

Condo Smarts

Headline: Proxy Abusers

Topic: Proxies

Publication date: July 15, 2012

Publication: The Province

Written by: Tony Gioventu

Dear Condo Smarts: We have a problem with a council member who always goes door to door and collects proxies from owners. A number of owners have now come forward and complained that she does not vote the way they instructed her to and hoped that the remainder of council members could do something about it. The problem is this person always collects enough votes to prevent any three quarters vote resolutions from passing, so we cannot amend bylaws, or proceed with major repairs requiring a special levy. Is the strata corporation permitted to adopt a bylaw that limits the number of proxies? If we could convince owners to stop sending in their proxies and attend a meeting we could pass some bylaws to stop this issue. Perhaps we could simply have meetings by proxy ballot and eliminate anyone from holding their proxies?
Carol G. Abbotsford

Dear Carol: There is no provision for balloting by proxy in the *Strata Property Act* or Regulations. Someone must represent the vote, either in person or by proxy. That is the definition of all three resolutions requiring voting - unanimous is a "vote" in favour by all the votes of all the eligible voters, $\frac{3}{4}$ vote, means a vote in favour of a resolution by at least $\frac{3}{4}$ of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting, and the same for a majority vote requiring more than $\frac{1}{2}$ the votes in favour. The only other provision for actually holding a meeting is a waiver of notice of meeting, but that requires all of the eligible voters vote in favour of waiving notice, plus all eligible voters must vote in favour of any proposed resolutions - if the meeting is the annual general meeting, all owners must also vote in favour of the budget, and election of a

council.

So how do you limit the number of proxies? The best solution for everyone dealing with this person is to simply stop giving this person their proxies. Technically the proxy document is not the proxy, it is the person who has been assigned by the owner, the proxy voting rights as instructed on the form. If proxy limitations were permitted by the Act through a bylaw, they would be extremely complicated to enforce. If someone collected proxies exceeding a limit, it would then be up to the registrar at the desk to determine which, if any of the votes of the proxied strata lots that exceeded the limit would be ineligible to vote. Whereas, the violator would be the person holding the proxies, not the owners of the strata lots, yet you would be attempting to enforce the bylaw and punishing the owner of the strata lot who is an eligible voter and who did not violate the bylaws. There are some easier solutions a strata corporation may want to consider. When you send out the notice of a general meeting, include an optional proxy form dated only for that meeting, that includes restrictions on the proxy that prohibit a proxy holder from voting on items such as council elections or some other vote. If the owners in your strata use the optional form issued by the strata corporation, and do not remove the restriction, at least this person does not have an unfair number of votes for council elections, ensuring they are guaranteed a spot on council each year. Over the years I have seen proxies in the form of power of attorney, an executor's appointment, a trusteeship, and even a simple assignment written on a bar napkin. As long as the proxy is in writing and signed by the person appointing the proxy, the vote is generally valid as long as the strata lot owner is eligible to vote.

**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.