

## Condo Smarts September 18, 2019

### Eligible Voters

**Dear Tony:** We are a mid sized condo building of 55 units. Our units are mostly retired owner occupied as we have a very desirable location. At our annual meeting we routinely have at least 50% or more of the owners attend. This year at our meeting, our new property manager advised five owners when they registered that they owed fees for unpaid fines and interest and they were not eligible to vote at the meeting. The five owners who are long-time residents were upset as this was the first time they had ever heard of any debts on their accounts. They asked the manager for details of the accounts and all he could advise is these have been on the books from the previous management company and they had no record of activities, only a receivable list showing the amounts owing. Our strata council claimed they knew of no outstanding accounts and were just as surprised. No one knew what to do and the five owners stayed at the meeting without a vote. There must be procedures to prevent this type of situation. Could you advise how we should manage this situation? BWJ

**Dear BWJ:** The Strata Property Act permits a strata corporation to adopt a bylaw that deems an owner is ineligible to vote for 3/4 and majority vote resolutions if the strata corporation is entitled to file a lien against a strata lot. If an enforceable bylaw exists, the strata corporation must also send a notice at least 14 days in advance advising the amounts that are due and that if the owner does not pay the strata corporation is entitled to file a lien. This sequence must be completed to deem an owner ineligible to vote. A strata corporation may only file a lien for unpaid strata fees, special levies, interest accrued on strata fees and special levies, reimbursement of the cost of work that is ordered by an authority under the Act, or a strata lot's share of a judgement against the strata corporation. A very common error and unenforceable bylaw that is applied by strata corporations and strata managers is a generic statement that deems "if any money is owing", the strata lot is not eligible to vote. Strata corporations and managers frequently place this statement on the notice package for general meetings and if applied incorrectly, without proper advanced notice advising if a lien amount is not paid within 14 days, you may jeopardize the outcome of your general meeting and seriously prejudice an owner's voting rights. Fees such as bylaw fines, parking user fees, damages or insurance deductibles owed by a single owner who is responsible for a claim, do not qualify as lien-able actions and cannot be used to prevent an owner from voting. Every strata council and manager should routinely review all aging receivables and determine what actions should be taken to protect the owner's interests and also to ensure there is a chain of evidence to support the claims. A receivables list should also coincide with decisions of councils that relate to council meetings. For example, if an owner has been fined, that is a decision only of council at a council meeting and the decision is recorded in the minutes. Enforcing a receivables list without supporting evidence is simply a bad idea. At the time the meeting was called to order, the authority rests with the chair to determine if the parties are eligible voters. If there is any doubt, it is always best to protect the voting rights of the owners. I double checked your bylaws filed with the Land Title Registry and your strata corporation has no bylaws that relate to voting eligibility. Every owner, regardless of the amounts owing are eligible to vote. Before you impose any such restrictions, check your bylaws and confirm the types of debts.

Tony Gioventu, Executive Director CHOA

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