



Electronic Voting: The Better Alternative?

By Warren Kleiner



There has been a lot written lately about electronic voting at condominium meetings since the first phase of amendments to the *Condominium Act, 1998* (the “Act”) came into force on November 1, 2017.

The Act now allows for voting by telephonic or electronic means, if the condo’s bylaws so permit. With the Act now allowing for electronic voting, lawyers and others in the condominium industry have been trying to come up with creative ways to use it to increase owner participation in meetings.

The approach that seems to be getting the most traction is one that allows owners to submit electronic ballots for the election of directors and other matters that will come before a

meeting, prior to the meeting. This is similar to submitting electronic proxies before a meeting, but there are some significant differences.

The first is that if an owner submits a proxy, the owner can revoke the proxy prior to the start of the meeting or can submit a new proxy which will automatically revoke the previous proxy submitted. Once an electronic ballot is submitted prior to a meeting, it is unclear whether the owner has any ability to change his/her vote prior to the vote being called at the meeting.

Another significant difference is that with a proxy, the owner does not have to indicate how the proxy holder is to vote on any particular matter at the meeting, but can authorize the proxy holder to vote on the owner’s behalf at the meeting. This allows the proxy holder to

listen to any discussion at the meeting and to ask questions before deciding how to vote. There is no such ability with an electronic ballot cast prior to a meeting. If an owner cannot attend a meeting personally, the owner can vote on a matter in advance using an electronic ballot, but without the benefit of any participation in the meeting and hearing any discussion on the matter.

There are also questions about whether a person who submits an electronic ballot can be counted towards quorum. A corporation may pass a bylaw to govern the manner in which an owner or a mortgagee may be present at a meeting of owners or represented by proxy. Electronic voting bylaws are being drafted to provide that someone who submits an electronic ballot prior to the meeting is deemed to be

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present at the meeting. The question is whether a bylaw that provides that an owner who is not in fact “present” and able to participate at a meeting can nevertheless be deemed to be present is reasonable and therefore valid.

In the writer’s view, to be present as opposed to being represented by proxy, you must be able to participate in the meeting, whether present in person or by electronic means, such as participating through a form of webcast that allows the owner to submit questions contemporaneously.



There is certainly a place for electronic voting in condominiums but it does not eliminate the need for proxies.

Although bylaw provisions which deem an electronic voter to be present for quorum purposes are a creative way to allow for electronic voting while still obtaining quorum, we will not know if this bylaw provision is valid until the courts weigh in on the matter. Until a court finds to the contrary, we will likely see an increase in the use of electronic voting prior to a meeting, which is seen by many as beneficial to the condominium industry.

There is certainly a place for electronic voting in condominiums but it does not eliminate the need for proxies. Owners have the right under the Act to attend a meeting in person or by proxy. Proxies are not just about voting, but also about participation generally, including the ability to ask questions of the board and management at the meeting. This is an inherent and important right of owners. So even with electronic voting, there is still a need for proxies for those owners who wish to appoint a proxy holder to attend a meeting with authority to vote on an owner’s behalf.

Electronic voting is an important development in condominium law, but does not, in the writer’s view, replace proxies or eliminate the need for proxies. Rather, it provides an additional tool to allow an owner to participate in a meeting where that owner wants to limit his/her participation solely to voting on matters prior to the meeting.

Even with electronic voting, condominiums should continue to include proxies with Notices of Meeting.

Electronic voting can assist to increase participation by owners, including in condominiums that have traditionally had difficulty getting quorum for meetings, or conducting other business such as passing bylaws. This is similar to the services provided by electronic proxy service providers, which allow owners to electronically submit proxies and indicate how they wish to vote on particular matters

directly on the electronic proxy. Electronic proxies were being used before the recent amendments to the Act with much success. Electronic voting does not seem to offer any benefits over using electronic proxies.

In the writer’s view, while electronic voting is promising and represents an additional tool to increase owner participation in meetings, there are still significant questions about how it will be applied. These questions likely won’t be answered until the results of an election featuring electronic voting are decided by the courts. In the interim, voting using electronic proxies appears to be the safer alternative, and offers many if not all of the same benefits as electronic voting. ■

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