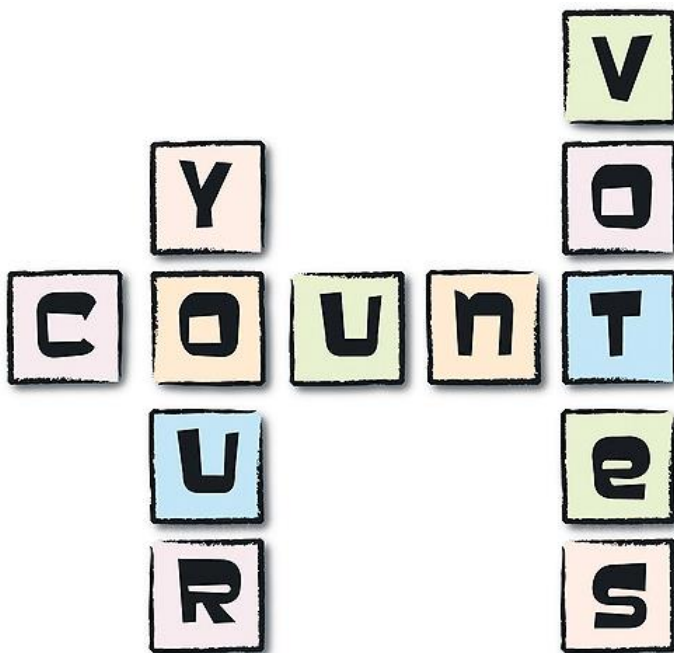


## TO VOTE, OR NOT TO VOTE: The condominium conundrum

- Published: [5/05/2013](#) at 12:00 AM
- Newspaper section: [Spectrum](#)

There's no lack of drama when it comes to modern-day condominium general meetings. Put a group of condo owners in a room together and ask them to vote on a variety of issues and sparks are bound to fly, especially when money is at stake. And money is always at stake.



Add to that a general lack of knowledge or understanding of rights and obligations, and you can add comedy and tragedy to the condo board drama.

It's important to note here that condominium owners' rights and obligations in respect to their units and the development's common property are, or at least should be, set out in both the development's rules and the Condominium Act. The right of every owner to vote at general meetings is an inherent part of this.

The position of a condominium owner can be compared to that of a shareholder in a company, and in many respects the relevant provisions in the Condominium Act are similar to those in the Civil and Commercial Code applying to private limited companies. Condo owners, like shareholders, hold shares in a legal entity, ie a condominium juristic person registered with the Commerce Ministry. They also appoint a board, the committee, comprised of owners (or their spouses, legal heirs or custodians) to monitor the management of the property and a manager to oversee its day to day operations.

Beyond that, certain matters are reserved for general meetings, at which all owners have a right to their say and get a vote. This is similar to the management of a corporation, with its board of directors and executive management team.

At general meetings, each owner's vote is calculated by reference to the size of the unit owned in relation to the total size of the common property (Section 45).

As a general principle, voting rights cannot be restricted or limited in any way, except expressly by the owner. An example is the granting of a power of attorney, or proxy, to vote to a third person.

We know of cases where an owner who had not paid the common area maintenance fee was not allowed to vote. This prohibition was in breach of the law. Owners lose their right to vote only if they fail to pay taxes, interest and other costs prescribed in Section 18 of the Condominium Act for more than six months. The loss of voting rights remains in place until the debt is cleared. Here we will look at some common queries regarding condo voting rights.

### **I'M A LESSEE, CAN I VOTE?**

Foreign owners who are not freehold owners (remember, foreigners can own up to a maximum of 49% of the total area of the condominium units), but who have a registered long-term leasehold right, must ensure their leasehold agreement provides specific and detailed provisions permitting them to exercise the owner's voting rights.

After all, in most cases the freehold owner stipulates that all obligations associated with the condominium ownership rights are assumed by the lessee, including the duty to pay maintenance fees, insurance premiums and applicable taxes. The flip side of this arrangement should be that the lessee will have the ability to exercise the owner's voting rights. This is often overlooked.

### **CAN SOMEONE VOTE FOR ME?**

In principle you can provide a voting proxy (ie written instructions granting someone else the authority to vote at the meeting on your behalf, but not to just anyone).

The Condominium Act prescribes that certain people (most notably those involved in the condominium juristic person management and members of the condominium committee) cannot represent owners, while a proxy holder cannot represent more than three owners.

The proxy must be in writing but there are no other requirements in the Condominium Act relating to the issue.

### **DO WE HAVE A QUORUM?**

This means is there a sufficient number of people either present or represented by proxy for the meeting to be considered valid.

The principle is that if only a small minority of owners attend a meeting or otherwise consider and vote on a matter, it would be offensive to the other owners for that vote to be binding upon them, particularly as there may be financial implications.

However, the legislators did not want the opposite to happen, such as making it difficult to hold meetings because owners don't show up.

This often happens with condominium projects in resort destinations with predominantly absentee owners.

In any case it is vital for the chairman to ensure that any meeting is quorate, and that proper notice of the meeting is given and proper information on the matters being voted upon is distributed in a timely manner.

Under the Condominium Act (Section 43) a quorum requires owners having 25% of all votes eligible to be cast either to be present or represented at the meeting.

However, if this is not the case, there is no disaster because the meeting can be reconvened 15 days later without this quorum requirement as long as at least seven days' notice is given to all owners.

### **WHAT IS THE REQUIRED MAJORITY?**

As with private limited companies, the general rule is that the majority of the votes of those owners present or represented (not of all votes owners can cast) at a meeting can pass a resolution.

Not surprisingly, there are exceptions that require less, or in some cases more, than this ordinary majority.

Most notable are the appointment or dismissal of the manager, which requires an affirmative vote of just 25% of the eligible votes, and any decision to approve the commercial exploitation of the common property or an amendment of the by-laws relating to the use or management of the common property, which requires an affirmative vote of at least 50% of all votes which the condominium owners can cast (not just by those who are present or represented).

These are often controversial and hotly debated issues. Also noteworthy is the minority protection of Section 45 that stipulates that an owner who has more than 50% of all votes can exercise only the number of votes that is equal to the votes of all other owners. This clause has been designed to protect against undue influence by the developer.

In one case, some of the owners of units at a condo development wanted to allow the operation of a cafe in the common area.

It was a divisive issue \_ people get worked up about strange things \_ and ultimately the vote had to be repeated and lawyer's opinions were sought regarding quorum and the appropriate voting thresholds. Lots of time, money and emotion were expended because the voting requirements and rights weren't properly reviewed at the outset.

---

**Angus Mitchell, Marcus Collins and Kejnapaht Ungsurungsee,**  
of DFDL Legal and Tax ([angus.mitchell@dfd.com](mailto:angus.mitchell@dfd.com),  
[marcus.collins@dfd.com](mailto:marcus.collins@dfd.com), [kejnapaht@dfd.com](mailto:kejnapaht@dfd.com)).  
For more information visit [www.dfd.com](http://www.dfd.com).  
Questions? Contact us at the email addresses above.



Source: <http://www.bangkokpost.com/news/investigation/348486/to-vote-or-not-to-vote-the-condominium-conundrum>