

Condo Smarts

Headline: Voting by Email and Voting Procedures

Topic: Voting

Publication date: July 31, 2011

Publication: The Province

Written by: Tony Gioventu

Dear Condo Smarts: At a recent Annual General Meeting, our strata president and property manager allowed an owner to vote by email. The property manager said the Act allowed for electronic attendance and therefore the owner could vote by email as long as the votes were sent in no later than the end of the meeting. There is one important issue here, the owner voting by email holds enough votes to defeat any $\frac{3}{4}$ vote resolutions in our strata, so the owners are confused by what seem to be special conditions for this person. We have read the Act, and nothing says owners can attend general meetings and vote by email. Are there new amendments we are unaware of? Sandra Watkins, Kelowna

Dear Sandra: The Strata Property Act does not permit voting by email. Section 49 of the Act allows a strata to adopt bylaws that set out the standards for electronic attendance at meetings, but that carries a significant condition: the method must permit all persons participating in the meeting to communicate with each other during the meeting. Obviously before your strata can permit electronic attendance, it would have first been required to adopt and file a valid bylaw that meets these conditions, and your strata has not adopted any such bylaw. Strata corporations vote on very real property issues that may impose a significant burden of cost or life style use on a strata lot owner. Unlike a community association that operates on the voluntary participation of arm's length members, a strata decision may result in restrictions of use on personal property, the risk of loss of the property and personal financial failures, and the risk of very high joint liabilities for insurance and claims. While technology gets ahead of us, the Act reminds that we need a very real person to

represent the voting entitlement of the owner(s). To understand the complications and importance of strata corporation procedures we just have to look at the recent Supreme Court decision of *Imbeau vs the Owners Strata Plan NW971*. The matter addresses the definition of a secret ballot, which up to this time has had no specific definition or interpretation under the Strata Property Act. The claim was that essentially owners were not entitled to privacy to execute their voting, and that owners could potentially see their votes and the result was that some owners were possibly intimidated. Because there was not a private booth provided to voters at the time the vote was conducted, the requirements of a secret ballot had not been met, and the judge decided the results of the resolution were null and void. The implications of this decision establish a very high standard for the conduct of meetings and the meeting procedures. Strata corporations need to be prepared to provide secure polling stations and secured voting boxes to protect the voting rights and privacy of owners. If we apply the conditions of this decision to a vote by email, it raises even more questions. For example, the standard bylaws say that voting cards must be issued. How is a voting card issued to someone electronically? How can the strata corporation protect private voting rights by email? How would voting ballots for a secret ballot be issued to an email participant? What happens if the connection is lost? Most important, do you know who is really at the other end of that email address? Before you consider a bylaw for electronic attendance, obtain an opinion from a lawyer experienced with strata law, electronic technology and privacy.

For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.