



A Guide for Licensees: The Use of Proxies and Proxy Forms

www.cmrao.ca | info@cmrao.ca

Table of Contents

- Introduction.....1
- What Is a Proxy?.....2
- Appointing a Proxy.....2
- Eligibility.....2
- How a Proxy is Appointed.....2
- Prepopulating Proxy Forms with Information.....3
- How Proxy Forms Are Collected.....4
- How Proxy Votes Are Made.....4
- Solicitation of Proxy Forms.....5
- Roles and Responsibilities.....7
- Unethical or Unprofessional Conduct of Licensees.....8
- Examples of Proxy-Related Issues Brought to the CMRAO to Date.....9
- Appendix: Select Excerpts from Legislation and Regulations.....10



Introduction

Solicitation of proxy forms is addressed under section 53 of the *Condominium Management Services Act, 2015* (CMSA) and is further described under section 33 of the General Regulation (O. Reg 123/17). This guide serves as a helpful resource outlining the legal and ethical obligations of licensed condominium managers and management companies¹ regarding the use of proxies.

The CMRAO is providing this document for your information and reference. It is a guide to understanding legislation and is not intended to be a substitute for legal advice. Please see the relevant sections of the *Condominium Act, 1998* (Condo Act), and the CMSA for additional information. In the event of a conflict between this guide and the legislation, the legislation prevails. This guide does not represent legal advice from the CMRAO or replace legal advice that may be needed for specific condo management issues.

¹Companies refers to companies that hold a Condominium Management Provider Licence.



What Is a Proxy?

A proxy is a person who has been appointed to represent an owner or mortgagee at a condo corporation's owners' meeting. The mechanism by which a proxy is appointed is through a proxy form. The proxy form authorizes a proxy to do one of the following actions:

- Attend the meeting to count towards satisfying quorum²
- Attend the meeting and vote only on routine matters
- Attend the meeting, nominate owners for director positions, and vote on all matters subject to any specific instructions in the completed proxy form

The Condominium Authority of Ontario (CAO) has samples and detailed instructions on how to complete proxy forms available on their [website](#).

Appointing a Proxy

A condo owner may choose to have another person attend and/or vote at an owners' meeting on the owner's behalf. In order to do this, owners must use the government-approved proxy form. Each voting unit is entitled to one vote, and there cannot be more than one proxy per unit. A single person may be a proxy for multiple units; therefore, each unit that a proxy represents is included in the count towards quorum and voting. In the event that more than one proxy form is submitted in respect of the same unit, the most recently dated and signed proxy form must be used.

To avoid the appearance of influencing the process, a condo manager should not be a proxy.

Eligibility

A proxy is an individual chosen by an owner to vote on behalf of the unit. A proxy does not need to be a condo unit owner.

At owners' meetings, proxies in attendance are counted towards quorum requirements as set out in section 42 (10) of the Condo Act or in the condo corporation by-laws.

Unit owners may transfer the right to attend a meeting without transferring the right to vote for board directors and other matters. This is often done to achieve the necessary quorum for a meeting.

How a Proxy Is Appointed

For a proxy to be valid, the mandatory proxy form provided by the Ontario Ministry of Government and Consumer Services must be used. The Condo Act requires that a proxy form be "in writing under the hand of the appointer or the appointer's attorney." This requirement is commonly satisfied by having the owner initial the entries on the mandatory form and sign as required.

The mandatory proxy form is available as an expandable electronic form. It can be completed electronically and printed by the owner to deliver to the condo corporation. The form can also be printed in full for manual completion. This format is often presented in the meeting package sent to owners by condo managers.

² Quorum is the minimum number of owners that must be present in order for the meeting to be considered valid.

Prepopulating Proxy Forms with Information

Boards sometimes request or expect managers to prepopulate proxy forms, which is seen as being helpful to owners. The CMRAO has also heard that prepopulating proxy forms may result in confusion or miscommunication.

Prepopulating proxy forms is not expressly prohibited in legislation or regulation. However, depending on what information is entered—and how it is entered—prepopulating a form may be viewed as an attempt to influence the decisions of the Board or the election of directors. For this reason, CMRAO recommends exercising caution to any manager that considers prepopulating forms.

As a general guideline, the following is a non-exhaustive list of information that managers may prepopulate on a proxy form:

- Name of condo corporation
- Date of meeting
- List of specified matters to be voted upon from the meeting agenda
- List of all candidates nominated for election to the board of directors with the stipulated conditions that:
 - All candidates be listed in alphabetical order by last name
 - The form includes additional spaces for inserting candidates equal to the number of director positions available



Condo managers and management companies need to understand the legislative requirements for the use of proxies and adhere to their ethical obligations when advising their clients.

Most importantly, when handling proxy forms, managers should remember their role as neutral administrators in the process. Managers should not prepopulate forms in a way that favours specific outcomes—even if directed to do so by the board.

How Proxy Forms Are Collected

The notice of meeting should instruct unit owners on the means to deliver the proxy form to the condo corporation. A board member, condo manager, or condo management company may send reminders to owners to appoint a proxy if they will not be attending the meeting. Corporation by-laws typically specify the manner in which proxies are to be provided to the corporation.

How Proxy Votes Are Made

A person who is a duly appointed proxy with authority to vote may do so at a meeting by show of hand or written ballot. The Condo Act, also allows for voting by electronic means if permitted by the corporation's by-laws. For an election of board directors and other non-routine matters, votes recorded in completed proxy forms are counted along with votes made by owners in attendance and votes made by proxies in attendance who are given the authority to vote at the meeting without specific instructions made on the proxy form.

The mandatory proxy forms are complex and there are many ways that a completed form could be judged to be invalid by the person overseeing the meeting. Therefore, it is advised that a condo manager not accept the responsibility to oversee owners' meetings so that the manager is not seen to be influencing the outcome of votes.

Electronic Voting



Section 52 (1) of the *Condominium Act, 1998*, notes that votes may be conducted by telephonic or electronic means, if the by-laws so permit. Condo managers are required to follow the same ethical obligations surrounding the use of proxy forms when administering electronic voting processes.

Solicitation of Proxy Forms

Section 53 of the CMSA requires that “A licensee, or any person acting on behalf of a licensee, shall not solicit an instrument appointing a proxy for a meeting of owners where the subject matter of the meeting includes,

- (a) any matter directly related to the licensee,
- (b) the removal or the election of one or more of the directors of the client, or
- (c) any other prescribed matter.”

Ontario Regulation 123/17, section 33 made under the CMSA, then defines “solicit” as follows:

“petition for, or to try to directly obtain, an instrument appointing a proxy, but does not include,

- (a) collecting or holding instruments appointing a proxy or providing a location in which the instruments can be collected or held respectively,
- (b) notifying or reminding owners or mortgagees to submit instruments appointing a proxy if the owners or mortgagees respectively are unable to attend a meeting of owners,
- (c) making information available on how to submit an instrument appointing a proxy,
- (d) providing a form of an instrument appointing a proxy as part of anything that a client gives to owners or mortgagees, or
- (e) providing a copy of a form described in clause (d) to owners or mortgagees on request.”

The definition and exclusions set out in section 33 of O. Reg 123/17, differentiates between soliciting (a personal appeal) and the administrative role of issuing notices and reminders and collecting proxy forms. To avoid the appearance of soliciting, reminders and collection of proxy forms should have equal application across all owners and not be targeted towards a subgroup of owners.

Condo managers must be careful not to communicate with unit owners in a way that could suggest they are trying to influence the appointment of a person as proxy, or influence the election of a director or other matters for the purposes of the meeting.

It is appropriate for management to knock on doors to remind owners of a meeting and encourage them to complete a proxy form if the owner will not be attending. According to section 33 (3) of O. Reg 123/17, management may also solicit proxy forms for the purposes of establishing quorum. However, managers should ensure that owners are aware of all their options regarding the use of proxies.

“(3) A licensee or any person acting on behalf of a licensee is exempt from section 53 of the Act if the licensee or the person, as the case may be, solicits an instrument appointing a proxy for a meeting of owners where the form or content of the instrument does not authorize or require the proxy to vote on any matter at the meeting, including matters of routine procedure.”



Roles and Responsibilities



Who is responsible for the lawful use of proxies?

The condo corporation's board of directors is responsible for the lawful use of proxies.

Resources are available on the Condominium Authority of Ontario (CAO) website to guide board directors with their roles.



The role of condo managers and condo management companies is to be neutral administrators of the meeting notice, proxy, and election processes. CMRAO licensees must understand and adhere to the requirements established in legislation, regulation, and the corporation's by-laws, declaration, and rules. If directed by the board or others to take action that does not comply with legal and ethical requirements, licensees must refuse and provide information of lawful appropriate actions. Failing to do so may open a licensee to complaints filed with the CMRAO that could potentially result in disciplinary actions or actions related to their licence.

Licensees must never put their own interests above the need for open, fair, and legal processes even when asked or directed otherwise.

Additional Resources

For more information about proxy forms, the CAO has developed helpful resources, which are available on their [website](#).

Code of Ethics

A licensee must use their best efforts to prevent error, misrepresentation, fraud or any unethical practice in the course of providing condo management services.

Unethical or Unprofessional Conduct of Licensees

The CMRAO supports its licensees in complying with legal and regulatory requirements for the use of proxies. The CMRAO uses education, discipline, and licensing processes to address compliance issues. The following actions related to the use of proxies may result in the CMRAO taking action against a licensee (**please note:** these are only some examples).



- Failing to remain neutral in the election of directors (for example, promoting some candidates over others, even when pressured to do so)
- Influencing others to promote some candidates over others
- Delivering inaccurate information to owners
- Providing inaccurate or incomplete information to the board and others regarding elections and the use of proxies
- Failing to advise the board of current by-laws, policies, or practices



- Soliciting proxy forms as defined in the CMSA (O. Reg. 123/17 section 33)
- Giving preferential treatment such as timely notices and reminders to owners known to be favourable to specific director candidates and/or management
- Failing to properly record the attendance of proxies at meetings
- Failing to accurately guide the handling of proxy vote counts by scrutineers



- Prefilling proxy forms with information naming a proxy, stating a preference for board candidates, or presenting information in a way that favours a particular director or outcome

Examples of Proxy-Related Issues Brought to the CMRAO to Date

The CMRAO has been approached by condo unit owners and condo managers with concerns predating the regulation of condo management, as well as current concerns regarding proxies. The CMRAO has heard questions and concerns regarding:

- Condo managers and management companies soliciting proxy votes for specific board of director candidates known to be favourably disposed to the management company
- Condo management companies directing condo managers to solicit proxy votes for specific candidates
- Condo managers not recording attendance of proxies at a meeting
- Condo managers inaccurately counting the number of proxy votes by failing to consider the number of proxy votes that a proxy in attendance holds
- The validity of incomplete proxy forms



Appendix: Select Excerpts from Legislation and Regulations

Condominium Management Services Act, 2015

Prohibition re: proxy instruments

53 A licensee, or any person acting on behalf of a licensee, shall not solicit an instrument appointing a proxy for a meeting of owners where the subject matter of the meeting includes,

- (a) any matter directly related to the licensee;
- (b) the removal or the election of one or more of the directors of the client; or
- (c) any other prescribed matter.

O. Reg. 123/17: GENERAL (Regulation to the Condominium Management Services Act, 2015)

Proxies

33 (1) In section 53 of the Act,

“solicit” means to petition for, or to try to directly obtain, an instrument appointing a proxy, but does not include,

- (a) collecting or holding instruments appointing a proxy or providing a location in which the instruments can be collected or held respectively,
- (b) notifying or reminding owners or mortgagees to submit instruments appointing a proxy if the owners or mortgagees respectively are unable to attend a meeting of owners,
- (c) making information available on how to submit an instrument appointing a proxy,
- (d) providing a form of an instrument appointing a proxy as part of anything that a client gives to owners or mortgagees, or
- (e) providing a copy of a form described in clause (d) to owners or mortgagees on request.

(2) A licensee shall not modify or attempt to modify an instrument appointing a proxy for a meeting of owners.

(3) A licensee or any person acting on behalf of a licensee is exempt from section 53 of the Act if the licensee or the person, as the case may be, solicits an instrument appointing a proxy for a meeting of owners where the form or content of the instrument does not authorize or require the proxy to vote on any matter at the meeting, including matters of routine procedure.

Determination of quorum

50 (2) 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.

.

.

Voting

51 (1) For an owner to vote at a meeting of owners, the owner's name must appear in the record of the corporation required by section 46.1 or be required by that section to appear in that record and the owner must be entitled to vote at the meeting.

One vote per unit

(2) All voting by owners shall be on the basis of one vote per unit.

Joint owners

(3) The majority of the owners of a unit may exercise the right to vote in respect of the unit but the vote shall not be counted if there are two or more owners of the unit and they are evenly divided on how to exercise the vote.

.

.

Method of voting

52 (1) Votes may be cast by,

- (a) a show of hands, personally or by proxy; or
- (b) a recorded vote that is,
 - (i) marked on a ballot cast personally or by a proxy,
 - (ii) marked on an instrument appointing a proxy, or
 - (iii) indicated by telephonic or electronic means, if the by-laws so permit.

Definition

(1.1) In subsection (1),

“telephonic or electronic means” means any means that uses the telephone or any other electronic or other technological means to transmit information or data, including telephone calls, fax, e-mail, automated touch-tone telephone system, computer or computer networks.

Proxy

(1.2) A vote cast by proxy is subject to the instrument appointing the proxy.

Request for recorded vote

(2) At a meeting of owners, a person entitled to vote at the meeting may request that a recorded vote be held on any item scheduled for a vote either before or promptly after the vote.

Proxy

(3) A proxy need not be an owner.

Appointment of proxy

(4) An instrument appointing a proxy shall be in writing under the hand of the appointer or the appointer's attorney, shall be for one or more particular meetings of owners, shall comply with the regulations and shall be in the prescribed form.



Acknowledgements

The CMRAO would like to thank the following individuals from the condo management sector for their feedback in the development of this document:

- Brian Horlick
- Chris Jaglowitz
- Murray Johnson
- Michael Kalisperas
- Denise Lash
- Dean McCabe
- Audrey McGuire



Meeting standards. Creating trust. Building confidence.

www.cmrao.ca | info@cmrao.ca



CMRAO
© CMRAO 2018