

## Condo Smarts

Headline: Owners in limbo after proxies used in levy vote

Topic: Voting, Proxies

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**Dear Tony:** Our strata council has put our owners in a serious conflict. The council proposed a special levy of \$100,000 to remodel our lobby and the owners passed it at a special general meeting last week. No one is objecting to the price. A good specification was written and we had 4 bids for the work which includes: new marble flooring, new elevator cabs, new entry doors, lighting and new windows. The problem that has arisen is the procedures at the meeting. A council member was holding proxies for 35 units. The vote only passed by 3. The next day, at least 5 owners came forward advising they did not authorize proxies held by this person. Our council deemed the vote was still valid and proceeded to sign the contract and issued a deposit to the successful company. Because it was a  $\frac{3}{4}$  vote, over 50% of the owners petitioned to reconsider the vote. Now we are in limbo. This is not the first time our strata has experienced these issues. Any idea how to get out of this mess?

*Martin D.*

**Dear Martin:** The *Strata Property Act* sets out specific conditions to reconsider  $\frac{3}{4}$  votes. If a  $\frac{3}{4}$  vote is passed at a special general meeting by persons holding less than 50% of the strata corporation's votes, the strata corporation must not take any action to implement the resolution for one week following the vote unless there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage.

Within one week following the vote, persons holding at least 25% of the strata corporation's votes may, by written demand, require that the strata corporation hold a special general meeting (SGM) to reconsider the resolution. The demand must be signed by each person making it. After receiving a demand for a special general meeting, the strata corporation must not take any action to implement the resolution unless there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage. The strata corporation must hold the SGM within 4 weeks after the

demand is given to the strata corporation and the president of the council may call the SGM without holding a council meeting.

At the SGM, the resolution being reconsidered is the first item on the agenda and must be dealt with before any other matter about which notice has been given. If a quorum is not present within  $\frac{1}{2}$  hour of the start of the meeting, the meeting must not proceed and the resolution stands and may be implemented only if one of the following conditions is met: a) a demand for reconsideration is not made b) the resolution is approved by a  $\frac{3}{4}$  vote at the SGM held c) the meeting held does not proceed for lack of a quorum.

Even without the proxy errors, your strata council did not have the authority to proceed and "deem" the resolution passed and deny the petition. Out of 178 votes in your strata, there were only 82 votes represented in person and by proxy. Your strata corporation must hold the petitioned meeting to reconsider this vote. This problem occurs frequently in strata corporations eager to get on with the work and assume they have the authority to proceed. Your strata council needs to consult with an experienced strata lawyer to look at their options. Holding the meeting is the first step and depending on the outcome of the decision, your strata may be required to negotiate with the contractors. The process certifying the proxies also needs to be closely reviewed. Registration and issuing of voting cards may be done by your manager, a council member or volunteer, but only the chairperson of the meeting has the elected or appointed authority to determine whether a proxy is valid or not.

There is an ironic twist to this situation. Your strata corporation has over 1.4 million in your contingency and these repairs are recommended in your depreciation report. It only required a majority vote to approve these funds from the contingency fund for the \$100,000 expense and all of this could have been avoided.