

# BRICK UNDERGROUND

APRIL 3, 2013 - JESSICA COHEN, EXECUTIVE VICE PRESIDENT, DOUGLAS ELLIMAN IN THE NEWS - By Tripp Whetsell

## 10 ways to be an awesome board member



The recent racial discrimination lawsuit between longtime African American resident Alphonse Fletcher Jr. and two board members at the legendary Dakota co-op sent a major wake-up call to the estimated 40,000 unpaid volunteers who currently serve on co-op and condo boards throughout the city. Among other things, it opened up the door to personal liability for board members in certain types of lawsuits.

The case also signifies what a slippery, if not treacherous, slope the job can often be to navigate even at the best of buildings.

"While the vast majority of co-op and condo boards members are able to do this successfully, it's obviously not possible all the time," underscores Mary Ann Rothman of the Council of New York Cooperatives and Condominiums, a non-profit membership organization for co-op and condo owners.

If you're thinking about running--or already serve on your building's board--follow these suggestions for a smoother tenure that (hopefully) won't end in a courtroom:

### 1. Do it for the right reasons

"Do not use your position as a board member to seek preferential treatment with regard to privileges, exemptions from building policies, etc.," says co-op and condo attorney Robert Braverman of Braverman Greenspun.

Co-op and condo attorney Jeffrey Reich of Wolf Haldenstein Adler & Herz agrees: "A lot of times what inspires people to run in the first place is that they want permission to do something even if it's not what everybody else wants."

Indeed, the experts we spoke to overwhelmingly say this is the number one board no-no.

Board members have a legal and ethical responsibility to put the needs of a building above their own. That means you shouldn't sign on unless you plan to play by the rules and not try to bend them to your own advantage.

"It could be anything from installing a washing machine in their apartment to having a playroom in the basement because they have small kids, and what ends up happening is that they'll get on the board and fight for their one issue, but not otherwise fully engage," Reich says. "The biggest thing a board member should never forget is that their responsibility to the building should always override their

own needs."

In many instances, agrees co-op and condo attorney Aaron Shmulewitz of Belkin Burden Wenig & Goldman, "the only reason people run for the board is to watch out for their own private interests, which is a recipe for disaster. It's also a blatant breach of their fiduciary obligation to the other shareholders."

### 2. Avoid conflicts of interest

This is another major occupational hazard, though not one as easily defined since conflicts of interest can mean just about anything.

The most common example is when either the board member or their family and friends have a related business, and the board member tries to influence the board to help them win a lucrative service contract for the building.

While such overtures may sound innocent enough at first, the potential for problems can be enormous, especially if the job isn't done right.

Conflicts can also pop up when real estate brokers serve on the board. Co-op and condo attorney Steve Wagner of Porzio, Bromberg & Newman recommends that brokers re-use themselves if a client's application comes up for approval.

"Legally you may not have to, but it's generally a good idea to do so if you're a broker," Wagner says. "Not only is there a direct conflict because of the commission involved, but sometimes it can affect sales because other brokers may shy away from doing business in the building if they think they aren't getting a fair shake."

### 3. Never accept gifts or special treatment

While the largess of others is one of the biggest temptations you'll face as a board member, "don't do it under any circumstances," admonishes Wagner.

"No special benefits, no gifts, no nothing," he says. "It's called self-dealing and it's about the worst thing you can ever do. Just say no and if you can't, then you shouldn't be on the board."

The same holds true when it comes to getting special privileges like moving to the front of the list for a space in the garage or getting a storage locker when it isn't your turn. For one thing, it automatically sends a signal that your co-op or condo board is corrupt. For another, if word gets out it will breed resentment among your neighbors.

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## 10 ways to be an awesome board member *continued*

### 4. Don't act like a tyrant

As with accepting gifts and seeking special treatment, if you have a quick temper, or are one to hold grudges, it's another sign that you probably aren't well-suited to serve on your co-op or condo board.

"Board members should never use their position to retaliate against other neighbors, especially when it's something minor and not a direct violation of the house rules," says Wolf Haldenstein Adler & Herz's Reich, noting, "It's easier said than done because these are people's homes and things can get very personal, but as a board member you have to exhibit a healthy dose of common sense and self-restraint so that you don't end up crossing the line."

And while "it is okay to agree to disagree," says Braverman, "you should always do so in a professional manner. Disagreements between board members should stay in the board room," he says, and you should "never disclose confidential information or discuss grievances in public."

What's more, Braverman says, exercise extreme caution when it comes to e-mail because you never know when or where it may resurface.

### 5. Make the rules, but don't try to enforce them

You'll also need to hold back when it comes to telling others what to do.

"It's the responsibility of the board make the rules, but beyond that it's the managing agent who should ultimately make sure they are carried out," says Mark Levine of property management firm Excel Bradshaw Management Group, who cites noise, pets and illegal renovations as among the most frequent troublespots.

"Always have the managing agents take care of any infractions so that everybody is doing their rightful part," he says. "Doing so also minimizes the chances of any animosity between the board and other residents."

### 6. Steer clear of staff issues

Similarly, you should also never try to intervene on behalf of your building's staff, no matter how long they've worked there.

"When a staff member thinks they can go to the board, it undermines the authority of the management," says Michael McCabe of Douglas Elliman Property Management. "Instead, a board member should always tell them to talk to the chain of command, which means either the managing agent or their union shop steward."

"But," McCabe adds, "anytime there's a serious staff issue that comes up before the board, don't jump to conclusions. Get all sides before you make a judgment."

### 7. Do unto others

"Even-handed treatment is critical," says Excel Bradshaw's Levine. "Favoritism should not be applied in any situation and all of your constituents should be given the same fair treatment as their neighbors would."

Likewise, says Braverman, "Do not engage in any form of discrimination based on age, gender, race, creed or anything else when it comes to performing your duties, including the approvals process."

### 8. Don't overpromise

Be honest when it comes to telling other residents what you can and can't do.

"You have to level with them when they make requests for things," says broker Brian Morgan of Citi Habitats. "There's a ceiling to what board members can do and the best way to handle these situations is to remain upbeat without overpromising."

### 9. Keep the competition in mind

While every building is different and each board has the right to set its own individual polices, broker **Jessica Cohen** of Douglas Elliman also cautions against taking things to the extreme.

"Board members need to constantly keep themselves informed about what other similarly priced co-ops are requiring," she says. "If they are going to add some type of stipulation like banning smoking or pets that is outside of the norm, then they may stand out in a negative way and undermine the property value for the other shareholders."

### 10. Don't overstay your welcome

Finally, while not everyone agrees on the issue of board term limits, Belkin Burden's Shmulewitz offers the following example for why they should be implemented.

"Especially in the case of board presidents, you often run into situations where they've been in office for ten or twenty years and so they become autocratic," he says.

"It's not a question of if it's going to end in disaster, but when."