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## Condo Smarts

Headline: Proxy Limitations

Topic: Proxies

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**Dear Tony:** At our recent annual meeting, one person registered with 22 proxies. No one knew this person and there were some strange situations with the proxies. All of the proxies were in the same handwriting, all allegedly signed by each owner, but did not have the name of the assigned proxy entered. We did determine this person was a spouse of an owner, but not on title. The property manager eventually permitted all the proxies, and now 3 of the owners who were identified as having issued proxies have come forward claiming they never issued a proxy. Because so many of our votes were very close at the meeting, including the election of council, we are concerned the results may have all been inaccurate. The Strata Act includes very little detail about proxies other than the requirement in writing and signed by the owner. How do we manage this process better in the future?

JRC

**Dear JRC:** A Supreme Court decision in 2019 has helped us understand the function and requirements of proxies. Certain requirements for a legal proxy were confirmed in *Macdonald v. The Owners, Strata Plan EPS 522*, blank proxies are invalid; proxies must identify an individual as the proxy holder; proxy holder's names should be inserted before signing the proxy; proxies may be signed manually or digitally; proxies stating "any council member" should not be certified; and, amendments to a proxy must be initialed by the owner.

The introduction of electronic meetings has created some challenges for the certification of proxies, but if treated the same as in person meetings, proxies must still be presented and they must be registered as eligible voters and are certified by the chairperson when the meeting starts. If there is doubt about the credibility of the proxy, the chair may decide whether to certify the voting rights. Electronic proxies which are digitally

signed, are routinely in the format of an email, a scanned document or a visual verification at the time of registration.

When a notice is issued, a strata corporation may include a sample proxy form, but should not identify an assigned person as that is the discretion of each owner to identify their proxy. A request to submit a copy of a proxy in advance of a meeting can help manage the risk of falsified documents. Proxies are not absentee ballots because the proxy is not the document signed by the owner, it is the person who has been identified on the proxy. That person must exercise the vote of the owner, and unless the proxy has a specific restriction imposed by the owner, the proxy has the discretion to exercise the votes including amendments to resolutions. Many strata corporations will include the proposed resolution on the proxy form for the convenience of the owner to provide instructions on their voting directions, but these are not votes or ballots, simply instructions to the proxy. Protecting voting rights is paramount, but falsifying documents to obtain voting rights that are not authorized may seriously alter the outcome of decisions within communities.