

A condominium association is required to have bylaws. The bylaws contain the rules for self-governance, including how the association's board of directors is elected, how they will guide the affairs of the association, the manner in which the association will administer policies, and so forth. The bylaws will also cover such matters as requirements for meetings, voting, preparation of the association's yearly budget, and the determination and handling of assessments. Given the importance of bylaws to the condominium association's governance, the below are the "must haves" and several "should haves" for every association's bylaws.

### I. Must Haves

The Pennsylvania Uniform Condominium Act ("UCA") states that the bylaws of an association must provide for: (1) the number of members of the executive board of the association, and the titles of the officers of the association; (2) the election by the executive board of a president, treasurer, secretary, and any other officers of the association; (3) the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling any vacancies; (4) which powers the executive board or officers may delegate to other persons or to a managing agent; (5) which of the association's officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and (6) the method of amending the bylaws.

Frequently, an executive board is comprised of no less than three and no more than seven individuals. The election of members of the executive board should be held at the annual meetings of the association. The term of office of any executive board member can be fixed at will, but generally should not extend beyond three years.

Although there are various avenues by which the bylaws can outline the manner someone will

be qualified to be a member of the executive board, one popular method is by means of a nominating committee. The president of the association can appoint a small nominating committee, which will select one to two persons eligible and willing to serve for each vacancy. A list of individuals would then be submitted to the president at least one month prior to the election and sent to the unit owners with the notice of such annual meeting. Additionally, the bylaws can also state that a unit owner may submit a candidate to the secretary for consideration as an executive board member along with a nominating petition signed by at least three unit owners, together with a statement that the person nominated is willing to serve.

Because an association will frequently engage the services of a professional management company to oversee the day-to-day affairs of the community, it is important to note in the bylaws that the executive board may employ a managing agent. Typically, a managing agent will have all of the powers of the executive board, except that he or she cannot: (1) adopt the annual budget and any amendment thereto or to assess any common expenses; (2) adopt, repeal, or amend rules and regulations; (3) designate signatories on the association bank accounts; (4) borrow money on behalf of the association; (5) acquire and mortgage units; (6) allocate limited common elements; and (7) change unit boundaries.

The bylaws should only be modified or amended by a vote of unit owners present in person or by proxy constituting a majority of the votes entitled to be cast at any annual or special meeting of the association. The bylaws should state that notice of any proposed amendment and the purpose thereof must be given in writing to all unit owners in advance. However, if any amendment is necessary in the judgment of the executive board to cure any ambiguity or to correct or supplement any provision of the

bylaws that is defective, missing, illegal, or inconsistent the bylaws may set forth that the executive board can implement an appropriate corrective amendment without the approval of the unit owners.

## II. Should Haves

Subject to the provisions of the condominium declaration, the UCA states that the bylaws may provide for any other matters the association deems necessary and appropriate. One area that the bylaws should address is the condominium's yearly budget. Before the end of each year, the executive board must adopt an annual budget for the association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair, and replacement of common elements, and the cost of wages, materials, insurance premiums, services, supplies, and other related expenses. The budget must also include reasonable amounts as the executive board considers necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements.

It is also appropriate for the bylaws to set forth the manner in which the association will collect common expense assessments. The executive board can calculate the monthly assessments for general common expenses against each unit by multiplying (1) the total amount of the estimated funds required for the operation of the property set forth in the budget by (2) the percentage interest allocated to each unit and dividing the result by (3) the number of calendar months in a fiscal year. Assessments should be due and payable on the first day of each month, and pursuant to the UCA, will be a lien against each unit if unpaid. The bylaws should also set forth the procedure to be followed for collecting assessments. For example, the executive board or the managing agent can be required to take prompt action to collect any assessments due

from any unit owner which remains unpaid for more than 30 days from the due date for payment. Any assessment not paid within 15 days after its due date can accrue a late charge in the amount of five percent of the overdue assessment.

Bylaws also generally discuss issues regarding community maintenance. The association will agree to perform inspections and maintenance required either in the bylaws themselves or in a separate maintenance manual. In addition to periodic maintenance, each unit owner should be required under the bylaws to immediately notify the association if he or she believes any maintenance may be required. When necessary maintenance is required for any equipment, the same shall be carried out by the association. The bylaws should attempt to reduce third-party liability for maintenance issues. Specifically, if required maintenance is not carried out in a timely manner, neither the developer, architect, or the installing contractor, should be liable for any damage to or malfunction of any such equipment or systems or for any damage or injury to any property or person resulting from such event. Such liability shall be solely that of the association, and the association will indemnify the aforementioned parties as to all costs, expenses, and liability related thereto, including reasonable legal fees and costs.

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**The KWBH real estate attorneys are available to answer questions or assist with legal matters related to condominiums or any other real estate matter.**

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