

# HOW DO WE CHANGE THE BY-LAWS?

By Sharon Gutnik, Past President CCI-NS (reprinted from Fall 2013 edition)

## “WHAT IS THE PROCEDURE TO CHANGE A CORPORATION’S BY-LAWS?”

It’s a question that is likely of interest to every condo corporation, whether 20 years old or just registered. Either there is an existing by-law that needs changing or there is one or more new by-laws that a corporation would like to add.

*The Condominium Act of NS (Revised 2010)* states Section 23 (1) that the Corporation, by a vote of members who own at least 60 per cent of the common elements, may make by-laws. Changing or making new by-laws is not done on a whim, given that a vote of owners is involved. The process is a legal one and as such should be done in consultation with the corporation’s attorney. The new by-law(s) must be submitted to the Registrar “together with a certificate in prescribed form executed by the corporation.” The proposed by-law is not effective until the Registrar accepts it for registration.

The proposed new by-law would have to be legitimate; it could not be contrary to the Declaration or Condominium Act, both of which supersede by-laws. As the Act states in Section 23 (2) “the by-laws shall be reasonable and consistent with the Act, the Human Rights Act and the declaration.”

The process usually starts at the Board of Directors level, where during the managing of the corporation the board finds an item lacking in the by-laws and decides to rectify this. As a vote is required, the first

step would be to send out a notice outlining in detail how the new by-law would read. A voting ballot would accompany the notice. It is not uncommon to hold a General Meeting to explain the proposed new by-law, why it is considered necessary and what affect it will have in future.

See Section 23 (1) (a) to (i) of the Condominium Act of NS for the comprehensive list of the different items that would be covered in by-laws. In general, by-laws are items governing management of the property, use of common elements and respecting the conduct generally of the affairs of the corporation.

Obtaining 60-percent votes of the common element (unit percentages) can be difficult and often involves many hours of canvassing owners by the Board of Directors. Once ballots are returned with the required percentage in favour, the corporation’s attorney would be involved (if not already consulted). The attorney would need to verify that the ballots are legitimate and signed by current, registered owners of each unit. The wording of the new by-law and how it was represented to the owners would be reviewed.

If you are looking to change or add to your corporation’s by-laws it can be done but best to consult legal counsel to avoid the frustration of your hard work being denied by the Registrar. ■