

Q&A: Exercising His Opinion

BY LENI MORRISON 2015 MAY Q&A



Q Our building recently put in a gym. One board member has made himself the spokesman for the gym and emails our 80 members directly with cheerful updates and information. I have said that all communications to shareholders should come through the management company from either management or the entire board. In my opinion no individual member should take ownership of a particular issue. While the president of the board told me that she agrees with me, and would speak with this board member, she has taken no action and he continues his campaign. In my opinion, he is using this as a platform so that he will have high awareness in the building for the annual election. He has said that he has no intention of stopping. I believe that, if I could get an opinion that this is against best practices, he would stop.

—Fervent Campaigner

A "It is best practices for boards to promulgate comprehensive confidentiality and communication policies," says Leni Morrison Cummins, an attorney and member of the Manhattan law firm of Cozen O'Connor. "Such policies govern both the content and delivery of communications from the board. It is common for boards to adopt rules regarding who may send out communications—many boards choose to have the managing agent act as the sole conduit of information from the board to the shareholders. It is also common for boards to require that all communications to the shareholders on behalf of the board or its members (in their capacity as board members) must first be approved by the board.

"If the spokesman board member is communicating information on behalf of the board in violation of board policies or directives, his behavior is improper. If the spokesman board member is communicating information on behalf of himself (not in his capacity as a board member) by using a means of communication only available to the board member by virtue of his membership on the board (such as an internal building database or email distribution list), his behavior is improper. Further, to the extent that the spokesman board member is acting in furtherance of his own self-interest, his actions could be found to be a breach of his fiduciary duty of good faith.

"However, if the spokesman board member is disseminating information acceptable to the board, on behalf of the board, in accordance with its policies (which may be laissez-faire), then there is nothing wrong with him doing so, even if it does help his campaign for the next election. If this is the situation, the writer should focus on encouraging the board to adopt a policy governing board communications to shareholders."

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