

# **COMMON OWNERSHIP COMMUNITY MANUAL & RESOURCE GUIDE**



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**2017**

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## **CHAPTER 3 BOARD, ANNUAL AND SPECIAL MEETINGS**

### **I. ANNUAL AND SPECIAL MEETINGS OF OWNERS**

The democratic process is alive and well in association meetings across our nation. However, the democratic process in associations requires order and rules of procedure and behavior so that boards of directors and the owners can work together to preserve, protect and enhance the value of the property and maintain a strong sense of community.

#### **Annual Meetings**

Typically, the bylaws sets forth criteria for the annual meeting, including notice, quorum, voting, and proxy procedures. Almost uniformly, the bylaws state that the annual meeting is held to elect directors and to conduct such other business as may properly be brought before the meeting.

Other business may include, by way of example and not limitation, the presentation of officer and committee reports, presentation and/or approval of the annual budget, voting on special assessments (if required) and voting on proposed amendments to the governing documents. Unless otherwise set forth specifically in the bylaws or other governing documents or relevant laws, any business which may appropriately come before the body can be entertained and, if needed, voted upon. It also can provide a forum for discussions on various aspects of association life and for non-binding, straw votes of the owners that can be used by the board as a tool to determine constituent interests. In addition, the annual meeting presents an opportunity to strengthen relationships within the community by bringing neighbors together.

At annual meetings, members have the right to speak out on any topic of association business, and may also have the right to vote on certain proposals; but any proposal to amend a bylaw or covenant must obtain the proper majority required by those documents for amendments.

#### **Special Meetings**

Special meetings generally focus on one particular matter, and this matter should be clearly spelled out in the notice of the meeting. Care must be taken when drafting special meeting notices. Imprecise language or an unclear purpose can

render the meeting invalid. For example, calling a special meeting "to discuss the removal of one or more directors" has two potentially fatal flaws. The first is the phrase "to discuss," which limits the meeting merely to discussion of the removal. No vote on the removal can be taken. The second is the phrase "one or more directors." As most bylaws require the association to notify any board director of his or her proposed removal, the association must provide such notice to each before taking action. Use of the phrase "one or more directors" is imprecise, thus problematical. However, the bylaw requirement would not pose a problem if the notice proposed the removal of all directors.

Most bylaws do not allow the owners to take any action at a special meeting on a matter that is not one for which it has been specifically called, even if a majority of all owners is present. Conducting business that is not indicated in the notice disadvantages those residents who did not attend based upon what they were told would be the subjects of the meeting. As an example, if the meeting is called to take a membership vote on a specific rule proposal, then the members cannot vote on proposed amendments to the proposed rule from the floor at the meeting.

Special meetings differ in one other significant respect from annual meetings. Bylaws usually allow a group of owners to call a special meeting. To call a special meeting, a minimum number of members must sign a petition and present it to the board president or secretary. The petition must precisely state the purpose of the meeting. The president or secretary then calls the meeting for the purpose contained in the petition. The special meeting provides a setting for residents to have an open discussion about the topic of interest of concern for which the meeting was called. Ideally, the special meeting allows the community to come to a consensus and/or resolve an issue. Even if consensus is not reached, the special meeting provides board members with valuable insight into the interests of the residents.

Note, that different rules might apply to special meetings called to remove a director, than are to be used for other business.

## II. NOTICE OF MEETINGS

### **Distributing Meeting Notices**

Notice of an annual or special meeting is an important procedural element of a successful meeting. How, when, and to whom notice must be given is governed by the bylaws and, for condominiums, state law. When notifying owners of a meeting, the association must follow certain rules. Notices must be issued on time and in the appropriate manner. Notices should be brief and direct.

## **Whom Do You Notify?**

Virtually all bylaws and state statutes require the association to send a notice to each owner. This means that every owner of record must be sent notice, even if the owner is ineligible to vote at the meeting. This can also be beneficial to the collection of assessments process, as notice of a meeting is a good way to encourage all owners to clear a delinquency so that they are eligible to vote at the meeting or stand for election to the board. Note that sending notice to all owners also means that each owner or co-owner of a unit or lot whose identity is known to the association must receive notice unless the bylaws specify otherwise. Accordingly, if a unit or lot is owned by husband and wife or by some other group of individuals all of whom reside there, a single notice should be sent to all co-owners at the unit or lot address. If there are multiple non-resident owners, notice should be sent to each owner at the address of record with the association.

The association has an affirmative duty to keep an accurate roster of owners and their current addresses. Prudent HOA bylaws and the Condominium Act itself require owners to keep the association apprised of their identity and address, and deny the right to vote to those who do not. The association is responsible for sending notice to all persons who are listed on its roster as owners. If owners fail to receive notice because they did not notify the association of their ownership or current address, the association is not at fault.

In some situations, the association must also give notice to any lender who has a mortgage on any unit or lot in the association. Usually, the bylaws or covenants will state when this is necessary.

## **What Address Should You Use?**

Notice should always be sent to the address of the unit or lot unless the owner has specifically designated a different address of record. If mail is returned from an alternate address of record with no forwarding address, the association should ask the renter or resident for the owner's current address. If the unit is vacant or the resident will not divulge the address, the association has little choice but to send the notice to the last known address of record AND to the owner at the unit address. Keep records of returned mail.

## **Delivery of Notice**

State statutes and association governing documents often define acceptable means of delivering official meeting notices. Delivery by first-class mail, postage prepaid, is almost always permissible. However, some older governing documents require associations to deliver notices by registered or certified mail. If so, the association should consider amending the documents to delete

that provision. Realistically, certified mail delivery is less effective because many people routinely decline it. First-class mail, on the other hand, will be left in the owner's mailbox and does not require the owner to be home. Moreover, the law in every jurisdiction establishes a presumption of delivery if the notice was sent by first-class mail.

Other forms of delivery are also acceptable. Governing documents often allow the association to deliver notices by hand. Some associations prefer this method because it saves postage and seems more personal, as it gives the board members an opportunity to interact with residents. This method can pose problems, however. Postal regulations forbid the placement of anything other than official mail items bearing postage that have been delivered by the United States Postal Service in a person's mailbox. Postal regulations also prohibit posting or affixing notices to the exterior of mailboxes or cluster boxes, although additional housing around cluster boxes may itself be used for posting notice.

Associations that hand deliver notices by placing them on the door knob, stoop, or threshold should note that even an established pattern or practice of delivering notice does not necessarily negate the effect of alleged non-delivery. Hand delivery is truly effective only if one person actually places the notice in the recipient's hand, and even then, certification of delivery may be required.

Some associations deliver notices by posting them on bulletin boards, in common hallways, on entryway doors, and in elevators. If an association has established a pattern and practice of delivering notice in this manner, that evidence would be admissible in court and most likely would be persuasive if the method of giving notice was challenged.

A few associations attempt to provide meeting notice via the association newsletter. An association that uses this method should mail the newsletter and should either put the notice on the front page or put a bold-faced statement on the front page that the meeting notice is inside. As with posting, this mode of delivery is advisable only if it is an established practice and if it is common knowledge among the owners that notice will always be made in this manner.

#### Electronic transmission, including email

If delivery of notice is made by any means other than by hand or through the mail, it is better to use more than one method. A notice challenge is more likely to be defeated if the association can show that notice was, for example, both posted on a bulletin board and put in the newsletter. Condominium and homeowner associations may use electronic notices if they have adopted rules for such methods, but they may only send notices electronically to those members who have agreed to receive their notices in that fashion.

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## **Timing of Notices**

State statutes and association bylaws dictate the time frame in which associations must deliver meeting notices. Any conflict between the notice period in the bylaws and the period required by statute should be resolved in favor of the statute. Thus, if the bylaws state that notice of meetings must be given no less than 10 or more than 60 days prior to the meeting, and the statute requires that notice be a minimum of 15 days prior to the meeting, the association will be obliged to give notice to the owners no less than 15 days and no more than 60 days prior to the meeting.

Most statutes and many bylaws provide only for a minimum time for notice of both annual and special meetings, although some bylaws provide a maximum time for notice of special meetings. However, the establishment of a maximum time limit can be important as well, since owners may forget the date or lose the notice if it is delivered too far in advance. As a result, the association may fail to achieve a quorum.

The lack of a maximum time limit can also lead to an abuse of power by an incumbent administration, especially in regard to special meetings that must be called pursuant to an owner petition. For example, a group of owners files a petition requesting a special meeting to remove all of the directors because they have indicated that they will allow an important contract to automatically renew. The owners do not want the contract renewed and know that notice of termination must be given to the contractor within 45 days to prevent the automatic renewal. The board, also aware of the timing, sets the date of the special meeting for the day after automatic renewal, knowing that the bylaws do not set a maximum time limit. Because of this gap in the bylaws, the board will probably succeed in its scheme, since the owners would have to file suit to move the meeting time forward. Most likely, the contract renewal date will pass and the owners' effort to remove the directors will fail. In this instance, if there had been an outside time limit that was violated by the board, the owners might successfully challenge the contract, even after renewal.

## **Notice to Mortgagees**

Association governing documents usually specify whether notice of an annual or special meeting must be sent to the individuals or lending institutions holding first deeds of trust on the units or lots: the mortgagees. Generally, the documents require notice to mortgagees only when they are affected by something taking place at the meeting. The most common example is a meeting that is called to vote on proposed amendments to the governing documents.

### III. QUORUMS

#### **Obtaining a Quorum**

The term “quorum” refers to the minimum number of owners who must be present at a meeting, in person or by proxy, before business can be validly transacted. The number of members needed to constitute a quorum is often governed by statute. The statute will always control if it conflicts with documents provisions. The best quorum provision to insert in the documents is one that allows it to be reduced by statute and provides that a group of owners cannot try to sabotage a meeting by leaving just before a vote they think they will lose, thus rendering the vote invalid because a quorum was not present at that time. We suggest the following language:

***A quorum is deemed present throughout any meeting of the Association if persons entitled to cast twenty-five percent (25%) (or such lesser percentage as may be provided by law) of the total authorized votes are present in person or by proxy at the beginning of the meeting.***

Governing documents often require a majority of the votes (sometimes expressed as 51 percent) for a quorum. Most practitioners now regard that number as too high. Many statutes and newer documents allow for a lesser number of votes to constitute a quorum. The quorum should be as low as possible so that the association can conduct its business. Low quorums do not discourage high attendance, but the association must be given every opportunity to have an official meeting and conduct necessary business - even if a great percentage of owners choose not to attend.

#### **Adjournment for Lack of Quorum**

Most documents contain a procedure for adjourning a meeting due to a lack of quorum. Generally, the owners who are present in person or by proxy must obtain a majority vote to adjourn and reconvene at a later date even though the meeting was not officially constituted because a quorum was not present.

Often, restrictions state that the second meeting cannot take place within 48 hours of the adjournment so association members have time to convince others to attend. But it is not uncommon for fewer residents to attend the adjourned meeting than the first meeting. For this reason, the chairperson should ask everyone attending the first meeting to execute a proxy before leaving. Unexpected events may prevent owners who planned to attend the adjourned meeting from arriving. If the owner finds that she or he *IS* able to attend after all, any proxy given is revocable by the owner's attendance at the adjourned meeting.

## **Failure to Achieve Quorum**

Maryland condominiums and homeowners associations should never fail to achieve quorum because the legislature has enacted provisions that enable each to hold an adjourned meeting at which the owners attending in person or by proxy automatically constitute a legal quorum despite the stated quorum provision in the governing documents.

For condominiums, Section 11-109 of the Maryland Condominium Act was revised in July of 2003 and provides that an additional (second) meeting of the council of unit owners may be called if a quorum was not present at the first meeting, so long as the following criteria are met:

- Notice of the initial meeting stated that the Section 11-109 procedures would be used if a quorum was not achieved.
- A majority of those owners present in person or by proxy vote to call for the additional meeting.
- Notice of the additional meeting is mailed to all owners at least fifteen (15) days prior to the additional meeting.

If the criteria are met, those persons who attend the additional meeting in person or by proxy, no matter how few, automatically constitute a quorum and any business that might have been conducted at the original meeting can be conducted at the additional meeting.

*NOTE: The reduced quorum provision of Section 11-109 cannot be used to reduce the number of votes necessary to amend the declaration or bylaws or to reduce the vote specified in the documents for a certain action. For example, if the bylaws require that a majority of all owners is required to approve a special assessment, that vote must still be achieved before the special assessment may be deemed to have passed.*

For homeowners associations and cooperatives, Section 5-206 of the Corporations and Associations Article, Maryland Annotated Code, makes similar provision for an additional meeting. The only difference is that notice of the additional meeting must be advertised in a newspaper of local circulation.

*NOTE: Section 5-206 of the Corporations Article does not require that notice of the second meeting be mailed to homeowners. Nonetheless, we recommend that associations send notice to all owners by mail so that they are aware of the additional meeting and can participate.*



## IV. CONDUCTING THE MEETING

### **Parliamentary Procedure**

Most association documents require the board to use parliamentary procedure at annual and special meetings. Though the structure of parliamentary procedure often aids a meeting, parliamentary procedure can be overdone. Most documents that require the use of parliamentary procedure specifically refer to Robert's Rules of Order, which is available in a variety of forms and editions. Unless the documents specify a form and edition, the association should choose a version of Robert's that it likes and stick with it. This measure will provide meetings with a degree of continuity from year to year. Since associations rarely need the complicated rules that are contained in complete editions of Robert's, abbreviated editions that focus on the basics can be easier to use and understand. The purpose of parliamentary procedure is to provide structure to the meeting and to keep the meeting fair and productive.

### **Order of Business**

Many sets of governing documents contain a specified order of business to be followed at the annual meeting (and, sometimes, at special meetings). The annual meeting order of business called for in these documents is often similar to the one that follows:

- Call to Order
- Roll Call (usually obviated by the check-in process)
- Verification of Quorum
- Proof of Notice (of Meeting)
- Reading and Approval of the Minutes of the Previous Meeting
- Report of the President
- Report of the Treasurer
- Reports of Other Officers
- Committee Reports
- Old Business
- New Business
- Appointment of Inspectors of Election
- Candidate Forum
- Election

### **Adjournment**

If the order of business is set by the bylaws, most associations choose to follow it to the letter. However, there are sometimes two circumstances when following this order of business detracts from the efficiency and brevity of the meeting: (1) when the calculation of a quorum is complicated and takes quite some time, and (2) waiting for the counting of votes and the announcement of election

results. The first problem is easily resolved by the president or other officers going out of order and making their reports while quorum is being tabulated. It is a simple matter to inform the owners that the reports are being made in the hope that a quorum will be had and the meeting can later be officially opened. Because the meeting cannot be officially opened until a quorum is confirmed, it is not appropriate to entertain a motion to revise the order of business, but the reports can be made on an unofficial basis and then later adopted by the body as the official reports once the meeting is opened. If the meeting cannot be opened for lack of quorum, those present will have had the benefit of receiving valuable information and no harm is done.

Because calculating the results of an election can also take some time, it may be appropriate to entertain a motion to revise the order of business by moving the election up so that it is conducted before reports and other routine business. Having done so, the results can be calculated while other business is being conducted so that the winners can be announced before the meeting concludes. The only potential problem with this change in order of business can come when the body knows that a controversial issue will be brought up under old or new business. In that event, it may be difficult to get volunteers to count votes and act as inspectors of election because they want to be present for the discussion on the hot topic. Of course, that need can also be accommodated by being flexible and only allowing the reports to be made and business other than the hot topic to be discussed during the counting of votes, reserving discussion on the hot topic until after all are again present.

The order of business for *special meetings* is typically:

- Call to Order
- Roll Call (usually obviated by the check-in process)
- Verification of Quorum
- Proof of Notice (of Meeting)
- Business Called for in the Notice of Meeting
- Adjournment

## V. ELECTIONS

### **Organizing an Election**

Conducting the election itself should be a simple matter, and there is no need to complicate it with undue procedures or embellishments. It is a good idea to conduct the election as early in the meeting as possible so the results can be tabulated as the meeting progresses. It also can be politic to do so because some meetings seem to ferment until the election occurs, especially if the election is hotly contested. If the documents set an agenda where the election occurs last, it is easy enough to entertain a motion to revise the agenda.

The CCOC offers a packet of forms and checklists on its website called “How to Conduct an Election” which can help those who are not familiar with the process. The forms can be modified to suit each association’s particular requirements.

Sometimes there is confusion over whom the members are actually going to elect: officers or directors? Almost all association documents allow the members to elect the directors who sit on the board. The board, not the members, will elect its officers (president, vice-president, secretary and treasurer) at its first meeting after the election of directors.

### **Candidate Forum**

It is important that all candidates for the board of directors have an opportunity to meet the owners and tell them their qualifications and platforms. Unfortunately, most governing documents are completely silent on this issue. It then becomes incumbent upon the current board of directors to set candidate forum rules for the election.

Some associations go so far as to have one or more candidate forum meetings before the annual meeting at which the candidates get a specified amount of time to make a presentation and the owners then have a question and answer period in which to further explore the candidates' qualifications and philosophies. Many associations publish candidate resumes prior to the annual meeting. However, even if all of these methods are employed, some version of the candidate forum should also be conducted at the time of the election so that voters not attending other meetings or reviewing the written materials will have some minimal introduction to the candidates. Speaking time limits and question and answer period time limits should be set before the meeting and announced at the beginning of the forum.

Unless specified in the documents, there is no right or wrong way to conduct a candidate forum: the important thing is to foster communication between the owners and the candidates so that the owners have an opportunity to elect those who best represent their viewpoints.

### **Inspectors of Election**

Many documents call for the appointment of inspectors of election from the owners present at the meeting. Even if the documents do not require such inspectors, it can be prudent for the chairperson to appoint them so the election can be certified as legitimate. Three people should be appointed, and at least one of them should be from the opposition if the group is divided into factions. Naturally, no one should be an inspector who has an interest in the election results, such as candidates, candidates' spouses, current officers, or directors. The inspectors should be neutral and fair.

Inspectors can be given the task of merely observing, or they can help with the process. In some associations, the inspectors conduct the entire ballot collection and vote tabulation process. The chairperson should describe the inspectors' function in detail at the meeting before making appointments. The inspectors should be required to certify, by signature, that the election was conducted fairly and that the results were accurate. The election results and the inspectors' certification should be kept among the association records for at least three years.

### **Taking the Vote**

The next step is taking the vote. Attendees should be given ample time to mark their ballots and fold or seal them for collection. Some associations have the inspectors take the ballots from each person or from the person at the end of each row. Others require voters to deposit ballots in a ballot box, which is passed around or found at a particular location. The process should be quick and the security of the ballots should be protected, especially if it is a secret vote.

### **Tabulating the Vote**

Several methods of vote tabulation are available to associations. These methods range from basic computation by hand, to sophisticated calculators, to computerized tabulation using barcodes. The League of Women Voters will, for a contribution, attend the meeting, count ballots and proxies, and certify results. No method is right or wrong. All that matters is that the vote is accurately counted.

The association should set procedures beforehand and make sure the individuals involved understand their tasks no matter what method it uses. Advance preparation is needed to ensure accuracy and to project the people involved as effectual. It also can be important to have tally sheets prepared in a format similar to that used for counting.

More than one person should be involved in the counting, and the job should be split among each person. For example, one person could be assigned all of the proxies and ballots that are filed by owners with a certain percentage interest. Once the number of votes for each candidate is determined, that total need only be multiplied by the percentage interest of that category. These totals are then recorded on the prepared tally sheet for that percentage interest and given to the person who will receive all of the tally sheets for each percentage interest. It is then a simple matter of adding the subtotals from each percentage interest to determine the total vote for each candidate.

Contemporary computer technology offers associations new and interesting ways to tabulate election results. Some companies will, for a fee, bar code all ballots

and proxies. Associations that use this method will have election results available within minutes of the vote.

Software packages are now available that allow associations and management companies to provide identical services. One need only purchase the software, load it on a PC-compatible computer, and rent or buy a bar-code reader (or enter coded information by hand). This technology is a great time-saver and allows associations to achieve a new level of accuracy.

### **Majority or Plurality**

In many elections, especially those where there are more candidates than open positions, candidates with the highest number of votes may not earn the majority of the votes. Such a result will not create problems for an association if its documents provide that the candidate with the greatest number of votes (the plurality) will win the election. If the documents are silent on this issue, and state that all issues arising at the meeting should be decided by a majority, the association may face a question about how many votes a candidate needs to be elected.

If an association adopts a conservative interpretation that requires a candidate to earn a majority vote to be elected, it may need to hold an indeterminate number of run-off elections before all positions are filled. For example, if there are five candidates for three positions and the candidates receive 42, 27, 15, 11, and 5 percent of the vote, respectively, none of them have been elected. The association would then be required to drop the lowest candidate and try again. This might happen several times before three candidates are elected by majority vote.

It is better to view the election as the main issue. As long as the election is decided by a majority vote, candidates should be elected based upon those receiving the greatest number of votes even if that is a plurality. It is difficult to conceive that association developers or their attorneys ever intended to saddle associations with the cumbersome process that a true majority vote requirement would entail. An association with documentary language that requires a majority vote should ask its attorney for a formal opinion letter regarding the actual vote necessary for each successful candidate.

### **Election Materials**

Associations should never favor a particular candidate when preparing election materials with association funds. Chapter 10B of the Montgomery County Code requires all associations to list candidates alphabetically and to show no preference. Though this rule seems simple, many may wonder if the indication that a candidate is an incumbent is a statement of preference. From a practical standpoint, being an incumbent may be an asset or a liability, depending upon how the current administration is regarded by the voter. The best bet is to not

indicate incumbency. Most owners are going to know who is an incumbent. It should be left to the candidates whether or not to emphasize their incumbency in the candidate forum or in prepared written materials.

### **Voting by Ballot**

All votes except those on minor or procedural issues should be recorded on a written ballot. A written ballot allows for continuity, as the vote of those owners filing directed proxies will be in writing. The ballot also safeguards the integrity of the vote, as a permanent record is available if the vote is challenged. Keep ballots for at least one year or, preferably, for three years.

A written ballot also can have a positive psychological effect. People seem to feel like they are doing something positive and official when casting ballots, as opposed to merely raising their hands. Filling out a ballot also makes people feel like the association is being efficiently run or managed. Moreover, putting their vote in writing usually makes people reflect or deliberate on their choice a little longer.

### **Secret Ballot**

Many associations have either a tradition or a requirement to hold all votes in confidence. Implementing a procedural system that ensures the secrecy of a vote is not difficult, but it requires planning. A secret vote must be done by written instrument: it is impossible to keep one's position private if the vote is taken by a show of hands or by ayes and nays. The simplest system for those who will be voting in person or by proxy is to distribute ballots at the registration table. It is easy to check voters in, verify their status, and give them a blank ballot that is marked with the percentage interest of their vote. Then the voters merely place the ballot in the ballot box after voting. The ballot only contains the percentage interest voted and the vote itself, not the name and address of the owner.

If the secret vote includes mail-in votes, either directed proxies or absentee ballots, the best system involves dual envelopes. The ballot or proxy stating the percentage interest is mailed to the owner along with two envelopes. One envelope is used as the outer envelope and the other as the inner envelope. Owners cast their vote on the form and place it in the inner envelope, which is blank. That envelope is placed in the outer envelope, which contains the owners name and the unit or lot number. The package is mailed or put into a ballot box located on the property. The outer envelope is used for registration purposes, then opened, emptied, and discarded. The inner envelope is placed in the ballot box for counting at the same time that the ballots of those at the meeting in person are counted (unless, as will be discussed below, mail-in votes are counted before the meeting to expedite the tabulation process). As long as the outer and inner envelopes are separated as described and no identifiers are on

the ballot or proxy, secrecy will be maintained.

### **Ballot Form and Content**

The ballot form need not be any more complicated than the proxy form. It only needs to set forth clearly what or whom the owners are voting for or against.

### **Election Records**

The ballots, proxies and tabulation sheets used during the election are the official election records of the association. These records should be maintained by the association for the longest term granted in the election. So, for example, if one or more directors were elected for a three-year term, the records should be kept for three years. If the entire board is elected each year for a one-year term, records need only be kept for that year.

Some association attorneys take a different position, however, and recommend that the board adopt a rule stating that the ballots will be destroyed after a fixed time (30 or 90 days) so that all challenges to the election must be made before that date. Boards should consult their own attorneys on this matter.

Because the board of directors conducts virtually all of the business of the association, the integrity of an election is extremely important. Any director seated in error is not properly elected, and any decisions of a board containing one or more such directors are subject to challenge. For this reason, all elections should be conducted in strict accordance with the governing documents and Maryland law and records vouchsafing the results should be kept in order to answer any challenge.

## **VI. PROXIES**

### **Voting by Proxy**

A proxy is the written authorization that allows one person to appoint another to vote on his or her behalf. The term "proxy" refers to the written instrument, while "proxy holder" refers to the person who is designated to vote for another at an annual or special meeting. The "proxy giver" is the person who authorizes another to vote on his or her behalf. The use of proxies in community associations is usually determined by Maryland law, the association's governing documents, or both.

### **General Proxies**

The most common type of proxy used in community associations is the general

proxy. A general proxy allows the holder to vote as s/he wishes at a meeting. Blanket general proxies allow the holder to vote on any matter that comes before the owners during the life of the proxy. If the proxy giver executes a general proxy, the proxy holder is authorized to vote as if he or she were the proxy giver.

### **Directed Proxies**

Directed proxies bind the proxy holder to specific terms, allowing the proxy giver to control the vote. The directed proxy is, in effect, an absentee ballot, which means that the proxy holder is little more than a courier who is entrusted with recording a vote. Chapter 10B of the Montgomery County Code requires all associations to use directed proxies for the election of directors. If the proxy ballot is not directed, the Code states it may be used only to help establish a quorum and for other business of the meeting, but not for the election of directors.

### **Other Proxy Limitations**

The right to vote by proxy relates to the right of an individual to vote. Statutes do not guarantee anyone the right to be a proxy holder. Accordingly, limitations placed on the proxy holder cannot abridge any right. However, Chapter 10B of the Montgomery County Code states that a board must have a good reason to reject any proxy ballot.

Limiting the number of proxies that any single individual may hold can thwart the assertive person who otherwise would show up at the meeting with the election in the bag. Such a limitation should include board members and management. Unfortunately, these individuals often are allowed an unlimited number of proxy votes because policy drafters assume they will vote in a neutral manner. It is quite common for proxy holders to be limited to other owners. It makes sense that the proxy, especially if it is a general proxy, can be voted only by someone who has the same interest in the property as the proxy giver. By the same token, outsiders would normally have little interest in the association's affairs and little knowledge upon which to base intelligent decisions. This limitation, then, also increases the integrity of an election or vote. Some associations allow tenants and mortgagees to vote by proxy. Each of these parties should be concerned, for example, to see that the association is managed well and to vote accordingly. The interest of tenants and mortgagees is recognized by law in some jurisdictions. For example, in Maryland, time limits placed on proxies may be waived when the holder is a tenant or a mortgagee (the lender holding the mortgage on the unit or lot).

The association secretary may be the repository for proxies that are cast by the proxy giver or that are used only to establish quorum. The secretary is normally responsible for controlling the association's books and records, receiving mail and service of process, and certifying votes or elections. The owners should be able to rely upon the integrity of the secretary and of the office to carry out this task.



## **Proxy Form and Content**

Some governing documents contain specific requirements for proxy form and content. Most, however, are silent, as are the Condominium Act and the Homeowners Association Act. A proxy need not be a sophisticated legal instrument full of incomprehensible language. The purpose of a proxy is to assign a vote from one person to another. It is sufficient, then, if the instrument identifies the proxy giver (and his or her unit or lot, if required), the proxy holder, the meeting or vote for which the assignment is intended (including the date, time, and place, if necessary), the date of the proxy, and the signature of the proxy giver. If the proxy is to be used to vote in an election, it should also list the names of all known candidates in alphabetical order. If a witness or notarization is required, those blanks must be provided. If the proxy is directed, the information and blanks necessary for the proxy givers to direct their vote must be provided. It may be necessary to provide written instructions for proper execution of the proxy. These instructions can be included either on the proxy form or on a separate sheet.

The Commission has ruled that under the “open records” sections of the HOA and Condominium Acts, members can inspect ballots after an election. Therefore, we recommend that in order to preserve voter secrecy, the proxy form be in two sections: one part will contain the identifying information of the proxy giver, and the other part will state how the proxy is to be voted. The election judge will separate the two parts at the election, and cast the ballot part with the other ballots. Both parts, however, should be kept (separately) as part of the records of the election. Alternatively, the association can use the dual envelope method described in the section above on “Secret Ballots.”

## **VII. BOARD MEETINGS**

### **Notice of Board Meetings**

Meetings of the board of directors are official meetings of the association and must be treated accordingly. In fact, more official business of the association occurs at board meetings than at owner meetings. This is so because most of the powers and duties of the association are specifically delegated to the board in the governing documents. Typically, the only powers reserved to the owners are the powers to elect and remove directors, amend the governing documents and, sometimes, approve special assessments. Otherwise, the board is tasked with maintaining the property, hiring and firing personnel and contractors, keeping the books and records, developing and enforcing rules, preparing the budget and setting the annual assessment, formulating policies and procedures, and complying with local, state and federal laws, ordinances and regulations. Except for emergencies, all of these things are done by the board at its meetings.