

Condo Smarts

Headline: AGM by proxy: is it allowed?
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Dear Condo Smarts: Our strata recently held our annual general meeting by mail-in vote. The council cited lack of interest of the owners and an inability to set a convenient time for everyone. The result was disastrous. We evidently did not elect a council. The property manager basically just counted the votes for the budget and sent a notice along with a statement to everyone for the next year's strata fees. According to our property manager, it is permitted to vote by mail, so long as a majority of the owners agree to the resolutions. We are highly suspicious if this is even possible, considering the strata corporation must have an Annual General Meeting each year. Is voting by mail in ballot permitted? Kelly Leung, Burnaby

Dear Kelly: There are no such provisions for voting by "mail-in ballot" in the *Strata Property Act*. It is possible for a strata corporation to agree to waive notice of a general meeting; however, the conditions that have to be made are onerous, and intended so, to ensure the rights of the owners are protected. A waiver of annual general meeting is permitted, if all eligible voters waive, in writing the holding of the meeting, and consent in writing to resolutions that: a) approve the budget; b) elect a council by acclamation; and c) deal with any other business on the agenda. A majority of owners does not meet the test of eligible voters, and in your strata of 108 units, only 60 ballots were received, and 104 of the units were eligible voters. At the very least, all 104 units had to sign a waiver notice in writing and agree to all of the conditions above. The Act does not contemplate balloting by

mail because our legislation is dealing with a form of governance that impacts the personal property and personal liability of each owner, thus requiring the vote is conducted physically by the owner, their proxy, or the conditions of waiver. A document appointing a proxy that is issued by an owner is not a ballot or vote. It appoints a person, who is the proxy, who votes on behalf of the owner and can do anything that person can do, including vote, propose and second motions and participate in discussion. Proxy appointments may also limit the specific direction of voting on matters or limitations of authority. The proxy appointment, optional Form A, is only the instrument that appoints the person to act as their proxy, and is not a ballot. If the property manager received the proxies and was appointed to act on their behalf and execute their directions, that decision was also in error. A person who is an employee of the strata corporation or who provides strata management services to the strata corporation is not permitted by the Act or Regulations to hold a proxy; therefore, they had no authority to execute the votes. To remedy the errors the strata corporation needs to issue notice of a Special General Meeting to properly convene the business of their annual general meeting, elect a strata council and approve a budget. All decisions need to be ratified by a majority vote, not a mail-in ballot. Regardless of the type of meeting, whether a convened meeting or a waiver of meeting, minutes of the meeting including the resolutions and results of the voting must also be produced.

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