

REES BROOME, PC

COMMUNITY ASSOCIATIONS NEWSLETTER

Tallying the Votes: The Electoral Process for Community Associations

By: Mariana Teran and R.A. Hurley

Your term as a director on your community association's board of directors is coming to an end. *Now what?* The association will need to hold an election for the directors on the board. *Remind me, how do we do that again?* The election process can be either mandated by the state's legislature through the laws passed within the state and/or outlined within the association's governing documents. Either election authority raises questions among directors tasked with holding those elections. *Who can be elected as a director? How will members vote in the election?* This Article will address the election procedures for community association boards in Virginia, Maryland and Washington, D.C.

Maryland

Board elections in Maryland are mostly governed by the community association's respective Act – either Condominium or HOA - and the covenants within the governing documents. The election cycle usually begins with a call for candidates to the members of the community to run in the election. The Homeowners' Association Act is silent as to the procedures for a call for candidates or the election itself. HOAs must rely on the procedures within their governing documents to call an election. Conversely, the Condominium Act explicitly requires that the call for candidates be sent not less than 45 days before notice of election is sent to the membership. Only nominations made at least 15 days before notice of an election shall be listed on the election ballot, in alphabetical order. Some governing documents allow the association to take nominations for candidates at the meeting if none have been submitted previously but are not required to if there are sufficient candidates for all vacant directors seats.

In 2025, the Maryland General Assembly passed into law further requirements for condominium and HOA board of directors' elections. Section 11-109 of the Condominium Act and Section 11B-118 of the Homeowners Association Act were amended to require an "independent party" to collect, count, tally and certify the votes for the elections. A party is considered "independent" if they are an owner that is not a candidate in the election, does not electioneer for any candidate, does not have a conflict of interest with any candidate in the election, and is not objected to by more than 25% of the eligible voting membership. An

1900 Gallows Road • Suite 700 • Tysons Corner, Virginia 22182 • (703) 790-1911 • Fax: (703) 848-2530
7101 Wisconsin Avenue • Suite 1201 • Bethesda, Maryland 20814 • (301) 222-0152 • Fax: (240) 802-2109
1602 Village Market Blvd SE Suite 385 Leesburg, Virginia 20175 • (703) 790-1911 • Fax: (703) 848-2530
www.reesbroome.com

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independent party can also be a third-party vendor or commercial technology company. However, a party is deemed not to be independent if that party is: 1) a current director; 2) the management company for the association unless the management company is owned by the association or a parent association; or 3) the community's legal counsel.

The Attorney General's office has advised that management companies are permitted to prepare the election materials – such as the call for candidates, notice of election, ballots, and proxies and send the election materials to the members. However, the collection of the proxies and ballots must be completed by the independent party. Many associations choose to rent a PO Box to receive the proxies and ballots and provide the key to their independent party. Other associations engage a third-party company to collect electronic ballots.

The deadline to send the notice of annual meeting and election may depend on the governing documents. Sufficient notice should be provided to members to allow them to participate and return their proxies. If meetings are held virtually, then communities may set a deadline no later than twenty-four hours after the annual meeting to have ballots returned.

Virginia

By comparison to Maryland, elections taking place in common interest communities in Virginia are much easier to handle from a statutory point of view. Of course, the governing documents for an association may provide additional requirements.

Both the Property Owners' Association Act (the "POAA") and the Virginia Condominium Act (the "Condo Act") contain provisions on owners' rights, including a right (when in good standing) to cast votes at meetings of the association. But, note that the Condo Act does not assume that all elections in condominium associations throughout the Commonwealth will play out the same; the Condo Act states that owners may cast votes in proportion to their ownership interest "except to the extent that the condominium instruments provide otherwise". In other words, the condominium instruments may provide for a different allocation of votes than percentage interest, and managers and boards need to pay close attention to this in order to make sure that elections are conducted properly.

Although the Commonwealth has not so far shown itself to be interested in the micro-level management of the elections process that Maryland's legislature has undertaken, the Commonwealth has established a few rules regarding the meetings at which elections take place. In particular, both the POAA and the Condo Act mandate the notice period for the membership meetings at which elections take place. What's interesting is that the notice

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periods are not the same; under the POAA, the minimum notice period is 14 days for an annual meeting, while the Condo Act provides for a minimum of 21 days. Of course, an association's governing documents may provide for a longer notice period in which case the documents would control.

In addition, an association's governing documents may also provide other deadlines that must be complied with in order for an election to be properly administered. Some associations have deadlines for submitting notices of intent to stand for election, timelines for notices to the association membership regarding who is standing for election, and the specific dates for formation of nomination committees. These deadlines, and any other formalities set forth in an association's governing documents, must be carefully studied and adhered to.

Additionally, in recent years, the General Assembly has enacted numerous statutory changes to aid an association in completing an election. These changes are particularly useful for those associations that encounter trouble obtaining quorum. Post pandemic, the General Assembly enacted changes to both the POAA and the Condo Act which allow voting "in person, by proxy, or by absentee ballot" unless expressly prohibited by the associations governing documents. This statutory change also provides that in order to allow voting to take place by electronic means, a board need only adopt guidelines for such voting; amendments to governing documents are not required to take advantage of these tools.

In this most recent legislative session, the General Assembly took aim at holes and potential conflicting provisions of the Nonstock Corporation Act. Among other changes, these amendments empower the board to determine if an election shall be conducted by mail in ballots only, by electronic means, or by physical means. Previously, under the Nonstock Act such power had to be expressed in the bylaws. The Assembly also provided for more flexibility and clarity in the submission of electronic proxies and appointments. While these particular changes mostly apply to property owners associations which are the most frequent type of association which is incorporated, condominium associations can be incorporated and so these changes may impact both types of associations.

D.C.

Like Virginia, D.C.'s approach to legislation around elections and the meetings at which elections take place is less heavy-handed than the Maryland approach. That's not to state that there are no tools and requirements provided in D.C., however.

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Also like Virginia's Condo Act, the D.C. Condominium Act (the "DCCA") also has a minimum requirement of 21 days' notice of an annual meeting. But, that provision of the DCCA has a rather unique feature. While Maryland and Virginia allow for owners in associations to provide for alternate addresses for notice, the DCCA provides for an *additional* address for notice; notice of meetings must be mailed to the unit and to one other address provided by the owner(s) if such an address has been provided. But, that additional address only applies if the notice of the meeting is mailed; if the association hand-delivers notice to the owner the association can ignore the second address. The DCCA is a technical act with multiple ways to comply with it, and boards and managers should read its language carefully.

The DCCA should not be viewed as a tripwire, however – it's rather useful, particularly in that it helps associations into the modern era by permitting electronic voting even if the condominium instruments prohibit electronic voting, or even appear to. The DCCA does require fidelity to an associations documents in some aspects, though; where the condominium instruments provided for voting by secret ballot, if the electronic voting procedure adopted by the board cannot guarantee anonymity then the board must also make provision for the casting of secret ballots on paper.

One particularly helpful aspect of the DCCA is the clarity that it provides regarding proxies. Specifically, the DCCA provides requirements which must be met in order for a proxy to be valid, as well as providing clear rules for termination and specifically stating that a proxy shall remain in effect during a recess or temporary adjournment of a meeting. This language not only provides clarity where condominium instruments lack clarity – or even any guidance – on the topic, but it is also helpful to managers who would otherwise have to manage different rules across all of the associations they are responsible for.

Finally, D.C. also has a Non-Profit Corporation Act (the "NPCA") which is applicable to incorporated associations, whether they are condominium associations or homeowners associations. Particularly useful given the lack of a homeowners association act in D.C., the NPCA permits an association to hold a meeting electronically and specifies what level of interactivity the electronic meeting must have (ability to read or hear the meeting, ability to vote, ability to ask questions, and ability to provide input). The NPCA also provides default notice periods for a meeting if the bylaws or the articles of incorporation fail to provide for a notice period.

This is not the only provision where the NPCA governs in the absence of instruction in the articles of incorporation or the bylaws. §29-405.09 of the NPCA provides that unless the bylaws or articles provide otherwise, an association may act without a meeting if every

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member entitled to vote on an action is provided a ballot. Similarly, §29-405.22 provides that members may vote either in person or by proxy unless the articles or bylaws provide otherwise. In these and similar sections we see the NPCA acting as a “gap-filler” to enable associations to move forward with meetings and elections in the absence of specific guidance on an issue in their documents. Perhaps the most consequential gap-filler is §29-405.27 which provides that in the absence of contrary instructions in the articles or bylaws the directors shall be elected by a plurality, and that cumulative voting is not permitted.

If you have any questions regarding the operation of your annual meeting or election, please contact one of our community association attorneys.

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