

Mutiny on the Bounty Or In Our Case, The Board

Now you've given your last command on this ship. We'll be men again if we hang for it.~

Lt. Fletcher Christian-Mutiny on the Bounty

Over the many years that I have practiced condominium law, I have received numerous phone calls from irate unit owners who want to remove some or all of their board of directors. The reasons are all over the board (no pun intended). “They are power hungry”, “They are crooks”, “They have no idea what they are doing” “They want to implement a special assessment”, and on and on. If you have a reason I have heard it. My answer to these irate owners is always the same. You have every right to try and remove a member of the board but make sure you know the process and what is required. Therefore, I figured now that the holiday season is upon us, why not share my pearls of wisdom and help share Yule time greetings by letting everyone know the legal way to conduct a revolt in your condominium corporation.

The most important thing you need is a majority of the owners in the corporation to agree with you. This is the crucial point to keep in mind, if you decide to take the necessary steps to do your best Che Guevara impersonation and lead an uprising. There is a procedure that must be followed under the Condominium Act, 1998 for a member of the board of directors to be removed. Therefore, before an owner even attempts to become Louis Real, they must do their homework and see if there is enough people in the Corporation that share their angst and frustration with the member of the board, so much so that they are willing to vote in favour of a removal by executing a proxy or showing up at the duly called meeting and casting their vote. If you are a solitary voice, don't waste your time because you will not succeed. If you do not achieve this number, there is no point in calling a meeting and it will simply be a waste of time. So my first piece of advice to these confederate wannabes is to go door to door and conduct an informal straw vote to see who else shares your displeasure. This initial homework will at least tell you if you have a fighting chance at succeeding in your revolution. If you are confident that you have the votes and the support, then you are ready to launch the necessary steps in your coup d'etat.

The first step is to requisition the Board to call a meeting. This is set out under Section 46 of the Condominium Act. Under Section 46, you must obtain 15% of the unit owners in the

corporation to requisition a meeting. The owners will sign a requisition which states the nature of the business to be presented at the meeting and has to be delivered or sent by registered mail to the president or secretary of the board, or to be served at the address of the corporation. Since you are removing one or more members of the board of directors, Section 46(3) specifically states that for the purposes of removing a member of the board of directors, you must state the name of the director, the reason for the removal and whether the director occupies a position on the board that is an owner occupied position. Once the board is in receipt of this requisition, they are required under the Act to add this item to the agenda for the next general meeting, or they must call a meeting of owners within 35 days of the receipt of this requisition.

If the board does not comply with this requisition because they feel that their demise is imminent and that they are simply going to be voted out, the Act states that the requisitionist can call the meeting of owners which is to be held within 45 days from the date that the meeting is called and the corporation will have to reimburse the requisitionist for the costs incurred in calling the meeting.

The notice must be sent to all the unit owners stating that the purpose of the meeting is for the removal of one or all of the board of directors and for the reasons for the removal.

The notice will also contain a proxy. As the leader of the revolution, you may want to photocopy the proxy so that you can go door to door to get as many proxies signed so that you will guarantee the requisite number of votes to complete your revolt. You will also want to ensure that the proxy is properly prepared and completed. In addition, I would also recommend that you are prepared to elect new members to the Board and their names are filled in on the proxy, prior to the owners executing the proxy. Once again, it is crucial that the proxy is completed properly. The last thing you want to happen is give the chairperson at the meeting a reason not to honor the proxy or declare it invalid, which will only lead to further problems.

On the return date of the meeting, the meeting will be called to order. At that stage, the votes will be counted and if the majority is obtained the director(s) shall be removed. Since there is a vacancy on the Board, at that meeting, the owners may elect another person to replace the

member of the board that was removed. It is crucial that the mutinous group have a candidate ready in the wings. The Proxy that will be sent around will allow the owners to write in the name of the replacement candidates. The last thing you want is for the removal of the director to be successful and then to only have the same director run again at the meeting and be re-elected. If the proxies are silent as to a new director then they will not be counted at the time of the re-election. I have seen the situation where one director is removed and the same director runs again because there was no one ready to replace him/her.

As you can see, the organization of a rebellion is not an easy task. Louis Real and Che Guevera had their problems to overcome. The owners in a condominium corporation have similar hurdles in terms of obtaining the necessary numbers. This requires the necessary reconnaissance to be completed in order to assure the rebellious faction that they have the necessary quota to complete their mutiny. Also, keep in mind that if a rebellion fails, the incumbent directors will be strengthened in their victory and they will be under the impression that they have an even stronger hold on the corporation because a majority of the owners want them there. That may create more animosity in future dealings with this particular board. As Captain Bligh said in "Mutiny on the Bounty" "I'll live to see you - all of you - hanging from the highest yardarm in the British fleet". So, a move like this should be considered carefully to make sure that you have your ducks in a row before you take any steps to shoot them.