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Community Associations Newsletter

Electronic Voting and Notices – Is it Time to go Electronic?

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Community participation, or lack thereof, is a problem affecting community associations of all types and sizes. Increasing community participation can be especially challenging and important when it comes to annual meetings, achieving quorum, and elections. In light of that, many Associations would like to utilize the ease and efficiency of technology to increase community participation through electronic notice and voting.

Both the Virginia Property Owners' Association Act and the Virginia Condominium Act allow associations to use and integrate technology into their meetings and elections procedures. Both Acts state, that unless the governing documents expressly provide otherwise, any notice required to be sent or received, or any signature, vote, consent, or approval required to be obtained may be accomplished using the most "advanced technology" available at that time. E-mail and other internet based notice and voting websites, forums or networks would likely qualify as "advanced technology."

Both the Maryland Homeowners Association Act and the Maryland Condominium Act provide that, regardless of what is stated in the governing documents, the Board may give the association authority to provide meeting notices or deliver information by electronic transmission provided that the owner provides the association with prior written authorization to provide such notices via electronic transmission. Likewise, in the District of Columbia, its Code permits associations to incorporate electronic voting and notice procedures.

For associations that are interested in utilizing technology for notices and voting, we recommend that the board adopt a policy resolution that delineates, in detail, the authority for the integration and how electronic notice and voting will be incorporated into the current meetings and elections procedures. Of course, this policy must also account for non-technology alternatives for those owners who do not have the capability or desire to use technology to receive notices or to vote.

It is important to note that there are limitations with respect to electronic notice. Notices must still be sent in accordance with the governing documents and/or any applicable statutes that specify the amount of notice that must be provided to the membership. For example, in Virginia, the Condominium Act requires that 21 days' notice be provided to owners in advance of annual meetings.

Therefore, any electronic notice would need to comply with the 21 day statutory requirement. Also, in Virginia, the authority to send electronic notice does not extend to covenants enforcement and/or collection matters which require a physical mailing per federal statute and the Virginia Code. In Maryland, notices sent electronically are considered ineffective if the association is unable to deliver two consecutive notices. Likewise, electronic voting must comply with any statutory requirements, i.e. in Maryland a proxy for an election must direct the proxy holder on the candidates who are to receive votes, so electronic proxies must also provide the same direction.

In sum, adoption of electronic notice and voting can be a great way to increase community participation provided that the implementation is done carefully to comply with all applicable statutory requirements and provisions of the governing documents. If you are interested in adopting an Electronic Voting and Notice policy resolution, please contact your Rees Broome, P.C. attorney – we would be happy to assist you with drafting the resolution and outlining the different options available in your jurisdiction.