

CONDO CONVERSATION CORNER: A VIEW & A VOICE

The extension to the deadline for AGMs along with the logistical considerations have spawned much discussion. Have you held your AGM, and if so, did you do it virtually or in person? How well did it go? We'd be interested in your lessons learned. If you want to contribute to the discussion, you can make a submission to cci-manitoba.ca/resources/condo-conversation-corner

ANNUAL GENERAL MEETINGS (AGMS)

The Province granted temporary relief for Condominium Corporation (CC) AGMs with a three month extension to the deadline in their Order 132/2020 <https://news.gov.mb.ca/news/?archive=&item=48161> in response to a request from CCI MB in May. In September CCI MB requested a further extension but at this time have not received a response.

A few topics pertaining to AGMs that have come up: meeting notice requirements, use of proxies, quorum requirements and virtual meeting format

1. Meeting Notice

Some of our unit owner members were concerned about the amount of notice they received for their CC AGM. The Order 132/2020 did specifically address minimum notice times and the MB Condo Act section 116 only specifies a minimum of 30 days notice if the CC is seeking written consent during the meeting, such as for a Declaration change. While your CC By-laws should explicitly define a minimum for the AGM notice, there may be some variation across all of the CCs in the Province.

For reference, a quick survey was done of other Provincial Acts and we found 10-14 days was common. Ontario had 20 days for the AGM notice plus a requirement for a 15 day pre-notice, allowing for submission of items for the agenda and director nominations (seems like a good idea).

If your CC does not meet the notice requirements in your By-laws, what recourse do you have, as a unit owner? In Manitoba we have no 'condo police' or regulatory body, whereas Ontario, which is much further ahead of us in terms of condo regulations, does have their Condominium Authority of Ontario (CAO) <https://www.condoauthorityontario.ca/about-us/services/> - perhaps we need something similar here too. Currently, the MB Condo Act has a clause 116(5) which states "A unit owner or unit mortgagee who attends or is represented by proxy at a meeting is deemed to have waived the right to object to a failure to give the required notice, unless the unit owner or unit mortgagee expressly objects to the failure at the meeting." but at least does have a section (Part 12) on Compliance and Dispute Resolution.

2. Proxy Forms

How much or how little detail is specified in the proxy form used by your CC? What steps are taken to educate your CC unit owners on how to properly fill out the proxy? There is some variation in the proxy forms used by CCs. Some leave the proxy appointee blank, so as to not influence the decision of the owner filling out the form. However, from a CC Director perspective, this can result in forms being submitted with the appointee field blank. Alternatively, the form could be filled out with a CC director's name, and without proper instruction on how to change the appointee name, it could be viewed as the current Board attempting to stack the deck so to speak. Another aspect of the proxy assignment is whether the unit owner is

wanting their proxy appointee to vote on matters as they, the unit owner desire, or as the appointee sees fit.

Manitoba and many other provinces make no mention of these practices and don't seem to have standardized proxy forms. Again, Ontario seems to be leading the way, with multiple variants of proxy forms (BC has a few too) and incidentally the CAO "strongly recommends against distributing pre-populated proxy forms" <https://www.condoauthorityontario.ca/resources/proxy-overview-and-sample-forms/>.

Manitoba and many other provinces have no specified retention periods for proxy forms, while a few have 90-180 days. Retention periods are useful if there is a dispute about voting outcomes at the AGM.

3. Quorum Requirements

Lots of questions on quorum have come up. The MB Act has good guidance on quorum requirements

- 117(1)(a) those unit owners who hold at least 33% or, if a greater percentage is specified in the declaration, that percentage, of the voting rights in the condominium corporation and are present in person or by proxy at the meeting; or
- 117(1)(b) if there are fewer than four units or four unit owners, those unit owners who hold at least 66% or, if a greater percentage is specified in the declaration, that percentage, of the voting rights in the condominium corporation and are present in person or by proxy at the meeting.
- 118(1) Adjournment "...if a quorum is not present within 30 minutes after the time specified in the notice".
- 118(3) "If, on the day to which the meeting is adjourned, a quorum is not present within 30 minutes after the time specified in the notice, the unit owners entitled to vote who are present in person or by proxy at the meeting constitute a quorum."

Emphasizing proxy usage is always a good practice to ensure quorum is met so as to avoid the additional expense associated with adjournments due to lack of quorum. It is also a good idea to point out to all unit owners that they can fill out the proxy form and revoke it when they show up to the meeting. That way, if they had intended to be at the AGM but something happened at the last minute, they still have their voting wishes respected and their absence won't affect quorum.

4. Virtual Meeting Format

MB Order 132/2020 specifically allows electronic/virtual meetings, regardless of whether the CC By-laws allow. The decision on whether or not to pursue the virtual option will depend on you CC and your unit owners. If all owners are tech savvy, the virtual option could work, but if many owners are not tech savvy or even lack computers or lack smartphones, then an in-person meeting (with social distancing and meeting protocols) would be the answer.

Voting can be a bit tricky for virtual AGMs, unless you use a voter software package or application, which could be pricey. Many CCs are emphasizing proxies to ensure quorum and if so, this can add to the complications of counting votes, depending on the type of proxy form used. For smaller CCs, vote counting can be easy, even in a virtual setting since it isn't that difficult to scan the computer screen to count raised hands for or against, or even use the 'raise hand' feature or the 'chat feature' within Zoom.

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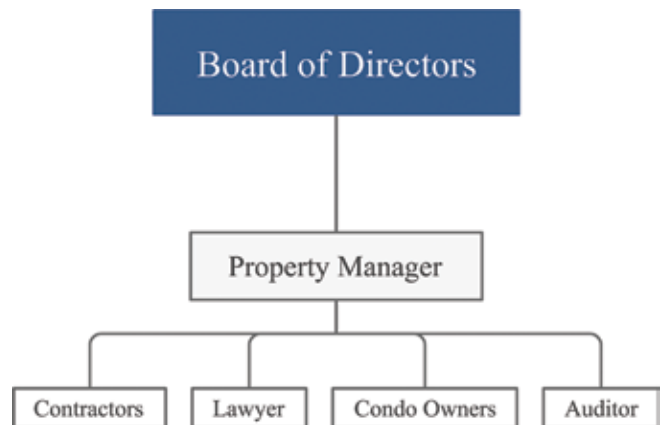
CC BOARD GOVERNANCE

There have been a few inquiries pertaining to Board behaviour and what an individual unit owner can do if concerned about it. The behaviours mentioned include a perceived lack of responsiveness to inquiries from unit owners, a lack of communication relating to maintenance of common elements and planned inspections, ignoring requests for copies of financial statements, directors not acting in a respectful manner with unit owners and a general lack of conformance to the by-laws. In one case, the difficulty of meeting the 25% ownership threshold to request a special meeting, especially in these covid times, and in another case a refusal to call a special meeting after receiving a request with the 25% threshold. Certainly a lawyer could be engaged, but how to cover the costs?

CCI MB Response:

Concerns such as these are often related to the amount and quality of communication between the Board and the owners. Regular communication in the form of meetings, newsletters, surveys are always beneficial to sort out many of the issues that come up in the governance of a CC. Another communication issue is whether unit owner suggestions, initiatives and offers of involvement are viewed as helpful or interference - again good lines of communication can prevent actions from being misconstrued or misinterpreted.

Another aspect to consider is whether all directors abide by a code of ethics, such as this one from CCI National <https://cci.ca/resource-centre/view/755>. Equally important though is to recognize that directors are volunteers trying to do their best and as such, all owners should follow a similar code of ethics.



Another thing to consider is the chain of authority - basically who works for who. This can be an issue if the Board lacks the will or the understanding to perform their role. Three sample CC organization charts are shown on these pages - which one do you think is correct, if any? Which one applies to your CC, if any?

CONDOMINIUM DOCUMENTS - DECLARATION, BY-LAWS AND RULES

A question came in from a unit owner asking how to assess whether "... *their CC documents were out of date*" and whether they needed to be updated with clarifications for the benefit of the unit owners. In this case, the CC was decades old and the documents apparently had not been updated. One of the issues raised is a minority of unit owners with inequitable access to common elements, while having to pay the same amount to cover the common expenses. Another issue is the lack of clarity in relation to maintenance responsibilities between the unit owner versus the CC. The decision on responsibility sometimes is based on precedence and sometimes based on an informal document of CC and unit owner maintenance responsibilities.

A few points to consider to answer the question about the documents being outdated include

- the documents certainly pre-date the MB Condo Act that came into force in 2015
- the documents likely don't have anything allowing electronic communication or virtual meetings
- how can a minority of the unit owners convince the majority to agree to a project to review and update all documents?

CCI MB Response:

Since the CC's documents predate the current version of the Manitoba Condominium Act (MB Condo Act) by a few



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decades, they are certainly outdated but whether they need to be updated is another matter. If the required changes to the CC documents are merely for “housekeeping” or cleaning up the wording, engaging a lawyer would probably not be a good use of the money.

One key aspect is to be aware of the documentation hierarchy and knowing the Condo Act has the highest precedence. In order of precedence the documents are

1. Manitoba Condo Act
2. CC Declaration
3. CC By-laws
4. CC Rules & Regulations
5. CC Policies

Recall also that there are approval requirements for amendments to the Declaration, By-Laws and Rules and that the requirements in the CC documents may be different than the requirements in the MB Condo Act (again, note the order of precedence). If the Board does not have a good understanding of their CC documents and of the MB Condo Act, they should probably obtain legal advice as to what the approval requirements are.

The MB Condo Act allows the CC’s documents to contain certain provisions which were previously not contemplated in the prior condominium legislation (such as the ability to fine or the right to remove a unit owner’s obligation to vote if they are in default of paying common expenses). The Board should review the MB Condo Act and consider whether it would be beneficial for their CC documents to be amended to provide for these provisions.

Outdated CC documents may still be usable but would require the Board to continually review the MB Condo Act as issues come up to see if it conflicts with the CC documents. However, in this case, the confusion over maintenance responsibility and the inequitable access to the common elements could warrant a documentation update project.

It is good practice for a CC to review their documents periodically, not only to assess them with respect to the

Condo Act but also to ensure they adequately support the operation of the CC - perhaps a review every five years or so would be a good practice. In addition, the Board of Directors individually should periodically review the documents, since they are responsible, directly or indirectly via the Property Manager, to follow and enforce the various rules and regulations. As well, unit owners should be familiar with the CC documents to govern their own activities.

In regards to the confusion over the maintenance responsibilities, precedence of prior activity should be taken into account to ensure consistency. For the CC in question, it should be possible to have a discussion amongst all owners to work through the various issues, come to an agreement, document them as a policy and have each owner sign off. Each owner could then keep a copy so that everybody knows who is responsible for what. This approach would avoid the cost of getting a lawyer involved but probably wouldn’t be practical for a large CC though, since the difficulty in achieving an agreement amongst owners increases with the number of the owners.

A trickier question for this CC is the inequitable access to the common elements. Do all owners contribute equally or equitably towards the common expenses and the reserve fund? If the answer is that there is indeed inequity and it is significant, it may warrant an update to at least the CC’s Declaration, unless some other informal agreement or policy can be worked out.

Related to these questions is the common theme of communication between the Board and the owners. Regular communication in the form of meetings, newsletters, surveys are always beneficial to sort out many of the issues that come up in the governance of a CC.

CONDO UNIT USAGE RESTRICTIONS

A question occasionally comes up in relation to commercial activities in a condo unit. While there are such things as commercial condominiums (such as in a strip mall) where commercial activities are clearly allowed, it is much less clear in a residential condominium setting. Besides the usual concerns about short-term rentals (such as AirBnB and ‘Ghost Hotels’), which was addressed in a recent CCI MB virtual Lunch and Learn) a recent inquiry came in asking “Can a condo owner operate a business from his/her unit in Manitoba?”

CCI MB Response:

The question of whether a unit owner can operate a business will depend on what the Condominium Declaration says. Assuming it says something to the effect that “the unit shall only be used as a single-family dwelling”, there is a strong argument that using the unit for solely a commercial purpose is in contravention of this provision. However, where the unit is being used as a home business, the answer is less clear. In that case it would depend on the specific language in the Condominium Declaration, the nature of the home business and whether such home business is permitted as a home-based business under the applicable zoning by-law. 🍁



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