

# CONDOBUSINESS

## CONDO DEMOCRACY

Ensuring fairness in condo voting



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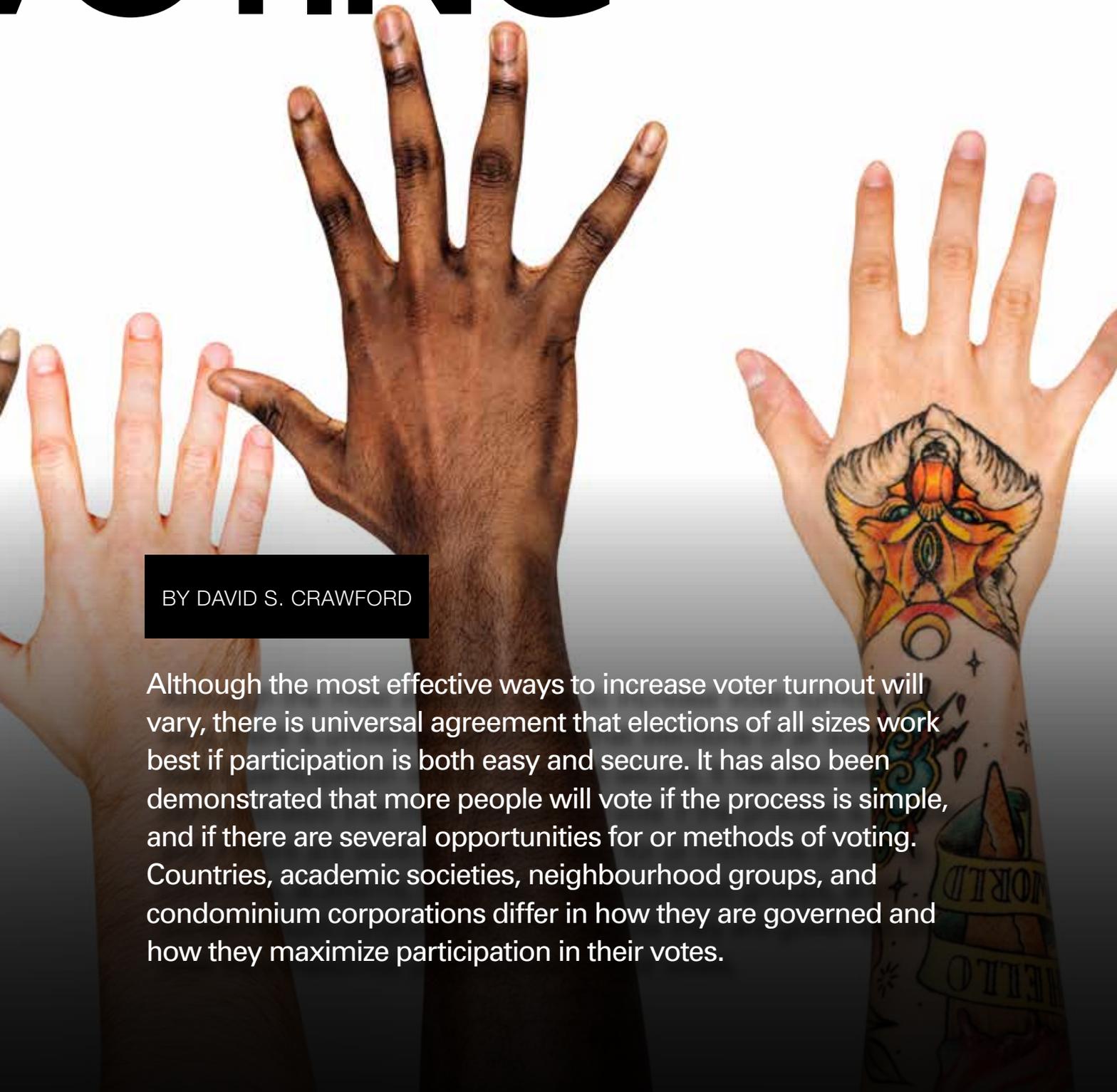
# ENSURING F IN CONDO V



# FAIRNESS VOTING

BY DAVID S. CRAWFORD

Although the most effective ways to increase voter turnout will vary, there is universal agreement that elections of all sizes work best if participation is both easy and secure. It has also been demonstrated that more people will vote if the process is simple, and if there are several opportunities for or methods of voting. Countries, academic societies, neighbourhood groups, and condominium corporations differ in how they are governed and how they maximize participation in their votes.



In some countries, voting is compulsory; many elections offer a variety of voting locations, while others offer polling weeks rather than polling days, and most offer some form of advance polls - often using postal or electronic voting. The rules for owner involvement in Ontario condominiums are laid down in the Condominium Act, and, for many years, owners had two ways to cast their votes; attending the meeting or appointing a proxy.

Completing a proxy form gives an owner two options for exercising their vote: they can give their proxy holder specific instructions on how to vote or they can delegate the decision to them. Proxies that instruct a holder how to vote are de facto a form of advance voting. The recent revisions to Section 52 of the Act extend the advance voting options further; that is, if their corporation makes these options available through its by-laws, an owner

can now also vote electronically or submit a mail-in vote.

According to the revisions, 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. 2015, c. 28, Sched. 1, s. 48 (1)."

The legality of mail-in ballots is confirmed by Section 56.1 c.i, which deals with the possible contents of by-laws:

"(c.1) to govern the methods permitted for holding a vote by a show of hands or for holding a recorded vote under clause 52 (1) (b) and the procedure for holding the vote, including permitting a recorded vote

described in subclause 52 (1) (b) (i) or (ii) to be submitted to the corporation by mail." (emphasis added.)

Condominium owners are a very diverse group. Some live in the units they own, while some do not; some are first time property owners, some are 'down-sizers'; some are long-term owners, others are more transient; some work several jobs in the 'gig economy', while others are empty-nest retirees; and some are owners of multiple properties which they rent out. Most condominium owners do not want (or are too busy) to run for the board or even attend owner meetings, and 'absentee voting' is as much participation as they are prepared (or able) to offer. As such, it is essential that appropriate advance voting options be made available.

Many owner meetings in condominiums are non-controversial and often have only procedural votes (to approve the minutes or adjourn the meeting). However, when there

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are major voting issues (for directors, for new by-laws, for changes in services, etc.), these are important, and it should be easy for all owners to participate fully.

#### **Making every vote count**

Condominium corporations themselves differ significantly in the number of owners in the mix of residents. Therefore, if one wants to encourage maximum owner involvement, the ways and the tools to engage and involve owners will also need to vary. After all, one size will not fit all corporations – or even all meetings.

In the past, as noted above, an owner who could not attend an owners' meeting had only one way to 'participate': appointing a proxy. The laudable aim of proxies is to encourage owner participation but does this in a way that is open to fraud and which

can be used by small groups of determined owners or directors to take or retain control of a corporation.

The rules about proxies in Ontario condominiums have remained virtually unchanged since the province's first Condominium Act in 1967, and proxy votes have been problematic since then for several reasons. Because proxies can be submitted up to the start of the meeting (or even during it), they are open to fraud as the signatures cannot be checked. If a proxy giver instructs their proxy how to vote, the proxy holder, if they were opposed, could simply not submit the proxy vote. If the proxy giver has allowed the proxy holder to vote in whatever way they want, a 'holder' can end up with multiple votes, which may be used in ways that do not reflect the views of their 'givers.'

Most problematic is the fact that proxy voters can only vote for candidates or motions that are known at the time they sign the proxy. They are unable to vote for directors (or replacement auditors) who are nominated at the meeting.

The recent amendments to the Act have allowed corporations to explore other advance voting options and many have started to adopt electronic voting by-laws; however, all advance votes currently suffer from a major problem in that one can only vote for a candidate or a motion that is known at the time they cast their vote.

Though the current advance voting process is clearly flawed, the Act or the regulations could be amended to remove or minimize some of the problems. The Act could be amended to require that proxies must be submitted in advance so that there is time to validate signatures; there could be amendments to prohibit 'from the floor' nomination of directors or auditors; there could be amendments so that the proxy giver can only vote or abstain and no longer be able to 'delegate' these choices to their proxy holder. If this latter course were followed, all proxies would become advance ballots that would be more 'secure' if submitted directly to the corporation and not 'filtered' through a proxy holder.

Though amending the Act and regulations to improve proxies and other forms of advance voting would undoubtedly help ensure better and more meaningful owner participation less open to fraud, a far better option would be for the Act to be amended to altogether abolish proxies and replace



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them with several advance voting options – without the need for each corporation to pass new or amended by-laws.

**Proposal**

The following is a proposal to address the risks that present themselves when proxy voting occurs.

- Amend the Condominium Act to remove all mention of proxies and state that all votes at owner meetings must be cast by the owner – either at the meeting or in advance.
- Amend the Act to remove the option of 'at-meeting' nominations for board elections and the appointment of new auditors. This should be done even if proxies remain. All non-procedural motions and the names of all candidates being voted on at a meeting should appear on the agenda.
- Amend or clarify the Act to ensure that, without the need to adopt special by-laws, all Corporations, must offer some form(s) of advance voting for all owner meetings (In-person advance polls or voting by

mail or electronically). Regulations should also be introduced to give guidance or direction on advance voting timelines, and it may be necessary for some of the current nomination deadlines to be extended so that advance poll(s), mail-in ballots, or e-voting can be arranged appropriately.

- Allow all owners who vote (whether they are present at the meeting or vote in advance) to count towards meeting quorum.
- For board-called owner meetings, boards should be required to provide in-person (at meeting) voting plus one or more advance voting options (e.g., advance poll(s), mail-in ballots, or electronic voting.) One could also argue that the Preliminary Notice of a board-called owner meeting should state how the board proposes to provide the required advance voting. A percentage of owners (15%?) should then be able to send in a requisition to demand additional or alternate voting option(s).
- For requisitioned owner meetings, the requisitionists should have the right

to select one or more advance voting options in addition to in-person (at the meeting) voting. If they do not select an advance voting method, the board must do so.

Though Ontario's condominium legislation has undergone several major reviews and revisions since the first Act in 1967, there is still more to do (in addition to proclaiming the remaining 2015 amendments). Most important is to reduce the possibility of voting fraud and strengthen the voices of owners by ensuring all owners have several options for securely casting their votes. Condominium owners deserve to have a range of voting options on all issues; that is, in-person voting if they can attend an owners' meeting and the ability to cast an advance vote if they cannot. □

*David S. Crawford is an 18-year resident of a Toronto condominium (MTCC 573, www.mtcc573.ca) who has served as a director, secretary, and webmaster of his corporation for 12 years.*



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