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Guidance for Board Members

Editor's Note: The following advice is presented to aid board members in carrying out their responsibilities. While it is not exhaustive, there is much useful information provided by industry experts.

MATERIAL ALTERATIONS: BY DEFINITION A BIG DEAL

By David Haber, Esq., and Jonathan Goldstein, Esq.

The Condominium Act prohibits any "material alterations or substantial additions" to the common elements or association property without compliance with preconditions stated in the Declaration. If the Declaration is silent, approval of 75 percent of the membership is required. Material alterations or substantial additions are defined to include palpable changes to the form, shape, function, appearance, elements, or specifications of a building, appreciably affecting its appearance, use, or function. Maintenance, repairs, and necessary improvements and modernizations are exempt.

Declarations often require membership approval for association alterations and only board approval for owner alterations, which should be reasonably conditioned on association protections. Commonly flagged concerns are insurance, indemnification, lien removal, post-tension cables, soundproofing, unit combinations, and enclosure of common elements.