



BOARD COMMUNIQUÉ

Riverside Gate II Condominium Corporation OCSCC 769

June 3, 2024

Message from the RG2 Board

A recent RG1 Newsletter included a message from their president, Debbie Bennett, on the responsibilities of a Board of Directors. RG1 had received legal advice on this topic and her message below includes the advice provided. Debbie has agreed that we can share her message with the RG2 owners. Our 2024 AGM is in June and there will be one vacancy; your Board believes this is a good summary of the role and responsibilities of a director for those considering putting their names forward.

The AGM is planned for June 26, 2024. If you are interested in serving, please feel free (if you wish) to approach Board members for their input and insights. We would be happy to discuss any questions you may have.

Please do not underestimate the rewards associated with giving back to our community! Many owners contribute to our community enhancing life at RG2. We appreciate all you do. Whether it is addressing the pigeon invasion, purchasing chairs and a bench for our front entrance, addressing emergencies, or replacing aging equipment, it is satisfying to review Board accomplishments knowing all the Board members were instrumental in the decision-making.

Your Board of Directors

Summary from RG1

Prior to joining the board as a Board Member, training is a requirement, and one quickly learns that rules are only relevant to the extent a vote is permitted under the Condominium Act of Ontario. That Act governs the conditions under which owners may be involved in decision making.

As always, the Act is nuanced but in simple terms, decision-making responsibility can be split into two categories – those where the board has an obligation to act unilaterally (aka has exclusive jurisdiction) and those where the Board has discretion to act subject to owner approval.

Looking first at the obligation to act unilaterally, under Section 97 of the Act, the Board of Directors has the exclusive authority and obligation to make decisions required to manage the affairs of the Corporation. It also has a duty to take all reasonable steps to ensure that owners and occupiers of units comply with the Act, the Declaration, the by-laws, and rules. Further, directors and officers are required to act honestly, in good faith, and to exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances. A director is a fiduciary and must not place her or his interests ahead of those of the Corporation. In



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understanding her or his obligations to the Corporation, a director will be deemed to be familiar with the requirements of the Act and with the provisions of the Declaration, by-laws, and rules.

This explains why the Board has exclusive jurisdiction to make certain decisions under the Act. Directors must meet the aforementioned standards of care under Section 37 of the Act. The standards of care are owed to both present and future owners as well as the corporation/property as a whole. Further, the directors are privy to an abundance of information that is not necessarily available to owners. Directors must make their decisions in the context of their unique knowledge, training, and responsibilities under the Act, and with regard to the interests of the Corporation as a whole, even if the decisions may conflict with the will of the majority.

Owners, on the other hand, have no similar duty or responsibility to the Corporation when they exercise their vote. Owners are perfectly entitled to vote in favour of their own interests, without any concern for the views of other owners, including future owners.

The exclusive authority of the board includes but is not limited to the following areas:

- Control, management and administration of the common elements and assets of the Corporation (sections 17 and 27);
- Enforcement of the Act, declaration, by-laws, and rules (section 119);
- Collection of common expenses, raising additional funds as needed to meet the obligations of the Corporation, and establishing a budget (section 84);
- Repair and maintenance of the common elements (sections 89, 90, and 97(1));
- Contracting for performance audits and periodic reserve fund studies (sections 44, 93, and 94);
- Maintenance of insurance;
- Ensuring that the common elements are reasonably safe and addressing any risks that may result in harm to persons or property;
- Attendance at meetings and management generally of the affairs of the Corporation on behalf of unit owners;
- Responding to requests for status certificates; and
- Responding to owner requests to review the records of the Corporation.

So, how does this work in practice? Let's say an owner wants a matter to be put to a vote of the owners, but the matter relates to one of the areas in which the Board has exclusive jurisdiction. The Board cannot allow the vote to go forward because the Board cannot accept the results of the vote if it thinks the results are not in the best interest of the current and future owners, and the corporation in general. Substituting a vote by owners for the exercise of its obligations under the Act would mean that the Board is delegating its exclusive authority, which is not permitted under condominium law. There are, of course, areas where the Board has authority to act but only subject



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to varying levels of owner involvement (depending upon the specific issue), including but not limited to the authority to:

- Borrow money to fund capital projects (as opposed to raising funds required through special assessment);
- Pass by-laws or rules for the purposes listed in sections 56 and 58;
- Change the common elements (as opposed to control, manage, administer, repair or maintain the common elements);
- Grant easements over the common elements.

Even in saying the owners have the right to pass a bylaws, there are a couple of necessary pre-requisites. First, the Board has to pass a resolution to present the bylaw to the ownership. If the Board doesn't present the bylaw to the ownership, there is no vote on the issue. The ownership cannot present a bylaw to the Board, or other owners. Obviously, if an owner wanted the Board to pass a bylaw or rule, he or she can raise that issue for their consideration or even request a straw poll on the issue, but the results would be for the purpose of providing information to the Board and would not be binding upon the Board.

This is the Reader's Digest version of a complex subject involving not only the wording of the Act but precedent that has been set in the past based on that wording. This article is not intended to provide a complete answer to every question raised with respect to potential motions and votes. However, it provides a flavour of issues within the exclusive jurisdiction of the Board and, in broad strokes, the decision-making structure under which we live.

One final note, which is less about the exclusive jurisdiction of the Board and more about voting requirements under the Act, is Section 47(8) which states:

No vote shall be taken at a meeting of owners on any matter other than routine procedure unless that matter was clearly disclosed in the Notice of the Meeting.

This clause is for the protection of all owners. It is intended to prevent a vote on a motion from the floor. The idea is that owners who chose not to attend a meeting should not be disenfranchised by virtue of the fact that they were unaware of a potential vote on an important issue, one for which they would have made themselves available to attend and/or provided a proxy, had it not been raised without their knowledge. In other words, no surprises are permitted when it comes to motions under the Act.
