

## Condo Smarts July 10, 2019 Unusual Voting Thresholds

**Dear Tony:** What happens when bylaws are amended in a mixed-use strata corporation? The strata council at our AGM proposed a new bylaw that prohibits smoking or use of any types of combustible substances on common property or strata lots. Of the 12 commercial units, only 1 attended the meeting and voted in favour of the bylaw amendment. Since the meeting we received a letter from a lawyer advising the bylaw did not pass because it required the unanimous approval of all commercial strata lots. Our manager told us at the meeting that it only required a  $\frac{3}{4}$  vote of the residential units and a  $\frac{3}{4}$  vote of the commercial units, which passed as everyone from both sides attending the meeting voted in favour and the bylaw was filed in Land Titles. Are we missing something? Mark H.

**Dear Mark:** There is a quirky provision in the Strata Property Act that permits a developer or a strata corporation to amend the bylaws altering the voting thresholds for bylaw amendments for commercial (non-residential) strata lots. Under the bylaw amendment procedures of the Act, any bylaws that are amended by commercial strata lots, are approved by a  $\frac{3}{4}$  vote resolution or as otherwise provided for in the bylaws. When your strata plan was filed in the Land Title Registry, the owner developer filed amended bylaws that required a unanimous vote of the commercial strata lots 1-12 to approve any amendments to the bylaws. Technically you would have been required to obtain a  $\frac{3}{4}$  vote of those residential units who attended in person or by proxy and did not abstain from voting, and separately, all 12 of the commercial strata lots totalling 24.77 votes. I have seen this amendment on several occasions with mixed commercial residential and also exclusively strata corporations with only commercial strata lots. It was often intended by the developers to prevent a group of commercial owners and residential owners from unfairly imposing conditions that could affect one or two of the commercial units. There are also commercial strata corporations that have adopted a similar bylaw to ensure all the strata lots reach consensus for all amendments. The down side to a unanimous vote is the simple act of not attending a meeting results in a no vote, and with mixed use strata corporations the balance of power is not evenly distributed.

When any strata corporation is considering bylaw amendments, it is always prudent to review all of your existing bylaws to confirm the proposed changes are consistent with your current bylaws, are not contrary to the Act, contrary to any other enactment of law or the BC Human Rights Code, and that the intended resolution provides the planned results. Are you amending a current bylaw, repealing any bylaws, or approving a new bylaw? Remember that the exact wording of a  $\frac{3}{4}$  vote resolution which includes the proposed bylaws being amended, repealed or adopted must be issued with the notice of meeting. It is essential that you issue voting cards that identify strata lot numbers when there are any non-residential strata lots as you will be required to identify those strata lots and their voting entitlement when you calculate the outcomes of each vote. Non-residential strata lots are not allocated 1 vote per lot. You must review the Schedule of Voting entitlement to confirm each number of votes allocated to each non-residential strata lot. It is possible that with the current provincial and local government smoking regulations, such a bylaw would benefit everyone and likely be successful. Try to contact each commercial property owner directly for their support either by proxy or attendance. Always have a copy of your complete bylaws on hand at every council meeting and general meeting.

Tony Gioventu, Executive Director CHOA

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