

Condo Smarts

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Dear Condo Smarts: Our strata council at whistler recently had a meeting where the property manager had received all of the proxies, which were described to the owners at the meeting as voting ballots. Each of the ballots was counted and cast for each of the votes, including a predetermined list of council members that were so called nominated by the retiring council. They nominated themselves for reelection, and secured it with these absentee votes. The remaining owners, who represented 45% of the strata corporation challenged the voting procedures, but the property manager advised they had legal advice on the process, and that absentee ballots were permitted. We understand that under certain societies or non-profit associations there may be different types of voting procedures permitted, but we did not believe that the Strata Property Act permitted any such voting variations. Could you please explain the process?

Carol & Doug Taylor

Dear Carol & Doug: You are correct. There is no such provision for absentee ballots. The principle reason is that the legislation requires a real person to exercise those votes. The *Strata Property Act* permits two different types of voting representation: in person, or by proxy. A proxy is a written assignment where a person is actually appointed to act on behalf of the owner(s) of the strata lot to exercise their votes and represent their interests. While the owner(s) of the strata lot may have provided instructions on the proxy, they are assigning this obligation with some level of discretion, unless the proxy has specific restrictions. A serious error made by the strata manager was allegedly representing the claimed absentee ballots. A person providing strata management services to a strata corporation, or an employee of the strata corporation is not permitted to hold or represent proxies. This is a legislated restriction for the protection of the strata corporation and owners by avoiding obvious conflicts of interest in the event monetary or contractual decisions are made at the meeting where these parties may benefit. This is almost always the case in most general meetings.

The definition of voting thresholds was also clearly over looked for majority and three quarters votes. Those votes are calculated only on those registered eligible strata lots in person or by proxy who vote for or against a resolution, and who have not abstained at the time the vote is called. It is obvious that the voting requires the vote be executed either in person or by proxy. An absentee ballot is not permitted, and even if they chose, the strata corporation could not amend their bylaws at this time to permit absentee balloting, without being in violation of the *Strata Property Act*. Another issue that is important to consider is whether those claimed absentee ballots formed part of the quorum or numbers used to calculate the quorum. If they were not present in person or by proxy, they could not be used to establish the quorum, or used for voting and the entirety of the meeting may now be in question. It would be prudent for your strata corporation to seek legal advice to determine what would be required at this time to ensure the approval of the annual budget and the election of council do meet the requirement of the legislation. Alternatively, in accordance with Carol & Doug's bylaws, the strata owners by 25% petition could demand a special general meeting for the removal of council, election of a new council and the ratification of the budget to ensure the strata corporation is operating with the authority they require.

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