Coping With UNQUALIFIED — OR — UNDERPREPARED Board Members: Basic Strategies For Boards

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UNDERPREPARED... May Be A BETTER TERM TO USE.

It is no surprise that boards, as volunteer organizations, may one day have a new member who may not have the optimal preparation for their new role as a board member. Boards often wonder what they can do to help get a new member, or an old member, up to speed on what they need to know to become a great board member.

Some board members may still share a common misconception that there is a minimum set of qualifications that are necessary to be a good board member. Illinois does not require any by law and there is no similar “licensing” provision for board members as there is for property managers. Most declarations and bylaws define the sole qualification for directors as ownership. Illinois law requires no particular schooling, coursework, or other qualification for a board member except for ownership. Therefore, the term “unqualified” does not necessarily apply to association board members.

When drawing from a volunteer pool many associations often look for availability and willingness to serve as the most desirable qualifications. However, at a minimum, a director should read the declaration, the bylaws, the rules and regulations, and peruse the applicable state act such as the Illinois Condominium Property Act or Illinois Common Interest Community Association Act. Surprisingly, these go a long way to help prepare a director.

There are also many resources available from industry groups, property managers and law firms that can help to prepare board members further, including continuing education opportunities, legal handbooks, and even forms. These sorts of materials can help many underprepared board members get some background experience and familiarity with the major concepts of community association boards.

Underprepared board members can exhibit some common signs, including frustration, lack of interest and a sense of stress when they feel “over their heads.” If a board member often states, “why are we doing this?,” “what is this for?,” or “why don’t we just do it the easy way?,” then chances are they may be missing some familiarity with key background information or a key document in the association’s history.

Some underprepared board members may avoid meetings, refuse to participate in discussions or become disruptive out of frustration. Fellow board members should take the time to reach out to a troubled board member and ask them what they need in order to improve their experience, whether there are any questions, or what historical or background information might be helpful to improve that member’s experience. It is important to do this in a supportive way rather than an accusative way. Saying, “I think you’re a problem board member” likely guarantees a defensive or offended response. Whereas, “I noticed you had a question about what our bylaws require for owner meeting notice. Did you see this section in the Bylaws in Article III?” is likely to come across better. Regardless of how you do it, it is important to engage as soon as possible.

No volunteer wants to hear that they are not doing their unpaid job correctly or that they need to spend more time on their unpaid service. It is never a bad idea to suggest that all board members read a refresher guide or revisit prior opinion letters to keep their knowledge up to speed. Other more experienced board members may consider mentoring a newer board member—sitting by them during meetings and answering questions. Surprisingly, small efforts can go a long way.

Another effective strategy is working closely with a property manager, especially for smaller or self-managed associations. Managers make a huge difference in the business operations of an association and take much of the burden off of board members. Managers help to streamline the process by noticing meetings, assembling bids and handling bookkeeping, freeing time for decision making.
What About Difficult Board Members, Whom No Preparation Can Help?

Eventually your board will have one difficult board member who cannot be pleased, cannot remain cordial or cooperative in meetings and simply will not engage in the process with productivity and politeness in mind. Usually, association bylaws allow unit owners to vote a board member off of the board. Unfortunately, many bylaws reserve this right for the unit owners and do not allow the board members to remove someone. If no productive conversation can be had with the difficult board member and no tactful approach of helping or educating works, it may be time to consider a popular vote. Though there are other means available under Illinois law to remove board members by court action, usually the cost of proceeding to court is prohibitive unless the association is at grave risk.

When Is A Board Member’s Preparation Too Much For The Role?

A difficult board member may be the most prepared board member at the table. This is a common problem with board members who draw on their personal experiences in the extra-association world. Often, board members will be interested in serving on a board if they have relevant professional experience, such as lawyers, building professionals and accounting professionals. This is a wonderful thing because it can bring excellent perspective to board discussions. However, Illinois law is clear that boards should rely only on qualified professionals in their respective industries in order to be safe and avoid potential claims for improper board activity or breach of fiduciary duty. Board members are insulated generally to the extent they rely on qualified professional opinions when carrying out their duties. This is why you ask a plumber to fix your clogged drains and ask for legal opinions when interpreting your governing documents.

For overqualified board members, this can be frustrating because they want to share their professional insight to help the community run well and the board function effectively. It is important that your overqualified board members understand what Illinois courts prefer to see. Illinois courts have ruled that just because a board member is a lawyer does not entitle that board member to render a reliable legal opinion to interpret the association’s governing documents, unless they are a qualified community association lawyer. The professional has to be qualified in the community association field for their professional insight to be a reliable professional opinion on which you can rely. To put it bluntly, don’t ask your association’s lawyer for an opinion on your trees and don’t ask your landscaping contractor for an interpretation of your bylaws. Though they are both happy to give their opinions, their opinions would not necessarily be reliable professional opinions.

The bottom line to remember is that difficult board members come in many different forms, from the underprepared first-time board member, to the over-prepared professional. Boards should remember that these members are, just like their fellow board members, volunteering their time for everyone’s mutual benefit. If you have a problem board member, talk to them and find out what you can do to help, and be cautious to address your concerns tactfully.

Key Considerations And Takeaways:

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