

*The following article was originally published in the March 15, 2009 issue of The Record newspaper.*

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

By Eric F. Frizzell, Esq., Buckalew Frizzell & Crevina LLP

In last month's column, we reviewed general legal issues that sometimes arise at a condominium association's annual meeting and election of trustees. Most New Jersey condominium associations are non-profit corporations and therefore also must comply with the New Jersey Nonprofit Corporation Act's requirements for annual meetings and elections. An association's failure to comply with the Act, if challenged in court, could result in a court invalidating an election, master deed or by-law amendment, or other action taken at an annual meeting.

Under the Act, an association must provide written notice, to each member (unit owner) entitled to vote, of the time, place and purposes of the annual meeting. The notice must be given personally or by mail between 10 and 60 days before the date of the meeting. Only those owners who own their units as of the cut-off, "record" date are entitled to receive notice of the meeting and to vote. The record date must be between 10 and 60 days before the meeting. If neither the association's by-laws nor the Board set the date, the Act fixes it as the day before the date on which notice of the meeting is given.

A key event at an annual meeting is the election of trustees. Most associations take nominations for candidates from the floor at the meeting itself. Under the Act, however, if the unit owners have enacted a by-law that provides a "fair and reasonable" procedure for nominating candidates, only candidates nominated in accordance with those procedures are eligible for election.

The use of proxies can greatly assist an association in avoiding the common problem of not obtaining the quorum necessary to begin the annual meeting. The validity of specific proxies is sometimes challenged, particularly at a contested election, due to a unit owner's failure to use the association's "official" proxy. Under the Act, however, a proxy can be given by virtually any kind of writing, as well as by telegram, fax, and cable or its "equivalent," which ostensibly now includes email. The key questions in determining whether a proxy is valid are whether it clearly conveys the rights of the unit owner to the proxy holder, and is free of anything that would cause its authenticity to be suspect.

A proxy holder may substitute another person to act in his place only if expressly permitted by the proxy; to preserve this option, the proxy should state that the proxy holder is appointed with "full power of substitution." Written notice of a substitution must be given to the Association's secretary.

The Act states that an election may not be conducted by mail unless specifically permitted by the by-laws. A well crafted proxy, however, can serve essentially the same function. An association can use a "limited" or "directed" proxy form, which enables a unit owner to appoint the board's secretary (or other designee) as the proxy and directs the secretary

to vote only as expressly shown on the proxy, without any discretion to change the owner's vote.

Although an association should include a proxy with the notice of meeting sent to owners, anonymous ballots should not be distributed until the meeting itself and should be printed on colored paper, to reduce the possibility of someone photocopying them and attempting to stuff the ballot box or commit other fraud.

If an election meeting is not held on the designated date due to lack of a quorum, the Act requires the board of trustees to hold it "as soon thereafter as convenient." A unit owner can seek relief in the Superior Court if the meeting is not held within 30 days after the originally scheduled date, or if no date has been fixed at all for 13 months since the last annual meeting.

Inspectors of election for the meeting should be appointed by the board, board president, or chairman of the meeting, depending on an association's by-laws. The inspectors' duties include determining the voting eligibility of unit owners, the existence of a quorum, and any dispute regarding the validity of a proxy, as well as counting the votes and deciding the results of the election. Inspectors must take an oath to faithfully execute their duties with strict impartiality and according to the best of their ability; they should not be current board members, candidates or their relatives, and should possess a good reputation in the community.

Complying with the Act will not only reduce the possibility of a legal challenge, but also will provide unit owners with greater assurance of the integrity of the process.