



The Co-op & Condo Learning Center

Advice for the New (and Old) Board Member

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Know Your Organizational Documents

Co-Ops

- Co-op By-laws: Defines the shareholders rights and privileges as a shareholder
 - Consider Changes: Ex: Qualifications for being a board member; election procedures
- Co-op Proprietary Lease: Defines the shareholder's rights and privileges as a resident (i.e., tenant)
 - Consider Changes: Ex: Fines for violating leases; e-bikes; noise rules (exercise equipment); insurance
- House Rules: Rules for living in the apartment

Know Your Organizational Documents (cont.)

Condos

- Condo By-laws: Defines rights and obligations as a resident and as a unit owner
 - Consider Change: Who is responsible for certain maintenance and repairs; alterations
- Condo Declaration: Defines the unit (among other things)
- House Rules: Consider

Know Your Organizational Documents (cont.)

Co-ops and Condos

- Consider insurance issues and alteration requirements
- Read the Alteration Agreement
- Consider policies; if they are not in writing, consider adopting them as “official”
- Review last annual and last two years Board minutes

Fiduciary Duty

As a co-op or condo board member in New York, you owe legal duties to the cooperative corporation or condominium association and to all unit owners/shareholders.

1. Duty of Care

- Make informed decisions based on reasonable diligence
- Review documents, ask questions, and consult experts when needed
- Attend meetings regularly and participate actively

2. Duty of Loyalty

- Place the building's interests above your own
- Avoid self-dealing, nepotism, and undisclosed conflicts of interest
- Disclose and recuse where conflicts exist

3. Duty to Act Within Authority

- Follow the bylaws, proprietary lease (for co-ops), and applicable law
- Do not exceed powers granted to the board

Fiduciary Duty (cont.)

Confidentiality & Ethical Governance

- What Must Be Kept Confidential?
 - Legal matters (e.g., pending litigation or claims)
 - Personnel issues and staff performance
 - Resident complaints or disciplinary actions
 - Financial or proprietary information (e.g., contract negotiations)

Business Judgment Rule

Protecting Your Decisions with Process

To ensure the Business Judgment Rule protects your board decisions:

1. Be Transparent and Deliberative

- Record votes and rationale in minutes
- Consider input from managing agents or attorneys

2. Apply Rules Consistently

- Uniform enforcement is key (e.g., sublet policies, alteration approvals)
- Avoid selective treatment or targeting individuals

3. Rely on Expert Advice When Appropriate

- Especially for major repairs, legal disputes, or financial strategy

4. Respect Confidentiality and Ethics

- A leak or improper disclosure can undermine a protected decision

Reminder: Courts won't interfere if the board acts in good faith — even if owners disagree with the outcome

Business Judgment Rule

New York courts generally defer to board decisions under the *Business Judgment Rule* if the board:

- ✓ Acts in good faith
- ✓ Exercises honest judgment
- ✓ Operates within its legal authority
- ✓ Does not act for self-interest, discrimination, or malice

Implication:

Your decisions don't have to be perfect — just in accordance with the above guidelines

Responsibility of the Board

- Review (or create) Code of Ethics / Confidentiality / Conflict Policy
- Review of monthly management and financial reports
 - Board must review arrears and accounts payable
 - Board must review all paid bills
 - Buildings cash position and budget
 - Operating vs. Capital Reserves

Responsibility of the Board (cont.)

- Meetings
 - Regular meetings must be established at first meeting
 - Establish Board procedures: Agenda; Use of phones and emails; In person vs. virtual meetings
- Set and Communicate Corporate Policy
- Exercise Good Faith Business Judgment
- Avoid Conflicts and Even the Appearance of Impropriety
- Maintain the Value of the Units

Responsibility of the Board (cont.)

- **Handle the Finances**
 - Establish Responsibilities:
 - Who will work with the CPA?
 - Who will approve invoices to be paid?
 - Who will be on the bank account signature cards?
 - Investment of reserves
 - Invest in conservative instrument with no possibility of loss

Responsibility of the Board (cont.)

- **Establish procedures for reviewing applications**
 - Handling personal information
 - Disposal and retention
- **Establish procedures for interviews**
 - Board v. Committee
 - When to interview
 - What can we ask/not ask?

Save the Date

Co-op & Condo Learning Center

Summer Break

We'll keep you up-to-date when our
new schedule comes out



Thank you!



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