

Condo Smarts

Headline: Conflict of interest

Topic: Conflict of Interest

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Written by: Tony Gioventu

Dear Tony: Our strata is approving a special levy in June for the amount of \$550,000 for the roofing, skylights and gutter replacement in our townhouse complex. The owners have been circulating a petition about the project and claiming the strata council president should be not be permitted at the meeting because the company is owned by his brother. When the strata council were reviewing the bids that were presented from our consultant, the council president disclosed his relationship, and removed himself from the meeting during the discussions and when the decision to recommend this company was voted on. He did not want any conflicts. This has all been documented, and our lawyer was present at the meeting to talk about the terms and conditions of the contract as well. How can the owners demand he be removed from the meeting?

Jennifer M. Surrey

Dear Jennifer: As volunteers, strata council members have specific limitations imposed by the *Strata Property Act*, the bylaws of the strata corporation and common law. The Act requires that whenever a council member has a direct or indirect interest in a contract or transaction with the strata corporation, or a matter that is or is to be the subject of a decision of council if the decision could result in the creation of a duty or interest that materially conflicts with that council member's duty or interest as a council member that council member must: disclose the conflict, abstain from voting on the matter, and leave the council meeting while the matter is discussed and voted on. In simple language, if the council member, directly or indirectly somehow gains from a personal benefit or interest in a decision, they cannot be a part of that decision making process. This doesn't mean that council members or their family members who own companies cannot bid on construction contracts or services, but they do have to ensure they are not part of the decision making process.

Your president and council appear to have taken the appropriate steps to inform the owners of the conflict and remove themselves from the decision making at council level.

So how does this relate to annual or special general meetings? Any owner, including a council member cannot be denied their voting rights or obligations under the Act or bylaws simply because there is a conflict at a council level. Every owner/eligible voter has the same entitled voting rights whether they have an interest in the outcome of the decision or not. The only exception is where the strata corporation is suing an owner or voting on a court settlement that is being offered by an owner. That owner is recused from the voting and does not contribute to any of the costs associated with that action. However, common sense and judgement need to be exercised. It would be prudent for the president acting as chair of the meeting to avoid representing proxies, or better yet, insist that the vice president or an independent person be elected chair the meeting. There is one other quirky twist that we have to consider with the recent amendments to the Act. Historically, decisions for contingency expenses and special levies were always a three quarters vote; however, with the amendments to the Act, if the roofing was recommended in the depreciation report, and the strata had sufficient funds, it is now only a majority vote. In the event of a tied majority vote, either the president or vice president may exercise an additional casting ballot. While this may be permitted under the Act, a president in this position acting as the chairperson who exercises an additional ballot to break a tie vote will likely find they are facing a nasty lawsuit. Council members can be liable for their self-serving decisions. Issues over conflict of interest, meeting irregularities and council actions will all be disputes that can be addressed by the Civil Resolution Tribunal, with minimal barriers for the owners to access justice.