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**CONDOMINIUM ASSOCIATION ANNUAL MEETINGS AND ELECTIONS:  
COMPLYING WITH THE NON-PROFIT CORPORATION ACT**

By Eric F. Frizzell, Buckalew Frizzell & Crevina, Glen Rock, New Jersey

Most New Jersey condominium associations are non-profit corporations and therefore are subject to the New Jersey Non-Profit Corporation Act (the "Act"). The Act contains numerous provisions that apply to annual meetings and elections of trustees. An association's failure to comply with these provisions, if challenged in court, could result in a court invalidating an election, a vote amending the by-laws, or other action taken at an annual meeting. Accordingly, association trustees, property managers and attorneys should assure that the following statutory provisions are observed.

**NOTICE OF ANNUAL MEETING.** Written notice of the time, place and purposes of the annual meeting must be given between ten and sixty days before the date of the meeting, either personally or by mail, to each member of record entitled to vote at the meeting.

**FIXING RECORD DATE.** A condominium association must fix a cut-off date, called the "record" date, establishing the members entitled to receive notice of the annual meeting and to vote at it. The record date must be between ten and sixty days before the meeting date. If the association's by-laws do not fix the record date, the Board is allowed to do so; if neither fix it in advance, then the Act fixes it as the day before the date on which the notice of meeting is given.

**PROVIDING MEMBER LIST AT ANNUAL MEETING.** At every annual meeting, the association must possess a complete alphabetical list of the members entitled to vote, certified by the officer or agent in charge of the membership record books. The list must be open to inspection by all members during the entire meeting and is prima facie evidence of the members entitled to vote. If the association fails to comply with these requirements, "the meeting shall, on the demand of any member in person or by proxy, be adjourned until the requirements are complied with."

**MEMBERSHIPS HELD BY PERSONS OTHER THAN SINGLE INDIVIDUALS.** Sometimes questions arise at annual meetings concerning whether certain categories of persons are entitled to vote. The Act contains specific provisions concerning voting by memberships held by corporations, by persons in a representative or fiduciary capacity, by two or more persons as joint tenants or in common, and by a member whose membership interest is pledged to a third party.

**FAILURE TO OBTAIN A QUORUM.** A common problem at annual meetings is the inability to obtain a quorum. If an annual meeting for election of trustees is not held on the designated date due to lack of a quorum, the trustees must hold it "as soon thereafter as convenient." A member can seek relief in the Superior Court if the meeting is not held within thirty days after the designated date, or if no date at all has been designated for a period of thirteen months since the last annual meeting. The Court is empowered to summarily order that the meeting and election be held at a specific time and place, upon notice and for the transaction of such business as may be designated in the Order. At a court-ordered meeting, the members entitled to vote, who attend in person or by proxy, constitute a quorum for the transaction of the business designated in the Order, even if the quorum provision of the by-laws is not satisfied.

**PROXIES.** The validity of proxies is a frequent source of dispute at contested elections. Some associations provide an "official" form of proxy to all unit owners, and refuse to accept any other proxy. Under the Act and common law, however, a proxy can be given by virtually any kind of writing, as well as by telegram, cable or its equivalent, and even fax.

Sometimes a proxy holder gives the proxy to a third person. Under the Act, a proxy holder may substitute another person to act in his place, only if the proxy so provides. The substitution is not valid until an instrument effecting it is filed with the secretary of the Corporation.

**NOMINATIONS OF CANDIDATES.** Most associations take candidate nominations from the floor on the night of the annual election. The Act, however, provides that if "a by-law adopted by the members provides a fair and reasonable procedure for the nomination of candidates for any office (including election of a trustee), only candidates who have been duly nominated in accordance therewith shall be eligible for election." Accordingly, if the members have adopted a by-law that requires that all nominations be made prior to the night of the annual meeting (e.g., through an election/nominations committee), arguably no additional nominations can be made from the floor.

**BALLOTING BY MAIL.** Elections may not be conducted by mail unless the by-laws specifically allow it.

**CUMULATIVE VOTING.** Cumulative voting, if allowed by an association's certificate of incorporation or by-laws, allows a member to cast all of his votes for one trustee. For example, assume that eight candidates are running for five seats on a Board. Normally each unit owner would be entitled to cast a total of five votes -- one vote for each of five candidates. Cumulative voting allows the unit owner to cast all five votes for one candidate, or to distribute them among the candidates in any other combination the owner chooses. Cumulative voting, although not usually allowed by association documents, can change the outcome of an election if exploited shrewdly.

**SELECTION OF INSPECTORS OF ELECTION.** Association by-laws often require that inspectors of election be appointed for the meeting. The Board may appoint inspectors prior to the meeting, unless the by-laws otherwise provide. If inspectors are not appointed by the Board, or as otherwise provided in the by-laws, the person presiding at the meeting may appoint them. Before entering upon the discharge of their duties, each inspector must take and sign an oath to faithfully execute the duties of inspector with strict impartiality and according to the best of their ability. The duties of inspectors are important: determining the voting power of each member, the existence of a quorum, the validity of proxies, and all challenges and questions arising in connection with the right to vote; tabulating all votes and determining the results; and doing all acts that are proper to conduct the election with fairness to all members.

The inspectors must make a written report of any challenge, question or matter determined by them, if requested to do so by the person presiding over the meeting or by any member entitled to vote. It is also recommended that they certify in writing the election results.

**SUMMARY.** These are just some of the Act's provisions that apply to annual meetings. Association property managers and attorneys should assure compliance with the entire statutory scheme to preserve the integrity of the meeting and election process and to reduce the possibility that a court might invalidate an election or other action on technical grounds.