

Condo Smarts

Headline: Bylaws for mixed use developments

Topic: Bylaws; mixed use buildings

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Dear Condo Smarts: I own one of four commercial units in a small mixed use development in Kelowna. There are 20 residential units, and the 4 commercial units. The strata corporation at their AGM recently passed a new bylaw regarding the use of parking, which has excluded the commercial strata lot owners from using the parking area. The residential owners claim the commercial owners do not respect the security needs of the strata, and have chosen to move all of our parking to an outside area behind the building, even though we had assigned parking. I was on vacation at the time and only one of the other commercial owners attended the meeting and he voted against the bylaw, although that was never specifically shown in the minutes. The minutes show that of the 14 people at the meeting, 13 voted in favour of the amendment with one opposed, so the bylaw passed, and was subsequently filed in the Land Title Registry. As commercial owners, we are troubled that we have such little control over our collective property, and with such a decision, the residential owners will always be able to determine what bylaws are adopted and how our businesses are controlled. Is there any type of consumer protection or legislation for commercial strata lot owners? As in most developments like ours, the residential strata lots always outnumber the commercial strata lots, so why wouldn't there be rule or law to limit or control the bylaw amendments?

Gary W.

Dear Gary: Improper bylaw amendment procedures with mixed residential and non residential strata corporations are a very common problem and this procedure is frequently conducted incorrectly. Section 128 c) of the Strata Property Act stipulates that amendments to the bylaws requires: *both a resolution passed by a 3/4 vote of the residential strata lots and a resolution passed by a 3/4 vote of the nonresidential strata lots, or as otherwise provided in the bylaws for the nonresidential strata lots.*

What this means is that in the case of your strata corporation, the 3/4 vote resolution passed by only

the corporation meeting, and not by the separate residential and commercial strata lots did not meet the requirements to pass the bylaws amendments. Where a 3/4 vote resolution is included with the notice of an annual or special general meeting of the corporation, the residential section must vote by 3/4 vote and the non residential (commercial) strata lots must vote separately by 3/4 vote resolution. Only then, when both parties have voted separately and in favour of the resolution to amend the bylaw, is the bylaw passed in accordance with the requirements of the Strata Property Act. As the bylaw is already registered, your strata corporation will need to convene another meeting to have the commercial units ratify the 3/4 vote resolution and if that fails, the strata corporation will need to pass a resolution to repeal the bylaw that has been filed. It is important to clearly indicate in the minutes of the general meeting, the total number of votes for and against the resolution in the residential units, and separately call the vote for the commercial units and show the total number of votes for and against the resolution and whether it passes. Also remember, the non residential (commercial units) likely have different voting allocations for each strata lot, so be sure to calculate the numbers of commercial unit votes based only on the registered schedule of voting entitlement. Section 128 of the Act is a significant part of the legislation as it was designed to protect both the interests of the residential and non residential strata lots in the adoption of bylaws that may create an unfair balance.

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