

Condo Smarts

Headline: Bylaw Amendments for Mixed use Buildings

Topic: Bylaws, Commercial Stratas

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Written by: Tony Gioventu

Dear Condo Smarts: We have a smaller strata of 37 units in the Fraser Valley. 30 of the units are condos on the upper floors and the ground floor is 7 commercial. Over the past 18 years our strata corporation has routinely amended bylaws at the Annual Meeting, and some of the amendments have had a negative impact on the commercial strata lots. No one in the commercial units is opposed to bylaws that affect the residential owners, for example a bylaw that only permits cats, but we are getting pressure from the strata council which is controlled by the residential owners, to comply with the bylaws that in our opinion apply only to residential units. One of the commercial owner brings his dog to work, they do not use the elevator of the building or lobby as their unit is on the end and has direct street access. It seems unfair that the residential units, who always have enough vote to pass a bylaw against our small minority, can control the sue of our property. How can our strata solve this impasse before we end up in court.

Darryl T.

Dear Darryl: When it comes to bylaw amendments for strata corporations that are made up of both residential and non residential (commonly commercial), the Strata Property Act has a different requirement. Rental bylaws for example are a good reason, in that while they may apply to a residential strata lot, rental restriction bylaws do not apply to non residential strata lots. Under section 128 of the Act, bylaw amendment procedures are set to define that bylaws must be approved by a three quarters vote at an annual or special general meeting. In the case of a strata plan composed of both residential and non residential strata lots, it requires that a resolution must be passed by a three quarters vote by both the residential strata lots and separately by a three quarters vote passed by the non residential strata lots. This prevents the residential or non residential from having an unfair advantage or influence over the use of the different types of properties. This also applies to any bylaw amendments that change existing bylaws. There is a similar strata corporation in Richmond where the owners of the

residential strata corporation attempted to repeal the signage bylaw that permitted lit or neon signage adjacent to the commercial areas. Their strata corporation consists of 58 residential units and 12 commercial units. In order for their bylaw amendment to pass, a separate three quarters vote is required of both the residential units and the non residential units. Surprisingly this is a common error in most mixed use developments where a bylaw that applies to a corporation is ratified. When the voting cards are issued at the beginning of the meeting, the residential units and non residential units should be issued different colours so they are easily identified when the vote is called. It is then critical that whether by show of voting cards or secret ballot, that an exact count of each separate vote is taken. Call the vote for the residential section, count the total number in favour and opposed and three quarters of that number is required, and then count the total number in favour and opposed of the non residential section and three quarters of that number is required. If both the residential and non residential ratify the vote separately by three quarters vote, then the resolution is carried.

Remember non residential votes are not generally one vote per strata lot, so the exact voting numbers need to be calculated. In Darryl's strata, the minutes indicate that only one vote was taken over the past 5 years on bylaw amendments. If bylaws are not properly amended, their enforceability is subject to a challenge.

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