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How can a co-op board get rid of an objectionable shareholder without a "Pullman" hearing?

BACKSTORY In concert with a cooperative board of directors, we successfully negotiated a resolution to a "Pullman" situation (the phrase comes from the case of David Pullman, a cantankerous co-op tenant whose neighbors voted to evict him for objectionable conduct). The violating shareholder entered into an agreement with the apartment corporation to sell his apartment, with the board of directors forbearing from conducting a Pullman hearing.

This process achieved a guaranteed result – namely the offending shareholder leaving the development – without the risk of protracted litigation, attendant legal costs, and the possibility of an adverse judicial decision. Also, the early exit more quickly improved the development.

However, achieving the end result was both technical and painstaking. In order to be in the position to achieve the result, the board had to do its homework and get the apartment corporation to the point where it had the upper hand. We advised the board that it must accumulate myriad complaints from many residents and building personnel over a significant period of time and send several warning letters to the offending shareholder. That would create a record. It would also create a paper trail (one of the prerequisites

for maintaining a Pullman hearing).

The board also had to communicate with the complaining shareholders about the need for this process. This process took considerable time, but enabled the board to present an overwhelming list of substantiated charges in the corporation's notice to the offending shareholder scheduling the Pullman hearing. The offending shareholder retained an attorney who must have advised that the evidence was overwhelming; after some initial customary beating of the chests, we were asked whether anything could be done.

We consulted with the board and recommended an orderly process, where without the need for the Pullman process, the offending shareholder might be allowed to sell his apartment. We were authorized to negotiate an agreement that included benchmarks for the shareholder to list his apartment for sale; to present an executed contract and application from a prospective purchaser; and, upon approval by the board, to close the transaction. The negotiations also included an agreement on a reasonable price at which the apartment would be listed and the identification of a real estate broker with a demonstrated track record in the development. As the conduct of the shareholder was affecting sales in the development, we even prevailed upon the broker to reduce his commission. The agreement provided that the board would forbear from conducting the Pullman hearing, but provided for reinstatement of the hearing should the shareholder commit any other offensive conduct during the period covered by the agreement. The agreement further provided for the payment by the shareholder of maintenance for the apartment without prejudice to any claims that might have been asserted at a Pullman hearing. The process worked as hoped, with the shareholder successfully selling his apartment and with the development now free of this rogue individual. All of this was achieved with greater speed, reduced legal costs, and most importantly, a level of certainty, which would not have existed had the parties gone to battle.

COMMENT The foregoing demonstrates that board members who are willing to be flexible and open to recommendations of the corporation's counsel and other advisers can often achieve their goals, while traveling in a slightly different direction.

All too frequently, boards view situations as being black and white, ignoring the nuances and shades of gray that are attendant to almost all situations. This almost tunnel-vision mentality is supported and exacerbated by either short answers that attorneys may give to questions posed in the Q&A section of a real estate publication, or quotes dropped into an article dealing with cooperative and condominium issues. More often than not, these responses and opinions

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TRAINING FOR TRIATHLON IN 2012

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CANDIDATES RUNNING FOR 7-SEAT BOARD IN 604-UNIT DEVELOPMENT I REPRESENT

GOT HOME AT 4 A.M. AFTER 9-HOUR ANNUAL MEETING.

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are given out of context – or even if in context, do not include the entire backstory. The result is that many boards believe, because the answer or story that they read has some connection to their development's situation and had some definitive result or opinion, that the same should be applied to the particular set of facts in their development. Unfortunately, no two sets of facts are ever identical.

Boards should work with their attorneys and other advisers in an almost backward fashion, determining the ultimate result to be achieved and then figuring out the various permutations of how the board might be able to get there. At the end of the day, it is the ultimate result and not always the process that is paramount. However, if the board selects the wrong process, the board will seldom, if ever, achieve the ultimate result. ■