



Armstrong
Teasdale

AT ACADEMY: CO-OP AND CONDO LAW SERIES

Modernizing Organizational Documents – Co-ops

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What are the Organizational Documents?

- Certificate of Incorporation
- By-laws
- Proprietary Lease
- House Rules

Certificate of Incorporation

■ Required Contents:

- Name
- Purpose
- County of Office
- Number of Shares
- If there are classes (e.g. preferred shares – not permitted in Co-ops)
- Duration
- Designation of Sec. of State for service of process (and the address of who the Sec. of State should send a copy)^{***}
 - Make sure that the person or company receiving the mail from the Sec. of State is correct. Often, its an old Management Company.

Certificate of Incorporation (con't)

- Certificate may include:
 - Exculpation of Directors
 - Eliminate or limit the personal liability of directors for damages for a breach of duty in such capacity, unless action or judgement was in bad faith, involved intentional misconduct or a violation of the law, or he/she personally gained a profit or advantage in violation of the law.
 - Cumulative Voting
 - If quorum or vote of shareholders is more than majority (on Stock Certif. too)
 - “Any other provision relating to the business of the corporation,... its rights or powers, or the rights of powers of its shareholders, directors or officers”
Note: Anything permitted in the By-laws can also be inserted into the Certificate
 - Voting Restrictions
 - Law requires “consents” (rather than a vote) by all shareholders. Consider allowing consent by the same number needed if at a meeting, and NOT all
- **Note: Amending the Certificate - vote of Board, then a majority of all shares**

By-laws

- Basically outlines rights and obligations of the shareholders
- Date of Meeting
- Notice of Shareholders Meeting (10/40 days ... 10/60)
- Method of Giving Notice (electronic)
- Number of Directors
- Indemnification of Directors and Officers
- Note: Amendment by majority of Shareholders voting OR Board if so provided in Certificate or By-laws

By-laws (con't)

■ CONSIDER CHANGES IN THE FOLLOWING:

- Quorum (min. one-third)
- Method of Nominations and Election
 - Prior to Meeting (not from floor)
 - Meet the Candidates Night
 - Voting Electronically (NEW!)
 - Note: Specifying Proxy Form NOT permitted
- Qualifications of Directors
 - Arrears, years as shareholder, etc.
- Staggered Board
- Removal by Shareholders NOT for “cause”
- Filling vacant seats on the Board
- Committees
- Permit Notice of Board Meetings by Email

Proprietary Lease (a/k/a/ Occupancy Agreement)

- **Use Provision**

- Business (Home Occupation)
- Relatives (does “and” mean “or”)
- Guests
- Subletting

- **Legal Fees**

- **Fines**

- **Insurance**

- **Alterations**

- **Environmental Liabilities**

- **Note: Amendments typically supermajority...but check**

House Rules (a/k/a Rules and Regulations)

- **Smoking**
- **Noise**
 - Alterations (sub-floor)
 - Musical instruments
 - Carpet Rules
 - Padding
 - Location
 - Under furniture or exercise equipment
- **Stairwells**
- **Lobby**
 - Playing, Loitering
 - If professional, no waiting
- **Consider whether the provisions should be in the Lease**
- **NOTE: Changes in the House Rules are solely in the Board's discretion**

The Politics of Change: How Best to Do It

- **Let the Shareholders be part of the process**
 - Informational Meetings
 - Perhaps there will other ideas
 - Allows Board to take the temperature of voters
- **Presentation of changes**
 - Send around a black-lined version of proposed changes
 - There's a danger of distributing a full black-lined document
- **One vote for all of the changes vs. voting for each change**

Final Word

- **One Document not discussed: the Alteration Agreement**
 - This too should be reviewed!
- **As with any important legal document, review the Organizational Documents every few years.**
- **Especially important when laws change or new laws are enacted (e.g. Smoking Policy, Electronic Voting).**

Contact



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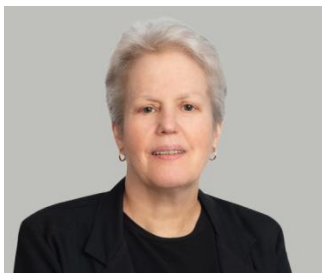
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