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Rep. Mike Lawlor

Dear Mike,

Over the 9 years I have lived here I became known as a trouble maker the reason being that I informed other owners of issues that I thought were problematic and I questioned issues that needed to be explained. . This past year I had 2 Board members come to my home and suggest that maybe I should move. This is not the way boards are supposed to operate.

I am listing some of my credentials that would make me a good candidate to serve on the board which I had done for 3 years. Unfortunately our board members chose to discredit me when I tried to stop them from destroying a conservation area on our complex. It was all downhill after that...

I am a Registered Nurse - graduate of Mount Sinai Hosp in N.Y.C. I am also a licensed Real Estate Broker and worked for Caldwell Banker for 10 years in Long Island. I also owned and operated a laundromat for 5 years and raised 4 children who have all become productive citizens . I have been married for 44 years to the same man. I have attended education sessions for 6 years to try to learn how condos work . Unfortunately our board was not receptive to the information I brought to them. I have also organized a group of condo complexes along the shore area and we meet to see if we can help each other. It is surprising to see how differently each board operates. Some are extremely responsible and others such as our are totally irresponsible. It is important to try to find out why..

When we decided to move to a managed community I assumed that anyone who served on the board understood and operated under the governing documents. How wrong I was. No one needs to do anything under the governing documents because there is no one in the state that owners can bring their complaints to. My only out is to go to an attorney who must first read my governing documents at a cost of about \$500. After that the charges run about \$200 to \$400 per hour. Most owners can either not afford it or choose not to spend their money for that. I have limited myself but I have had to spend quite a few thousand dollars to make our board and managers act responsibly. They actually announced to the owners that it was because I had hired an attorney that it was necessary for the condo to also hire one. What nonsense. If I had more money to spend I would have taken them to court a long time ago.

I am often told that it is up to the owners to let the boards know when they are displeased with their actions and vote them out. That's a little difficult to do when the board members cast the votes of the ballot proxies that are sent to the board. There are no term limits so board members can stay on year after year as they have done here. An owner who was the president of our board for many years served for about 8 years in total. He recently moved and when he resigned he announced to the owners that he had not followed the governing documents so owners had paid for many repairs that were actually limited common elements and should have been paid for by the owner who benefited from it. He also refused to have a notice and hearing to establish responsibility when a few owners decided to destroy a conservation area. He said that they couldn't act as judge and jury. So the board assessed everyone \$500 to pay for it to be restored. Nobody should be allowed to stay on a board for more than 3 consecutive years unless there are no other candidates. Otherwise the ones that are on the longest must retire and make room for someone new.

You must also be aware that people who move into managed communities do so because they are busy and either don't have the time to become involved or choose not to. Most owners have not even read their governing documents- - just ask Mike Lawlor. Today there are also many seniors living in these communities. They are busy trying to enjoy their retirement , addressing their medical needs or just think they don't have the credentials to serve on a board.

What exists today is an ideal situation for mismanagement of the community and their money by self serving board members and or controlling and incompetent managers. How can you justify giving owners from all walks of life the right to assess, collect and spend owners money without some protective oversight??

Did you know that:

Audits of the finances of managed communities do not need to be done regularly especially if there are less than 50 units. Our condo went for about 10 years until I put up my money. We found our manager was such a sloppy bookkeeper that some accountants refused to audit his books because it took so much longer to get his numbers in place.- as a result the budgets were wrong. He had also helped himself to a few extra checks. This has to tell you something about judgements that

uneducated boards make. Would you believe that after I was voted off the board that manager was rehired?? They fired him again after he once again helped himself to a few checks he wasn't entitled to.

There are 4 different governing documents that owners need to read in order to fully understand how their complex must be managed. Even attorneys have trouble interpreting some of the documents. How can you expect the average individual to read and interpret them??

Our complex requires that 75% of the owners vote against the budget in order to defeat it. A vote to pass an assessment requires the same 75% vote. That makes it extremely difficult for budgets or assessments to be voted down. Boards and managers learn to take advantage of this. Connecticut State Statutes say that a simple majority is all that is needed except if the Declaration states a higher amount as ours does. It's not to the advantage of the board or manager to amend that.

Our board recently passed an assessment for \$350000 and took a line of credit loan for \$425000. It was a very unfair vote but the board was given the proxies to vote and the questionable vote was passed. I had gotten 20 signatures of owners who had unanswered questions about the loan. Many individuals are not necessarily fiscally astute. The board had some discussion then moved quickly to the vote. There are no details addressed in any of the governing documents that mandate giving owners a full disclosure of the debt they will be put into by taking a loan and how the loan will be repaid so that every owner pays no more than his fair share of the assessment for which the loan is taken. Financial officers at the banks should bear some responsibility in advising all the owners of a complex about how the loan will be administered. And what kind of restrictions will be put on the complex. The loan commitment should be reviewed at a question and answer session prior to taking any votes.

Outside of executive meetings there should never be a meeting that owners are not allowed to attend. Our board has regular meetings that exclude owners. My question is what is it that the board doesn't want the owners to know??

Our board hired a new manager- they never interviewed anyone else- you can imagine how surprised I was when I decided to check his credentials because I didn't like his fast talking and found that his registration was expired and had been for 6 months because he filled it out improperly. Instead of thanking me they were annoyed that I had created a delay in doing some repairs.

I have included a copy of the powers and duties of the executive board from the Common Interst Ownership Act. Why would anyone expect that untrained individuals should be allowed to operate with those powers??

Thank you
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Notice of the meeting to elect directors must be given not less than ten nor more than sixty days in advance of the meeting. If the budget is to be ratified at the same meeting, Subsection 46(c) of the Act requires that the notice of meeting be sent not less than fourteen nor more than thirty days in advance of the meeting.

Subsection (b) meets the requirement of Subdivision 49(a)(3) of the Act that the "terms of office" be provided for in the bylaws. Under Subsection 46(b) of the Act and Article XXV of the model declaration, the executive board may not determine the terms of office of directors. Thus, this provision, as well as those provisions of the bylaws which are governed by Subsection 46(b) of the Act, may not be amended without the consent of the unit owners.

The term of office can be any length between one and five years pursuant to Subsection 33-448(d) of the Connecticut General Statutes. However, the annual expiration of at least one-third of the terms (meaning no term can exceed three years) is the old act requirement and was chosen as a reasonable provision. The terms could be set for any shorter period, at the unit owner meeting electing directors, so that more than one-third expire annually.

Section 2.2 - Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws, Rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- 2.2 (c) Collect assessments for Common Expenses from Unit Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees and agents other than managing agents and independent contractors.
- (f) Institute, defend or intervene in litigation or administrative proceedings in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Common Interest Community;
- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement and modification of the Common Elements.
- (i) Cause additional improvements to be made as a part of the Common Elements;
- (j) Acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property but Common Elements may be conveyed or subjected to a security interest only pursuant to [Section 55] of the Act;
- (k) Grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements;
- 3.2 (l) Impose and receive payments, fees or charges for the use, rental or operation of the Common Elements, other than Limited Common Elements described in [Subsections (2) and (4) of Section 22] of the Act, and for services provided to Unit Owners;
- X (m) Impose charges or interest or both for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of the Declaration, Bylaws, Rules and regulations of the Association;

- (n) Impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates required by [Section 71] of the Act or statements of unpaid assessments;
- (o) Provide for the indemnification of the Association's officers and Executive Board and maintain Directors' and officers' liability insurance;
- (p) Assign the Association's right to future income, including the right to receive Common Expense assessments;
- (q) Exercise any other powers conferred by the Declaration or Bylaws;
- (r) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;
- (s) Exercise any other powers necessary and proper for the governance and operation of the Association; and
- (t) By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

COMMENT: This Section grants to the executive board virtually every power granted to the association under Subsection 45(a) of the Act necessary to administer the community. Subsection 46(a) permits all these powers to be delegated by the association to the executive board. The draftsman should note that the powers included in Subsections 2.2(b), (g), and (p) are subject to limitations contained in the declaration.

Subsection (t) provides for the power to establish committees of directors, a power implied by the general powers given to the executive board and granted through Subsection 49(a)(4) of the Act. However, a committee should be delegated only administrative activities within specific limited authority granted by the executive board. For instance, an architectural control committee may be given the authority to regulate architectural changes within limitations adopted by resolution of the executive board. A social committee may be given the authority to administer the social program within the budget and guidelines adopted by the executive board.

"Notice and an opportunity to be heard" under Subdivision 45(a)(11) is not defined as to procedure. Section 24.2 of the model declaration contemplates that the hearing may be held by the executive board, a committee, or an officer or the manager. The party proposing to take the action, however, must be fair and impartial, and may be subject to rules of fundamental fairness. See *Michaels v. Galaxy Towers Condominium Association, Inc.*, Superior Court of New Jersey, Chancery Division, Docket No. C19283 Aug. 3, 1983; *Cohen v. Kite Hill Association, Inc.*, 142 Cal. App.642 (1983). *Sterner v. Saugatuck Harbor Yacht Club*, 450 Conn. A.2d 369 (1982).

Section 2.3 - Standard of Care. In the performance of their duties, the officers and Directors of the Executive Board are required to exercise the care required of fiduciaries of the Unit Owners, if appointed by the Declarant, and ordinary and reasonable care if elected by the Unit Owners.

COMMENT: See Subsection 46(a) of the Act.