

Condo Smarts

Headline: Bylaw differences in Mixed Use Buildings

Topic: Bylaws; Mixed Use Buildings

Publication / Date: The Province, Oct 1, 2015

Written by: Tony Gioventu

Dear Tony: Our building is a commercial and residential mixed building in the Vancouver area. 12.5% of the units are commercial retail units and the remainder are residential. We have an ongoing problem of unfairness in our building. Whenever the residential owners don't like something they propose a new bylaw that restricts the use or access to parking, storage areas, and common areas which generally has an impact on the commercial owners. It is extremely unfair that a strata corporation can control the activities of the commercial units by amending bylaws that we oppose.

Marney C.

Dear Marney: For strata corporations with mixed residential and non-residential (commercial), there are procedures in the bylaw amendment process that are frequently overlooked.

Giving notice is often the first error. The exact wording of any proposed bylaws and the resolution determining the type of amendment with must be included on the agenda and in the notice package, and the notice package must be issued to comply with the time periods set out by the Act.

Counting votes correctly is also common mistake. Bylaw amendments under the *Strata Property Act* require a three quarters vote resolution at an annual or special general meeting of the strata corporation. A three quarters vote resolution means only those eligible votes who have voted for or against a resolution and who have not abstained. So we only count those who are for and against the resolution, giving us a total which we apply the 75% value to determine the minimum number of votes required to pass the resolution. While residential strata lots generally receive 1 vote per strata lot, non-residential voting is

based on the relative size of the strata lot and the allocation for voting is shown on the schedule of voting rights filed in the Land Title Registry, so make sure to also count the total number of votes of the non-residential units as well.

For mixed use properties, many strata corporations have not passed their bylaws separately. The most important part about bylaw amendments for residential and commercial mixed that is often overlooked is that they do not vote together. In order for a bylaw amendment for strata corporations of mixed use to pass, they require a separate three quarters vote of both the residential strata lots and of the commercial strata lots. In most mixed use stratas there are a minority of commercial strata lots with only a small portion of the votes.

In Marney's strata they have 16.45 commercial votes. At their last general meeting all 16.45 were present and voted against the bylaw, which means the bylaw did not pass, because it required a three quarters vote of the 16.45 who voted for or against the resolution. Now the strata has another problem because they registered a bylaw which was not passed correctly. When this occurs, the Land Title Registry does not have the authority to reverse the filing. The strata corporation either voluntarily or by petition, convenes a general meeting and votes on the bylaw correctly. If they do not pass the bylaw, the next step is to file an amendment to repeal the incorrectly filed bylaw. Because incorrectly filed bylaw amendments that apply to both types of units may have been in effect for a long period of time, your strata may require legal advice to determine whether the bylaws would still be in force and in effect.