

Strata Alert: Proxy Battles at General Meetings

The *Strata Property Act* allows owners to attend general meetings in person or by proxy. When a controversial issue is on the agenda, proxies will usually determine the outcome of the meeting. Proxies can also play an important role in establishing a quorum where owner interest in the business of the strata corporation is low.

Below are some practice notes on proxies for property managers.

Under s. 56 of the Act, a proxy is valid if it is in writing and signed by the person appointing the proxy. A photo copy or faxed proxy is acceptable. The Act does not specify that only signed original proxies may be used. A proxy may also be general or for a specific meeting or resolution and may be revoked at any time. Finally, anyone can be a proxy except a strata manager or employee of the strata corporation and there are no restrictions under the Act as to how many proxies a person may hold at a meeting.

Note that unless the bylaws specify otherwise, a proxy does not have to be in any particular form. A proxy is valid so long as it is in writing and meets the essential requirements of s. 56 of the Act. Also, the reason that an owner gives a proxy is irrelevant to the validity of the proxy. For example, where an owner alleged that members of strata council had paid certain owners for their proxies, that allegation was not considered sufficient to support cause of action by another owner (*The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2009 BCSC 473).

Generally speaking, the strata council must not use the meeting notice to solicit proxies if there are items on the agenda that are controversial. If a strata corporation has competing factions of owners on an issue, the meeting notice should be neutral and any proxy solicitation that is included with the notice must provide the contact information for a representative of each faction (*Azura Management (Kelowna) Corp. v. Owners of the Strata Plan KAS2428*, 2009 BCSC 506).

Since a proxy can be for a specific resolution, prudent practice requires a strata manager to carefully review proxies for any voting instructions issued by the voter. Those votes should be counted separately so as to ensure that the proxy holder votes in accordance with the grantor's instructions. This may prove to be a challenge on a secret ballot and may require that the proxy holder's ballots be filled in at the time of registration.

An owner cannot hand his voting cards to another owner during a meeting without completing a written proxy appointment. For this reason, it is also good practice to keep a supply of blank proxy forms on hand at each meeting. Note also that only an owner, or an authorized tenant or mortgagee under s. 54 and 55, may issue a proxy. As a result, a proxy holder cannot give or transfer his or her proxies to anyone else before or during the meeting. Prudent practice requires property managers to collect the

voting cards of anyone who leaves a meeting to ensure that proxy holders are not handing off their proxy votes to others.

The Act does not require the strata corporation to keep proxies after a meeting and it is common practice to invite a resolution from the floor to destroy the ballots and proxies at the end of a meeting. In the event a contentious meeting, it would be good practice to keep the proxies for a period of time.

As the Act gives owners broad discretion to grant proxies and there is little guidance from the courts about proxies, any terms and conditions concerning proxies should be set out in the bylaws. There is no legal authority for strata councils or property managers to impose “ad hoc” rules concerning proxy forms, proxy limits, or who may be a proxy.

What we do: [Lesperance Mendes](#) advises strata corporations and owners on matters such as construction defects, warranty claims, bylaw enforcement and collections. We also act as proxy for owners and we chair contentious meetings. For more information about our strata law practice, contact [Paul Mendes](#) at 604-685-4894 or by email at pgm@lmlaw.ca.