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## An Ounce of Prevention: Preparing for your Condominium Association’s Annual Meeting

“An ounce of prevention is worth a pound of cure.” This adage, which was popularized by Benjamin Franklin in the 1700s, speaks to the importance of preparation and still rings true for condominium association annual meetings and Board elections.

**F**rom notice requirements to voting procedures, annual meetings and Board elections present a host of procedural requirements that can leave even reasonably informed and well-meaning condominium association Boards and management (if professionally managed) confused. Making matters worse, some condominium Board elections may also be contentious, which amplifies the need for clarity in conducting annual meetings and Board elections. To help successfully navigate these challenges, it is important that condominium Boards and management (if any) plan ahead. Below is a summary of considera-

tions and recommendations to help condominium associations better prepare for their annual meetings and Board elections.

### 1. Consider “Absentee” Voting

**Procedures.** If a condominium Board adopts absentee balloting rules and regulations, in addition to voting for Board elections in-person during the meeting, unit owners may also register their votes in advance and without attending the annual meeting either via proxy or mail-in ballot. These are two similar but legally distinct concepts and are summarized as follows.

Proxies permit a unit owner to appoint a proxyholder to cast a ballot on their behalf in person at the meeting. Voting via proxy requires a two-step process. First, the unit owner must submit a valid proxy form naming a proxyholder. Second, the named proxyholder needs to attend the annual meeting in person to cast the actual ballot on behalf of the unit owner who submitted the proxy form.

**Mail-in balloting** (i.e., “absentee voting”) allows unit owners to submit their ballots directly without attending the annual meeting. Unlike with proxies where the proxyholder must show up in person to cast a ballot on behalf of unit owners, with an absentee ballot, there is no need for anyone to show up in person to register their vote.

Proxies are the default method for unit

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owners to register their votes without attending the annual meeting, and mail-in balloting can only be used if a condominium association has adopted an absentee balloting rule at least 120 days before the election (or if the declaration or by-laws expressly allow for mail-in balloting). It is important to confirm the applicable method for "absentee" voting before the annual election to ensure that the proper forms (i.e., proxy vs. absentee ballot) are used and avoid any issues.

*Note: If a condominium association adopts rules allowing for mail-in balloting, then proxies cannot be used in board elections once the mail-in balloting rules are in effect.*

**2. Confirm the Meeting Format.**

There are several formats for conducting an annual meeting. The first option is to hold the annual meeting and Board election in-person only with no virtual option. The second option is to hold the meeting virtually via videoconference or teleconference (Zoom, Microsoft Teams, etc.) except that the voting portion of the meeting is done in person with ballots to be cast at a designated physical location during the annual meeting. Said another way, everything but voting is done virtually, and voting in the Board election is the only part of the annual meeting conducted in person. The third option is a "hybrid" approach that marries the in-person and virtual components and allows unit owners to cast ballots in person and attend the meeting in person or virtually.

The second approach (virtual with in-person voting component) was more popular in the immediate wake of the COVID-19 pandemic to help avoid large in-person gatherings. Of late, the "hybrid" approach has been more popular as more unit owners are comfortable with in-person gatherings but also wish to preserve the flexibility of being able to dial into the meeting rather than attend in person. Any of the three approaches listed above are generally acceptable, but a decision on the meeting format should be made in advance so that the format can be detailed in the annual meeting notice and unit owners may plan their attendance at the annual meeting accordingly.

**3. Consider Modernizing Election Procedures.**

There are a few options for bringing your election procedures into the 21st century. One method is to replace proxies with mail-in ballots, which allow unit owners to cast their ballots for Board

elections directly without having to attend the annual meeting in person (see #1 above). Another method to modernize your annual meeting is to adopt rules for electronic communications and/or voting. An electronic communication rule permits the Association to send official notices via email to unit owners who opt in to receive notices electronically (rather than "physical" delivery of notices), and an electronic voting rule permits unit owners who opt in to vote electronically (i.e., vote using platforms

offered by various vendors for completing and submitting a ballot on your computer). As with absentee balloting rules, electronic voting rules do away with the use of proxies in Board elections.

The "catch" with absentee balloting and electronic voting rules is that a condominium association must adopt these rules at least 120 days before the election, so associations would be wise to proactively consider adopting mail-in balloting rules well in

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### Preparing for your Condominium Association's Annual Meeting

advance of the next election. It is a recommended best practice that the Association's legal counsel prepare any rules for absentee balloting, electronic communications, and/or electronic voting to avoid any potential issues and ensure that the rules in compliance with the law.

*Note: The Illinois Condominium Property Act ("Condo Act") requires that unit owners affirma-*

*tively opt-in to participate in electronic communications and voting.*

#### 4. Confirm Candidate Eligibility.

Candidates for the Board must be unit owners (on title for the unit). For units owned by a non-human entity such as a trust, corporation, or LLC, check the by-laws to confirm who is eligible to run for the Board on behalf of such entity. It is a recommended best practice to check unit deeds to confirm candidate eligibility in advance of sending out

the annual meeting notice and election materials (proxy or absentee ballot, if applicable) to unit owners. Doing so will ensure that ineligible candidates are not listed on proxy or ballot forms.

#### 5. Engage an Independent Auditor to Tabulate Election Results.

While not required, it is a recommended best practice for the association to engage a professional, independent auditor or accountant to collect ballots and tabulate the votes. Having a third party tabulate the election results helps to ensure accuracy of the vote count and shield against potential accusations of "rigged" elections.

#### 6. Send Out the Annual Meeting Notice and Related Documents.

The annual meeting notice must be sent 10-30 days in advance of the annual meeting and include the date, time and location of the meeting. Be sure to check the Association's by-laws to confirm that there are no restrictions on the date and time of the annual meeting. For annual meetings being held virtually or as a "hybrid" (see #2 above on annual meeting format option), instructions for participating via teleconference or videoconference should also be included in the annual meeting notice.

#### 7. Check for Quorum.

A quorum of the unit owners is required to conduct the annual meeting. Quorum is set at 20% of the unit owners (by ownership percentage) unless the association's by-laws include a different percentage for quorum at a unit owner's meeting, in which case the percentage in the by-laws controls and is required for a quorum of the unit owners. Recommended best practice to confirm quorum as soon as possible via proxies or absentee ballots (if applicable) submitted in advance to avoid possibility of not having quorum and not being able to conduct the annual meeting and Board election.

Annual meetings and Board elections are essential for the proper operation of condominium associations and help ensure that unit owners have a voice in how their association is run. With some proactive preparation, condominium associations can ensure that their annual meetings and Board elections are properly and efficiently held—all while avoiding a costly "pound of cure." 🍀

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