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# Understanding Fiduciary Duty For Co-op and Condo Board Directors

*By Mark L. Hankin, Partner, Hankin & Mazel*

Serving as a board director entails a range of obligations, and it's not uncommon for newcomers to underestimate the scope of their responsibilities. Individuals are drawn to board positions with varied motives, ranging from personal interests to community objectives or concerns about finances. However, despite their eagerness to contribute, most new board members are unaware of the depth of their obligations until they step into their roles.

**Bigger budgets.** A common challenge facing new directors is the realization that campaign pledges may not align with the realities of governance. Promises to keep maintenance flat often collide with the financial complexities and legal constraints of managing a co-op or condo. There may be five, seven, nine, or even 12 board members and the budgets for buildings run into millions of dollars. The days when co-op budgets were $100,000 are long gone. Now it's in the millions. And these funds, entrusted to the board, must be used to reflect the collective interests of the community rather than any individual agenda. *(cont. below)*

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**A code of ethics.** Providing a code of ethics to new board directors can help explain the relationship they have with other shareholders. It helps clarify the faith and trust placed in them by members of the condo or co-op. It’s impossible to mandate new board members signing a code of ethics, but it can be recommended. Under the Business Judgment Rule, the courts largely tend not to interfere with decisions made in good faith within the scope of the board’s authority. However, each year board members must declare any conflicts of interest. The statute is clear about this: Any act done in self-interest, which could be considered to be a conflict, must be disclosed. This might be a contract a board member was involved in where some type of compensation was received. Self-dealing, unfortunately, does occur, and if there’s a breach of fiduciary duty, the board member may face a lawsuit holding them individually and personally responsible for money damages.

**Governing documents.** Reading the bylaws for the building is an important starting point for new board directors. If the building is a co-op, board members should also be familiar with the proprietary lease. If it’s a condo, read the articles of organization and the declaration. These documents spell out what a board member is supposed to do and what they are not supposed to do. It’s very important for those on the board to recognize they are making decisions for the whole community.

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