

**Headline: Assignments Of Voting Rights**

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Strata corporations often receive Form C's from mortgage lenders accompanied by *assignments of voting rights* to the lenders, creating confusion for both the strata corporations and owners regarding the actual exercise of such rights.

Section 54[c] of the Strata Property Act ["the Act"] permits mortgagees to vote on behalf of owners in the following circumstances:

**54** The following persons may vote at an annual or special general meeting:

- (a) an owner, unless a tenant or mortgagee has the right to vote under paragraph (b) or (c);
- (b) a tenant who has been assigned a landlord's right to vote under section 147 or 148, unless a mortgagee has the right to vote under paragraph (c);
- (c) a mortgagee of a strata lot, but only in respect of insurance, maintenance, finance or other matters affecting the security for the mortgage and only if
  - (i) the mortgage gives the mortgagee the right to vote, and
  - (ii) at least 3 days before the meeting the mortgagee has given to the strata corporation, the owner and the tenant referred to in paragraph (b), if any, written notice of the mortgagee's intention to vote.

These assignments are additional security for lenders, *presumably* to permit them to exercise the borrower/owner's voting rights if their mortgage loan goes into default or their security is otherwise deemed to be in jeopardy. The problem is that lenders virtually NEVER attend at strata meetings, nor exercise the borrower/owner's voting rights in person or by proxy.

To complicate matters further, an assignment of voting rights may arrive at a strata corporation by letter from the lender's lawyer, but NOT accompanied by a FORM C [Mortgagee's Request for Notification to provide a name and address for service for the lender].

The assignments are generally not drawn with appropriate conditions as to use by the lender.

The reason is that institutional lenders have not agreed upon a standard assignment of voting rights to provide to conveyancing solicitors. Instead, their mortgage instructions generally require that their lawyer is to "*take all steps necessary to ensure that the borrower's voting rights are assigned to the bank.*" The lawyer has his or her client sign a simple blanket assignment of voting rights to the lender and the assignment is mailed to the strata corporation.

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Unfortunately, the result is that the owner/borrower's rights are transferred to the bank [at least in so far as permitted under s.54[c] of the Act –insurance, maintenance, finance or other matters affecting the security of the mortgage].

The effect of this situation is that owner is deprived of significant voting rights and the without providing an address for service by way of a FORM C, the bank/assignee of said rights will not be notified of proceedings –thus making the assignment worthless for the lender. *[It's highly debatable whether the assignment is worth anything in any event, given that the lender would have only one vote to cast even if its representative was to actually vote!]*

Experience has shown however, that even if a FORM C does accompany the assignment and the strata corporation notifies the bank of an upcoming strata meeting, the lender invariably does NOT attend at or vote [in person or by proxy] at the meeting.

Thus, what should a strata corporation do when it receives an assignment of voting rights?

The following are some suggestions.

File the assignment of voting rights in the strata owner's file and notify the owner that he or she is unable to vote on the matters set forth in s.54[c] of the Act, as their voting rights have assigned to their bank. Suggest that the owner contact their bank to rectify this situation.

If the assignment contains an address for service on the bank, consider sending the following standard letter to the bank to rectify the situation.

NAME AND ADDRESS OF STRATA CORPORATION

NAME AND ADDRESS FOR SERVICE OF ASSIGNEE/BANK

Dear Sirs:

RE: Assignment of voting rights for SL , Strata Plan by [the borrower/assignor]

We are in receipt of the above-noted assignment [copy attached]. Please confirm that it is in order for your borrower [the assignor] to continue to exercise all of his or her voting rights notwithstanding the assignment, unless:

- a. your borrower's mortgage goes into default; or
- b. you otherwise determine that your security is in jeopardy; AND
- c. you notify us of your intention to exercise the borrower's voting rights 3 days before any meeting pursuant to s.54[c] of the Strata Property Act.

Please reply by signing below and returning this letter to us by fax at

Thank you for your anticipated early reply.

Yours truly,  
The Owners of Strata Corporation etc.

**We acknowledge receipt of the foregoing and agree to its terms.**

**Dated:** 2004

**XYZ Bank**  
**Per:**

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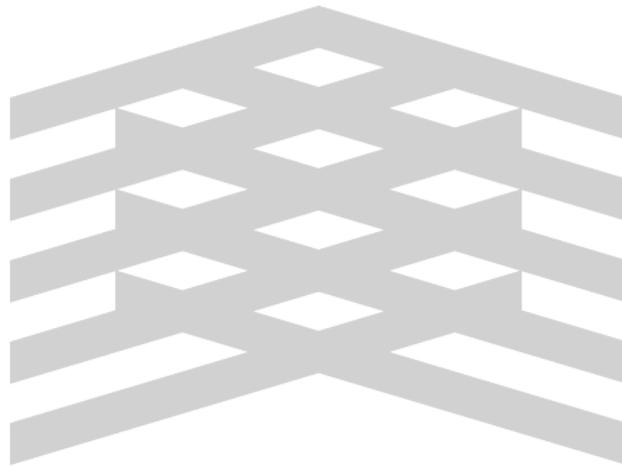
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Upon receipt of this letter signed by the mortgagee, the strata corporation may ignore the assignment of voting rights unless and until it receives written notice from the mortgagee of its intention to vote under s.54[c]. Thus, the strata owner could continue to vote on all matters.

The strata corporation would still have to provide the lender with notices under s.45 and s.113 [provided that it has received a FORM C], but this may solve the current problem of having no one able or willing to exercise the owner's voting rights due to the bank's assignment.

We are attempting to have the major banks adopt a standard form assignment of voting rights incorporating the provisions of the above letter. If that occurs we will notify you through CHOA.



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