

Condo Smarts

Headline: Voting thresholds: Who decides?

Topic: Voting Thresholds

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Dear Tony: What happens when a bylaw contradicts the Strata pAct? We are a 128 unit mixed use strata corporation that was constructed in 2005. There were an initial set of bylaws that were adopted by the developer, which we are now wanting to amend, but have run into a roadblock. In 2005 the bylaws were fine, but since that time a number of changes around property use and the legislation have caused us to look at doing some upgrades. One of the bylaws that the developer adopted determines that all future bylaw amendments require a unanimous vote to be amended. The developer who still owns the commercial units is insisting on a unanimous vote. We read the article about liquidation and that required a unanimous vote which applies to every strata lot and owner. Does this also apply to our strata corporation? *Ellen Yu, Richmond*

Dear Ellen: One of the principles of the *Strata Property Act* (the Act) is that bylaws are only enforceable to the extent that they do not contravene the Act, the regulations the Human Rights Code or any other enactment of law. The voting threshold for the amendment of bylaws under the Act is a three quarters vote at an annual or special general meeting. This means, three quarters of the votes cast in favour of a resolution by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting. Voting thresholds at annual or special general meetings are determined by section 50 of the Act which are: majority votes, for items such as the annual budget, council election, ratifications of rules, three quarters votes for items such as bylaw amendments, designations of limited common property, special levies, and unanimous votes for items such as amendments to the strata

plan or liquidation of the strata property. Neither the Act or regulations permit strata corporations to amend the voting thresholds for prescribed decisions set out by the Act, except for the amendments that apply to non residential (commercial) strata lots. In your situation, a bylaw that changes the requirement for bylaw amendments from a three quarters vote to a unanimous vote applied to residential strata lots, contravenes the Act and is therefore unenforceable. Before the Act came into effect in 2000, one of the common reasons that this bylaw was adopted, was to ensure that a large majority of residential strata lots did not make amendments that prejudiced a small minority of commercial units; however, this is no longer necessary. When the Act came into full effect it required that any subsequent amendments that applied to both residential and non-residential (commercial) strata lots required a separate three quarters vote of both the residential and commercial units to be adopted. This ensured a residential or non residential group of strata owners could not over whelm the minority and impose bylaws on the others without their consent. In a mixed use strata corporation, the wording of the resolutions of the notice package for the bylaws amendments is easier to administer if the resolution indicates the need for a vote of both the residential and non-residential units. The votes can be taken separately, recorded separately and shown that the bylaws were either approved by the three quarters vote and can be filed or they were defeated. Get legal advice on the proper procedure and wording of the proposed resolutions and bylaws to ensure you have an enforceable set of bylaws.

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