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April 26, 2024

Members of London St. Thomas Association of Realtors®

Dear Members:

Re: Requisition of a Special Meeting and Proper Motions to be called by Members

This letter is in response to concerns raised by members of the London St. Thomas Association of Realtors® ("**LSTAR**") to the Board of Directors at a recent Town Hall which took place on April 18, 2024 in relation to a contract with PropTx for MLS® listings.

We first wish to clarify our role as legal counsel in this matter. LSTAR is a non-profit corporation. As a corporation it has a legal identity distinct from its members. Our firm is retained by LSTAR in the provision of legal advice. The Law Society of Ontario's rules of professional conduct are clear that as the corporation is our client, we must ensure that the interests of LSTAR are served and protected. Please see Rule 3.2-3[1] and its accompanying commentaries for more information.

To be clear, we are not retained, nor will we be retained by members of LSTAR for the provision of legal advice. We only serve the corporation.

Notwithstanding this, the corporation, through its authorized officers and directors, has requested that we provide you with legal information relating to the proper procedure for calling a special meeting and as well, to explain the identified issues in the motions proposed in the petition dated April 2, 2024.

This letter constitutes legal information only and should not be relied upon as legal advice. If the members wish for more detailed instruction on the requisitioning of a special meeting, we recommend you contact separate counsel for legal advice.

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[1] Complete Rules of Professional Conduct | Law Society of Ontario (lso.ca)

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The Role of a Board of Directors for a Not-for-Profit Corporation

LSTAR's Board of Directors is an elected body. The Directors have been chosen by the members to represent their interests. When decisions are properly made within the Board of Director's authority, they are not open for change by the membership. Furthermore, pursuant to Section 21 of the Not-for-Profit Corporations Act, 2010 ("**ONCA**") the role of the Board of Directors is to "manage or supervise the management of the activities and affairs of the corporation".

The LSTAR Bylaw approved by the members of LSTAR on June 27, 2023 at the LSTAR Annual General Meeting (the "**Bylaw**") further describes the role of the Board in Section 6.4 as:

> The Directors may do all things as allowed in the Bylaw and LSTAR policies, as required by any resolution adopted at any duly constituted Meeting of the Members, or as may be allowed by the laws of Ontario, as well as any act that are not expressly required in the Bylaw or LSTAR Policies to be done in some other manner.

It necessarily flows from the foregoing that the Board of Directors is responsible for the operation of LSTAR and that part of this responsibility is entering into and ending contracts. In accordance with the Bylaw, member approval is only required for one-time unbudgeted expenditures in excess of $500,000.

To effectively govern, it is imperative that the Board of Directors is able to make decisions without a requirement of membership approval unless required by the Bylaw or ONCA. To require so would greatly diminish the Board of Directors ability to manage and supervise the activities and affairs of the corporation. The appropriate avenue for members to express disapproval with the Board of Directors' decisions is removal of the Board and re-election in accordance with the Bylaw and ONCA.

Special Meeting vs Annual Meeting

Whereas an annual meeting is meant for conducting the formal business of the organization, for example, approving financial statements, election of directors, review of financial statements, or debate regarding proposals by members, special meetings are typically used when business arises that must be dealt with prior to the annual meeting. There is caselaw to support the rejection of a special meeting where an annual meeting is close, which would make the special meeting superfluous.[2]

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[2] *Seong v. Korean Canadian Cultural Association of Metropolitan Toronto*, 2007 CanLII 7400 (ON SC), <https://canlii.ca/t/1qtsd>

As a reminder, the annual meeting for LSTAR has already been set for June 25, 2024.

How to Call a Special Meeting

Pursuant to Section 5.2 of the Bylaw a special meeting can be called:

(a) By the Board, on its own initiative; or
(b) Upon the written request of not less than 10% of the Members in good standing.

This second option of "written request" is not a call to meeting, but rather a requisition which requires the Board of Directors to call for the special meeting.

In addition to the Bylaw, requisitions are governed under Section 60 of ONCA which states:

(1) The members of a corporation who hold at least 10 per cent of votes that may be cast at a meeting of the members sought to be held, or a lower percentage that is set out in the by-laws, may requisition the directors to call the meeting for the purposes stated in the requisition.
(2) The requisition, which may consist of several documents of similar form each signed by one or more members, must state the business to be transacted at the meeting and must be sent to each director and to the registered office of the corporation.

A requisitioned meeting must be called as nearly as possible in the manner in which meetings are to be called under the Bylaw.

A valid requisition must:

1. Indicate the purpose of the special meeting. This purpose must be sufficiently specific and include the actions to be taken, the specific parties to be involved (if applicable), who is responsible for implementing the action (if applicable) and when the action is to be taken.
2. Include list of members names with corresponding authentic signature.
3. While the specific motions are not required, the members should include a detailed description of what they wish to accomplish in the meeting.

Where the bylaws or ONCA are silent, Robert's Rules of Order are the default for governance procedure at corporate meetings. Regardless of the format used to create the requisition, it is imperative that the purpose of the special meeting is clear to every potential signatory.

The Petition received April 2, 2024 is invalid

You have asked, and LSTAR has agreed, to provide our review of deficiencies noted in the petition dated April 2, 2024. The information in this letter shall be limited to a noting of deficiencies and will not include detailed methods to remediate them. If you wish for assistance in creating a proper requisition, you should retain independent legal counsel.

We would first like to clarify the difference between a requisition and a petition.

A petition is a document that is addressed to a governing body, often the Legislative Assembly, which requests that the legislative body act or change its position on an issue. Conversely, a requisition in the ONCA context has a very narrow meaning of requesting the Board of Directors to call a special meeting.

While the requisition must state the purpose of the special meeting and what you wish to accomplish, members of LSTAR do not have the right to create a petition to have the Board of Directors to act on or change its position. A requisition may only call a meeting for the purpose of one of the rights the members hold in accordance with the Bylaw or ONCA. A discussion of the specific rights and responsibilities of LSTAR members will be discussed further below.

To be clear, the common form of a petition being a description of its purpose and a list of signatures may be used as a model for the form of a requisition. However, the purpose of the requisition in this matter is not the same as a petition in law.

1. **An electronic list of names and contact information does not constitute "signatories".**

A properly created requisition must have an authenticated signature. This can be a "wet signature" or an electronic signature which complies with the *Electronic Commerce Act*, 2000. The Petition provided to the Board was a Microsoft form where anyone with access to the link could add a line with a name and contact information. This is not only not a valid signature, but also is susceptible to issues of impersonation. There was no way to confirm that the person who added a name was indeed that person. This highlights the importance of having independently verifiable signatures.

2. **There can be no duplication in signatories.**

Upon review of the Petition, we note that some entries were duplicated (and even triplicated). The 10% threshold must be met by separate members in good standing. A form should be used which does not allow for duplication, or at minimum, the requisition should be reviewed prior to submission to ensure there has been no duplication in signatories.

3. **The form of the Petition does not ensure that each member was aware of the purpose of the Special meeting.**

As noted above the form of a petition may be used as a model for the requisition to be provided. It is incredibly important that it is clear that each member who signs the requisition is aware of the purpose of the special meeting. A petition accomplishes this by including a description of the purpose of the petition at the beginning of each signing page as a header. This format may be helpful in creating your requisition.

This ensures the integrity of the governance system by reducing risk that signatories collected for a different purpose are not used to meet the 10% threshold for a special meeting.

Member's Rights and Privileges

Pursuant to Section 3.5.1 of the Bylaws, Individual Members in Good Standing are entitled to:

(i) Receive any notices required by these Bylaws, Policies, REBBA or ONCA;
(ii) Attend and speak at any Meeting of the Members;
(iii) Vote on any resolution proposed at a Meeting of the Members;
(iv) Request to inspect the minutes of meetings of the Board of Directors (other than in camera sessions) or financial statements; and
(v) Individual Members in Good Standing are, subject to this Bylaw, entitled to be elected to the Board as a Director and to be an Officer on the Board.

Please note that these rights and privileges do not include the right to petition the Board of Directors to change a decision properly passed. Pursuant to the Bylaw, resolutions voted on by the members include only:

- Unbudgeted expenditures in excess of $500,000 (Section 1.14)
- Bylaw amendments (Section 2.1(b))
- Persons entitled to attend a meeting of the members (if the individual is not already specifically permitted under the Bylaw) (section 5.4)
- Appointment of an auditor (Section 5.10)
- Elect a chair where no Director is present (Section 5.11(c))
- Removal of Directors (Section 6.8.1(b))
- Election of Directors (Section 6.7(b))

Under ONCA, members also vote on resolutions for fundamental changes (Part XI), these include changes to membership structure, purchase and sale of substantially all assets not in the ordinary course of business, reorganization, merger and amalgamation.

Motions Requested in Petition

You have also requested that we provide an overview of the deficiencies that you requested in your Petition. Generally, we note that while you may provide draft motions in your requisition, it is only necessary that the requisition clearly set out the purpose of the meeting. This does not need to be in motion form.

1. **Revoke resignation from ITSO**

The role of the Directors of a corporation is to manage and supervise the activities and affairs of the corporation. Their proper authority includes making contract decisions. Under 1.10(b) of the Bylaw, the Board has the authority to sign contracts which are binding on LSTAR without any further authorization or formality.

Further, the Board of Directors only needs member approval where it is a one-time unbudgeted expenditure in excess of $500,000 (1.14 of Bylaw) or if disclosure is required due to a conflict of interest.

This is not the case in these circumstances. The PropTx contract has already been entered into and notice has been given to terminate the ITSO contract..

2. **Submit previous motion to contract with PropTx for ratification by the membership at June 2024 AGM**

Your entitlements as members in good standing do not include the right to ratification of Board decisions where the one-time unbudgeted expenditure is less than $500,000. The contract with PropTx has been executed and fits within the constraints of the Bylaw and was properly within the Board of Director's authority to make.

3. **Investigate and inform members in writing before June 2024 of the estimated costs to terminate the ITSO contract**

It is the Board's position that the ITSO contract was properly terminated and there are no costs payable. As members of LSTAR you are entitled to financial statements, further information will be disclosed at the appropriate time.

4. **Deliver copies of the ITSO and PropTx contracts to members upon request**

Both the ITSO and PropTx contracts have confidentiality provisions. Therefore, it would be a breach of contract to provide to members and cannot be provided.

5. **Post minutes to members website within 14 days of each meeting**

It is our understanding that this request has already been fulfilled.

6. **Cause complete minutes of past 2024 Board of Director meetings to be posted within 45 days of resolution**

It is our understanding that this request has already been fulfilled.

7. **Post a copy of current bylaws to members website within 14 days**

It is our understanding that this request has already been fulfilled.

8. **Immediately remove Board of Directors from office and an election of directors to be held at June 2024 annual meeting**

As members of LSTAR you have the entitlement to remove a Director from office by ordinary resolution at a special meeting. (6.8.1(b)). However, there are practical considerations that would make removing the entire Board of Directors from Office at a special meeting and waiting for the annual meeting to have an election problematic.

LSTAR's Board of Directors has a specific composition that must be respected. These are further described in Sections 6.1 and 6.2 of the Bylaw. This specific composition requires an election.

If the Board of Directors are removed at a Special Meeting, but no new Directors are elected, then it will have lost quorum, and no one would be running the corporation in the interim.

Under ONCA, if there is no quorum then a members' meeting must be called. This meeting would be done to fill the vacancies. However, given that elections are required for several Directors, it would take time to complete the election and meet quorum.

Under section 29(1) of ONCA, if all of the directors have resigned or been removed without replacement, a person who manages or supervises the management of the activities and affairs of the corporation is deemed to be a director for the purpose of ONCA. In this case, the most likely individual would be Bill Madder, the Chief Executive Officer ("CEO").

9. **CEO removed from position and contract terminated.**

Under Section 8.7 of the Bylaw, it is very clear the CEO is employed by and reports to the Board of Directors. The members have no entitlement to force removal of the CEO.

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We trust this letter addresses your concerns regarding your recent Petition for a special meeting. If you wish for further assistance in bringing a valid requisition we recommend you contact independent legal counsel.

Yours truly,

Siskinds LLP

Per:
Stacey Bothwell
Partner

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