

# HABITAT

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## The Fine Art of Ousting a Toxic Condo Board

New York City



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A luxury Manhattan condominium is in trouble. The building has fallen into disrepair. The **board president** has been in power since the building opened more than 35 years ago. **Annual meetings** have failed to attract a quorum for the past 10 years — so says the board of managers, though it fails to take attendance — thus thwarting efforts to replace board members and bring about needed changes. Mandatory work is awarded to **questionable contractors**. And in an effort to defuse criticism, the board has announced a **\$100 fine** for any piece of correspondence distributed within the building, such as fliers posted in common areas or slipped under doors.

What can unit-owners do to correct this drastic state of affairs?

**Bylaws** must contain a provision, under New York's [Condominium Act](#), allowing unit-owners to remove a board member, along with criteria for doing so, replies the [Ask Real Estate](#) column in **The New York Times**. This is typically done through a **special meeting**, which can be called by a board president or via a **petition** signed by a specified percentage of unit-owners.

There's a high hurdle to clear. Condominium boards' decisions — like those of co-op boards — are almost always protected by the **business judgment rule**, which makes it “extremely difficult” for a unit-owner to challenge the board in court, says **Ronald Gitter**, a real estate lawyer in Manhattan. For this reason, he says, calling a special meeting to remove a board member or members for violating the **governing documents** is likely your best option.

Boards are not protected by the business judgment rule if they act with gross negligence or in bad faith. “That might apply to the fines imposed for distributing communications to other residents about board conduct,” says **Ruta Behrend**, a partner at the law firm **Tane Waterman & Wurtzel**.

Unit-owners have the right to ask for a **list of contacts** for their fellow unit-owners. With this list in hand, it's possible to determine the extent of dissatisfaction with the board and decide on the appropriate course of action. But keep in mind that boards do not want unit-owners abusing the list, and to that end some boards require a signature on a **nondisclosure agreement** before releasing the list.

Then there is the nuclear option: **filing a lawsuit** against the board, claiming that it has breached its **fiduciary duty**, but this would be a more expensive, lengthy process. For a potentially quicker result, you could ask a court to **appoint a receiver** to oversee building operations and expenses. This, says **Steven Sladkus**, a partner at the law firm **Schwartz Sladkus Reich Greenberg Atlas**, “is a good step toward preserving everyone’s investment in the building.”

Whatever step you take, make sure you adhere to your condominium’s bylaws and to state law to ensure that your challenge stands up to legal scrutiny. No condo board is likely to take an ouster movement without pushing back.