

Condo Smarts July 26 – July 31, 2021

Incorrect Decisions

Dear Tony: At our recent annual meeting, we had 5 resolutions on the agenda that included repairs to our roof to come from our contingency fund. This was a repair that was necessary around the skylights of the townhouses for waterproofing, and it was recommended in our most recent depreciation report. Unfortunately, the writer of the resolutions was not paying attention and assumed it was a 3 / 4 vote to approve this amount and the resolution failed by a few votes. The next day one of our owners pointed out that the resolution only required a majority vote, because it was only a contingency expense and recommended in the report. If this is correct, is it possible for council to correct this error and notify the owners of the correction and proceed with the repairs? We really want to have the work done before the fall rains set in. Jason R.

Dear Jason: You are correct, expenses recommended in the depreciation report can be approved from the contingency fund by majority vote. It must be the most recent report and the resolution only relates to a contingency expense and does not include special levies or the approval of surplus funds in the operating account. A critical question I always ask before I chair a meeting is: “where did I get the authority”. The business conducted at a general meeting not only includes those persons who attend in person, but the decisions and instructions of those who have issued proxies and those who have not attended. Had the resolution been written in a different manner or potentially amended by the correct voting threshold at the meeting, a different outcome may have resulted. A strata council does not have the authority to change the outcome of a general meeting, after the meeting is terminated, as the council are not in a decision-making position of authority at a general meeting. The chairperson of a meeting whether by default as the president or vice president of council or an elected chairperson is bestowed the elected authority of the owners to convene the meeting, certify proxies, receive motions, manage the speaker role, manage the counting procedures for voting and the outcome of votes, ensure the strata corporation is complying with the Strata Property Act and the Bylaws of the Strata Corporation, and maintaining the focus of the discussion and possible amendments on each resolution or agenda item as it arises. If the eligible voters disagree with the chairperson, they have the voting privilege to challenge a decision of the chair, and a majority of the eligible voters present in person or by proxy who vote may overturn the decision of the chairperson. Once the meeting is terminated the record shows what was done at a meeting, not what was said. Strata council were owners in attendance like everyone else, and do not have the authority to rewrite minutes. The secretary of the meeting should record motions, amendments proposed if any, the results of amendments, and the result of motions or amended motions. Altering the ratified decision and what was included in the notice may seriously jeopardize the authority of the strata corporation to proceed with a modified resolution. Unless you have a sound legal opinion in writing recommending you alter the resolution, it would simply be more efficient and enforceable to convene an electronic meeting to address the one resolution and have the owners clearly informed of the voting threshold and what they are voting on. Remember: electronic meetings will be permitted without a bylaw amendment until December 31, 2021. If your strata corporation plans the convenience of electronic meetings after that time you will be required to amend your bylaws.

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/>