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### **Condominium association annual meetings (Part I)**

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One of the most important nights of the year for a condominium association is the annual meeting of unit owners and election of trustees. Although the election often is highly anticipated, the meeting also is an ideal time for you to learn more about your community. Normally, the board president will present an update on key association events of the past year, such as the board's major achievements, the status of renovation projects, and the outcome of any litigation; the treasurer will review the condition of the association's finances; and the property manager will submit an overall management report. Unit owners are given the opportunity to ask the board and management questions, and to air grievances or concerns affecting the entire community; most boards prefer, however, that issues that impact only an individual owner be raised privately after the meeting.

Sometimes disputes arise regarding the manner in which the meeting will be conducted, the persons who are entitled to attend, and the scope of actions that the assembled unit owners legally are permitted to take. An association's board possesses the power to impose reasonable rules governing the meeting, to assure that order is maintained, that the agenda is covered, and that the best interests of the association are served. These rules can include, e.g., restricting the amount of time that any member can speak or the number of questions that can be asked.

An annual meeting is not a public meeting. Only unit owners have the legal right to be present, although almost all associations also allow non-owner spouses to attend as well. Unit owners do not have an established right under New Jersey law to be accompanied by an attorney or court reporter, or to videotape or audiotape the meeting.

The chairman of the annual meeting, who is usually the board president, can refuse to hold a vote on a unit owner's motion if the proposed action is not within the power of the unit owners to determine. Under New Jersey law, the power to conduct the vast majority of a condominium association's business is delegated to the board; unit owners are not granted authority to decide issues other than where applicable statutes or the association's master deed and by-laws expressly require their approval (such as amendments to the governing documents and, at times, approval of board loans and special assessments). Therefore, an owner's motion to, e.g., hire or fire a particular contractor or incur a specific expense is not appropriate, because the power to make such decisions is vested in the board.

Sometimes a heated procedural dispute will occur when a unit owner offers a motion to remove one or more trustees from the board. This type of motion is usually based on a provision, commonly found in the by-laws of numerous New Jersey condominium associations, which states that a trustee can be removed by a vote of the unit owners at an annual meeting. It is generally accepted among experienced condominium law attorneys that, notwithstanding this by-law, a vote to remove a trustee cannot occur unless the question has been expressly included in the notice of meeting as one of the meeting's specific purposes. Requiring prior notice assures

that all unit owners will have the opportunity to vote on this critical issue and that the trustee whose removal is sought will have a reasonable opportunity to respond. Similarly, prior written notice to all unit owners is a necessary prerequisite to voting on a proposed amendment to the by-laws or master deed, and cannot be raised for the first time by a motion at the meeting.

Most New Jersey condominium associations are non-profit corporations that are subject to the New Jersey Non-Profit Corporation Act. The Act imposes various requirements on annual meetings and elections, pertaining to the contents and timing of the notice of meeting, proxies, balloting by mail, cumulative voting, cut-off dates for voting eligibility, inspectors of election, and similar concerns. An association's failure to comply with these requirements, if challenged in court, could result in an election, by-law amendment, or other action being judicially invalidated. Accordingly, an association's board and manager should confirm with the association's counsel that all annual meeting requirements imposed by the Act, as well as the association's governing documents, are satisfied. The Act's requirements will be discussed in more detail in a future column.