

Condo Smarts September 12, 2020

Calculating Votes at General Meetings

Dear Tony: Our strata corporation held its Annual General Meeting electronically last week. Other than routine business of the budget and council elections we adopted a new bylaw to permit electronic meetings in the future. There was an issue that was raised by several owners however in how the votes were counted. The president of council chaired the meeting with the help of our property manager, and when it came to voting he advised he would simply count if any were opposed to the motions, and then declared whether the vote passed or not. On the election of council this created a fair amount of controversy as he refused to use the electronic voting or ballots for the nominated council members and called for a vote on each nominee separately and then determined whether the council member was elected. It was very confusing, and no one really understood how the votes were calculated. There is now a petition going around to call for a Special General Meeting to remove the council and properly elect a new council. Is there a required protocol for voting at general meetings? Rob M.

Dear Rob: The Strata Property Act under the definitions section 1, sets out the voting calculation requirements clearly. Depending on the type of vote that is being taken, the method of calculating may be different. A "majority vote" means a vote in favour of a resolution by more than 1/2 of the votes cast 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. A "3/4 vote" means a vote in favour of a resolution by at least 3/4 of the votes cast 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. An "80% vote" means a vote in favour of a resolution by at least 80% of the votes of all the eligible voters. A "unanimous vote" means a vote in favour of a resolution by all the votes of all the eligible voters. If you apply these definitions, it is not possible to determine the outcome of the voting if all that is established is those opposed to the resolution or matter being voted. In the 2009 BC Supreme Court Decision of *Azura Management v Owners of Strata Plan KAS 2428*, this matter was raised challenging how the voting was calculated. The outcome was a prescribed voting procedure that should be implemented at all future annual and special general meetings on all resolutions after it has been determined that there is a quorum present: *"(a) the total number of votes represented in person or by proxy should be calculated; (b) all votes in favour should be counted first; (c) all votes against should be calculated second; (c) all abstentions should be counted third. Once those counts have been undertaken, the votes in favour as a percentage of the eligible votes should be counted to ascertain whether the requisite 50%, 75% or unanimous votes have been obtained."* For Majority and 3/4 votes, this is a simple math calculation. For example, there were 45 strata lots registered representing 45 votes. At the time the vote was taken for the bylaws, requiring a 75% or 3/4 vote there were 31 that voted in favour, 9 opposed and 5 abstentions. $31 \text{ in favour} + 9 \text{ opposed} = 40$ $40 \times .75$ requires 30 votes in favour to pass. The vote was passed. Abstentions do not count in the calculations for majority or 3/4 votes.

For strata corporations in BC that have mixed use of residential and non-residential strata lots, or exclusively non-residential strata lots, the voting calculations also require that each strata lot and its total number of votes are independently calculated. You must also review bylaws that apply to non-residential strata lots as the voting requirements may be different. Mixed-use strata lot voting results are frequently calculated incorrect as evidenced by the minutes of meetings. Non-residential/commercial strata lots are generally allocated the proportional number of total votes in relationship to the proportional size of the strata lot. For example, in an East Vancouver strata where there are 88 strata lots including 7 commercial units on the street level, the 81 residential units each represent 1 vote, and the 7 commercial units represent a total of 15.64 votes. To determine voting entitlement for each strata lot, refer to the Schedule of Voting Entitlement filed

with the Land Title Registry as part of the original strata plan or filed as a separate Schedule of Voting Entitlement.

Tony Gioventu, Executive Director CHOA

Covid-19 Notice: As a precautionary measure to prevent the spread of COVID-19 CHOA staff are working remotely and our offices are temporarily closed. We understand these are challenging times for strata corporations and we are here to help. Even though CHOA advisors are working remotely we are only a phone call or email away and able to assist you with hosting meetings and notice preparation.

Tuesday Lunch & Learn Live with CHOA: CHOA is hosting a series of webinars once a week, for the next few months. Join us each Tuesday as we bring together industry experts to discuss the many issues affecting BC's strata community. For more information visit our website at:

<https://www.choa.bc.ca/seminars/>