



*FLS Educational Seminar, Lunch and Learn*

# ELECTING AND MAINTAINING THE BOARD OF DIRECTORS

Presented to EJF Real Estate Services, Inc. | October 2025 | Brian R. Fellner

# Prologue: The Legal Framework

- What is a Board really asking when they say “is this legal?”
  - Do our documents allow for it (and does that document provision comport with all relevant laws)?
  - Is there a statute that allows or prohibits this?
  - Has a court issued a binding case dictating the outcome here?
  - If none of the above, what is your opinion on how this case would turn out if litigated in our jurisdiction?

# PART I: Requirements of the Board



**DC Condo Act  
Requirements for a  
Board of Directors**



**Common Bylaw  
provisions regarding the  
Board of Directors**

# DC Condo Act Requirements

- “Executive Board” shall mean an executive and administrative entity, by whatever name denominated and designated in the condominium instruments to act for the unit owners’ association in governing the condominium.
- Any lack of compliance with this chapter or the condominium instruments shall be grounds for an action to recover damages or injunctive relief, or for any other available remedy
- The decisions and actions of the unit owners’ association and its executive board shall be reviewable by a court using the “business judgment” standard. A unit owners’ association shall have standing to sue in its own name for a claim or action related to the common elements.

# Common Bylaw Provisions

- Chosen by developer until certain triggering event
- Elected by Unit Owners at an annual meeting where quorum is met
- Odd number of directors
- Must be Unit Owners
- Staggered terms
- Officers are usually distinct from board members
- Can be removed for cause by Unit Owner vote
- The Board fills vacancies by appointment until either a special election is held, or the vacated term expires

# Board Procedures

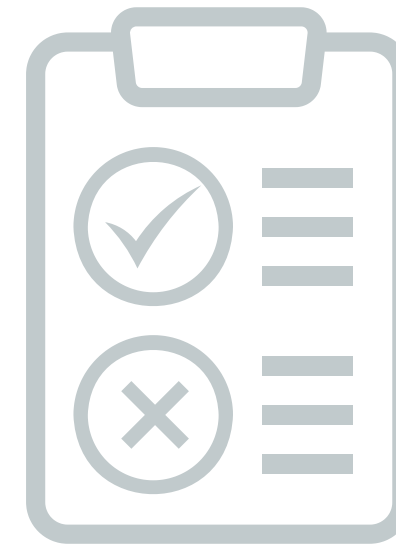
- Hold an initial organizational meeting
- Vote on your officers
- Obtain board training
  - Educational materials from CAI
  - Board training from CCOC
  - Vendors or trusted resources
- Work with management
  - Delegate
  - Liaison
  - Meetings



## PART II: Powers and Duties



**Duties of Board**



**Power to Create  
Rules**

# DC Condo Act Requirements

- **(a)** Except to the extent expressly prohibited by the condominium instruments, and subject to any restrictions and limitations specified herein, the unit owners' association shall have the:
- **(1)** Power to adopt and amend bylaws or rules and regulations;
- **(2)** Power to adopt and amend a budget for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;
- **(3)** Power to hire or discharge a managing agent or other employees, agents, or independent contractors;
- **(4)** Power to institute, defend, or intervene in litigation or administrative proceedings in the name of the unit owners' association on behalf of the unit owners' association or 2 or more unit owners on any matter that affects the condominium;
- **(5)** Power to make a contract or incur liability;
- **(6)** Power to regulate the use, maintenance, repair, replacement, or modification of common elements;

## DC Condo Act Requirements Cont'd

- **(10)** Power to impose on and receive from individual unit owners any payment, fee, or charge for the use, rental, or operation of the common elements or for any service provided to unit owners;
- **(11)** Power to impose a charge for late payment of an assessment and, after notice and an opportunity to be heard, levy a reasonable fine for violation of the condominium instruments or rules and regulations of the unit owners' association;
- **(12)** Power to impose a reasonable charge for the preparation and recordation of an amendment to the condominium instruments, a statement concerning the resale of units required by § 42-1904.11, or a statement of an unpaid assessment;
- **(13)** Power to provide for the indemnification of officers or the executive board of the unit owners' association and maintain liability insurance for directors or officers;
- **(14)** Power to assign the unit owners' association's right to further income, including the right to future income or the right to receive common expense assessments to the extent necessary for the reasonable performance of the unit owners' associations' duties and responsibilities, unless expressly prohibited in the condominium instruments;
- **(14A)** Power to reasonably restrict the leasing of residential units; provided, that any restriction described under this paragraph shall not apply to a unit that is leased at the time of any action taken to restrict the leasing of residential units until the unit is subsequently occupied by the owner or ownership transfers;

# Common Bylaw Provisions

- Restrict leasing
- Prohibit nuisance
- Regulate parking
- Create rules for use of common areas
- Enforce architectural guidelines

Wherever possible, the Board should use its rule making power to create specific rules on each topic



## Court of Appeals Case Law

- Although the governing body of a condominium has broad authority to regulate the internal affairs of the development, this power is not without limit. To determine whether the governing body of a condominium has properly exercised its rule making authority, courts consider whether the action taken was within the legal powers granted the governing body by relevant statutory or condominium document provisions.
- Except to the extent expressly prohibited by the condominium instruments, and subject to any restrictions and limitations specified herein (specifically highlighted provision of Condo Act)

## Court of Appeals Case Law Cont'd

- In assessing the reasonableness of condominium regulations, courts have scrutinized both substantive and procedural aspects of such rule making. In reviewing the substance of condominium regulations, courts have sought to determine whether the action taken was within the legal powers granted the governing body by relevant statutory or condominium document provisions.
- Courts have also examined the substance of condominium regulations to ensure that they bear a relationship to the "health, happiness and enjoyment of life of various unit owners."

## Court of Appeals Case Law Cont'd

- Courts have analyzed the substance of condominium regulations to determine whether they have an unfair or disproportionate impact on only certain unit owners.
- Judges have also scrutinized procedural aspects of condominium rule making, seeking to determine whether unit owners had notice of the governing body's authority to regulate in the area at issue.

## Court of Appeals Case Law Cont'd

- Finally, courts generally find regulations unenforceable where the board failed to follow the procedures mandated by applicable condominium documents in promulgating regulations.
  - Example: attempt to ban pets through promulgation of regulation invalidated where condominium documents require that restrictions on use of units be implemented through amendments to bylaws
  - Example: denial by homeowners' association of authorization to build prefabricated home invalidated where wrong entity acted on application, and applicant was not given timely notice of reasons for denial
  - Example: assessment invalidated where Board failed to follow proper procedures
  - Counter-example: parking regulation reasonable where appellants received notice of special association meeting held to discuss the regulation, expressed their views, and voted on proposal

## PART III: New Maryland Rules



**Maryland Senate  
Bill 758 / House  
Bill 1534**



**Effective October  
1st, 2025**

## Independent Parties Requirement

- Maryland Associations must now have their elections conducted by “independent parties”, who are not candidates in the election and do not have a conflict of interest regarding any candidate(s) taking part in the election.
- Community association managers of many associations will **not** qualify as independent parties.

## Independent Parties Definition

- Independent parties include qualifying unit or lot owners, property management that is owned by the Association, and third-party vendors or commercial technology platforms.
- Unit owners and lot owners can qualify as independent parties, so long as they comply with the remaining requirements of Condo or HOA Act, do not campaign or electioneer for any candidate(s), and are not subject to the objection of more than twenty-five percent (25%) of the unit or lot owners who are eligible to vote.

## Limitations on Charges for Books and Records

- The recent legislation also amends the Condominium Act and the Homeowners Association Act to prohibit associations from imposing charges on an Owner for examining the financial statements or the meeting minutes of the association in person, or for requesting and receiving them electronically.
- Maryland Community Associations may only impose charges to review or copy the books and records when the review or copying occurs out side of normal business hours or is requested without reasonable notice.

# Questions & Contact



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