

A Universal Proxy Form for Condominiums

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Abstract:

We condominium owners can ensure that our elected councils loyally serve our community interests, by strengthening the democratic linkage between us and our councils. In some condos, that linkage is weakened by a proxy voting system that may concentrate voting power in the hands of too few people. This paper suggests reforms to solve that problem.

Owners could pass a new bylaw specifying the format and contents of the proxy form circulated to all owners in the pre-AGM (Annual General Meeting) information package. We could require that the form include the names of all owners willing to act as proxies, with a check-box by each name. That would make it easy for proxy assigners to select the assignee they prefer, while reducing the effort required for democratic competition among assignees.

We could decrease the risk of proxy abuse still further by keeping proxy assignments confidential, so that even the assignees wouldn't know which owners selected them to act as proxy. The assigners could send the completed proxy forms to the agent who keeps track of proxies at the AGM. The reason for such confidentiality is the same as for secret ballots -- to prevent improper influence on votes.

I propose making the above system voluntary for owners. An owner could still use any legal form of proxy besides the "universal proxy" in the info package, and proxy assigners could choose to show their completed forms to the assignees. But I think the convenience factor would encourage most to use the universal proxy and the confidential way to submit completed proxy forms.

This system would reduce the danger of concentrating power in those who might use an uncompetitive proxy process to control many votes. Perhaps more importantly, it would cultivate stronger democratic connections between owners who attend AGMs and those who don't.

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For helpful discussion, I thank Glyn Holton, James McRitchie and Holland Marshall.

Introduction:

Happy condominiums are all alike; every unhappy condominium is unhappy in its own way.¹

A wide range of problems arise in condo living. Two websites with impressively encyclopedic descriptions of condo issues are:

- condoinformation.ca/feedback
- condomadness.info/contents_2.html

I was motivated to write this paper by a problem with the political system in the condo tower where I am a resident owner, in Vancouver, British Columbia (BC). Researching diverse sources and communities in Canada and the USA, I found many condos with similar problems.² Based on analysis of behavioural causes, I suggest several reforms that may help. I hope that experimenting with various reforms will lead to gradual evolution of best practices, and convergence of most condos toward a happier similarity.

Terminology and scope of this paper:

The terms "condominium" and "homeowners association" (HOA) are used with somewhat different meanings in different places. I will try to standardize on the definitions in Wikipedia, where an HOA is the organization that runs a condominium:³

- en.wikipedia.org/wiki/Condominium
- en.wikipedia.org/wiki/Homeowners_association

Here I will usually use the word "condo", but most of the principles I discuss should apply to the governance of various types of HOA.

The legal framework for condos is established by provincial legislation in Canada, and state legislation in the USA. Here in BC the legal term for condos is "strata", and the governing law is the BC [Strata Property Act](#). The owners elect a "council" (called a "board of directors" in some jurisdictions) to oversee management of the condo.

Most condo buildings have some units occupied by their owners, and some units occupied by renters. Bylaws often limit owners' rights to rent out their units, such as by requiring a minimum term of lease. The differing interests of resident owners versus nonresident owners are a common source of political conflict. My condo building has a large proportion of renters -- roughly half the units. I will not focus on this issue though, but instead develop some general principles of condo governance that can be applied to a wide range of conflicts.

Owners each have a vote in condo association decisions, as determined by legislation and the condo's bylaws. Renters do not have votes, so they depend on their relationships with landlords to ensure their interests are served. My analysis below will focus on the political relationships among owners.

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- 1 Tolstoy's famous quote has suffered many adaptations -- see en.wikipedia.org/wiki/Anna_Karenina_principle.
 - 2 The power of internet search makes us relax the opening quote to: "Happy condominiums are all alike; there are many ways for a condominium to be unhappy."
 - 3 In Florida state law however, an HOA is distinct from a condo association, and the two are governed by different legislation. Each member of an HOA owns a specific plot of land with their home built on it, while a condo is built on shared land owned by the condo association. Thus a tower of separately owned apartments is a condo, while a residential subdivision with free-standing homes and some shared land and facilities is not a condo (in Florida), but would be organized as an HOA. See for example:
 - jimersoncobb.com/blog/2014/08/differences-homeowners-association-condominium-association-law-florida-part-board-operations
 - blogs.sun-sentinel.com/condoblog/2015/01/condominium-and-hoa-election-procedures.html: "Unlike condominiums where the election procedure is almost entirely regulated by statute, Section 720.306(9) of the Florida Statutes provides very little guidance with respect to HOA election procedures."

Problems we are trying to solve:

This paper addresses the problem of getting a council to act in the best interests of all owners in a reasonably fair and balanced way, rather than favouring themselves or their friends at the expense of most owners. In addition to such active unfairness, tendencies toward simple neglect or incompetence will also be addressed.

A sample of cases where condo councils (boards) seem not to be acting in their communities' interests:

- condoinformation.ca/feedback/boards-of-directors

Why do some councils act selfishly even though they were chosen by, and can be replaced by, a democratic process where all owners can vote? Such a process is intended to make councils loyal to all owners, but somehow that often fails to work.

Proxy voting seems to be a weak link in condo democracy. Because many owners don't want to bother attending AGMs, most jurisdictions let an owner designate a "proxy" -- a person to represent them at the AGM and cast their votes.⁴ Some condo directors (council members) take advantage of this mechanism by persuading many owners to choose them as proxy. That can concentrate a majority of votes in the hands of a few incumbent councillors, enabling that group to control election results and perpetuate their power, so they may abuse that power to some degree.

These three news articles are insightful surveys of proxy voting system pitfalls and possible solutions:

Sydney Morning Herald:

- [How 'boring old farts' use proxy farming to take over trendy new buildings](#)⁵ (2015-02-12)

Chicago Tribune:

- [Pros and cons of proxies in association elections](#) (2013-11-01)
- [Readers weigh in with thoughts on proxy voting](#) (2013-11-30)

The proxy system gets misused so often that some observers would abolish proxy voting -- e.g. property manager Michael Baum in the "Pros and cons" article above; and Anne-Marie Ambert, editor of condoinformation.ca (in Section 52 of [this link](#)).

The legislation described in the [Sydney Morning Herald article](#) above, which limits proxies to 5% of eligible voters per assignee, would go a long way toward solving the problem of concentrated power. I will propose a different reform below, based on an analysis of voters' incentives, which could work on its own or in conjunction with a limit on the number of proxies per assignee. Some jurisdictions (including BC) do not allow a limit on proxies per assignee.⁶

Trouble in Tiberio:

I'll call my home condo community "Tiberio". Here in Tiberio, our proxy voting system seems to have drawn us into something like a benevolent dictatorship. We have had the same council President for the past seven years, for several reasons:

- 4 Although the word "proxy" means the assignee (the person to whom voting rights are assigned, as in "please be my proxy at the AGM"), it is also often used to refer to the authorization form ("please fill out this proxy") or the assigned voting right ("I have five proxies").
- 5 Although the title of this article makes me laugh, I realize others might not find it so funny. So let me emphasize that I have seen far more community benefit than harm from retirees serving on condo councils.
- 6 We should of course continue to seek better ways of persuading condo owners to attend AGMs and cast their own votes. But as long as a substantial proportion of votes are cast by proxy, we should improve our proxy system.

1. Most owners would agree that the President has been doing a great job -- keeping the condo secure and well maintained, financially sound with low fees and a healthy contingency reserve fund, and resolving friction among residents.
2. AGM attendance is low (about 13% to 20% of owners), so we need quite a few proxies to achieve the legal quorum of 33%.
3. Our standard proxy form in the pre-AGM info package, adopted nine years ago before the Current President's reign, says (emphasis added):
"The undersigned owner of Strata Plan BCS 9999 hereby appoints _____ or failing him/her, **the Strata Council President**, as the proxy of the undersigned to attend and vote at the Meeting to be held on October 25, 2006, and at any adjournment thereof ..."
4. Our standard proxy form does not list the resolutions to be voted on, so assigners typically do not instruct their proxies (assignees) which way to vote, thus leaving assignees free to decide.
5. The President instructs the building manager to solicit proxies by phoning owners and knocking on doors to collect the completed forms. The great majority of completed forms do not have a name filled in the blank above, thus appointing the President as proxy. So at the AGM in recent years, the President has cast the majority of votes.

We should try harder to increase AGM attendance, but it tends to remain low because over half our owners either rent out their suites or travel often. As a relatively new downtown tower, our demographics tend toward an international cross-section of people, with higher than average turnover of ownership. Thus the challenges of Tiberio's political community differ from those of a suburban condo.

While a benevolent dictatorship can work well, it carries the risk that a dictator might one day be less than benevolent. For example, when our current President retires from the position, will we be as lucky with the next President? We should consider implementing more democratic principles to guard against such risks.

Why proxy voting systems may lead to corruption:

Most political conflicts can be understood as driven by self-interested behaviour. Communities have shared interests, such as a condo's owners' interest in their building's security, cleanliness of shared spaces, functioning of shared facilities and so on. The question of how best to serve a community's shared interests is called the "[collective action problem](#)". The standard solution is to "[undertake this as a collective action the cost of which is shared](#)".

So these shared interests are served by fees collected from each owner, to pay for services like water, repairs and building management. An elected council is empowered to oversee this system of fees and services, as well as rules for community living.

Regardless of whether the council is volunteer or paid⁷, the democratic link between council and owners is an important incentive for council to serve the community's interests fairly. The owners share an interest in electing a fair and efficient council. Voting in democratic elections seems to be the last remaining piece of the collective action problem that we have not found a way to fulfill by delegating to collectively paid agents.

Because voting is an *individually* performed task to serve a *shared* interest, it is an unsolved collective

⁷ The question of whether a council should be volunteer or paid is ignored in this paper for the sake of brevity. Although it relates to the topics discussed, most of our analysis and conclusions apply in either case.

action problem, and suffers from a lack of individual incentive to perform the task well. This is also known as the voters' [free-rider problem](#). Thus many owners are reluctant to spend the time to become informed before voting, such as by attending the AGM. Voting by proxy is much easier; but for various reasons, the quality of a proxy voting decision may be low.

I think the biggest problem with proxy voting is that it can easily amount to buying and selling votes. Although assigning a proxy is unlikely to involve an explicit cash payment, it almost unavoidably involves feelings of an exchange of favours -- a more subtle form of corruption than cash payments. Even if the (proxy) assignee has no conscious intention of influencing the vote, the assigner may nonetheless be influenced and the assignee may subconsciously return the favour later. For these reasons, in many democratic election systems, not only is vote-selling illegal, but also voting is by [secret ballot](#).

With a secret ballot, a voter is not allowed to show their marked ballot to anyone, and is not given a receipt showing which way they voted. So even if they wanted to sell their vote, they could not prove to a buyer that they voted the way the buyer wanted.

With proxy voting, the (proxy) assignee casts the assigner's vote, and therefore knows which way the assigner voted. This is an ideal setup for the assignee to buy the assigner's vote. (The danger of corrupt influence exists regardless of whether the assigner tells the assignee which way to vote, using what is known as a "[directed proxy](#)".)

Sometimes returning the favour may not be so subconscious:

- [Sydney Morning Herald \(2015-02-12\)](#):

"...one or two owners holding the balance of power or, even worse, holding owners to ransom, demanding their votes in exchange for favourable treatment in the running of the building."

- Case reported in condomadness.info/elections-proxy-threats.html :

- "1. Telling a woman that if she did not give the board her proxy they would make her get rid of four of her five cats.
2. Telling several owners that the board would make them get rid of their one or two tenants if they did not give the board their votes.
3. Replacing windows in three units with upgraded ones. The other owners were sure this was payment for signed proxies."

One might think that competition among several people trying to collect proxies could reduce the harm from this lack of secrecy and potential influence on votes. However, there is a systematic bias toward harming the community, because it takes time and effort to collect proxies. Proxy collectors who would use their power for personal gain, have a stronger incentive to make that effort than those who would vote proxies for the good of the community.

Some incumbent councils use the community's resources to collect proxies, by naming themselves as assignees in the proxy form included in the AGM info package, and/or by instructing condo employees to do the work of collecting proxies. This biases power toward the council, diminishing the possibility of democratic competition. A council entrenched by such means is less accountable to the owners, and can get away with favouritism to themselves and their friends. If they hold a majority of votes as undirected proxies, they have less incentive to explain the voting resolutions and encourage owners to attend the AGM.

A "universal proxy form" could solve these problems:

There are many possible ways to reduce proxy abuse, and different strategies may work better in different condos. Factors that can affect this include the governing legislation, professional standards and technology of available property management firms, and the particular condo's community culture, existing bylaws and incumbent council politics. As described above, the causes of political dysfunction in my home condo of Tiberio may be quite different from the challenges in other condos.

Drawing on my research on voting and governance in various types of organizations, one possible reform that might work for Tiberio is something we could call a "universal proxy form".⁸ Suppose we owners were to implement the following system:

1. Before the pre-AGM info package is printed, condo management asks all owners if they would like to act as proxies at the AGM on behalf of any owners who are planning not to attend.
2. All owners who are willing to do so, have their names listed in random order⁹ on the proxy form in the info package, with a check-box next to each name as in the example form on the next page.
3. Owners who are not planning to attend the AGM are encouraged to fill out the proxy form and send it to the property management agent who will be counting votes at the AGM. To facilitate this, an employee could go door to door and collect completed proxies, each sealed in an envelope to maintain confidentiality (even from that employee). Using the "universal proxy" would be voluntary; owners would still be free to edit it (e.g. write in any assignee on the "Other" blank) or draft their own proxy forms (which need not be universal, nor secret), as they can now.¹⁰
4. The property management agent does not tell anyone which owners assigned proxies to which assignees. When counting votes at the AGM, the agent augments the count of each assignee's vote by the number of proxies assigned to that assignee (same as current practice).
5. Security and audit verification of vote counts in the above system would have to be implemented. I'm no expert in those topics, so will defer discussion of how best to do that. I would at least suggest announcing at the AGM the number of proxies each assignee has.

This system would level the playing field of democratic competition for proxies, removing the unfair advantage of an entrenched council to monopolize the AGM info package and strata employees for soliciting proxies. Furthermore, confidential proxy assignment would remove any improper influence of exchanging favours for proxies.

As with Tiberio's current proxy form, I have not included a list of resolutions and check-boxes for assigners to specify which way they want their votes to be cast. Ideally this should also be added, as an additional option for those assigners who want to specify. Confidentiality could still be preserved by the assignees instructing the property manager to read the assigners' voting instructions and follow them without telling assignees their names.

By thus making elected council more democratically accountable to condo owners, this reform can be expected to improve the quality of council performance in serving the community's interests.

8 I borrow the term "universal proxy" from the field of USA corporate governance, where it is used with the somewhat different meaning -- a [directed proxy](#) form in a corporate board election, showing all competing candidates. Corporate proxy forms now are *not* universal: they show only one slate of candidates, omitting any competitors. Here is an organization advocating universal proxies: cii.org/cii_universal_proxy.

9 The bias from nonrandom ordering is well known -- see condomadness.info/Elections-ballot-position.html.

10 The BC *Strata Property Act* specifies that voting by proxy is allowed. BC condo owners can use any proxy authorization format that satisfies the conditions in [section 56 of the Act](#). So although a council can *facilitate* the use of a particular format, they cannot *require* it.

PROXY AUTHORIZATION STRATA PLAN BCS 9999

The undersigned owner of Strata Plan BCS 9999 hereby appoints the person indicated below under "Write 1, 2, 3" by the number 1 (or failing him/her, the person indicated below by the number 2; then 3 etc.) as the proxy of the undersigned to attend and vote at the Meeting to be held on Wednesday, October 21, 2015, and at any adjournment thereof, in the same manner, to the same extent and with the same powers as if the undersigned were present at the Meeting or any adjournment thereof. Discretionary authority is conferred on the proxy with respect to such proposals or matters which may properly come before the meetings or at any adjournment thereof. This appointment includes the power and authority on the part of said proxy to appoint another proxy in his/her discretion to exercise the rights and powers conferred by this appointment in the event that he/she is unable or unwilling to act as proxy at the Meeting.

Notwithstanding any voting instructions, the proxy holder will be able to vote at his/her discretion on all Resolutions (including amendments and the election of Council) that are dealt with at the Meeting or any adjournment thereof.

THE UNDERSIGNED acknowledges receipt of the information circular for the Meeting and hereby revokes any proxy previously given.

Write 1, 2, 3	Name of Proxy to Cast Your Votes	Contact (optional)	Council Experience
	Elaine Rawnsley	erawnsley@gmail.ca	Current Treasurer
	Rod Inglewood	(604) 987-6543	N/A
	Stefanie Gagnon	N/A	Former President
	Chris Traboulay	Suite #713	Current President
	Hannah Quinn	hannah.quinn@abcd.ca	N/A
	Other:	N/A	N/A

Date

Suite #

Signature

NOTE: Pacific Condominium Services Ltd. and the strata agent assigned to manage your Strata Corporation cannot be appointed as a proxy.

If you do not plan to attend the Meeting, please fill out the above form in private (like a secret ballot) and send it to your strata agent:

- by sealing it in an envelope with your signature across the seal, and giving it to the building manager; or
- by scanning and emailing it to strata.agent@pacificcondo.com; or
- by mailing it to Pacific Condominium Services Ltd., 2999 Georgia Street, Vancouver BC.

Implementation stages:

There are several possible ways to implement the above proposed universal proxy system; and if it is adopted, that is likely to happen in gradual stages. First, a condo council could simply choose to implement it as a voluntary AGM procedure, if there is nothing in the bylaws or governing legislation that prevents it. (I don't think there's anything in the BC *Strata Property Act*, or in condo bylaws that I've seen, that would be an obstacle.)

This could be voluntary for both council and owners: Council could choose to use a universal proxy procedure for the proxy form in the pre-AGM info package. Owners could choose to use that conveniently provided proxy form, or draft any other legal proxy form which might not show multiple assignees' names, and which might not be kept confidential from the assignee. And nothing would prevent owners from discussing with each other about which way to vote on resolutions or council elections, or about who they should assign proxies to.

But if a universal proxy system seems to work well, owners could vote to create a new bylaw requiring it in the AGM info package. Council would no longer have the choice of what format to use in the package. Using that proxy form and confidential procedure would still be voluntary for owners though, and there would still be no restriction on free speech (discussion among owners etc). The bylaw would protect the community against a council unilaterally cancelling the universal proxy, and circulating a proxy form that names council members as assignees.¹¹

The above universal proxy system, mandated by bylaw to be provided in the info package, but voluntary for owners to use, is the main proposal of this paper. The convenience factor may be enough to make it an effective reform.

This proposal faces a political [catch-22](#): A council that is willing to voluntarily implement a universal proxy, is a council that does not abuse its power, so is probably not abusing the proxy process. In that situation, owners may not see any need for the reform, and may not push for it. On the other hand, if a council is already maintaining its entrenchment by means of proxy abuses described earlier in this paper, it may be difficult for owners to get enough votes to require a bylaw change implementing a universal proxy. In this latter case, a lawsuit could help resolve the issue. In the former case of complacent owners, they could learn to see governance reform as low-cost insurance against future problems.¹²

The most powerful way to dislodge entrenched proxy abusers would be to get legislation passed mandating a universal proxy in the pre-AGM information package. But legislative change is difficult and takes years to achieve. It could be hastened, however, by successful implementation in a growing number of condos. In condos with laws or bylaws requiring a secret ballot on request, another strategy could be to interpret a secret ballot as nullifying all proxies that are not confidential, i.e. nullifying all proxies where the assignee knows who their assigner is.

A universal proxy system could bring further benefits, beyond preventing proxy abuse. This new mechanism linking owners who attend AGM with owners who don't, can cultivate a broader network of relationships in a condo community's democracy, creating new channels of information flow that lead to more informed voting. This would improve council's accountability to all owners, leading to a better managed condominium. Even condos that do not currently suffer from blatant proxy abuse might benefit from instituting a universal proxy.

11 Similarly, if most owners want a universal proxy but council will not even try it as a first voluntary stage, then owners could propose it as a resolution in an annual or special general meeting, by such means as in [BC *Strata Property Act* Section 46\(2\)](#).

12 As Canada's former Prime Minister [Jean Chrétien](#) said: "The problem with Canada is, we have no problem." My interpretation: compacency is dangerous.

Electronic options:

Owners can consider many variations and enhancements of the above basic universal proxy idea. In particular, adding some online functionality could facilitate democratic evolution, now that internet access has become a widespread standard.

While continuing to provide owners with at least the option of receiving their per-AGM info package on paper, the same material could also be given online via owner login. It would then be easy to provide further info and options to those owners interested enough to log in and access them. This online alternative would of course be advertised in the paper package.

More info could be shown about the proxy assignees, such as an uploaded photo, how long they have been an owner, and their views on condo policies.

Electronic submission of an owner's completed proxy form could eliminate the bother of scanning it in. The signature requirement could be fulfilled by having each owner's signature on file (electronically) with the property manager, and added to a proxy form by a click from the logged-in owner.

Alternative formats for the proxy form could be offered, such as:

- specifying how the owner wants to vote in the council election and on specific resolutions (a directed proxy);
- further reducing concentration of power, by selecting several assignees (writing "X"s instead of numerical rankings), and assigning proxy rights to the one who has the fewest proxies from other owners;¹³

Owners could discuss the upcoming AGM issues in an online forum.

A smart-phone app offered by property managers could enable electronic voting at the AGM. That would simplify the tallying of proxy votes and reduce errors. It could also facilitate enhanced council election systems such as [Single Transferable Vote](#).

Defenses against proxy fraud and voting fraud could be enhanced by check and balance systems, such as hiring a service provider other than the property management company to receive proxies and count votes, and letting the management company audit those counts.

While most of the above enhancements are conceived as electronic functions, some of them could be implemented using physical paper.

Reform condos, then reform corporations:

Improving condo governance would improve condo life. But that's not the most important reason for condo reform. Far more important is that it would set an example for how to reform our larger organizations like corporations and governments, where corruption is more deeply entrenched.

The more corrupt an organization is, the greater the political obstacles blocking reform. So although it is natural for reformers to focus on large corrupt organizations where reform is most needed, that may not be the most effective way to make progress. It may be easier and faster to reform smaller organizations in ways that can then be applied to larger ones.

¹³ The [proxy voting section](#) of the BC *Strata Property Act* does not allow limiting the number of proxies an assignee can have, but it could be amended to allow or even require such a limit, as in the Australian legislation mentioned [here](#).

One of my favourite Japanese proverbs is [*isogaba maware*](#): When in a hurry, take the roundabout route. [The direct obvious route may not be the best choice.]¹⁴

Once a reform is demonstrated to be effective, it will be easier to build popular support for similar reforms elsewhere. For example, proxy voting is common practice in corporations as well as in condos. Similar reforms are possible in both. The potential for proxy voting reform to improve the behaviour of corporations has been explored by several authors, including:

- Glyn Holton: "[Investor Suffrage Movement](#)" in *Financial Analysts Journal* (Nov/Dec 2006). He proposed an online system for facilitating more open competitive proxy voting assignment for corporate shareowners.

- Mark Latham: "[Proxy Voting Brand Competition](#)" in *Journal of Investment Management* (1st Quarter 2007). I proposed an online system for corporate shareowners to share their voting decisions in real time, enabling some to copy the decisions of others. This achieves similar voting results as assigning proxies, without actually giving control of one shareowner's vote to another.

Going from reforming condos to reforming corporations is a big step; one might say a big leap. But there are intermediate steps to help bridge the gap: reforming such organizations as student unions and co-ops -- see my papers "[Experiments in Voter Funded Media](#)" and "[We Want Our Co-ops Back](#)".

14 A similar reform strategy point was cogently argued by Lawrence Lessig in his [2013 TED talk](#): Even though climate change is probably the biggest urgent issue the world is facing, political system reform is required before we will be able to effectively tackle it.