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Community Associations Newsletter

ANNUAL MEETING PROCEDURES

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It is that time of year when most communities are gearing up for their annual meeting and election of directors. While it may be that your community has run its annual meeting the same way for many years, it is a good idea to dust off the governing documents and check the applicable state statutes to make sure that your next meeting is scheduled and run appropriately.

The first item on your list should be a thorough review of the annual meeting notices and the proxy form. Often times, the governing documents will specify the date, or time of year, that the annual meeting and elections must be held. In addition, the statutes will specify the amount of notice that must be provided to the membership before the meeting is held. For example, the Virginia and DC Condominium Acts provide that the notice for the annual meeting must be sent at least 21 days before the meeting, while the Virginia Property Owners' Association Act requires 14 days of notice. The Maryland Condominium Act requires only 10 days of notice of such meetings while the Maryland Homeowners Association Act is silent.

Your governing documents and applicable statutes likely contain several requirements regarding your proxy forms and what language must be included. Most governing documents also contain restrictions regarding who may serve as a proxy and whether that proxy may vote for directors in the election or

may only count towards the establishment of quorum. Furthermore, if you are implementing electronic voting for the first time, you should also check the documents and state statutes to confirm whether the proxies may be accepted via electronic transmission. Due to the complexities of what is required in the annual meeting notices and proxy form, we recommend that the attorney for your community review the annual meeting notices every few years.

The second item on your list should be a detailed review of the quorum requirements. Without quorum, the Association will not be able to conduct business at the annual meeting or move forward with the election of directors. The quorum requirements for your community are likely determined by the governing documents, but those requirements must also be consistent with the applicable state statute. For example, the Virginia Condominium Act specifies that the quorum requirement for a meeting must not be less than 10% of the total votes in the association. In conjunction with the quorum requirements, you must also determine the weight that is given to each member's vote at the annual meeting. While owners within homeowners' associations are often entitled to one vote per lot, the governing documents for condominium associations often provide that voting shall be based on the percentage of ownership that is established in the Declaration.

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Once the annual meeting notices are perfected and the quorum requirements are confirmed, the Board of Directors must then determine how the annual meeting will be conducted. The governing documents rarely provide much detail on this topic beyond describing a basic agenda. As a result, the Board should discuss what topics it would like to address under the common “President’s report” section of the agenda.

Under the Maryland Condominium Act, the Board is required to designate a portion of the meeting for owners to make comments regarding any matters that pertain to the condominium. In addition to this “open forum” section of the meeting, the Board should determine whether the annual meeting will be used to present and, if required, vote on the budget for the upcoming fiscal year. While the primary purpose of the annual meeting is to conduct the election, the Board should keep in mind that the annual meeting is the one meeting each year that is held for the members. Where appropriate, the Board should welcome motions and commentary from the floor and be prepared to discuss the Board’s accomplishments for the prior year as well as future plans.

Finally, and perhaps most importantly, a detailed review of the election procedures should be performed. Many Association are unaware of the provisions in their Bylaws that require an election committee to be appointed or require candidate petitions to be signed before a member is eligible to seek election to the Board of Directors. Under most circumstances, these requirements must be fulfilled weeks before the annual meeting is held. In addition, the governing documents and state statutes

may specify those owners may be excluded from the voting process, such as owners with delinquent accounts or who are otherwise not in “good standing” with the association. Also, in Montgomery County, Maryland, the local statute dictates the process for receipt of unsigned absentee ballots. There may also be a requirement for inspectors of the election to count and certify the vote, or a requirement that the vote be undertaken by “secret ballot.”

While a review of the annual meeting requirements and notices may prove tedious, it is imperative the Association fully understand its obligations to avoid a contested election, which could prove disruptive and expensive for the Association. If you require assistance with reviewing your annual meeting procedures or notices, please contact one of our community association attorneys.