

Beware of Building Politics

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It seems to happen year after year after year: An entrenched board refuses to hold elections or annual meetings.

At one such co-op with the same board members "for almost 20 years," writes a shareholder, a meeting finally was scheduled for the first time in four years. "There was no list of nominees provided," the writer says. "We called management, [who] said they would only tell us who the nominees are at the meeting. Right after the meeting was scheduled, a group of people asked to be nominated for the board. Management is preventing these people from being included on the ballot."

Moreover, the person writes, management will not provide a list of shareholders - even though management itself "has been in contact with many of them and is collecting proxies for their candidates." The shareholder wants to know what his or her options are.

A couple do exist, though neither is easy, notes attorney Rob Braverman, a principal at Braverman Greenspun. Since the co-op is now having a meeting, he says, that wipes out the transgression of not having done so for several years. "While certainly it was not good practice or in compliance with the governing documents not to have a meeting for five years," Braverman says, "it appears [the board has] cured it. They're having a meeting."

How can shareholders force the board to call a meeting? "You present a written petition to the secretary of the corporation, signed by a denominated percentage of shareholders, usually 20 percent," Braverman says. What if the board ignores that, like it has ignored other legal requirements? "Then it becomes a little trickier," the lawyer concedes. "What I would suggest is that there be a grassroots effort to force the board's hand: It's harder for the board to ignore a petition signed by 50 or 60 percent of the shareholders than to ignore one signed by 20 percent."

And shareholders are entitled to fellow shareholders' names in order to attempt this, he confirms: "Under the Business Corporation Law, a shareholder does have a right to review the record of a corporation's existing shareholders - i.e., names and addresses." Though the statute does not address condominium associations, courts have ruled that the same applies in the context of annual elections, he adds.

Braverman says that when he prepares a ballot for an annual election, he leaves blank spaces - so shareholders can write in names, regardless of what the board puts on the ballot.

The attorney is particularly troubled by the idea of a managing agent actively soliciting proxies for anything other than a quorum. "Because now," he says, "they're interjecting themselves into the politics of buildings. Any professional should remain apolitical."

If all else fails, there is always the court option - which, surprisingly, has a silver lining for shareholders.

"You can bring a 'derivative action,' where a group of shareholders is basically standing in the shoes of the corporation, because the board is not doing the right thing," Braverman says. "And this is one of the few instances where you can actually recover attorney's fees. The theory is, you're doing what the board should have done, and if you undertake that obligation you shouldn't have to be out-of-pocket for it."

- Frank Lovece
