

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

Bulletin: 400-019

March 5, 2005

## Do strata corporations have the right to limit proxies?

By: Tony Gioventu, CHOA Executive Director

Strata corporation bylaws have recently surfaced that limit the number of proxies a person may hold for general meetings. Now some of these strata corporations are in disputes with owners as a result of refusing to certify proxies and allow owners to vote by proxy. The disputes have resulted in chaos in several Vancouver Island and Lower Mainland resort properties.

A proxy is a private matter between the strata lot owner and the proxy holder. Section 56(4) provides that "A proxy stands in place of the person appointing the proxy, and can do anything that person can do." The *Strata Property Act* ("Act") does not give strata corporations the power to impose conditions or limitations on the use of proxies. The only times a strata corporation can stop an owner from voting pursuant to the *Strata Property Act* is if the strata is entitled to file a lien and has a bylaw providing for this situation or if there is a vote regarding legal action against that owner.

Consider what would occur if a strata council were able to limit the number of proxies a person could hold, exercise limitations on proxies, or influence the outcome of the voting proceedings. By limiting the number of proxies a person could hold, the strata council would be influencing and controlling the outcome of voting results if anyone exceeded the number of proxies that were allowed, and was prohibited from holding more proxies than the bylaw allowed. Who would want to accept the substantial liability of determining which proxies would be allowed to vote and which were disallowed? Would a manager, agent of the corporation or council member consider certifying a select number of proxies and ignoring others? Since council cannot delegate its authority to enforce bylaws, and council would not be capable of convening a council meeting to consider whether the bylaw is being violated, how would the decision be made without violating the rights of the owner assigning the proxy to have their vote represented?

Would the decision be made to allow the number of votes allowed by the bylaw or would no proxy votes be allowed? If a single owner held more units than the number of proxies allowed, how could he assign one representative to represent his interests? In some resort communities a single owner or single corporation holds hundreds of units. That owner usually relies on one trusted voice. If a bylaw limited the number of proxies a person could hold to two, would the owner of a hundred units have to find fifty proxy holders to vote? What if there were only one hundred fifty units and only five people available to attend the meeting willing to hold proxies? Does the owner have to find fifty proxy holders at his own cost?

Consider the owners' perspective. If a bylaw limited the number of proxies a person could hold, how would an owner know if the person they are assigning complies with the bylaw? Should the owner obtain a written disclosure from the person? What if that person doesn't declare all the proxies they hold? What if that person intentionally exceeds the number allowed to nullify a number of votes to influence the outcome of the vote? If the strata cannot enforce the bylaw on site, it may prevent them from enforcing the bylaw at the general meeting, and if the ballots are secret, the strata would have no way of enforcing the bylaw in the future. As a result, the

For more information on CHOA resources and benefits visit [www.choa.bc.ca](http://www.choa.bc.ca)  
or contact the office at 1-877-353-2462 or email [office@choa.bc.ca](mailto:office@choa.bc.ca).

page 1

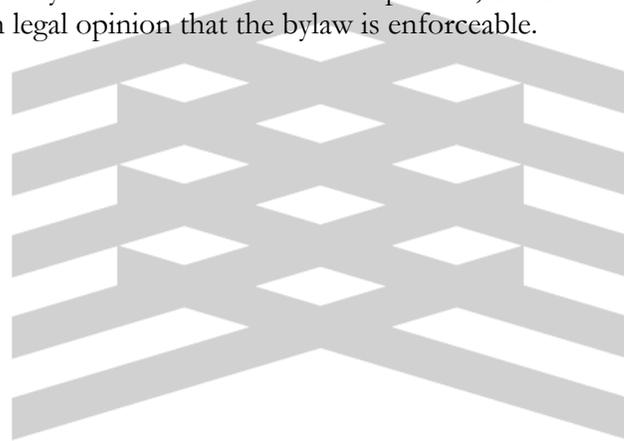
**No part of this publication may be reproduced without the prior written permission of CHOA**

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.

bylaw could not be enforced retroactively and the council does not have the authority to nullify any votes because decisions are made at general meetings by a majority vote of the owners pursuant to section 50 of the Act and that would exceed the authority of the council.

How can the strata corporation prevent one person from unfairly holding an excessive number of proxies and controlling the corporation? Typically most stratas have adopted the standard bylaws of the Act, which require under section 28 that a secret ballot must be held at the request of any owner. To record the proxy holders accountable, strata corporations may consider amending this bylaw requiring a majority vote to approve the use of a secret ballot, and if there are a substantial number of proxies held by one person the strata may consider polling significant decisions. If a proxy holder acts unfairly against a strata corporation, the corporation then has the ability to seek redress through the courts or arbitration.

Before your strata considers a bylaw that affects the use of proxies, CHOA recommends that the strata corporation obtain a written legal opinion that the bylaw is enforceable.



# CHOA

**For more information on CHOA resources and benefits visit [www.choa.bc.ca](http://www.choa.bc.ca)  
or contact the office at 1-877-353-2462 or email [office@choa.bc.ca](mailto:office@choa.bc.ca).**

**page 2**

**No part of this publication may be reproduced without the prior written permission of CHOA**

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.