

UNLAWFUL INSTRUCTIONS FROM CHAIR OR CONDOMINIUM BOARD

Purpose: To explain what is considered unlawful instructions by a condominium corporation Chair or board and how a condominium manager must respond.

This Information Bulletin applies to condominium manager brokers, associate brokers, and associates.

Condominium managers are required to abide by all legislation applicable to condominium management, including the *Real Estate Act*, the *Real Estate Act Rules*, the *Condominium Property Act (CPA)* and its regulations, the condominium corporation's bylaws, privacy legislation, human rights legislation, and all other applicable legislation.

What is considered unlawful instructions?

Anytime a condominium corporation, its chair, or a director gives a condominium manager direction to do something that is contrary to any law, and in particular legislation specific to condominium management, that would be considered unlawful instructions.

Inform the condominium board

Should a condo manager believe they have been given unlawful instructions, they must inform the condominium board of the issue and why it is believed to be unlawful. This would include providing the applicable legislation, rule, regulation, or bylaw, along with an explanation as to how it applies to the specific situation.

Should the board choose to continue with an action the condo manager believes to be unlawful, the condo manager must document their concerns, in writing, and provide it to all the members of the board.

Resolving the unlawful instruction

When there have been unlawful instructions that the board is not willing to resolve, the condominium management brokerage must make a decision as to how the condo manager and brokerage will proceed. Depending on the type of breach/unlawful instruction, providing the written warning to the board may be sufficient. In more serious situations it may lead to the condominium management brokerage terminating its management of the corporation.

Examples: The following are examples of different situations that would be considered unlawful instructions:

Unequal application of bylaws to unit owners—A board is responsible for the enforcement of their corporation’s bylaws. There may be circumstances when the board decides to vary the application of a bylaw. However, there may be situations where the condominium manager has serious concerns when the board directs the manager to take action the manager believes to be a breach of the bylaws. The condominium manager must then document their concern in writing to all the board members.

Reserve Fund—There are many issues that can arise because of a board not following the requirements of the *CPA* regarding reserve funds. Condominium managers are expected to advise the board of the requirements under the *CPA*, the Regulations and the condominium corporation’s bylaws. The issues could be related to:

- Having a reserve fund study completed within the required timelines
- Implementing the reserve fund plan
- Accumulating funds to meet the requirements
- Proper expenditure of the funds for uses approved as per the *CPA* and the Regulations

If after the condominium manager advising the board on these issues, the board decides to go ahead with what the condominium manager believes are actions that are a contravention of the legislation, the condominium manager must express their concern in writing to all the members of the board.

Board meeting minutes—Discussions and decisions at board meetings are normally recorded in minutes and would usually be approved at the next board meeting. The minutes would then be available on the record for unit owners and other interested parties. Minutes are the official record of the corporation’s issues and decisions. The lack of approved minutes is sometimes a problem. This can create issues from a good governance point-of-view, and it causes serious issues for unit owners selling their units, as it causes problems for potential buyers doing their due diligence. The condominium manager must advise the board of the importance of transparent and accurate board meeting minutes, and if it is an ongoing issue the condominium manager must put their concern in writing to all board members.

Receipt of Contributions—Board instructs the condominium manager that condo fees must be by electronic funds transfer (EFT), but the bylaw states that funds can be paid electronically or

by cheque. The manager must inform the board that the bylaw allows for payment of fees by cheque. If the board wants to restrict the form of payment, the bylaws would have to be amended by the owners. Until that change takes place the manager must accept both EFT and cheque payments.

In summary, condominium managers cannot condone or be silent when a condominium corporation directs them to act unlawfully. They must decline to follow unlawful instructions. The condominium manager must notify a condominium corporation's board of their concerns, and if they are not prepared to change their decision, the manager must ensure the concern is made known to all the board members in writing. A condominium management brokerage must, at some point, decide how long they are prepared to work with a condominium corporation that is okay with breaking the law or being willfully blind to unlawful activity.

Related Information

[Real Estate Act Rules: 80.84 \(e\)\(f\), 80.88\(b\)\(h\)](#)