Know Your Duties

The standard of conduct for Condominium Boards and appointed Condominium, Property and Strata Managers

Elected board members and appointed managers must abide by a standard of conduct as set out by their respective provincial Property Regulations and Trustee Act. These legal regulations and requirements set out the manner to which all approved and appointed signing agents must hold themselves accountable. The purpose of this document is to highlight the important duties that must be followed when making decisions on the wealth assets of others. Further information can be obtained from various industry associations, property regulators, provincial documents, and independent legal advice.

Guiding Rule of Law

The Prudent Investor Rule – this is the standard of care that each signing agent must adopt. The prudent investor rule is a legal guideline for trustees of investment portfolios. It requires a fiduciary to act in the best interest of the trust's beneficiaries and outlines standards for legally controlling investment portfolios.

Under the prudent investor rule, the signing agent is required to consider the provision of regular income, the needs of the reserve fund's owners, and the preservation of the fund's savings. Among the principles stated in the rule are diversification, minimizing of fees and the balancing of income production and capital appreciation.

Application to managing the Reserve Fund

The following would meet the test of The Prudent Investor Rule when abiding by provincial Property Regulations and the Trustee Act.

1. Deposits must be insured when available. Any deposit held at an institution that offers insurance, such as CDIC or CUDIC, should adhere to the described limits to mitigate all risk to capital contributions.

   Explanation: A Board delegates authority to a condominium manager to open and manage bank accounts for daily transactions and planned expenditures according to the reserve fund study. The manager must conduct all activities as a fiduciary and is legally responsible for abiding by all regulations and rules. In this case, the bank offers CDIC insurance on deposits. It is then prudent to adequately safe-guard capital against all risks where feasible – the risk of bank default in this scenario. Therefore, the manager places up to $100,000 in the bank account and must open an additional bank account or savings account with other institutions as needed, to ensure full compliance. Interest that will accumulate above the capital deposited is deemed a prudent risk of not being insured but can easily be reallocated among accounts if preferred.

2. Investments must consider the liquidity requirements of planned expenditures.

   Explanation: A Board decides to hire a professional investment advisor to manage their invested assets. The investment advisor must consider the type and allocation of various investments that balances preservation of capital, income, capital appreciation and liquidity needs based on the timing of planned expenditures. For example, buying a 5-year government bond does not adequately meet the test if there is a major planned expense in 3 years, unless there is other adequate capital to match that expenditure timing. Bonds are typically liquid in the market, but this introduces timing risk and the greater potential of capital loss. It would not be deemed prudent unless held in combination with other appropriately positioned assets.

3. Appropriateness of investment choices.

   Explanation: A reserve fund investment plan and proposed investments can only be adopted once several options have been identified and compared. The goal is to objectively assess alternatives and chose the optimal option for the benefit of owners – being the prudent choice. This aims to remove bias and negligence, in the event of approving less than optimal solutions, when better choices are available. Professional advisors can access many comparable options quickly and are also regulated to do such under their fiduciary diligence requirements. Balancing higher return with reduced risk and fees is deemed prudent.

4. Investments must comply with the eligibility list under the appropriate provincial Property Regulations.

   Explanation: A Board decides to invest their reserve fund in a diversified portfolio to achieve as much return as possible, while preserving capital and maintaining the required amount of liquidity. The Board hires an investment advisor to provide recommendations. The investment advisor, while balancing preservation of capital, income, capital appreciation and liquidity (as above), must only provide recommendations based on eligible investments. Even though eligible investments may involve additional risks and the potential of loss, they are deemed prudent when recommended appropriately.

5. Conduct of the signing agent when making investment decisions.

   a. Unless otherwise specified in the policy statement of the reserve fund, the signing agent should always try to be even-handed in investing the fund assets for preservation, income, and gain.

   b. The agent must act honestly. The agent has been selected by the condominium owners to prudently manage and allocate the reserve funds in accordance with the reserve fund study.

   c. The agent must not select speculative or unduly risky investments.

   d. The agent must always avoid personal conflicts of interest and must act for the benefit of the owners.

6. Prudent criteria to take into consideration when making investment decisions.

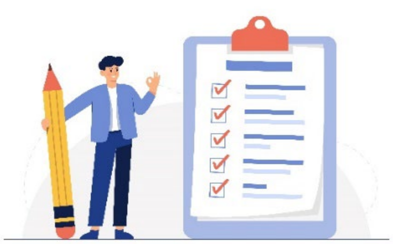
   a. General economic conditions.

   b. The possible effect of inflation or deflation.

   c. The role that each investment or course of action plays within the overall portfolio.

   d. The expected total return from income and the appreciation of capital.

   e. Needs for liquidity, regularity of income and preservation or appreciation of capital.



Indemnity of Boards and appointed Managers

Unless otherwise provided under a trust instrument, an agent who adheres to the Prudent Investor Rule will be relieved from liability if the investment is consistent with an investment plan or strategy that a prudent investor would have adopted in comparable circumstances. A Board member or appointed Manager that chooses to disregard these criteria will not be protected from personal liability.