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## **Election Of A Strata Council**

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Election of strata council members is sometimes a heated part of an Annual General Meeting ("AGM"), and can be a focal point for any other disputes or factional divisions amongst owners.

Properly electing strata council members can make the difference between having effective leadership of the strata corporation throughout the year ahead, or having a quarrelsome strata council which is unable to effectively protect the strata corporation's interests or fulfill the basic obligations of the strata corporation in terms of maintenance, governance and administration.

Some strata corporations have troublesome candidates being continuously re-elected because of a shortage of candidates and a misunderstanding as to how the election should take place. It is hoped that this article will assist strata corporations with an effective and fair election process.

It is wise to put good voting practices in place before a problem arises; so that a change is not perceived as an unfair reaction to an unpopular or controversial candidate running for council.

### **General Procedural Requirements**

The *Strata Property Act* (the "Act") requires that council elections must take place at each AGM, and that they must be conducted by majority vote; however there is no specified procedure in the Act, the *Regulations*, or the Standard Bylaws as to exactly how the election should be administered. Therefore, it is open to the strata corporation to pass a bylaw setting out how the election is to occur, as long as the method specified is otherwise legal, fair and reasonable.

If there is no such bylaw, it is not clear to what extent the owners may define and change election procedures at the meeting; however there is some case law which supports the conclusion that the owners can adopt fair and lawful procedural guidelines for the purpose of a meeting - by majority vote resolution at the AGM.

The Standard Bylaws permit a minimum of 3 and a maximum of 7 strata council members for strata corporations with 4 or more owners. Who is eligible to serve on council depends upon the strata bylaws, but typically includes owners, designated representatives of corporate owners and tenants with valid assignments of owner rights. Specific bylaws may exclude owners in arrears, and may include other categories of people, such as spouses of owners, as eligible to serve on council. Each strata lot can only supply one council member at a time, unless all owners cue on council, in which case each strata lot has only one vote at a council meeting.

### **Problematic Voting Methods**

By far, the most common way to elect a strata council is to take nominations at the AGM, and have owners vote for preferred candidates by ballot or show of hands. Then the 7 owners who receive the greatest number of votes are typically deemed elected to the strata council, regardless of the number of votes each of them received.

The main practical disadvantage with that voting method is that members can be elected by a single vote who would not be elected by a majority vote. With controversial candidates, that can mean that an unpopular or duly removed candidate could be reelected by their own vote if there were fewer than 7 nominees for the strata council. That method also doesn't deal well with situations where nominees exceed available council positions.

The method described above is also problematic legally. Section 50 of the Act requires that all business at an AGM which does not require a different voting threshold must be determined by a majority vote.

A more appropriate voting method will ensure that only owners approved by a majority of votes serve on the strata council. "Majority Vote" is defined as follows:

**"majority vote"** means a vote in favour of a resolution by more than 1/2 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;

Acclamation of council is not contemplated by the Act. If there are fewer nominees than maximum council positions, and all of the nominees will be acceptable to all voters, then there should still be a majority vote taken and noted in the minutes confirming the election of all nominees.

Other problematic methods observed involve holding separate elections for each strata council position, either by number or by specific role, requiring that candidates commit to a specific position. These methods create serious legal and practical difficulties, including what happens if there is no majority vote because 3 candidates split a vote. This method also causes jockeying between nominees as to which positions they will run for, which can lead to an unfair result. Keep in mind that under the standard bylaws, the owners do not elect candidates to specific officer roles on council. Council itself determines who will hold specific officer roles at the first council meeting following the AGM.

Simply holding majority votes for each nominated owner is also problematic if there are more nominations than there are available strata council positions. In such a case, the order of votes can be unfair to those who are considered after all positions are filled, or will result in more council members than there are available council positions pursuant to the bylaws. A series of run-off elections could solve this problem but creates a cumbersome and lengthy process.

### **Acceptable Voting Methods**

One viable system permits each owner to cast up to 7 votes on a single ballot for their preferred nominees. The 7 candidates with the highest number of votes received are then tabulated and confirmed by a simple majority vote approving the 7 as council. If that second vote fails for some reason - usually because one candidate is unpopular or controversial - individual majority votes can be held to confirm each of the seven candidates as elected strata council members.

An alternative is the process described above of casting votes for each candidate separately, requiring a majority vote for each, and then holding run-off elections to reduce the number of candidates to the maximum number of council members, if required. Simple collective election of an uncontroversial strata council comprised of all candidates is also acceptable; if ratified by majority vote, and if there are fewer candidates than positions.

There are various other election methods which can properly be used, some of which are quite complicated.

### **Casting and Counting Votes**

The Standard Bylaws contemplate that votes can be cast by show of voting cards, roll call, secret ballot or "some other method".

Voice votes, show of hands or voting cards, roll calls and other methods of casting and recording votes will not be practical for larger strata corporations with dozens or hundreds of participants, where multiple votes are required for various council nominees. These methods are also not possible if a secret ballot is requested.

Ballots, and particularly secret ballots, are common means of handling council elections. Secret ballots have the particular advantage of avoiding allegations of voter intimidation or privacy concerns with respect to voting. The main challenges with voting by ballot include the time required to count and accurately record votes cast during the course of the meeting, and the great technical difficulty in handling ballots in strata corporations where owners are permitted by bylaw to attend the AGM by electronic means.

If a secret ballot is properly requested, the case of *Imbeau et al. v. The Owners, Strata Plan NW 971*, [2011J] says that the Strata Council must take reasonable steps to ensure the secrecy of the vote, including creating a confidential voting area. Secure ballots, cardboard voting booths, and ballot boxes should be kept at hand for such votes.

*Azura Management (Kelowna) Corp. v. Owners of the Strata Plan KAS2428* [2009J] suggests that lots directly owned by the strata corporation should not cast votes, except on votes requiring unanimous consent of all owners. This case also suggests that it is important to count votes as follows:

1. Determine quorum;
2. Total the votes in person and proxy votes in attendance;
3. Count all votes in favour;
4. Count all votes against;
5. Count all abstentions; then
6. Calculate the votes in favour as a percentage and determine if the applicable vote threshold has been met.

### **Defects in Election of Council**

*Blue-Red Holdings Ltd. v. Strata Plan VR 857* [1994] held that the improper make-up of a Strata Council is not a fatal defect to a resolution of the council, if the resolution was made in good faith.

However, *Francescutto (Guardian ad litem of) v. Strata Plan K227* [1996] suggests that a Strata Council elected at an AGM that is not held in accordance with the legislation may not be considered a valid council, and may jeopardize transactions conducted by the council. Although this case was from the BC Court of Appeal and therefore takes precedence over the *Blue-Red Holdings Ltd.* decision, it has been largely ignored by subsequent decisions.

*KBK No. 181 Ventures Ltd. v. Lee* [1998] confirms that voting must be conducted in accordance with the registered schedule of voting rights, and in accordance with relevant provisions of the Act and Bylaws. Any

serious defects in the election process can result in the need to hold a new election.

The decision in *Clarke v. VIS 770*, [2008] lists the following factors for consideration in determining the effect of a defect in the election of council:

1. Was the error due to bad faith;
2. Did the error materially affect the outcome of the election; and
3. Was there unreasonable delay in bringing an application to challenge the election.

*Dockside Brewing Co. v. Strata Plan LMS 3837* [2005] suggests that a Strata Council continues to hold office until an AGM is held, even if the AGM is delayed.