

Major Legislative Changes and Repairs

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There have been recent amendments made to the *Strata Property Act* (“*Act*”) that will allow many strata corporations to approve large scale repair projects. In some circumstances, the required voting threshold at a general meeting has been changed from a $\frac{3}{4}$ vote to a majority vote for decisions related to planning for repair and proceeding with them. This article will review the legislative amendments that will undoubtedly result in many repair projects moving forward in the coming months.

Funding Depreciation Reports

Amendments to the *Act* have clarified that a majority vote is sufficient to approve funding a depreciation report, either from the operating fund or from the contingency reserve fund.

The cost of obtaining a depreciation report may be quite significant on a per strata lot basis, especially for smaller strata corporations. One of the practical considerations of obtaining a depreciation report is how to obtain approval of the owners to pay for it. Since depreciation reports became mandatory (with certain exemptions and waivers that are beyond the scope of this article), one of the questions has always been how to fund the cost of obtaining the report. Given that depreciation reports are only required every three years, it certainly could have been argued that the reports should not be funded out of the operating fund, but should be funded by way of an expenditure from the contingency reserve fund or by special levy, both of which required a $\frac{3}{4}$ vote resolution. This put strata corporations who could not obtain a consensus amongst owners about whether to obtain a depreciation report in a “Catch 22”. Some strata corporations could not obtain a $\frac{3}{4}$ vote resolution to waive the requirement to obtain a depreciation report and could not obtain a $\frac{3}{4}$ vote resolution to fund the depreciation report through the contingency reserve fund or by way of a special levy.

As of April 9, 2014 an amendment came into effect to section 92 of the *Act* that provides that an operating expense is not only for common expenses that usually occur either once a year or more often than once a year, but also for common expenses that are necessary to obtain a depreciation report. On the same date another amendment came into effect that allows strata corporations to approve by majority vote at a general meeting an expenditure out of the contingency reserve fund necessary to obtain a depreciation report under section 94 of the *Act*.

These amendments will allow more strata corporations to obtain depreciation reports, which should result in increased preventative maintenance and also for better planning for large scale repairs, including increased funding into the contingency reserve fund.

Using Contingency Reserve Funds to Finance Maintenance and Repairs

An amendment has now been made to the *Act* which allows expenditures out of the contingency reserve fund to be approved by a majority vote at a general meeting for certain repairs, maintenance and replacement.

Under the *Act*, the general rule is that expenditures from the contingency reserve fund must be approved by a $\frac{3}{4}$ vote resolution of the owners. There has always been an exception under section 98(3) of the *Act* whereby “... expenditures may be made out of the operating fund or contingency reserve fund if there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage, whether physical or otherwise”. As we have just reviewed, there is now also an exception that allows depreciation reports to be paid for out of the contingency reserve fund with approval of the expenditure by majority vote.

There is now a third exception to the general rule that a $\frac{3}{4}$ vote resolution is required to approve an expenditure from the contingency reserve fund. This amendment allows owners by majority vote to approve the cost of repairs, maintenance or replacement that is recommended in the depreciation report.

As of April 9, 2014 a majority vote is sufficient to approve or authorize expenditures from the contingency reserve fund if the expenditure is “... related to the repair, maintenance or replacement, as recommended in the most current depreciation report obtained under section 94, of common property, common assets or the portions of a strata lot for which the strata corporation has taken responsibility under section 72(3)...”

As a result, a strata corporation can now use a majority vote to fund a depreciation report from the contingency reserve fund and fund the recommended work from the contingency reserve fund.

Court Application for Repairs

Another example of the expanding scope of majority votes and access to repairs is evidenced by an amendment made to section 173 of the *Act* which came into effect on December 12, 2013.

Prior to this amendment, if a strata corporation failed to approve maintenance, repairs or replacements and owner(s) felt strongly about having the work performed, one or more owners could commence a Petition in the Supreme Court of British Columbia to obtain an order deeming that a $\frac{3}{4}$ vote resolution was passed to fund the repairs. This meant that the burden of commencing the Petition was on the one or more owners, who rarely were able to obtain reimbursement from the strata corporation for all of the legal fees they expended for the court proceedings.

Now, section 173(2) to 173(4) provide as follows:

173 (2) If, under section 108 (2) (a),

(a) a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and

(b) the number of votes cast in favour of the resolution is more than $\frac{1}{2}$ of the votes cast on the resolution but less than the $\frac{3}{4}$ vote required under section 108 (2) (a), the strata corporation may apply to the Supreme Court, on such notice as the court may require, for an order under subsection (4) of this section.

(3) An application under subsection (2) must be made within 90 days after the vote referred to in that subsection.

(4) On an application under subsection (2), the court may make an order approving the resolution and, in that event, the strata corporation may proceed as if the resolution had been passed under section 108 (2) (a).

As a result, if at a general meeting a $\frac{3}{4}$ vote resolution to approve a special levy fails to meet the $\frac{3}{4}$ vote resolution threshold, but the majority of votes cast are in favour of the resolution, then the council can choose to apply to the Supreme Court of British Columbia for an order approving the resolution and the Strata Corporation can proceed as if the resolution had been passed.

The writer envisions depreciation reports being used as evidence in these applications regarding the necessity and urgency of the work required. It may be that in the future, strata corporations will plan on the possibility of needing to rely on the depreciation report as evidence in an application to have a Supreme Court Judge approve a $\frac{3}{4}$ vote resolution for a special levy and will require the qualified person preparing the report to draft the report in a manner so that it can be relied on as an expert report under the BC Supreme Court Rules.

As a result of this new amendment, if a special levy for urgent repairs is approved by enough owners to pass a majority vote, but not a $\frac{3}{4}$ vote, then the council can proceed to court and the voice of those owners will be heard.

How is a Majority Vote Obtained?

Under the *Act*, a "majority vote" is defined as follows:

"majority vote" means a vote in favour of a resolution by more than $\frac{1}{2}$ of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting.

Under section 48, unless otherwise provided for in the bylaws, quorum is $\frac{1}{3}$ of the strata corporation's votes, present in person or by proxy. As a result, a strata corporation with a hundred strata lots could meet the quorum requirements

by having 33 strata lots represented. If all strata lots represented vote at the meeting, only 17 yes votes would be required to meet the majority threshold. Many strata corporations have bylaws that lower quorum requirements even further, such as providing that ½ hour after the scheduled time for the meeting has passed, those present in person or by proxy constitute quorum. Given these parameters, decisions made by majority vote can be made by a very small percentage of individuals in a strata community.

Section 51 of the *Act* requires that a strata corporation cannot take any action to implement a ¾ vote resolution for one week following the vote if it is passed at an annual or special general meeting by persons holding less than 50% of the votes, unless there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage. There is no similar provision for majority votes and the council can implement the results of the votes immediately, for instance by signing a contract for the major repair and maintenance right after the general meeting is held.

Unlike ¾ votes, there is no legislative impediment to amending a majority vote at a general meeting. So, not only can a small percentage of the owners constitute quorum, that same small percentage of owners may also be able to amend the majority resolution that was put on the agenda as well. Only time will tell whether majority vote resolutions are amended in a significantly unfair way to those that choose not to attend the general meeting in person or are unable to instruct a proxy properly. For instance, can a majority vote resolution to expend funds from the contingency reserve fund to pay for repairs recommended in the depreciation report be amended at the meeting to greatly increase the amount to be expended? Is that significantly unfair to those that failed to attend the meeting after reviewing the notice of the meeting?

Moving Forward

The recent amendments to the *Act* will allow more strata corporations to move forward with planning and following through with repairs, maintenance and replacements of all kinds, including repairs to major building systems which may have been delayed for many years due to lack of consensus amongst the ownership. The use of majority votes for repair decisions makes it very important for owners to attend general meetings.