

Condo Smarts

Headline: Proxy piling

Topic: Proxies

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Dear Condo Smarts: A small group of owners in our strata are very frustrated by the lack of interest of most of the strata owners in our complex. We often struggle to get a quorum, so we amended our bylaws to approve those attending as the quorum. Even with a recent major financial decision, less than 40% of our owners showed up and more than half of those were represented by proxy. While no one objects to proxies, we do object when a few people hold all of the proxies and then defeat our resolutions. At our recent meeting the person holding enough proxies to defeat our vote forced us to make amendments to her liking before the vote could pass. What we need to find out is if the strata can pass a bylaw that limits the number of proxies a person can hold? Denny, Vancouver

Dear Denny: The Strata Property Act only requires that a proxy must be in writing and signed by the person appointing the proxy. A proxy may be either general or for a specific meeting or a specific resolution, and may be revoked at any time. An employee of the strata or the strata agent are not permitted to hold proxies. A proxy stands in the place of the person appointing the proxy and can do anything that person can do, including vote, make motions and engage in discussion. The proxy may limit the scope of authority as well. For example, to limit proxy piling in council elections, the strata corporation may issue an optional proxy form with the notice that prohibits the use of proxies for the purpose of election of council. If the person assigning the proxy agrees to those terms then that restriction would apply. However, it should be noted that the

person assigning the proxy does not have to use the proxy form issued with the notice and may simply issue a general proxy or amend the proxy form with no restrictions. There are several problems with a bylaw that would prohibit or limit the number of proxies. The Act creates the use of the proxy and leaves the discretion of the assignment to the person assigning the proxy and bylaws must comply with the Act to be enforceable. Such a bylaw may conflict with Section 59 of the Act. The practical application of enforcement is even a greater problem. There is no provision in the enforcement of bylaws to deny voting rights of an eligible voter (either in person or by proxy), except when a strata has adopted a bylaw that permits the strata to restrict an owner from voting if the strata is entitled to register a lien against the title of the strata lot. Even that action requires 14 days notice before a lien can be filed, and the person has an opportunity to respond. Your strata would have no notice of someone violating a proxy bylaw until they showed up at the door to register for the meeting. How would the strata enforce the bylaw on the spot when bylaw enforcement is under the authority of council and requires a council meeting with notice? Would anyone conducting registration be willing to assume the liability of votes that would not be eligible and those that are? How would a person or corporation who owns or represents 50 votes be affected by the bylaws? Which ones would be valid? Before you contemplate a bylaw on proxies seek legal advice. Voting rights of owners are fundamental. Denying their proxies is denying their voting rights.

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