

Condo Smarts May 29 – June 4, 2021

Resolving the Ongoing Dispute of Council Elections

Dear Tony: Our Victoria strata corporation has struggled with the decision process around how council is elected at the Annual General Meeting. We use the *Standard Bylaws of the Strata Property Act*. We are constantly challenged whether the election is a majority vote for each council member, those who get the greatest number of votes or, in the event we have only 7 nominated, can we simply elect the council with one vote? To confuse the situation, we had 2 property managers in the last 3 years and they have given us two separate opinions. At our recent AGM we argued for over an hour before we finally agreed on electing those of the 10 nominated who received a majority vote. In the end 7 received a majority vote so it was entirely a waste of time. Is there a way we can solve this issue and stop the arguing? William R.

Dear William: Your strata corporation shares the same frustration many of the 32,000 corporations across BC experience every year. The *Act* with *Standard Bylaws* is a one size fits all, for every strata corporation from a duplex to corporations over 1,000 units and residential to mixed use commercial to industrial. Many sections of the *Act* and the *Standard Bylaws* require amendments in your strata bylaws, where permitted, to tailor the legislation to fit your property use, community, strata plan designations and business operations. The ideal solution is the development of bylaws that clearly stipulate how council are nominated, the eligibility limitations permitted by the *Act*, terms of council members and how the election is conducted. This removes the issue of debate each year and volatility of the majority of voters changing the process. The *Act* permits any registered owner, a tenant assigned an owner's rights, and a corporate assigned representative to be elected to council. The strata corporation may also adopt a bylaw that permits other classes of persons, such as a spouse of an owner who is not on title, or a family member or other designated person such as a professional services appointee to be nominated and elected to council. The decision is ultimately an approved bylaw amendment of the owners at a general meeting. Like all actions, there are consequences to each of the methods. Being elected to council is not necessarily a right of owners but an opportunity to serve your community and protect your investment. Discuss the options of council elections with an experienced strata lawyer before you adopt a bylaw. Consider the implications. For example, if your bylaw requires a minimum of 3 and maximum of 7 council members, and you adopt a bylaw that declares those 7 with the greatest number of votes are elected to council, you may open the door for a council member who is a chronic bylaw violator with a total disregard for the remainder of the community, or a person with a known, published criminal record for fraud, or a person who is aggressive and in conflict within your community. If you adopt a bylaw that only elects those council members who have received the majority of ballots case, you may only elect the minimal number of 3 placing a large burden of obligation on a small group of elected council members and often leaving the control of the corporation in the hands of a person who is gathering large numbers of proxies. You must also define how the balloting process functions and how you determine the total number of ballots cast, establishing the majority requirement. With electronic meetings, polling functions are often used but the scrutineer counting those ballots must be able to identify who is voting, that there are no duplicate votes, and how they have reached the greatest number of ballots cast to determine the majority. Like in-person meetings where a ballot is issued to eligible voters holding voting cards, electronic voting is conducted by email to identify the eligible voters who were identified with virtual voting cards. The total ballots submitted determine the majority threshold, whether they have voted for 1, 3 or 7 council members. The *Act* establishes that matters at a general meeting are determined by majority vote unless a higher voting threshold is required. Even on this point we have conflicting court decisions and decisions of the Civil Resolution Tribunal. Invest in your strata corporation's future and amend your bylaws to prevent the conflicts.

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/>