

Headline: Strata Corporations Use of Proxies

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The use of proxies is a frequent source of questions from strata managers and strata corporations. What should a strata council do if a person appears at a meeting with an e-mail from an owner appointing that person as a proxy? What if a strata lot is jointly owned but only one owner has signed the proxy form? Which proxy should be accepted if an owner of one strata lot has signed two proxies?

A basic understanding of the use of proxies is valuable, since such issues tend to arise at meetings of strata corporations when there is little time to find answers.

The Strata Property Act, S.B.C. 1998, c. 43 (the "Act") provides very minimal guidance, and the use of proxies for strata corporation meetings has not been considered in any detail by BC courts. However, there are a number of principles regarding the use of proxies that apply to all corporations, including strata corporations. While the Act supersedes any general company law principles, if the Act does not provide an answer, a useful resource to turn to for questions regarding proxies is a text regarding company meetings.¹

It is helpful to understand what a "proxy" is. A proxy is a person, who acts in place of another. The piece of paper is the proxy appointment. The basic right to vote by proxy is contained in section 56 of the Act. Section 56(1) provides that anyone who is entitled to vote at an annual or special general meeting may do so by proxy. Therefore, a strata corporation cannot validly pass a bylaw which prohibits the use of proxies. Note that the Act does not, however, provide for voting by proxy at council meetings.

Form

Section 56(2) specifies the form requirements of a proxy appointment: the appointment must be in writing and signed by the person appointing the proxy, an appointment may be general, or may be for a specific meeting or resolution, and an appointment may be revoked at any time. The Act contains an optional form of proxy appointment which may be used.

In addition to the s. 56(2) requirements, the date of the appointment should be given, as well as the name of the proxy. It is not necessary that a specific person be named—it is acceptable, for example, to appoint the chair of the meeting. Although an original signature is not required (facsimile copies are acceptable), the document must be signed. Therefore a person presenting an e-mail designating a proxy would not be entitled to vote.

It is the task of the meeting chair to determine whether or not a proxy appointment is valid. Scrutineers may be appointed to check in voters and review proxy appointments, but if there is uncertainty, the matter should be referred to the chair. Proxies that do not contain all of the required information are not valid and should not be accepted by the chair of the meeting. It would be acceptable to reject a proxy if the appointment form is so torn or mutilated that one cannot be certain of the appointer's intention or if

¹ *E.g., Wainberg and Nathan's Company Meetings, 5th ed., CCH Canadian Ltd.*

the instructions or restrictions on the appointment are confusing or in doubt. If a strata lot is jointly owned, a proxy will be valid even if only one of the owner has signed the appointment. However, if both owners sign proxies appointing different people, the proxies will cancel each other out and should be rejected.

There is no limit to the number of proxies one person may hold, and almost anyone can be a proxy (*e.g.*, a non-owner or a council member). Only strata managers and employees of strata corporations are not permitted to be proxies for strata corporations to whom they provide services.

Function

Section 56(4) describes the function of a proxy: under the Act, a proxy stands in the place of the person appointing the proxy, and can do anything the appointee can do (including vote, make motions and participate in the meeting) unless limited in the proxy appointment document.

Typically, in company law, proxies are restrictive. For example, if a proxy holder is instructed to vote “yes” on a resolution, and the resolution is modified in the meeting, the proxy holder cannot vote, unless specifically authorized to do so.

If the holder of a proxy appointment does not follow the instructions of the person appointing the proxy, the chair should decide how to handle the matter. While the Act does not contain any guidance, in company law, the chair would not accept a vote by proxy that does not conform to the restrictions and instructions in the proxy appointment.

Objections

From time to time, an owner may object to the chair’s decision to accept or reject a proxy. Objections should be made at the meeting. The party objecting should be given an opportunity to make submissions to the chair, and inspect the proxy appointment, if requested. Although proxy appointments are not “records of the Strata Corporation” to be kept under section 35 of the Act, the council should carefully consider how to proceed if there is controversy over the vote.

Duration

How long a proxy appointment lasts depends on the type of appointment. A proxy for a specific meeting or resolution will be at an end after that meeting. A general proxy will continue until revoked. Although a revocation should be in writing and signed by the grantor, the appointment of a new proxy for that strata lot will revoke the previous proxy, and only the most recent appointment should be accepted. Proxies are also automatically terminated by the death of the appointer, upon the strata receiving notice of the death.