



MEETINGS USING RESTRICTED PROXIES – AN UPDATE

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For several months now many strata corporations have been using the “restricted proxy” format for general meetings (most finding it preferable to the mechanics of holding a meeting by electronic means such as telephone or videoconferencing). Many owners have also found it a satisfactory method of conducting the strata corporation’s business. However, it is a process which stretches the limits of the *Strata Property Act* (SPA) and which requires the complete cooperation of the owners.

The typical “restricted proxy” meeting involves the use of a proxy form which permits each owner to appoint a proxy and to direct how their vote is to be cast with respect to each resolution on the agenda. It also involves (in order to maintain social distancing) a limited number of “volunteer” proxy holders who will meet and cast the votes of the various owners as instructed on the proxy forms.

Unfortunately, some strata corporations have not fully understood that such meetings are still to be conducted with a view to the formal requirements of the SPA. The recent decision in *Shen v. The Owners, Strata Plan EPS 3177 2020 BCCRT 1157* is an example of that. In that decision the Civil Resolution Tribunal (CRT) set aside a meeting that was held by restricted proxy. It did so based on the fact that:

- owners were forced to participate by proxy;
- the proxies were treated as ballots; and
- the strata corporation failed to give proper notice of the meeting as required by section 61 of the SPA;

In its decision, the CRT noted that “all eligible voters or their proxies must have the opportunity to vote in person at an SGM if they decide to do so”; not a surprising conclusion given that section 56 of the SPA makes the granting of a proxy discretionary. The strata corporation was found to be at fault for not holding the meeting “in a way that allowed attendance by all eligible voters and proxies”, particularly given the fact that all strata corporations can conduct meetings electronically pursuant to Ministerial Order M114. The CRT also criticized the strata corporation for not allowing owners to appoint their own proxies, but rather having them choose only from pre-selected proxy holders.

The CRT also found that the proxy forms were essentially treated as “advance ballots” and merely collected and tabulated without formal votes actually being cast.

However, the decision in *Shen* does not mean that general meetings cannot be conducted by “restricted proxy”. It simply means that the process cannot be forced on owners. Owners who wish to participate by restricted proxy can do so. However, provision must be made for owners who do not want to do so and who do not want to give their proxy to one of the suggested proxy holders.

Going forward, if a strata corporation wishes to conduct a “restricted proxy” meeting it must do the following:

1. make provision for people who do not want to grant a proxy to attend in person or electronically and make that option clear in the notice of meeting;
2. allow a space on the proxy form to appoint someone other than the suggested proxies and allow the person to attend;
3. for owners who wish to grant a restricted proxy, collect the proxy forms and provide them to the appointed proxy holders;
4. have a date time and location for the meeting just as you normally would;
4. have the proxy holders meet (either physically or electronically) along with any owners who wish to participate and conduct the meeting as you normally would, following the agenda;
5. each resolution must be dealt with separately, with the proxy holders casting their votes and the chair counting them at that time (not in advance of the meeting);

However, given the *Shen* decision and the ability for all strata corporations to hold electronic meetings pursuant to Ministerial Order No. M114, “restricted proxy” meetings should be the exception and not the norm.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com. He can be followed on Twitter @stratashawn.