# Enhancement of Director Disclosure

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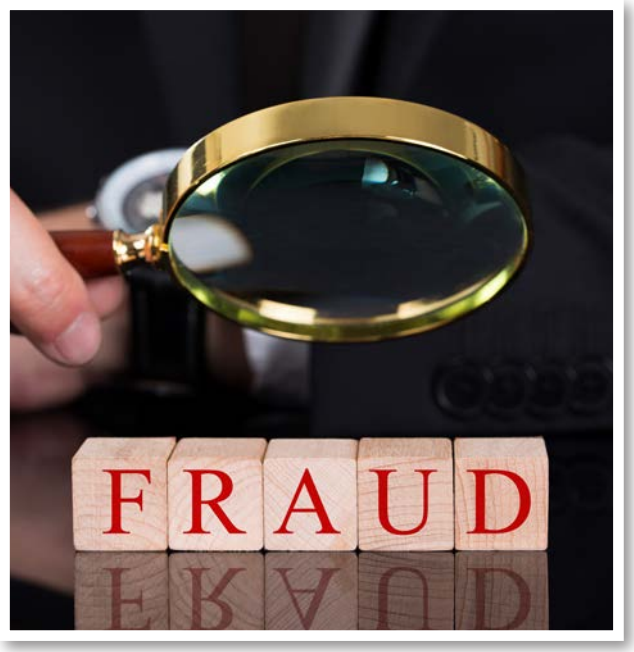


**"If you tell the truth, you don't have to remember anything." – *Mark Twain***

The first reaction most of us have when told that we need to reveal potentially sensitive personal information is to tell the person to, in so many words, mind their own beeswax. The problem is that when you are a director of a condominium corporation, your beeswax can impact the condominium corporation in untold ways and is, therefore, no longer, necessarily, your own personal concern. Director disclosure can mean the difference between a condominium corporation making the right decision for the condominium and making the right decision for a director; the former is the goal, the latter can constitute fraud.

Existing director disclosure and conflict of interest requirements in the *Condominium Act* (the "**Act**") are, to put it bluntly, next to useless. Currently, directors are required to disclose a material interest in a material contract (whatever that means), and even then, only when that material contract is considered by the Board. This standard requires no further disclosure to fellow Board members or to owners – no listing of why they are interested in sitting on the Board, what their goals are for the condominium, whether they are in conflict with the condominium – and can lead to unexpected, protracted, and costly litigation when true motives are uncovered.

Take, for example, the decision of *Skyline Executive Properties Inc. v Metropolitan Toronto Condominium Corp. No. 1385*, 2002 CarswellOnt 5670. In that matter, Skyline owned a number of units at the condominium and was involved in the short-term rental business. This was contrary to the condominium's declaration which prohibited such arrangements. Skyline made several attempts to get elected to the Board and, as the condominium corporation alleged, was attempting to get on the Board to block the enforcement of this provision. As the Act was drafted at the time, Skyline was not required to make any disclosures prior to running for the Board regarding its material interest in the running of the condominium, nor was it required to disclose its interest in the ongoing litigation. With the director disclosure changes in the Act, this kind of situation is not necessarily prevented, but the new duties of disclosure would have required Skyline to make voting owners aware of the conflict before running for the Board.

There are four main points of disclosure required under the new Act:

1. Whether the individual, their spouse, child, or parent, is party to any legal action where the condominium corporation is also a party;
2. Whether they have any direct or indirect interest in a contract or transaction to which the corporation is a party; and
3. Whether they have been convicted of an offence under the Act within the 10 years preceding their candidacy;

4 Whether they are in arrears of their common expenses for sixty (60) days or more.

As you may have guessed from the language above, this disclosure needs to happen in advance of announcing an intention to run for the Board. When the pre-notice for owners' meetings or the AGM goes out calling for candidates for the Board, make sure that the pre-notice highlights the fact that disclosure needs to be submitted along with candidacy/biographies. This will ensure that when the notice of meeting goes out, disclosure goes out along with the names of the candidates. Candidates need to know: **no disclosure = no candidacy!**

In the event that you have someone announcing their candidacy at a meeting, rather than in advance, that does not exempt them from the disclosure obligations; they will simply need to make their disclosure at the time of the announcement, whether orally or in writing. This, of course, begs the question about the person who actively and/or forcefully solicits proxies for their election to the Board without announcing their candidacy through the Notice of Meeting. This person would only be required to make their disclosure in person at the meeting and not in advance – the way the Act is worded, this would be legal, but seems to skirt the objective of these changes, which is to give advance notice of potential conflicts so that voting owners can make informed decisions about who to vote for. If the disclosure is made orally at the meeting, it would be best to ensure that someone is recording the disclosure and retains it for future reference so that it can be proven that disclosure was, in fact, made and what the contents of that disclosure were.

There is also the issue of appointed directors. These individuals are not exempt from disclosure. Where they are appointed prior to their first Board meeting, the appointed director must submit their disclosure in writing. Where they are appointed at their first Board meeting, the disclosure can be either orally or in writing. Although, again, it would be prudent for the Board to record the fact and contents of the oral disclosure for future reference.

But the disclosure obligations don't end there. Disclosure obligations for a Board Member are ongoing and continue to apply for the duration of the Board Member's term. Specifically, when there is a change of information that falls under the disclosure obligations, a Board Member has to disclose that information either within thirty (30) days of becoming aware or at the first Board meeting to occur following becoming aware, whichever comes first. This information must be provided to the Board in writing.

Unfortunately, these disclosure obligations do not apply to Board Members elected or appointed prior to November 1, 2017. **However**, disclosure obligations do apply if the same person runs for a subsequent term or is subsequently reappointed.

So, what does all of this mean? It means that owners will have a better idea of who they are electing; it means that fellow Board Members will understand the interests and history of their colleagues; it means that unscrupulous individuals seeking a spot on the Board will have a harder time getting there; and it means that someone who wants on the Board just to award a contract to a relative has to broadcast that information to the community. Ultimately, it means a more transparent and open community, where dirty laundry shouldn't stay hidden for long.

Disclosure can feel invasive to the person revealing information about themselves, but if you've done nothing wrong, you've got nothing to hide. And to the person receiving the disclosure, the information can be invaluable in ensuring that the right person (and not just the loud person) gets on the Board. ■

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