

Condo Smarts

Headline: Forcing repairs for essential maintenance

Topic: Repair and Maintenance: Financing Repairs

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Dear Tony: In August we held our third special general meeting in an attempt to approve a special levy to replace the piping in our 30 year old building. Once again, an owner showed up with enough proxies (28) to defeat the special levy. She always demands a secret ballot and we have no way of controlling how she votes. We have held several information meetings with owners since and have discovered several owners instructed the proxy holder to vote in favour of the special levy; however, we have no way of verifying the results because of the secret ballots. Our strata received a letter from our insurance broker last week advising that they could not renew our insurance as the strata corporation had not approved the plumbing project. We have secured a temporary 30 day renewal extension, but it is subject to the strata corporation approving the piping project in January and commencing work no later than May 1, 2020. How do we deal with the owner who is clearly attempting once again to control the meeting and vote down the repairs?

Karen J. North Vancouver

Dear Karen: Despite the efforts of one person to undermine your efforts to deal with your maintenance and renewal issues, there are other options available to address the voting imbalance. A controlling proxy holder is relying on owners being uninformed and isolated from the implications of the decisions.

While the *Schedule of Standard Bylaws of the Strata Property Act* requires a secret ballot if an eligible voter requests a secret ballot, your strata corporation bylaws were amended in 2015, and the provision for a secret ballot was removed. Your voting is conducted by either a show of voting cards or if a precise count is requested, it is the decision of the chairperson to determine the

method of voting. In your bylaws it is either by ballot, polled ballot or a call of the roll. A secret ballot is not an option.

A strata corporation has no control over a proxy holder's actions. Disruptive proxy holders often demand secret ballots to hide behind the anonymous collection of paper ballots where they can vote at their own discretion, regardless of the instructions given to them on the proxy. By polling the ballot, each strata lot is identified on each ballot, and the results of the votes of each strata lot present in person or by proxy are recorded in the minutes. By calling the roll, each strata lot present in person or by proxy, is called, requested how they vote, and the result of each strata lot vote is recorded in the minutes.

While nothing prevents the proxy holder from acting contrary to an owner's instructions, it does record the outcome of each vote and forces the proxy holder to disclose their decisions. The result often ensures the success of the corporation. For contentious meetings that may result in interpretation of the *Act* or your bylaws or the effects of a failed resolution, it is well worth the investment to have your strata lawyer present to advise the owners.

When a strata corporation is unable to obtain the owner approval for necessary funding for maintenance and renewals, there are several other options available.

Under the *Act*, if a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and the number of votes cast in favour of the resolution is more than 1/2 of the votes cast on the resolution but less

than the 3/4 vote required under the *Act*, the strata corporation (council) may make an application to the Supreme Court of BC to order the repairs.

This is a method frequently employed by strata corporations to proceed with repairs. If your insurance provider has indicated a risk of insurance cancellation, it is likely sufficient evidence to make an application.

Likewise, if a strata corporation has a depreciation report, and the report recommends the repairs, the strata corporation only requires a majority vote to approve a project as a contingency expense.

If your contingency reserve fund does not have enough money to cover the cost, remember it is only a majority vote to approve an increase in your CRF contributions when you approve your annual operating budget. While this takes a year or two of planning, if you are anticipating a major project in the future, it is a viable option to consider. A valuable tool for major repairs and funding is to maintain an ongoing 5 year plan of upcoming projects. Five years will provide any community with sufficient advance time to consider funding and repair options.