

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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What is the result if a Strata Corporation fails to comply with the procedural requirements of the *Strata Property Act* when holding meetings and passing bylaws?

Two Strata Corporations discovered the answer to this question when owners challenged the validity of their bylaws.

In one case, the evidence before the Judge was that the bylaws that were circulated with the Notice of the Meeting were not the bylaws that were voted on at the meeting. Additionally, separate votes were not taken on behalf of the residential and non-residential owners. Although the Judge did not provide reasons, the Judge concluded that the bylaws were void and of no effect.

In a second case the Strata Corporation had mailed the Notice of the Annual General Meeting to the owners' strata lot and not to their home address. The owner had been in a dispute with the Strata Corporation over the rental of their strata lot. Although they were told they were not permitted to rent because the maximum number of rentals permitted by the bylaw had been reached, the owners nonetheless rented out their strata lot. The owners submitted the form under the Condominium Act equivalent to the Form K in the *Strata Property Act*, which advised the Strata Corporation of the home address of the owners of the strata lot. However, the Strata Corporation had inadvertently failed to update their computerized mailing list with the owners' home address.

When the time came to send out the Notice of the Annual General Meeting it was sent to the strata lot instead of the owners' home address. The Notice of the Meeting included a resolution to amend the rental restriction bylaw. The amendment to the bylaw changed the bylaw so that it prohibited rentals rather than setting a limit on the number of rentals that were permitted. The amendment was of no assistance to the owners. At the meeting, the bylaw amendment was approved by all owners in attendance, however, the owners who were in dispute with the Strata Corporation over the rental of their unit did not attend the meeting. The owners in the dispute with the Strata Corporation challenged the bylaw and argued that they had not received the Notice of the Meeting until after the meeting.

The Judge considered section 47 of the *Strata Property Act*, which provides that the failure to give proper notice of an Annual or Special General Meeting does not invalidate a vote taken at the meeting as long as the Strata Corporation made a reasonable attempt to give the Notice in accordance with this section. The Judge found that although the error was inadvertent, the Strata Corporation had not made a reasonable attempt to notify the owners. The Judge reached this conclusion because the Notice of the meeting contained an amendment to the rental bylaw and the Strata Corporation was aware that they were in a dispute with the owners in relation to rentals. The Judge found that in such a case, the Strata Corporation had a higher duty to ensure that the owners received the Notice of the meeting.

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The Judge rejected the argument that because all the owners at the meeting had approved the bylaw amendment, the presence of the owners who disputed the bylaw would not have affected the outcome. The Judge stated that had the owners attended the meeting they might have been able to persuade other owners to support their position. The Judge found that the resolution approving the bylaws was void and of no effect.

The *Strata Property Act* contains a number of procedural requirements that Strata Corporations must adhere to when calling meetings and amending bylaws.

Sufficient notice must be given of the meeting. The *Strata Property Act* requires at least 14 days notice, however, the Interpretation Act provides that in such circumstances, the first and last days are not counted. Thus, 16 days must be allowed. Additionally, the *Strata Property Act* provides that unless a Notice is hand delivered to the owner, it is deemed to have been delivered four days after it was placed under the door or in a mail slot, mailed, or left with an adult at the strata lot. A further 4 days should be added to the notice period. Strata Corporations should therefore allow a minimum of 20 days between the date the Notice is mailed or delivered and the date of the meeting.

Copies of all resolutions that require a 3/4 vote must be circulated with the Notice of the Meeting. At the meeting, owners may only amend a resolution that requires a 3/4 vote if the amendments do not substantially change the resolution and if the amendments have been approved by a 3/4 vote prior to the vote on the resolution.

If the Strata Corporation contains both residential and non-residential strata lots the residential strata lots and non-residential strata lots must each vote to approve the bylaws.

Although Strata Corporations should follow all procedures set out in the *Strata Property Act* relating to the calling of meetings and the amendment of bylaws, Strata Corporations should pay particular attention to ensure that a notice of a bylaw amendment is provided to an owner if the owner has, in the past, challenged the validity of the bylaw.

Complying with the procedural requirements of the *Strata Property Act* will prevent a Strata Corporation from facing the possibility that their bylaws are declared void which then prevents the Strata Corporation from enforcing the bylaws and requires the Strata Corporation to go to the trouble and expense of calling a further meeting in order to have the bylaws re-approved by the owners.

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