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Online Attendance and Voting at Owners' Meetings

The amendments to the Condominium Act, 1998 (the "Act") that came into effect in November 2017 permit a condominium's by-laws to allow online attendance and voting at owners' meetings.

The by-law cannot take effect until a majority of the owners present or represented by proxy at an owners' meeting vote in favour of confirming it. This is a lower voting threshold than that which typically applies to the confirmation of by-laws, being the owners of a majority of the units in the condominium.

Online voting and attendance are relatively new to condominiums and there is uncertainty in the industry about what the Act permits. My comments in this article are subject to debate and disagreement until reported case law or legislative intervention provides guidance.

Online Attendance

A quorum is the number of owners who must be present to validly transact business at an owners' meeting.



Other than a few exceptions, a quorum at owners' meetings is those owners who own 25 per cent of the units in the condominium. Subsection 50(2) of the Act clarifies how to determine quorum:

50(2) Determination of quorum – To count towards the quorum, an owner must be entitled to vote at a meeting and shall be present at the meeting or represented by proxy.

The amendments to Regulation 48/01 under the Act added clause 14(0.1) (p), which permits a condominium's by-laws to govern the manner in which an owner or a mortgagee may be "present" at a meeting of owners or represented by proxy. The prescribed Notice of Meeting of Owners form expressly contemplates that a by-law may authorize attendance online.

This could enable owners or proxies to attend online and participate with those attending in person. Additionally, condominiums may conceivably hold owners' meetings online rather than at a physical location. Condominiums would need to ensure that online meetings would comply with the meeting provisions in their general operating by-law. As technology evolves, condominiums may have more options at their disposal to promote owner attendance.

I believe that "present" implies that the owner or proxy must be able to participate during the meeting. A by-law that defines "present" to include owners who voted online but who are absent during the meeting might stretch the word beyond its literal meaning. Take that concept to its logical extreme and it appears untenable: no owners or proxies present at the meeting to chair, bring motions, confirm nominations, or otherwise participate in real time to transact the business of the meeting. On the other hand, defining "present" to allow absentee online voters to count towards quorum provides powerful practical benefits for condominiums that have struggled to

achieve quorum in the past. It remains to be seen whether a reported court decision will weigh in on that definition's enforceability.

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Online Voting

Online voting completed before the meeting is a type of absentee voting. The Act does not require owners to be present at a meeting in order to be entitled to vote. However, if the owner voted online in advance of the meeting and is not "present" (as may be defined in the condominium's by-laws) at the meeting or represented by proxy, he or she would not count towards quorum. The quorum refers to the number of owners present or represented by proxy at the meeting, not to the number actually voting on a particular question.

52(1) Method of voting – Votes may be cast by,

...

(b) a recorded vote that is,

...

(iii) indicated by telephonic or electronic means, if the by-laws so permit.

The Act broadly defines "telephonic or electronic means" so that it would include online or other forms of electronic

voting.

Robert's Rules of Order provides guidance on absentee voting, albeit with specific reference to a vote by mail (Robert's Rules of Order, 11th Edition, pg. 424):

A vote by mail, when authorized in the bylaws, is generally reserved for important issues, such as an amendment to the bylaws or an election of officers – on which a full vote of the membership is desirable even though only a small fraction of the members normally attend meetings.

Online voting could be useful where higher voting thresholds apply, such as confirming by-laws or removing directors. It could also help prevent owners from procuring votes through proxy manipulation or fraud.

However, online voting is not a substitute for proxies. If online voting is in place, proxies may still serve other useful purposes. A proxy is a limited power of attorney given by an owner to another person to participate at an owners' meeting in accordance with the owner's instructions. An owner may appoint a proxy to count towards quorum, vote on matters that the online ballots do not address, and participate in motions and discussions that properly come before the meeting.

Online attendance and voting have introduced new platforms to encourage owner involvement. Condominiums interested in making use of them in their communities should consider passing a by-law to allow them for future owners' meetings.

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