

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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## Headline: **How to Successfully Pass $\frac{3}{4}$ Vote Resolutions**

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In order to move forward on many important issues, it is necessary for the owners in a strata corporation to be able to successfully pass a  $\frac{3}{4}$  vote resolution. Failure to be able to successfully pass a  $\frac{3}{4}$  vote resolution can bring paralysis to a strata corporation. For instance, if a  $\frac{3}{4}$  vote resolution is not passed, repairs required to a building may not be done and bylaws will remain unpassed. This article outlines when a  $\frac{3}{4}$  vote resolution needs to be used, how it is defined, what notice must be given to the owners that one will be considered at a general meeting, and when it can be implemented. At the end of the article consideration is also given to the practical aspects of planning and running a general meeting that can make the difference between the resolution passing or failing.

### **A. When are $\frac{3}{4}$ votes used?**

The *Strata Property Act* (“*Act*”) recognizes three different voting thresholds for resolutions passed by the owners. The voting thresholds are majority votes,  $\frac{3}{4}$  votes and unanimous votes.  $\frac{3}{4}$  vote resolutions are required in circumstances which including the following:

- (a) disposing of land that is a common asset (section 79);
- (b) disposing of common property in certain circumstances (section 80);
- (c) selling, leasing, mortgaging or otherwise disposing of personal property which has a market value of more than \$1000.00 or the amount set out in the bylaws (section 82);
- (d) expending money out of the contingency reserve fund (section 97);
- (e) changing the fiscal year end (section 102);
- (f) determining how to use a surplus from the operating fund if the funds are to be used in a manner not specified under section 105;
- (g) passing a special levy (section 108);
- (h) passing bylaws (section 128);
- (i) authorizing commencement of a lawsuit in most circumstances (section 171);
- (j) authorizing commencement of an arbitration (section 176); and
- (k) canceling a strata management contract in accordance with section 39.

### **B. How is a $\frac{3}{4}$ vote resolution defined?**

According to the definitions in the *Act* a  $\frac{3}{4}$  vote “means a vote in favour of a resolution by at least  $\frac{3}{4}$  of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting”. As a result, when you are counting the votes for a  $\frac{3}{4}$  vote, it is important to count the votes for the resolution, the votes against the resolution and the abstentions. If only the “yes” votes are counted and all other votes are counted as “no” votes, the vote will not be recorded correctly. In that case,

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people who abstain from the vote, or who leave the meeting will be counted as having voted no to the resolution when they have not voted at all.

**C. What are the notice requirements for a 3/4 vote?**

In order for a 3/4 vote resolution to pass it is necessary under section 45 of the *Act* that the notice of the annual or special general meeting include the proposed wording of the resolution. This notice requirement is not always followed by strata corporations. Sometimes the general idea of the resolution is included in the notice, but not the wording. For instance, I have seen notices that include wording similar to “We will discuss and vote on raising money for the building envelope repairs”. This type of statement in the notice does not meet the requirements of the *Act*, because the exact wording of the 3/4 vote resolution needs to be set out on the notice. In addition, very specific information needs to be included on the resolution when a special levy is being voted upon. Section 108 should be used as a checklist to ascertain that those requirements have been met. When passing resolutions to raise funds for large scale remedial projects, it is prudent to ask a lawyer to draft the resolution to ensure that all the requirements of the *Act* have been met. These resolutions can become quite complicated, especially when the funds for the remediation are being raised through a loan from a financial institution.

Sometimes owners want to change the wording of the resolution at the general meeting. Section 50 of the *Act* allows for this, as long as the amendments do not substantially change the resolution and are approved by a 3/4 vote. What constitutes a substantial change is a judgment call. In my view, a resolution has been substantially changed if an owner could complain later that because of the change he did not receive sufficient notice of the meeting and had he known what resolution was actually going to be voted upon he would have decided to attend the meeting or prepare differently for the meeting. For example, changing a resolution to amend the bylaws from allowing two dogs per strata lot to allowing one dog per strata lot certainly could be objected to by an owner later on. Conversely, correcting a typographical error that could not reasonably cause any confusion in the first place is not a substantial change. In order to approve the amendment by a 3/4 vote resolution, the procedure set out below should be followed:

- (a) a motion to pass the 3/4 vote resolution needs to be made and seconded;
- (b) discussion on the 3/4 vote resolution follows;
- (c) to request an amendment to the resolution, a motion needs to be made to pass the amendment and then it needs to be seconded; and
- (c) the amendment to the original resolution needs to be discussed and voted upon, and if the amendment passes by a 3/4 vote, then the 3/4 vote resolution will be eventually voted upon as amended.

**D. When can the strata council not immediately act on implementing a 3/4 vote?**

Section 51 provides that if a 3/4 vote resolution is passed 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 unless there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage. During the week following the meeting, persons holding at least 25% of the strata corporation's votes may, by written demand, require that the strata corporation reconsider the resolution. For instance, if the strata corporation has passed bylaws, but less than 50% of the owners attended the meeting, the bylaws cannot be registered for one week after they are passed.

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## **E. What are the practical aspects of passing a ¾ vote?**

Many times ¾ vote resolutions are not successfully passed, because of the technical rules above have not been followed. Other times the resolutions do not pass because of how the council has prepared for the general meeting and how the resolution is presented to the owners at the general meeting.

In my experience, when several competing ¾ vote resolutions are included on the notice of meeting, all of the resolutions typically fail. For example, if there are four different ¾ vote resolutions included in the notice setting out different proposed solutions to repair the building envelope, all of the resolutions are bound to fail because accomplishing the main goal is overshadowed by the individual preferences of owners for the different repair solutions. In these circumstances it is important for the strata council to consider the preferences of owners before the meeting, perhaps by obtaining the input of the owners at a town hall meeting. That way, the council will know what ¾ vote resolution best meets the needs of the owners and stands a reasonable prospect of passing at a general meeting. It is helpful if council members can decide on the basis of a majority vote what the wording of the one proposed ¾ vote resolution will be that deals with each topic. If the owners are advised at the general meeting when the ¾ vote is being considered that council has consulted with owners at a town hall meeting, has fully considered the situation and that the majority or all of the council members consider the ¾ vote resolution to be the best solution in the circumstances, the resolution stands a much greater chance of passing than if several council members have competing resolutions set out on the agenda to be discussed at the meeting.

Having someone chair the meeting that is a neutral and unbiased professional is also helpful. It is important to maintain order at a meeting where a controversial matter is being discussed and decided upon. Sometimes it is necessary for the chair to advise an owner to leave the meeting and take a walk around the block to cool off. It is much easier for an outside professional to ask an owner to cool off outside the meeting than for someone who is on council and is a neighbour of that person. A neutral person will also have an easier time facilitating the discussion. If a chair is advocating that the resolution should pass or fail, owners who want to express a different opinion often feel that their comments are not treated with respect, because the chair often times makes counter-arguments to theirs as soon as they are finished speaking. If the president or another member of council is going to chair the meeting, it is best for that person to take a neutral position throughout the meeting and have another council member be the point man to explain the resolution and why council as a whole considers it to be the best solution in the circumstances.

Whether a resolution is passed successfully or not often times comes down to the numbers of proxies that have been collected by council members. Knocking on a few owners' doors to collect proxies can make the difference between being able to repair a building on the basis of a successful ¾ vote resolution or having to obtain a court order to do so.

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