

Smart Phone Voting

Condo board elections and voting: No more proxy fraud

By Denise Lash



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(September 18, 2019, 10:55 AM EDT) -- The condominium lifestyle grows ever more popular in Ontario: over 11,000 condominium corporations are registered throughout the province, each governed by a board of directors typically comprised of inexperienced owners who step forward as volunteers. Central to the destiny of each condo corporation is the quality of its governance. Yet the weak link in board governance often is the manner by which board elections are conducted, frequently resulting in disputes about legitimacy of directors and ultimately having direct financial consequences on the owners.

Board members are entrusted with decision-making authority over all aspects of operating a condo corporation. Although boards will rely on management providers to do the day-to-day operations of running a condo corporation, the board's governance authority remains supreme.

Widespread owner apathy and low turnout at annual general meetings (AGM) leaves board elections vulnerable to individuals who can target board elections in order to gain control of a condo corporation. Historically, proxy forms have been — and remain today — the principal vehicle by which board elections can be used for improper motives.

Voting procedures used by condo corporations have remained essentially the same for the past 50 years. The voting process involves either a paper ballot cast in-person at an AGM, or a proxy form signed by an owner who designates a representative — or, if left unspecified, the forms typically designate the board president or secretary as default proxy holder. Opportunities for widespread fraud are apparent, since form photocopies and forged signatures can be submitted at the last minute before start of the AGM, leaving no time to validate and allowing compliant condo managers and meeting chairpersons to expediently turn the other eye.

Proxy forms have been used as a method of voting since the *Condominium Act* was introduced in the late 1960s. The proxy form gives the person named the right to vote for the owner signing the proxy. It is interesting to note that proxies have all but disappeared in other types of elections and voting around the world, including homeowner associations in the U.S. and Australia.

Knowing all the integrity problems with proxy forms — plus their long history of proxy battles, court decisions and very divisive owner meetings — one may wonder why they are still around or even legally allowed for condo corporation elections in Ontario.

So, how did proxies originate? Proxies first were introduced in the U.K. in the 1800s so wives could vote on behalf of their husbands who were out colonizing various corners of the world or cutting down trees in a faraway town. How this managed to stay on as a “best practice” and incorporated into Ontario's *Condominium Act* is bewildering.

In November 2017, when the most recent amendments to Ontario's *Condominium Act* came into effect, the focus was on “consumer protection” — reinforcing the interests of condo owners as well as buyers.

One of the most forward-thinking changes to the Act in 2017 was the introduction of electronic voting for condo elections. Electronic voting has been used for a number of years in the U.S. and Australia

for homeowner associations, strata corporations and condo corporations. Electronic voting also is used in 144 municipalities across Ontario and Nova Scotia, by various political parties in leadership contests and in elections by Indigenous communities. Ontario is the first province in Canada to introduce electronic voting for condo corporations and Alberta soon will adopt electronic voting under its proposed amendments to the *Alberta Condominium Property Act*.

This form of voting allows condo owners, otherwise unable to attend an AGM in person, to vote directly from their smart phone, tablet or a computer through an e-mail link. Not only is this a secure form of advance voting but more importantly, it is direct empowerment that allows owners to vote for themselves rather than blindly submitting a proxy form and trusting that it will not be misused at the AGM. Electronic voting for condo owners is a real solution to proxy fraud and manipulation.

Although electronic voting is a very positive change, what Ontario's legislation failed to address in 2017 is the use of proxies. Instead of eliminating the proxy form and strictly using electronic voting and paper ballots, the amendments to the Act introduced a three-page template as the prescribed proxy form for mandatory use in all condo elections. The result has been a great deal of confusion and chaos — even among condo lawyers. In 2018 the forms underwent some minor modifications — which only further confused owners — and were accompanied by an instruction guide developed on "how to complete the proxy form" — a bureaucratic response that did not address the root problem of these forms.

In an effort to deal with some of these issues, "electronic proxies" have been developed by some service providers. However, at their core these remain a proxy form that gives voting control to a third party at the AGM. Notably, electronic proxies do not supplant the use of paper proxy forms, and thus many board elections continue to witness handfuls of paper proxy forms of dubious reliability being submitted at the last moment — again resulting in board election outcomes of questionable legitimacy.

It is understandable that for over 50 years, condo owners, directors, managers and lawyers have become accustomed to a certain way of conducting board elections. They find it is difficult to let go of the old methods and old habits. But in all too many cases, the motivation for not letting go of proxy forms may be to ensure that governance authority and spending power remain with the incumbent players who themselves control the voting process.

Accessibility is a prime issue in Ontario, thus condo corporations should promote methods that allow owners to vote in advance of the AGM without assistance or obstacle, due either to linguistic challenges or physical disability. Electronic voting can increase display font size so visually impaired persons can manage their own ballots. Language translation can be offered at the touch of a screen option.

Electronic voting offers full accessibility to condo owners without regard to limitations inherent in the prescribed proxy forms. Using an electronic direct-voting service for condo AGMs transcends all these problems.

Those condo corporations that have now adopted electronic voting are finding that owners appreciate dispensing with the old confusing three-page proxy forms and are simply voting by their own hand, conveniently and electronically, in advance of AGMs that they are otherwise unable to attend in-person.

Participation rates increase, and so does the legitimacy of election outcomes and strengthening of condo governance.

It will be a very positive step if the next phase of amendments to Ontario's *Condominium Act* reconsiders the limitations and risks of proxy forms and moves towards their abolishment in favour of electronic voting — as has been done successfully in many other jurisdictions.

The founder of Lash Condo Law, Denise Lash has over 25 years' experience as a condominium lawyer, is a director of Community Associations Institute (CAI) Canada and served as president for its first year. Denise has been qualified as an expert in condominium law in the Ontario courts and is a writer, lecturer and sought after by many media outlets for her expertise.

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