



## Instruction Guide 9

# What to Know about Voting

**Caution and Disclaimer:** Please note that this Guide has not been updated to take into account legislative amendments and court decisions that have occurred since it was prepared in 2000. For example, certain legislative amendments came into force on January 1, 2010 and the Guides have not been updated to reflect those amendments. The reader should review the current legislation or seek professional advice in order to obtain a full understanding of the current provisions of the *Strata Property Act*. Neither the Superintendent of Real Estate, nor any other authority of the government of the Province of British Columbia, is liable for any inaccurate or incomplete information in this Guide.

**Important Notice:** This Instruction Guide has been prepared by the Superintendent of Real Estate to provide information about the *Strata Property Act* (the "Act"). This is only a guide to certain parts of the Act and Regulations. Please consult the Act and Regulations to determine the complete and precise requirements of the Act and Regulations. In addition, please remember when reviewing statements about the Standard Bylaws that they may not apply until January 1, 2002, and even when they do apply, they may have been amended or removed if the strata corporation has filed bylaw amendments in the Land Title Office. Please check all filed bylaw amendments to determine whether and how the Standard Bylaws may have been amended.

October, 2000.

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### 1. Voting Entitlements

All strata lots will have:

- one vote; or
- the number of votes set out in the "Schedule of Voting Rights" (Form W) which has been filed in the Land Title Office.

A Form W cannot be filed for strata developments that are exclusively residential, unless it relates to a plan amendment.

Unless the Form W has been approved by the Superintendent of Real Estate or relates to a plan amendment, it should state that:

- all residential strata lots in mixed use developments have one vote each;
- a non-residential strata lot has a vote that is in proportion to its unit entitlement divided by either the average residential unit entitlement in mixed use developments or the average unit entitlement of all strata lots in exclusively non-residential developments.

## 2. Eligible Voters

The following persons are eligible to vote at a general meeting:

- strata lot owners, unless:
  - pursuant to a bylaw they are ineligible to vote on resolutions requiring a majority or  $\frac{3}{4}$  vote due to unpaid strata fees or other monies owing;
  - they have assigned their right to vote on certain matters to tenants or mortgagees;
  - they no longer have a vote due to an automatic assignment to a residential tenant with a lease of three years or greater or to a family member who is a tenant;
  - they lack capacity to vote or are under sixteen years of age; or
  - there are two or more owners of a strata lot, in which case only one owner representing the strata lot may vote on any given matter. If owners who share a vote cannot agree on how their vote should be cast, the vote in respect of their strata lot will be discounted by the chair of the meeting.
- tenants who have been assigned a landlord's right to vote;
- residential tenants who are family members as defined in the Regulations or who have entered into a lease of three years or greater;
- mortgagees who have given the strata council a notice of an intention to vote, however:
  - the notice must be given to the strata corporation, and any one who has the right to vote;
  - the notice must be given at least three days before the meeting; and
  - the mortgagee is restricted to voting on matters of insurance, maintenance, finance or matters that affect the security of the mortgage.
- a parent or guardian acting for a strata lot owner who is under sixteen years of age;
- a person who is legally authorized to act for the owner who, for a reason other than being under sixteen years of age, lacks the capacity to make a decision;
- the Public Trustee or other person appointed by the court:
  - the court may appoint the Public Trustee or other person to vote in respect of a strata lot when there is no person to vote in respect of the strata lot and an application has been made to the court by an owner, a strata corporation or an interested person; and

- the court must, when a matter requires a unanimous vote, appoint the Public Trustee or other person to vote in respect of a strata lot.

### 3. **Ineligible Voters**

A strata voter may be ineligible to vote for the following reasons:

- pursuant to a bylaw they are ineligible to vote on resolutions requiring a majority or  $\frac{3}{4}$  vote due to unpaid strata fees or other monies owing;
- they are an owner and have assigned their right to vote on certain matters to tenants or mortgagees;
- they are a residential owner and no longer have a vote due to an automatic assignment to a tenant with a lease of three years or greater or to a family member; or
- they lack capacity to vote or are under sixteen years of age.

### 4. **Voting by Proxy**

A proxy is a written authorization given to enable the proxy holder to act on behalf of the person giving the proxy. A proxy:

- must be in writing, and be signed by the person appointing the proxy;
- can be given for general purposes or for a specific resolution or for a specific meeting;
- can be revoked by the person appointing the proxy at any time; and
- can be held by any person except the strata corporation's strata manager or an employee of the strata corporation.

A proxy holder may do anything the person appointing the proxy can do, including voting, proposing and seconding motions and participating in discussion at an annual or special general meeting unless limited in the appointment document.

### 5. **Voting at a General Meeting**

The Standard Bylaws set out the following provisions which deal with voting at general meetings:

- a voting card must be issued to all eligible voters;
- generally, votes are decided on a show of voting cards;

- an eligible voter can request a precise count, and if a precise count is requested, the chair must decide whether it will be by a show of voting cards, roll call, secret ballot or some other method;
- the outcome of each vote (including the number of votes for and against the resolution if a precise count is requested) must be announced by the chair and recorded in the minutes of the meeting;
- if an eligible voter requests a secret ballot the vote must be taken that way; and
- a tie vote can be broken by the president of the strata council, or vice president if the president is unwilling or unable to act.

## 6. **Levels of Strata Corporation Voting Approval**

Strata corporation resolutions at general meetings must be approved by:

- a majority vote:
  - a majority vote requires the support of more than  $\frac{1}{2}$  of the votes cast by eligible voters present in person or by proxy at a general meeting who have not abstained from voting;
  - all resolutions should be determined by a majority vote, unless the Act or Regulations require an alternative level of voting approval.
- a  $\frac{3}{4}$  vote:
  - a  $\frac{3}{4}$  vote requires the support of at least  $\frac{3}{4}$  of the votes cast by eligible voters present in person or by proxy at a general meeting who have not abstained from voting.
- unanimous vote:
  - a unanimous vote requires the support of all voters.
- some other vote:
  - exclusively non-residential strata corporations or sections can pass a bylaw which allows new bylaws to be approved by a voting threshold of other than a  $\frac{3}{4}$  vote.

## 7. **Abstentions**

If there are eligible voters who abstain from voting, the total number of abstentions must be deducted from the total number of eligible votes before the vote is counted.

### Example of How to Count a Majority Vote with and without Abstentions

Total No. of Eligible Votes in the Strata Corp.	No. of Votes Present In Person Or By Proxy	No. of Abstentions	Net No. of Eligible Votes	No. of Votes Necessary For Majority Vote
100	80	0	80	41
100	80	10	70	36

#### 8. Reconsideration of a $\frac{3}{4}$ Vote

If a resolution requiring a  $\frac{3}{4}$  vote was passed at a general meeting by persons holding less than 50% of the votes in the strata corporation, then the strata council cannot implement the resolution for one week unless such action is needed to ensure safety or prevent significant loss.

Any  $\frac{3}{4}$  vote passed by persons holding less than 50% of the votes can be retaken, if within one week of the general meeting, persons holding 25% of the strata corporation's votes demand a special general meeting to reconsider the resolution.

For example:

- a strata corporation has persons who hold **120** votes;
- in order to conduct business and vote on resolutions at a general meeting, the strata corporation would need persons who hold **40** or more of those votes to constitute a quorum of voters;
- if there were persons holding **44** or more votes at the general meeting, the strata corporation could conduct business and vote on resolutions, as this number is greater than the quorum;
- a resolution needing to be passed by a  $\frac{3}{4}$  vote would need **33** out of the **44** votes to pass;
- however, **33** votes are less than **60**, which is **50%** of the total number of **120** votes; so
- the vote must be retaken if within one week of the general meeting, persons holding **30** or more votes demand a special general meeting to reconsider the resolution.

**Reconsidering a Resolution Passed by a  $\frac{3}{4}$  Vote**

<b>Total No. of Votes in the Strata Corp.</b>	<b>50% of the Strata Corp's Votes</b>	<b>No. of Votes Present In Person or By Proxy</b>	<b>No. of Votes In Favor of the Resolution</b>	<b><math>\frac{3}{4}</math> Vote passed? 33/44 = 75 %</b>	<b>Did Persons Voting in Favor Hold Less Than 50% of Strata Corp's Votes 33 &lt; 60 Votes</b>
120	60	44	33	Yes	Wait one Week

9. **Court Approval of Failed Unanimous Votes**

If there are ten or more strata lots, and a unanimous resolution is not passed due to:

- a dissenting vote in respect of one strata lot; or
- the dissenting votes in respect of more than one strata lot, if those votes represent less than 5% of the total strata corporation votes;

the strata corporation can seek a  $\frac{3}{4}$  vote to apply to court for an order that the resolution be passed despite the lack of unanimous support.

The court may order that the resolution be passed despite the lack of unanimity if the resolution:

- would be in the best interests of the strata corporation; and
- would not unfairly prejudice the dissenting voters.

**Calculating The Number of Votes Needed To Request Judicial Passage of A Nearly Unanimous Vote**

<b>Total No. of Votes in the Strata corp.</b>	<b>No. of Votes Necessary to Pass a Unanimous Resolution</b>	<b>Max No. of Votes (Using Whole No.'s) Which Taken Together Represent &lt; 5% of the Strata Corp.'s Votes</b>	<b>No. of Votes in Favor of the Resolution</b>	<b>Unanimous Vote Passed?</b>	<b>Can the Strata Corp. Choose to go to Court? 100 – 96 = 4 the vote failed by 4 votes. 4 votes is less than 5% of the strata corp.'s votes</b>
100	100	4	96	No	Yes

10. **Strata Corporation Decisions that Require a 3/4 Vote**

A  $\frac{3}{4}$  vote is required to:

- create, amend or remove bylaws for residential lots and non-residential lots (unless an alternative voting threshold for the non-residential lots is set out in the bylaws);
- approve special levies when the method of payment of the levy is based on unit entitlement;
- designate limited common property or remove a limited common property designation by means of a sketch plan; [Note: this is not an amendment to the strata plan.]
- cancel a strata management contract, other than in accordance with its terms or by failing to renew it after the second annual general meeting;
- approve significant changes to the common property, unless there are reasonable grounds to believe that immediate change is required to ensure safety or prevent significant loss or damage, in which case no vote is needed;
- approve the borrowing of money;
- acquire or dispose of personal property (except permitted investment instruments), if the market value of the personal property is:
  - over the amount specified in the bylaws; or
  - if there is no amount specified in bylaws, over \$1,000.
- acquire or sell land held by the strata corporation that is not common property;
- make land held by the strata corporation into common property;
- divide a residential strata lot into two or more strata lots if the division does not have the effect of:
  - decreasing the relative voting power of the other strata lots;
  - increasing the share of common expenses borne by the other strata lots; or
  - decreasing the relative unit entitlement of the other strata lots.
- amalgamate a strata corporation with another strata corporation;
- make land held by the strata corporation into a new strata lot, if the unit entitlement, voting power and strata fees for all other lots is unaffected by the change;
- approve expenditures from the Contingency Reserve Fund, unless the expenditure is required for an emergency, in which case no vote is needed;

- approve contributions to the Contingency Reserve Fund if the fund is 100% or greater than the total annual budgeted amount for the fiscal year that has just ended;
- approve expenditures from the operating fund that are not:
  - authorized in the budget;
  - within the unapproved expenditure limit; or
  - required to deal with an emergency.
- change the fiscal year end and start date;
- approve decisions related to surplus funds when surplus funds are not being dealt with under the options set out in the Act;
- decide not to replace or repair damaged property after receiving insurance proceeds paid on a claim in respect of the damaged property;
- create or cancel separate sections, along with a  $\frac{3}{4}$  vote of the section; and
- give approval to the strata corporation to sue.

11. **Strata Corporation Decisions that Require a Unanimous Vote**

A unanimous vote is required to:

- give approval to the Owner Developer to enter into a contract or transaction on behalf of strata corporation with the Owner Developer or with a person who is not at arm's length to the Owner Developer, after the first strata lot is sold but before the first annual general meeting;
- approve any resolutions ordinarily requiring a  $\frac{3}{4}$  vote, during the period from the sale of the first strata lot to the first annual general meeting, unless:
  - the resolution is to amend the bylaws in a wholly commercial strata corporation or to amend the commercial section bylaws in a strata corporation consisting of residential and commercial sections;
  - the resolution is to amend a Rental Disclosure Statement;
- approve changes to the schedule of unit entitlement;
- approve a method other than by unit entitlement, in which a special levy will be assessed to the owners;
- approve changes to the strata corporation bylaws in a residential or mixed use development before the first annual general meeting;
- amend a strata plan to designate or remove a designation of limited common property;

- amend the strata plan to:
    - divide a strata lot into two or more strata lots;
    - consolidate a strata lot with one or more other strata lots;
    - make land held by the strata corporation into a new strata lot;
    - add land held by the strata corporation to an existing strata lot;
    - change the unit entitlement of a strata lot;
    - add part of a strata lot to another strata lot;
- if the amendment would have the effect of:
- decreasing the relative voting power of the other strata lots;
  - increasing the share of common expenses borne by the other strata lots; or
  - decreasing the relative unit entitlement of the other strata lots.
- amend the strata plan to add a strata lot to the common property;
  - cancel the strata plan and wind up the strata corporation; and
  - change the basis for calculating a strata lot's contribution to the operating fund and contingency reserve fund.

## 12. **Voting at a Strata Council Meeting**

The Standard Bylaws set out the following provisions which deal with voting at strata council meetings:

- each council member has one vote;
- all matters are decided by a majority vote;
- a record of each vote must be recorded in the minutes; and
- a tie vote can be broken by the president unless the strata corporation consists of only two strata lots.

The Act sets out the following provision which deals with voting at strata council meetings:

- a council member cannot vote on a matter if the council member has a direct or indirect interest in the outcome of the vote.

### **References:**

Sections of the Act: 1, 10, 11, 32, 39, 48, 50-58, 70, 71, 73-75, 78-80, 82, 96-98, 100, 102, 105, 108, 111, 142, 127, 128, 147, 148, 159, 171, 193, 197, 247, 248, 257, 260-263, 266, 272, 277

Sections of the Regulations: 6.1

Standard Bylaws: 18, 27

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