

MEMORANDUM

January, 2024

TO: The Condominium Board

FROM: Witten LLP

RE: Passing Amendments to the Condominium's Bylaws

A. Process to Pass the Bylaw Amendments

In order to pass an amendment to the Bylaws, the ownership must pass a special resolution. A special resolution requires a majority of the owners to vote in favor of the change, which majority must be no less than 75% of all the owners who, at a properly convened meeting of the Corporation, would be entitled to vote and representing not less than 75% of the total unit factors of the Condominium. Therefore, there are two parts that must be met: 1) 75% of the persons entitled to vote, must vote in favor and 2) at least 75% of all unit factors must vote in favor. Therefore, owners who are not entitled to vote cannot be counted.

A special resolution can be passed in person at a meeting (including the AGM or a special meeting called to pass the resolution). Alternatively, it can be done in writing by having the owners sign a form confirming their consent to pass the special resolution. Passing the special resolution in writing is usually the easiest option as it can take time to obtain enough owner votes in favor of the amendment. Accordingly, we have prepared a written resolution form that can be provided to the owners along with the proposed Bylaw amendments. We also recommend the Board provide the owners a covering letter explaining the reason for the proposed Bylaw changes to be provided along with the special resolution form and the proposed bylaw revisions. The board may also want to host an 'informational' meeting to discuss the bylaws and answer any questions the owners may have.

Once the special resolution has passed, two members of the Board will have to sign a "Form 3", which is the mandated land titles form. The Form 3 must also be sealed with the Corporation's seal. Then you must provide our office with two executed copies of the Form 3 and then we will register the same at the land titles office. It is important to note that the amendments to the Bylaws are only effective once they are registered at land titles.

The Board should note that there is a special chambers decision discussing how to interpret the special resolution definition in the Act being, 1597130 Alberta Ltd. v. Condominium Corp. No. 1023241, 2016 ABQB 195. That case found that each owner only counts as one "person" regardless of how many units they own. Previously the general understanding was that each unit counted as one "person" or one "vote" so an owner owing multiple units would have each unit count as a separate vote. Based on this decision, however, owners who own two or more units would technically count as one vote only (however, in terms of counting the unit factors, all of the units owned by the same owner would be counted for their unit factors). This understanding was proposed to be codified in the Condominium Property Act, however such bill was not passed but we foresee it being passed in the future. This may not matter to your condominium, but I wanted to raise it to the board in case it may be a concern.

If you have any questions regarding the above, feel free to contact our office.