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# *Navigating Condominium Board Election Pitfalls*

Condominium board elections can seem like a straightforward exercise; the candidates that receive the highest number of votes are elected to serve on the board. As the saying goes, “wash, rinse, and repeat.” But sometimes issues arise with respect to condominium board elections that leave even the most seasoned condominium boards and management professionals perplexed.

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**U**nderstanding these challenges and how to properly address them can help ensure a smooth and fair election. A few of these issues, and guidance on how to correctly, efficiently and effectively resolve them, are detailed below.

## **Who is Eligible to Run for the Board?**

Only unit owners (or certain individuals on behalf of units owned by a non-human entity) are eligible to run for the Board. This means that only individuals who are officially listed as owners of the unit on title can run for

a position on the board. For units owned by non-human entities such as corporations, LLCs, or trusts, the association's bylaws identify who can run for the board on behalf of those entities (whether officers, shareholders, members, trustees, etc.). It is advisable to have the association's legal counsel confirm candidate eligibility before the election to avoid any issues with ineligible candidates being included on the ballot. This step is crucial as it ensures that all candidates meet the necessary requirements and helps prevent disputes or issues during the election process.

## **Who Can Vote?**

Only unit owners (i.e., those on title for the unit) are eligible to vote in condominium board elections unless a valid proxy or other proper authorization such as a power of attorney for property is executed by the unit owner. Review the conveyance deed for the unit to confirm the current unit owner(s) who are eligible to vote on behalf of such unit (and/or any valid proxy or power of attorney for property submitted by or on behalf of the owner).

## **What to Do if Two Different Proxies Are Submitted for the Same Unit?**

In situations where two proxies are submitted for the same unit, such as when a unit is owned by two spouses and each submits their own proxy, the most recently submitted proxy for the election will take precedence. For example, if a unit is owned by two spouses (both are on title to the unit), and one spouse

submits a proxy on Monday and the other submits a proxy on Tuesday of the same week and the board election is on Wednesday, then the proxy submitted on Tuesday is the most recent and thus is counted. The older proxy is invalidated by the newer proxy. Alternatively, unit owners can attend the meeting in person and cast a ballot in person, which will invalidate any previously submitted proxy or proxies.

Note: The above applies only to condominium associations that use proxies as the designated method of registering votes without attending the annual meeting. It does not apply to condominium associations that have adopted absentee/mail in balloting for board elections, which requires adoption of a rule among other procedural requirements because per the Illinois Condominium Property Act ("Condominium Act"), proxies may not be used where absentee balloting is used for condominium board elections.

### **For How Long are Board Members Elected? Are There Term Limits?**

The terms for Board members will be expressly stated in the condominium by-laws.

In general, board members are elected for two (2) year terms, but a board member may be elected for a one (1) year term if they are filling a vacancy on the board (e.g., a board member resigns with a year or more left on the term). Section 18 of the Condominium Act provides that board members may succeed themselves; therefore, there are no term limits in Illinois for condominium board members.

### **What to Do in the Event of a Tie?**

While rare, ties in elections are possible. For example, in 2006 a Democratic primary for a House seat in Alaska was decided by a coin toss.

If there is a tie in a condominium board election, the first step is to confirm the results. Check every ballot and proxy to confirm that the votes have been accurately tabulated to the last decimal computed using the exact unit ownership percentage per the condominium declaration. To mitigate tabulations issues, it is a recommended best practice to engage an independent auditor to tabulate the votes to ensure accuracy of the results and defend against claims of bias.

If a tie is confirmed by the tabulator, a runoff election between the two candidates that tied is the next step. Proper additional notice of the runoff election is required. It is recommended to consult with the association's legal counsel in the event of a board election tie to ensure proper procedures are followed.

### **Conclusion**

While most condominium board elections are smooth, on occasion challenges can arise; however, with planning, adherence to the association's governing documents and applicable law, unexpected issues can be effectively managed. By addressing these common pitfalls, condominium associations can conduct fair, efficient, and proper board elections. The primary goal is to avoid costly disputes over election procedures and allow the board to commence the important business of administering the association. ■■