

CAI Legal Forum 2022

Effective Elections in a Changing Environment: Creating Reliable, Predictable, and Trustworthy Structures for Annual Meetings

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About Your Presenter

David J. Bloomberg
Chuhak & Tecson, P.C.
312.444.9300
dbloomberg@chuhak.com



David J. Bloomberg is a Principal at Chuhak & Tecson, P. C. He is the leader of the firm's condominium and community association practice group and the co-leader of the firm's litigation group. David advises his association clients on all aspects of dispute resolution with a focus on ensuring that associations are prepared in advance to manage areas of risk. David enjoys problem solving and assisting Boards in reaching their goals.

Elections—choosing representatives of the Association

- The legal background for elections and Annual Meetings;
- Planning for the Annual Meeting;
- Managing both ends of the spectrum: apathy to heavy campaigning
- Proxy wars and the battle for reliability and fairness
- Electronic voting and balloting
- Handling voting at in-person meetings
- Is this the best way to get representation for the Association?

Basic Statutory and State Guidelines

1. IL Condo Act;
2. CICA Section 1-25
3. IL Not For Profit Corporation Act
4. Robert's Rules of Order
5. Governing Documents of Association
6. Case law interpreting these documents

Election Basics under the Condo Act

Section 18(a) of the IL Condo Act sets out basic requirements and rules:

- Must be at least 1/3 of Board members' terms expiring annually (18(a)(1));
- Calls for an annual election among "Unit Owners" (18(a)(1)) (18(b)(3));
- No restrictions as to who can run beyond being a Unit Owner (18(a)(1))--HOWEVER, new 2022 amendment allows amendment to governing documents allowing a majority of the Board to be residents (18(a)(1));
- Limit of a 2 year term for Board Members (18)(a)(12))
- Rules regarding candidate bios (18)(a)(17))
- Rules regarding submission of proxies (18)(a)(18) and electronic voting (18)(b)(9)(B))

Election Basics under Common Interest Community Association Act (CICAA)

Section 1-25 of the CICCA sets out basic requirements and rules:

- Elections must be held at least once every 24 months, subject to governing documents of Association—if an election is not timely held, Unit Owners can petition to have an election called (similar to IL Not for Profit Corporation Act);

- Four year term limit;

- Rules regarding proxies, including detailed method of submission;

- Rules regarding electronic voting;

- Gives more deference to governing documents than Condo Act;

Governing Documents

- Typically, the following variables as to Elections are found in the governing documents
- Time and place meeting should be held;
- Number of Board members;
- Terms of Board members
- Identity/type of officers;
- Whether cumulative voting should be held;
 - What is cumulative voting and how does it work?
- Manner in which a “voting member” is defined (esp. important for corporations and trusts);

WHO GETS TO VOTE?

- Unit Owners get to vote;
- As between multiple owners, preference for Board/management to keep list of voting members to prevent problems at elections;
- Possible to have multiple voting members for a Unit but only one vote can be counted (18(b)(8));
- Declaration sets forth qualifications for corporations/trustees;
- Buildings with parking spaces sometimes have special rules—make sure governing documents are reviewed before every election;
- Deceased Unit Owners? There might be a gap between the death and an estate being open—might leave a Unit without a vote;

WHO GETS TO RUN?

- Condo Act sets forth main qualification relating to Board membership as one who is a Unit Owner—subject to further definition in the governing documents;
- Many governing documents contain provisions that forbid non-residents from serving on the Board;
- Those provisions were found to conflict with the Condo Act's mandate that there be only “one class” of Unit Ownership;
- Extensive lobbying in Springfield allowed an amendment to Section 18(a)(1) allowing Boards to be protected only against non-resident majorities;
- Issues with running for Board with multiple Units as well as transactions designed to keep a seller in title of a Unit;

Proxy Voting—general rules

- A proxy must have the following:
 - Signature by Unit Owner
 - Designation of Proxy
 - Length and scope of proxy—time limitations
- Difference between Board-issued proxy and Unit Owner drafted proxy;
- Difference between a proxy and a ballot;
- Ability to revoke proxies by voting in person;
- Proxy wars—door to door solicitations and regulation of same;

Calling for the Candidates

- Associations often times opt to call for candidates to submit their intention to run for membership by a certain date prior to the Annual Meeting;
- Purpose should be to allow ample time for Unit Owners to vet out candidates;
- Associations should adopt rules concerning this process – the key to these rules are to ensure that no candidate or incumbent Board member has superior resources to promote a candidacy;
- There should always be opportunities to allow for write-in candidates or for nominations from the floor;
- Information form should allow ample opportunity to explain candidates' platforms and ideas

Noticing the Meeting

- Must be given on at least 10 days notice and no more than 30 days' notice;
- Notice must set forth place, time and date of Annual Meeting;
- Best practice is for Associations to give detailed explanations as to general rules relating to proxies, ballots, campaigning, how votes will be tabulated, and how spots will be filled;
- Proxy forms may be issued by Association and is often times preferable to allowing homemade legally questionable proxies;
- Detailed agenda should lay out time for candidates to speak, how long voting will remain open, and ability for candidates to view counting of ballots;
- Remote access to meetings post-pandemic?

Conducting an Annual Meeting

- **Best Practices to ensure productive process:**
 - Sign in sheets ensuring proper attendance;
 - Ballots only given once name is submitted or proxy is submitted;
 - Ballots individually handed out—one per Unit;
 - Where election is contested, highly recommended to have an outside auditor present;
 - Meetings can be recorded and ballot counting observation must be allowed—there should be advance understanding of how this should be handled at meetings;
 - Immediate Board meeting should be held after tabulation of votes so as to allow officers to be elected
 - Importance for Managers to remain neutral.
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Apathetic Associations

- Many Associations go years without being able to elect new Board members—vacancies are filled as needed;
- The challenge is usually two-fold
 - First, there are usually not enough Unit Owners that are involved in Board business sufficient to allow for a 20% quorum at an Annual Meeting;
 - Second, there are usually not enough Unit Owners interested in serving on a Board.

It becomes incumbent upon a Manager or an existing Board to be more communicative with the Unit Ownership on a regular basis so as to make the Unit Ownership feel like stakeholders;

The reverse side to this problem is that newer Unit Owners may see an entrenched Board that doesn't communicate well and assume that the Board is operating in secret for nefarious reasons.

Electronic Voting Regulations

- Section 18(a)(B)(9)(B) permits Associations to adopt rules on 120 days' notice that prohibits the use of proxies and allows electronic voting
- Means and methods of electronic voting.
 - Experiences have varied as to the reliability and effectiveness of these measures

Has electronic voting been shown to increase participation?

How can electronic voting work with the right to nominate candidates “from the floor” or via write-in process?

Other considerations regarding elections

- Make sure record keeping is air-tight. Section 19 allows full inspection of ballots and proxies
 - This will likewise need to be the case with respect to electronic voting.
- Make sure that management regularly updates Unit Owner lists and voting lists;
- How much campaigning is too much campaigning? How much should a Board get involved?
- Should Boards be able to “correct the record” as to mistruths made by a candidate during elections?
- How much can an Association devote to resources surrounding elections
- Do proxies do more harm than good?

Questions?

David J. Bloomberg, Esq.
dbloomberg@chuhak.com
(312) 855-4621

Eliot Schencker, Esq.
eschencker@chuhak.com
(312) 855-4368