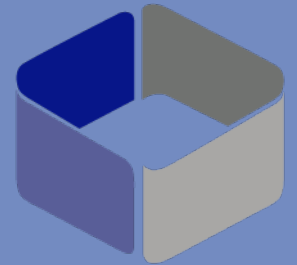


TIPS FOR ELECTRONIC AND LIMITED PROXY MEETINGS



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WHO WE ARE

We are a full service law firm with a focus on strata property law. We have been advising strata corporations since the introduction of the Strata Property Act in July 2000.

We deal with all the issues strata corporations face, but with a particular focus on:

- Collections
- Bylaw packages
- Governance matters;
- Providing strategic advice on major issues;

SPA MEETING BASICS

Strata Property Act

s.40 AGM – must be held within 2 months of fiscal year end

s.42 SGM – council can call a meeting at its discretion

s.43 OWNERS WRITTEN DEMAND TO HOLD SGM

s.46 AGENDA – determined by council, subject to owner demands under ss. 43 and 46(2)

SPA MEETING BASICS

S.45 NOTICE REQUIREMENTS

- Must go to owners, tenants with voting rights, lenders
- Two weeks notice must be given (2 weeks = 20 days)
- Must include a description of the matters that will be voted on at the meeting, including the proposed wording of any resolution requiring a 3/4 vote

s.61 METHODS OF GIVING NOTICE

- Mail
- Delivery to the strata lot
- Email

SPA MEETING BASICS

S.48 quorum - subject to the bylaws, a quorum is eligible voters holding 1/3 of the strata corporation's votes, present in person or by proxy

s.50 VOTING THRESHOLD - matters are decided by majority vote unless a different voting threshold is required or permitted by the Act.

s.56 VOTING BY PROXY - must be in writing and be signed by the person appointing the proxy; can be general or for a specific meetings; can be revoked at any time

WAYS TO HOLD A MEETING

- **IN PERSON** (the traditional method)
- **LIMITED OR RESTRICTED PROXY**
- **ELECTRONIC (VIRTUAL) MEETING**
- **HYBRID MEETINGS**
- **WAIVER AND APPROVAL**

WAYS TO HOLD A MEETING

Objective is to get as close to perfect as possible.

Make every effort to mimic a regular meeting.

s.47 – meeting can be saved if there was a reasonable attempt to give notice. Doesn't apply to problems with conduct of the meeting.

IN PERSON MEETING

- The SPA envisions owners attending physically at a location - “owners present in person or by proxy”.
- Provincial Health Officer’s Order:
“...prohibited from permitting the gathering of people in excess of 50 people ...”.
- Small meetings can still be held, subject to physical distancing requirements – option for smaller strata corporations

IN PERSON MEETING

- Potential liability issues if someone gets sick and its linked to the meeting – take steps to protect against that
- Take steps to limit attendance
 - Encourage proxies – don't come if you don't have to
 - Ask only one owner from each strata lot attend
 - Standard Bylaw 26 – tenants and occupants may attend unless motion passed to exclude

LIMITED/RESTRICTED PROXY

WHAT IS A LIMITED/RESTRICTED PROXY MEETING?

- A conventional meeting (date, time, location) where owners are represented by proxy.
- Not a mail-in ballot.
- Notice requirements of SPA to be complied with.
- Requires a high degree of owner cooperation and trust, which creates a high need for transparency.

LIMITED/RESTRICTED PROXY

HOW DOES IT WORK?

- Designated individuals attend the meeting and vote the proxies which owners have provided.
- Choose from a list of council members or owners willing to attend and vote proxies.
- A special form of proxy is created and used.
- Owners indicate their voting preference for each resolution on the proxy form (yes, no, abstain, proxy holder discretion)

LIMITED/RESTRICTED PROXY

- Proxies are collected by the strata and distributed to the proxy holders.
- Meeting is called to order and proceeds as usual (but with minimal people in attendance)
- When each resolution is brought forward proxy holders vote in accordance with instructions
- Results are declared and recorded in the minutes

LIMITED/RESTRICTED PROXIES

Options for electing council:

- Adjourn (don't terminate) the AGM before election of council – reconvene later and finish;
- Current council is re-elected with promise to call an SGM later to replace themselves;
- Request nominations before the AGM notice is sent. List candidates on proxy and owners can choose.

LIMITED/RESTRICTED PROXY

What to do with the proxy forms?

- SPA does not require proxies to be kept (s.35)
- Doesn't mean that the strata corporation cannot keep them
- Disclose that the proxies will be kept – implied consent to do so
- Keep for two years – Limitation Period to challenge
- Not accessible to owners under s.36

LIMITED/RESTRICTED PROXY

Transparency Considerations

- Security and privacy of proxies before the meeting
- Appoint scrutineers to oversee the voting process
- Should council members be the only choice for proxy holders?
- Consider allowing owners to observe by video conference

LIMITED/RESTRICTED PROXY

Potential Problems:

- Cannot compel someone to attend only by proxy;
- Cannot require them to use a certain proxy form;
- No ability to cast a secret ballot;
- Lack of debate and discussion;
- Incorrectly completed proxies;
- Security of proxies;

ELECTRONIC/VIRTUAL MEETINGS

MINISTERIAL ORDER 114 – April 15, 2020

- Allows AGM and SGM attendance (without a bylaw) by telephone or electronic method
- Ends when the State of Emergency does

S.49 SPA - A strata corporation may, by bylaw, provide for attendance at an annual or special general meeting by telephone or any other method...

ELECTRONIC/VIRTUAL METHOD

Key Criteria:

In both cases, the method used must permit “all persons participating in the meeting to communicate with each other during the meeting”.

Need to assess whether the platform/method you are planning to use meets that requirement.

A “chat” feature may not be sufficient – particularly if only the host sees it.

ELECTRONIC/VIRTUAL MEETINGS

Standard Bylaw 28 – Order of Business

The order of business at annual and special general meetings is as follows:

- (a) certify proxies and corporate representatives and issue voting cards;
- (b) determine that there is a quorum;

ELECTRONIC/VIRTUAL MEETINGS

Develop a method to sign people in:

- Meeting registration function
- Waiting room
- Roll call
- Pre-registration by email

Verification of proxies:

- Email in advance
- Return them with registration
- Show them virtually (not practical for a large meeting)

ELECTRONIC/VIRTUAL METHOD

Standard Bylaw 27 presents some difficulties:

- (1) ...voting cards must be issued to eligible voters.**
- (2) ...vote is decided on a show of voting cards, unless an eligible voter requests a precise count.**
- (7) Despite anything in this section, an election of council or any other vote must be held by secret ballot, if the secret ballot is requested by an eligible voter.**

ELECTRONIC/VIRTUAL MEETINGS

Voting Options:

- Show of hands or voting cards (provided everyone is on video and a small number)
- Roll call/poll vote
- Platform polling function

Facilitating a “secret ballot” will likely not be possible.

Consider how proxy votes will be dealt with.

ELECTRONIC/VIRTUAL METHOD

Voting – platform polling function

- Convenient method for vote tabulation
- Not a ballot (secret or otherwise) if individual polling data is recorded and stored
- Doesn't allow for voting proxies (or fractional votes for commercial strata lots) – one vote for participant
- Limited number of polls may be allowed
- Host cannot cast a vote

ELECTRONIC/VIRTUAL METHOD

Recording of Meeting

- OIPC Guidelines prohibit recording unless there is consent of all involved
- Turn this function off unless all participants consent

Host/Chair Controls

- Should the chair should be the one who controls the meeting functions?
- Macdonald v The Owners, EPS 522, 2019 BCSC 876 - cutting off a speaker was a significantly unfair act.

ELECTRONIC/VIRTUAL METHOD

Things to consider:

- Owners who do not have access to a computer or smart phone
- Developing a meeting protocol for the conduct of meetings – send out with Notice of Meeting
- Participation by non-eligible voters
- Amending the bylaws to address some of these issues.

HYBRID MEETINGS

There is nothing which requires a meeting to be held entirely by one method or the other.

Eligible voters at the in-person portion must be able to communicate with those attending by electronic means and vice-versa.

Secret ballots can be conducted at the in-person portion, but not necessarily the electronic portion.

Consider bylaw amendments to set different procedures for a hybrid.

WAIVER AND APPROVAL

s.41 - Waiver of annual general meeting

- Must be done before the last date by which the meeting must be held
- All eligible voters must sign (if more than one owner on title, each must sign)
- Everyone must waive in writing the holding of the meeting
- Must unanimously approve:
 - (a) the budget for the coming fiscal year,
 - (b) elect a council by acclamation, and
 - (c) any other business on the agenda.

WAIVER AND APPROVAL

s.44 Waiver of special general meeting

- All eligible voters must sign (if more than one owner on title, each must sign)
- Everyone must waive in writing the holding of the meeting
- Must unanimously approve the resolution(s)

Might require some discussion in advance to reach a consensus.

COUNCIL MEETINGS

Standard Bylaw 17

“At the option of the council, council meetings may be held by electronic means, so long as all council members and other participants can communicate with each other.”

Email is not an method expressly permitted by Bylaw 17 (although decisions by email have been upheld by the court and the CRT)

COUNCIL MEETINGS

Decisions made by email must be ratified at the next in person meeting – Mueller v. The Owners, Strata Plan LMS2195 2018 BCCRT 773

Consider amending bylaws to create an email decision making regime, eliminating need to ratify.

S.34.1 - owner can request a hearing. Must be held within 4 weeks.

That provision is not suspended due to COVID, but an electronic hearing is okay.

THE FUTURE

How long will strata corporations need to conduct business this way?

Will some of these meeting methods continue to be used after the pandemic is over?

If these types of meetings are to continue (even for the next year or two) then bylaw changes need to be made to address some of the issues raised today.



QUESTIONS

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The information provided during this presentation is of a general nature and should not be taken as legal advice about a specific situation.