

March 1, 2024

John Midgette
Property Manager, Cityside
1771 Cityside Drive
West Palm Beach, FL 33401
Tel: 561 697-8997
jmidgette@seacrestservices.com

Dan St. Martin
Board Director and President, Cityside Condominium Association
[REDACTED]
[REDACTED]
bod@citysideonline.com

Gilles Kennedy
Board Director, Cityside Condominium Association
[REDACTED]
[REDACTED]
bod@citysideonline.com

Tom Foster
Board Director, Cityside Condominium Association
[REDACTED]
[REDACTED]
bod@citysideonline.com

Orie McIntosh
Board Director, Cityside Condominium Association
[REDACTED]
[REDACTED]
bod@citysideonline.com

SENT VIA EMAIL TO: jmidgette@seacrestservices.com; bod@citysideonline.com

Dear Cityside Property Manager and Board Members:

Re: Board elections (TIME SENSITIVE)

We are in receipt of Cityside's "First Notice of the Annual Meeting of the Membership" dated February 22, 2024 (hereinafter, the "2024 Notice"). The 2024 Notice states:

“The Election of Three (3) eligible persons to the Board of Directors will be held at the Annual Membership Meeting (the “Meeting”) of the Cityside Condominium Association, Inc. on **Wednesday, April 24, 2024, at 6:00 p.m. at 1771 Cityside Drive, West Palm Beach, FL 33401**. The meeting will be conducted in person (clubhouse) and via Zoom.”

It also later states: “Three (3) eligible person will be elected for a Two (2) year term.” (sic)

As set out in this letter, the 2024 Notice is incorrect, and by law there are in fact five Board seats available.

Cityside’s Bylaw 4.1 says:

“The first Board of Directors shall consist of three (3) persons who shall be the subscribers to the Articles who shall serve until their successors are designated by Developer or elected at the first annual meeting of the Members following recordation of the Declaration creating the Condominium. **Subsequent Boards shall consist of not less than three (3) nor more than five (5) directors, the exact number to be determined from time to time, by a majority vote of the membership.**” [emphasis added]

I was unable to find any record of any majority vote of the membership to restrict the number of directors to three. Indeed, the appointment of Mr. Orié MacIntosh to the fourth Board seat in 2023 by the other three directors (Mr. St. Martin, Mr. Kennedy and Mr. Foster) would also seem to indicate that these Board members were also under the impression that the number of Board seats is not limited to three. If indeed no majority vote of the membership has ever been held limiting the number of Board seats to less than five, then there are in fact five seats available.

Looking back at the Notices in past years, 2020, 2021 and 2023 all say the same thing as this 2024 Notice (i.e. they are announcing an election of three Directors).

The 2022 Notice, for some reason, announces an election for two Directors.

There are no notices posted on Frontsteps pre-dating 2020, so at this time, we do not know what those say. However, it appears that for at least four years, the Board has been sending out notices that do not accurately reflect the number of Board seats available. We struggle to comprehend how such a significant error could have occurred, repeatedly, year after year, particularly in light of s. 718.112(d)(4)(b) which states:

“Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association’s declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association’s members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment.”

We urge the Board to obtain independent legal advice as to the best way to proceed. Owners of Cityside are entitled to know that there are five board seats available, not three.

The requirements for a valid election

The 2020 and 2021 Notices both state: “To have a valid election, all that is required is for at least twenty percent (20%) of the eligible voters to cast their ballot.”

The 2022 and 2023 Notices, for their part, state: “At least 20 percent of the voting interests of the Association must cast a ballot in order to conduct the election.” [emphasis added]

We wish to bring your attention to Bylaw 4.2(g) which states:

“Notwithstanding anything herein to the contrary, there shall be no quorum requirement for any vote held to elect a Director; however, at least 20% of the eligible voters must cast a ballot in order to have a valid election of members of the board of administration.” [Emphasis added.]

Eligible voters means *voters present at the Annual General Meeting*. In other words, if you have 100 owners present at the meeting and 81 of those owners decide to abstain from the vote on who should be a Director, then you cannot conduct the election (because you would have only 19 owners wanting to vote, when you need at least 20 owners who want to vote to conduct the election). On the other hand, if you have 10 owners present at the meeting, you can (and must) conduct the election, provided that at least 2 of those owners want to vote. In other words, the law is extremely encouraging of the election of Directors.

We had hoped this would only serve to repeat back to you something that you already know. However, following our request to obtain copies of the 2021, 2022 and 2023 AGM minutes, so that we could figure out when each of Mr. St.-Martin, Mr. Kennedy, and Mr. Foster’s two-year directorship terms expire (pursuant to Cityside Bylaw 4.2(d)), we were today advised by Mr. Midgette that “there was no quorum, so there was no meeting, so there are no minutes”. **This makes no sense whatsoever, and leads us to question how any of the current could have Directors validly obtained their positions in the absence of an AGM being held.**

We would have presumed that Mr. St.-Martin, Mr. Foster and Mr. Kennedy received their spots by acclamation pursuant to Florida Statute Chapter 718.112(d)(2) – excerpted below. This, of course, requires that an AGM be held (for which there would be minutes).

It seems like a gross misunderstanding of the law lead someone (or perhaps all of you) to believe that a certain number of owners had to be present in order to vote on directors. We query what kind of legal advice the Board has sought or not sought to have resulted in such a prolonged, fundamental mistake in governance. This is compounded by the fact that, for at least the last three years, the entire Board and the property management company did not think that an AGM had to in fact be held and that minutes were required by law to be kept.

There is no election unless the number of candidates exceed the number of spots

Florida Statute Chapter 718.112(d)(2) states:

“If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting.”

In other words, if there are five candidates for five Board spots, then those five candidates are automatically Directors of the Board at the end of the meeting.

Sincerely,

Jessica Gagné and Andrew Burgess
Owners

[REDACTED]

[REDACTED]

jessica@jessicagagne.ca

[REDACTED]