

Condo Smarts

Headline: To Destroy or Not to Destroy
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Written by: Tony Gioventu

Dear Condo Smarts: Last week's column on voting procedures was very helpful to our strata corporation. We used the step by step process at our AGM a few days later, and the result was accurate, no one questioned the procedures, and unlike past years our two troublesome owners did not challenge any part of the meeting. In 45 minutes the budget was approved, a new council was elected and we approved the funding for a reserve fund study. After the meeting, one council member was left with the ballots for the election of council and the three quarters vote for the special levy for the reserve fund study. Could you kindly tell us what we are supposed to do with the ballots when a meeting is over? The property manager said we are supposed to vote to destroy the ballots during the meeting, so if we didn't do that, do we have to keep the ballots and for how long? Darryl Crespin, New Westminster

Dear Darryl: There are three potential types of ballots that may be used. Secret ballots where the identity of the voter is unknown, and the privacy of the voter is protected at all cost, general ballots where a paper ballot is used, but secrecy is not demanded or required under the bylaws, and a polled ballot where the identity of each strata lot is recorded on each ballot. The different types of ballots are determined through the strata corporation bylaws, the Schedule of Standard Bylaws of the Strata Property Act and the decisions of the owners and chairperson of the meeting. Depending on the type of ballot and the type of meeting, it may be necessary to retain the ballots for future evidence in the event of an unresolved dispute or court action to force matters such as immediate repairs. The ballots, as part of a meeting, may be necessary to prove that the vote was taken, how it was taken, and what the resulting count was. For example, if the use of ballots is for general use of accuracy in a large meeting, or to protect the privacy of owners for council elections, then before the meeting is over the strata corporation may decide to destroy ballots by majority vote. It will be the duty of the scrutineer to then destroy the ballots once the meeting is over. They should be shredded immediately. According to Allyson Baker, lawyer with

Clark Wilson LLP in Vancouver, " if you retain the ballots, it is important at the meeting to identify that the ballots will be retained, how they will be sealed or protected, and who is going to retain the ballots, for what period of time, and at what point are those ballots destroyed. A practical approach would be to vote by majority vote that the ballots would be destroyed in 1 year's time, in the event no legal proceedings have been initiated or threatened following the vote. If you have been retaining ballots for meetings over the years, you will still be required to have the owners pass a vote by majority vote at your next general to destroy the specific year's ballots". Remember that even if your strata corporation is voting by secret ballot, it may not be possible in all cases, when you consider the voting rights of commercial strata lots. Commercial strata lot voting rights are not one vote per strata lot and as a result a ballot that shows 9.77 votes could easily identify the voter. To have a true secret ballot the strata corporation may be required to retain an entirely independent scrutineer to count and report on the voting results.

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