



## **NOTICE TO ALL STRATA CORPORATIONS RE USE OF VIRTUAL MEETING PLATFORMS**

The Commission of Strata Corporations has applied to the Supreme Court for an order asking the Court that the term “in person” may be interpreted as appearing by video conference platform and that Zoom or any other similar online conference application be considered an acceptable means of holding the Annual General Meeting (AGM) in light of the prevailing restriction on physical attendance. The Commission also asked the Court to rule that voting by way of these online conference applications is practicable and can be accounted for, similar to the traditional means of voting in an AGM and finally that any Annual General Meeting already facilitated via Zoom or any other similar online applications is not negated merely by the fact that it was convened via Zoom or any other similar online conference application.

The application was heard by Justice I. Reid on November 19, 2020 and Her Ladyship ruled as follows:

1. The First Hearing of the application is adjourned until January 11, 2021 at 3 pm for 1 Hour.
2. The Commission is to give notice of proceedings to all interested parties. This is to be published in a national newspaper twice, seven (7) days apart.
3. The application and orders herein are to be published on the Claimant’s website.

By way of this notice, we notify all Strata Corporations that the Commission is seeking to have a declaration that Corporations may have AGMs and Extra Ordinary General Meetings (EGMs) by way of Zoom or similar online platforms. In the Commission’s view, Zoom and its other platforms are acceptable for having their AGMs and EGMs, however due to clauses in most Strata Corporations’ by laws, the Commission is compelled to seek the Court’s intervention in the matter in order to have these meetings conducted by said platforms.

### **What should Strata Corporations do in the interim?**

The Corporations will have to continue to have physical, in-person meetings, while meeting the protocols laid down by the Ministry of Health (MOH) which limits any gathering to only fifteen (15) persons. The Commission has also sought an exemption from the MOH but has not yet received a response to this request as the majority of Corporations within the island are larger than 15 proprietors.

This is an opportunity for Strata Corporations to implore its members to use the proxy mechanism provided for in the **Registration (Strata Titles) Act (The Act)** as well as in their various By Laws.

### **How does the Proxy Work?**

By **Section 9 of the Act**, the control, management, administration use and enjoyment of the strata lots and common property is to be regulated by by-laws. **Section 15** speaks to the appointment of a proxy by the proprietor. In law, proxies are entitled to vote on behalf of the person who granted them the power. They are to vote as instructed by the grantor, unless the grantor has given no instructions. This underscores to all proprietors that when giving proxy, **clear and precise instructions must be given to**

**your grantee/proxy as to how to vote on the stated resolutions.** In the event a matter arises for which there are no instructions on how to vote, proxies should seek to contact their grantor in order that they can be given instructions on how to vote on this matter. It would lead to litigation if the person votes against the wishes of the grantor. Proxy power is not wide as a Power of Attorney/Agent power and thus they are bound to work by instructions of the grantor of the power.

By Law 29 of the Standard By Laws and replicated By Laws throughout the many Strata Corporations in Jamaica, state that an instrument appointing a proxy shall be in writing under the hand of the appointer of his attorney (not necessarily his Attorney at Law but by power of attorney/agent) and may be either general or for a particular meeting. A proxy need not be a proprietor but can be anyone. It is to be noted that the Proxy Forms are to be stamped or have a (postage) stamp affixed in order that the duty on them are paid.

Based on Section 10 of the First Schedule, the proxies should be added to those present to constitute a quorum for the Annual General Meetings or the Extra-ordinary General Meetings.

Many Strata Corporations have standardized proxy forms which follow the above paragraph. The Corporations are to ensure the forms contain the following data in order that they can be filled in by the Proprietor:

- a. Name of Proprietor and Unit Number/Strata Lot Number
- b. Name of person being appointed Proxy
- c. Area for the Stamp to be affixed
- d. Area for the writing to specify whether this is general proxy or to vote on an issue or issues as stated in the Notice to the AGM or EGM (if they are available before the date of the meeting)
- e. Contact Number for the Proprietor
- f. A small narrative stating the power of the proxy to vote and that the proxy form must be stamped.
- g. Area for Signature of the Proprietor and a witness to the signature to sign. The witness need not be a Justice of the Peace of the like.

These would form the essentials of a standardized proxy form and we would advise all Strata Corporations to ensure that a form of like nature is created or if not, that all proxy that had been given confines to the above. A sample copy can be found on this website.

### **Proxy Power**

The Power of the Proxy is limited to **voting** and making up the quorum for the meeting. Proxies can do nothing more than vote, and vote as they are instructed. If you would like your Proxy to do anything else, permission must be given in writing to elevate this person to your agent or attorney. Additionally, as stated above, if any additional items for vote arises, they should seek their grantor's instructions before voting on the matter unless the grantor had given prior instructions on the matter.

### **Conclusion**

The Commission trusts that the above will provide guidance to Strata Corporations during this unparalleled period of pandemic. The Commission will keep the Corporations up to date on the outcome

of its application stated above and it is to be noted that the Application, as per court order, will be published in the papers for all proprietors in Strata Corporations to peruse. We hope to be granted the Court Order so that you may hold your meetings via Zoom or any like platform.

Christopher Henry  
Attorney-At-Law  
The Commission of Strata Corporations  
Tel: 876-926-9478/9