functions in the form of a booking fee.

Helpful hint: Ask your insurance agent these types of questions every once in a while so as to keep coverage up to date with the condo corporation’s needs.

Q: Our condo building is 20 years old and in need of painting. Our recent vote, using 80 per cent affirmative required, fell short at 64 per cent in favour. The 64 per cent who supported the paint job now want to lower the acceptance rate to 50 per cent. What percentage is required to proceed with painting?

A: I do not understand why this issue went to a vote. Generally, painting (a maintenance issue) would be a board decision. One would have to review your bylaws to determine if there are any requirements or special rules that allow owners to participate and vote on this kind of issue. As well, there is nothing

under the Condominium Property Act that indicates that the threshold is 80 per cent for these types of votes. Is there something in your bylaws?

Helpful hint: Condominium corporations, through their boards, have a duty to maintain and repair common property and condominium owned property. It is incumbent on boards to make these types of decisions. Some of these decisions do not require the vote of the owners.

Q: Could you tell me why I would need a real property report (RPR) when selling a bare land condo unit?

A: Because you own everything within the property. The RPR, with a compliance certificate from the municipality, is needed for financing and to ensure that the building and other additions are within your property. You do not need a RPR when you are a selling a condominium unit in a low-, mid-, or highrise building.

Helpful hint: The need for a RPR is a distinction between a bare land condo unit and a traditional condominium unit. A bare land unit is described as a unit in a condominium plan by reference to boundaries governed by monuments placed pursuant to the provisions of the Surveys Act.

Robert Noce, Q.C. is a partner with Miller Thomson LLP in both the Edmonton and Calgary offices. He welcomes questions at condos@edmontonjournal.com. Readers are cautioned not to act on the information provided without seeking legal advice on their unique circumstances. Follow [Noce on Twitter](#)