



AT Academy: Board Practices and Policies

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Document Retention

- **Certain files must be kept by a cooperative housing corporation or a condominium to:**
 - document its actions and legal relationships,
 - pursue or protect itself in litigation,
 - ensure compliance with federal and state laws and regulations, and
 - resolve disputes.
- **A cooperative or condominium is not required to keep documents forever. Different types of documents should be kept for different periods of time depending upon:**
 - their topic,
 - any legally required retention period, and
 - the statute of limitations for litigation to which they may relate.
- **Associations should create a Document Retention Policy that identifies:**
 - the types of documents that should be maintained,
 - the number of years documents should be maintained,
 - where the documents will be maintained,
 - who should be the custodian of the documents, and
 - how documents should be disposed.

Document Retention (Continued)

- **Records to Retain Permanently**

- Corporate, Organizational Papers
- Minutes
- Alteration Agreements
- Stock records
- Property records
- Certain tax and financial records
- Certain employment records

- **Record to Retain at Least Seven Years**

- Certain shareholder/unit owner files
- Expired leases or satisfied loan documents
- Certain tax and financial records
- Certain employment records
- Expired contracts, warranties and insurance policies
- Accident reports and claims (settled cases)

Use of Emails

- Use of email address solely for Board business
- Emails as forming a contract
- Emails for Board discussion
- Emails for Board votes

Confidentiality

- **Tremendous conflict between “openness” (i.e., transparency) and the fiduciary responsibility of the board**
- **Most board meetings are not open to the unit owners / shareholders**
- **Maintaining apartment owner’s privacy is essential**
 - Non-payments or late payments
 - Applications to purchase or sublease
- **Sensitive issues may be discussed**
 - Potential maintenance/carry charges increases
 - Capital project
- **Issue of half-truths being leaked**

Confidentiality (Continued)

- Open Board meetings
- Updates/newsletters/distributing minutes
- Confidentiality agreement
- Code of Ethics

Books and Records

- **Shareholders in a cooperative corporation have a statutory right to a corporation's:**
 - shareholder meeting minutes, and
 - a shareholder roster.
- **Unit owners in a condominium are entitled to:**
 - the records of receipts and expenditures arising from the operation of the condominium, and
 - the vouchers authorizing the payments.
- **Common Law rights**
- **Check By-Laws/Proprietary Lease**
- **A corporation may refuse a shareholder access to the foregoing books and records where the request is desired for a purpose other than the business of the corporation**
 - A bona fide claim of corporate mismanagement supports shareholder's demand for access to a corporation's books and records
 - Assessing a corporation's financial condition, investigating management conduct, and obtaining information in aid of legitimate litigation are proper purposes
- **There is no right to conduct an overly broad inspection supported only by speculation**

Purchaser Applications

- **What information should be required**
 - Cooperative v. condominium
- **Social Security Numbers**
- **What rules and policies should be stated in the application materials**
- **Board review**
 - Hard copy
 - PDF
 - Web-based program
- **Board member notes**
- **When should a Board request additional information**

Conflicts

- **Definition:**

- Voting on an issue that may benefit you or your family.

- **New York State Law**

- BCL 713 – No contract or transaction between a corporation and one of its directors (or the director’s company) is void or voidable just because of this “conflict” if the material facts as to the directors’ interest is disclosed and the board approves the transaction (without counting that director’s vote).
- Note: the conflicted director(s) can be counted for the quorum.
- Note: if the votes of disinterested directors are insufficient to constitute an act of the board, a unanimous vote of the disinterested directors is sufficient.

Conflicts (Continued)

- **BCL 727 – Each director must sign a statement annually disclosing a list of all contract voted on by the board (with names amounts and purpose); which directors were present and how they voted; and the dates of each vote and the date the contract would be and remains valid.**
- **Voting? Discussion?**
- **Use of Committees**
- **Create a policy**

Continuing Legal Education Credits – Code Word

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- Code Word: **PRACTICES**



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