

Condo Smarts April 5 – April 11, 2021

Different Classes of Persons on Council

Dear Tony: Our strata corporation proposed a new bylaw at our recent annual meeting that will permit other classes of people to be elected to the strata council. It does not define what this means, and at our information meeting, the council basically suggested it could be any other type of person who might fill our needs such as an accountant, an engineer or realtor that would be working with us on projects. Our manager has advised this is a common bylaw being adopted by strata corporations. Is this correct? As owners who pay the cost of the operations of our strata corporation, could you please explain how these classes of persons would be elected and how they could contribute to our operations for special projects and avoid being in a conflict of interest if they are also to provide us professional services? Our owners ultimately defeated the proposed bylaw subject to better definitions of who these people could be elected and under what circumstances. Ian & Margo H.

Dear Ian & Margo: There are a small number of strata corporations who have adopted a bylaw that permits other classes of persons to be elected to council; however, clearly understand the implications of such a bylaw as certain classes of persons may have no interest in a strata lot or the consequences associated with their appointments. The provisions of the *Strata Property Act* automatically qualify an owner who is the person registered on title, a tenant who has been granted the owner's rights and a corporate representative of a strata lot registered to a company, to be elected or appointed to council. All these persons have some sort of interest or assignment to the owner of the strata lots. This includes both residential and commercial/non-residential strata lots. Other classes of persons who are not defined, may have no interest, except their personal benefits and could place your strata corporation in a precarious position. There may also be limitations on directors and officer's liability insurance coverage if your strata corporation has a significant exposure to liability or the appointees have history of criminal records or litigation. While other classes of persons may not be appropriate for some types of strata corporations, this may be an ideal solution for other types of operations that require a much higher level of activity and involvement beyond the normal scope of a volunteer. An amendment we encounter is a spouse of an owner who is not on title or a family member with the written consent of an owner. For a variety of taxation or professional reasons not all spouses are registered on title, and family members in retirement communities may be helpful in filling in the additional spaces often vacant on strata councils. These persons may bring a higher level of professional support to the strata councils; however, strata corporations should avoid electing or appointing individuals if the candidate or their companies are providing any type of professional or compensated services to the strata corporation. If you need to evaluate whether there could be a conflict of interest, there probably is. It is critical your owners retain control of your strata corporation. Consider a bylaw that clearly defines who the other classes of persons may be and limits other classes of persons ensuring the majority of council are still owners, assigned tenants or corporate representatives. Consult a lawyer experienced in strata legislation to develop the bylaw for your consideration and don't pirate bylaws from another strata corporation. What works for them may create a significant liability for your community.

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/>