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## THE NEW FUTURE OF HOLDING BOARD ELECTIONS THROUGH ELECTRONIC VOTING

The annual meeting package has been sent out, and every member of the association has been given notice of the date, time and place of the annual meeting. Reminder notices have been posted throughout the community. The meeting package includes a proxy for those owners who are unable to attend, as well as a letter from the board president, begging all members to attend the annual meeting. Several board positions are up for re-election and those current directors are ready to move on. The day of the annual meeting finally arrives and... only a handful of owners show up. Certainly not enough to establish a quorum. Yet another year goes by where the association is unable to hold an election of directors because of lack of participation.

Sound familiar? Unfortunately, it is a common story for many associations. Unless there is a major or divisive issue going on in the community, for a lot of associations, getting owners to attend the annual meeting is like pulling teeth. Some boards have offered such things as drawings for gift cards and other prizes to tempt owners to appear, while others have resorted to announcements of potential special assessments to simply goad owners into action.

Encouraging enough owner participation to obtain a quorum for membership meetings and annual elections has been an age-old problem for many associations. Even proxies that allow a member to participate without even having to attend do not seem to help. On top of that, owners are quick to criticize a lack of turnover in the board, while refusing to participate in any meaningful way in meetings or elections.

### Is this the sad future for all community associations? No! There is a better way.

The solution? Conduct annual elections separate from your annual meeting, either by electronic voting or mail-in ballot. The Georgia nonprofit Corporation Code allows most associations to take any membership vote or annual elections separate from your annual meeting,

either by electronic voting or mail-in ballot if it normally could be taken at a meeting. This includes conducting annual board elections outside of a meeting.

Holding the annual election by electronic voting or mail-in ballot can offer several advantages for an association:

- **More owner participation.**  
In today's world of instant communications, most people have short attention spans. The easier you make a process for someone, the more likely you are to gain participation. Most associations have already discovered that, unless there is a community issue, most owners won't even take the time to fill out a proxy and send it in with a neighbor to the meeting. However, as many associations have discovered, if you give owners different options for voting, or even allow for online voting, you are likely to get more participation. The world has become accustomed to life through computers and email.
- **More efficient and secure voting process.**  
Conducting the election by action outside of a meeting offers an association the ability to place additional security on the voting process. One issue that many associations face, particularly during contested elections, is verifying whether or not the proxies are legitimate. Holding an election outside of a meeting allows an association to put measures into place to ensure the vote received is actually the vote of the homeowner, such as individually coded ballots or password protected logins to a voting website. Also by counting the votes prior to the annual meeting, you can remove the time delay caused by counting the votes at the meeting (assuming the association even makes quorum!), and it also gives the election committee or board sufficient time to address any questions or to resolve any voting issues that may arise.

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Our attorneys and staff have decades of experience and are proven leaders in their fields. Our attorneys are uniquely qualified and have been recognized on both a national and local level for their knowledge and commitment to their respective fields. We value the relationships we have with our clients. We are proud to be a part of the team of experts they rely on, and we work hard to maintain those relationships everyday.



*...some association bylaws require that an action outside of a meeting be approved by 100% of the membership.*

- **Simpler, less uncertain annual meeting.**

Electronic or ballot elections allow the board to spend more time at the annual meeting on community reports, time to discuss the budget, and more time for owner input at the annual meeting. Taking the election out of the process streamlines the annual meeting, and in many cases, removes uncertainty and conflict that comes with elections. The board is able to ensure that candidates step forward for the election long before the night of the annual meeting. Plus, being able to simply announce election results at the annual meeting shortens the length of the meeting. Again, the less time commitment required by owners, the more likely an association is to receive participation.

Sound good? It is! But how does it work? The process is very simple, but it does take some time to prepare. For any association whose annual meeting falls during the winter, now is the time to start planning!

### **CHECK FOR AUTHORITY.**

The very first step to setting up the voting process by action outside of a meeting is to review the governing documents for your community to determine what limitations, if any, may exist on doing so. In general, most association bylaws contain a provision governing where the association membership can take an action normally taken at an association meeting by action outside of a meeting. For associations where action outside of a meeting is permitted under the governing legal documents, it is extremely important to review those provisions to ensure two things: (1) that it allows for membership action outside of a meeting, and not just board action; and (2) that any action being taken outside of a meeting, can be taken with the same votes as would be required to take the action at a meeting. Most association bylaws allow for the action outside of a meeting to be approved by the same percentage of votes as those required to take the action at a meeting. However, some association bylaws require that an action outside of a meeting be approved by 100% of the membership. If your bylaws contain this latter requirement, holding an election outside of the meeting may not be an option for your association.

If the association's bylaws do not contain any provisions addressing or otherwise prohibiting the association from

taking a membership outside of a meeting, then the Georgia Nonprofit Corporation Code allows for membership action to be taken outside of a meeting, so long as the action is approved by the same percentage of approvals necessary for the action to be approved at the meeting. If the association's bylaws prohibit action outside of a meeting, then, unless the bylaws are amended at some point, the association can only hold a board election at a membership meeting.

### **DEVELOP A TIMELINE.**

If an association intends to hold the election by action outside of a meeting, it is very important to develop a timeline of events to allow enough time to nominate candidates, announce the candidates, issue ballots or voting instructions, conduct the vote and count and certify the votes. The entire process can take up to three months, so it is important to schedule each step of the voting process well in advance so that the results may be announced at the annual meeting and the newly elected directors can be in place to take on their positions. In developing the timeline, it is usually best to set the date of the annual meeting of the membership and to work backwards from there. A sample timeline for holding an election by action outside of meeting can be viewed on our website under Resources or by clicking [here](#).

### **DETERMINE VOTING PROCESS.**

Concurrently with developing the timeline of events, the board should discuss and determine the form in which the vote will be taken and how the votes will be received. Typically, when action outside of the meeting is permitted under an association's governing documents, the association may take the action either by written consent or mail-in ballot. The important thing to remember is that the quorum requirement for any action to be taken at a meeting must also be satisfied for any membership action taken outside of a meeting. This means that, before the votes can be counted, an association has to verify that it has received enough votes to meet its quorum requirement, even if the vote is being taken outside of a meeting.

For this reason, using a mail-in or electronic ballot for the election process is usually the best choice. The mail-in ballot will look very similar to the regular ballot; however, the Code requires certain specific statements on the ballots such as, indicating the number of responses

needed to meet the quorum requirements and specifying the time by which the ballot must be returned.

The other part of the equation in determining the form in which the vote will be taken is how the votes should be received. Ultimately, the purpose behind holding a vote outside of a meeting is to encourage owner participation, and the easier the process is, the more likely an association is to gain the participation it needs. For most associations looking at holding an election outside of a meeting, the first question that arises is whether or not the vote can be taken electronically. In most cases, the answer to this is yes.

The bylaws for many associations contain provision which recognize electronic documents and signatures. This means that, for any document which is required to be written or for which a signature is required, the association can produce this document electronically by fax, email or through a website, and likewise can accept any electronic signatures that are provided through fax, email or a website submission. For those associations where the bylaws are silent on electronic documents, the Georgia Electronic Records and Signatures Act, as well as several key provisions of the Georgia Nonprofit Corporation Code recognize the validity of electronic documents and signatures.

Taking a vote electronically can mean any number of things. The term “electronic voting” encompasses receiving ballots by email or fax, or through a website set up for voting. There are many online resources to help with this, but boards also can manage this process without a third-party voting site. But, with the importance of complying with the Code and ensuring that there are appropriate security measures in place to protect the integrity of the voting process, do not conduct this process without the association’s’ legal counsel involved.

Practically, when taking a vote by action outside of a meeting, it is more efficient to allow for the acceptance of votes by a variety of methods, such as faxes, email votes, mailed votes, or online voting. Though uncommon there are still some owners who do not have access to a computer, so it is important to afford such owners the same opportunity as others when it comes to voting. So long as the association can put appropriate process and procedures in place for protecting the integrity of the vote, it is acceptable to receive the votes through multiple methods.

## **ANNOUNCE THE VOTING PROCESS AND CALL FOR NOMINATIONS.**

Once the association has established its process and timeline for the vote, the next step is to notify the membership of the voting process and to start the nomination process. Since most owners are not used to the process of holding a vote by action outside of a meeting, it is important to clearly explain the process and the benefits it provides.

The nomination process is simple. The first notice to the membership should act as a call for nominations and for interested candidates to submit their

information and biographies. If the association’s bylaws contemplate that there will be a nominating committee, the nomination process can be run by the nominating committee in accordance with the procedures in the association’s bylaws. If no time frame for nominations is specified in the association’s bylaws, the association should allow ample time for the nominations to be received and compiled.

## **PROVIDE NOTICE OF THE ANNUAL MEETING, BEGIN VOTING, AND HOLD A CANDIDATES FORUM.**

Once the nomination period is closed, the next step is to announce the candidates to the membership and to provide the voting form and instructions. Since the goal is typically to announce the results at the annual meeting, if timed well, the ballot and/or voting instructions can be with the annual meeting notice. The meeting package should include the bios for all of the candidates, and the mail-in ballot for the election and/or specific instructions for ballot or electronic voting. Since the owners do not get a chance to hear the candidates speak from the floor at the annual meeting, the board should also consider holding a candidates forum, where owners are invited to meet the candidates and ask questions of the candidates.

The length of time an association allots for the voting process should be as long as necessary. But, if the goal is to announce the new directors at the annual meeting, the minimum time frame for voting must be at least the required notice period for the annual meeting.

## **COLLECT VOTES, CERTIFY VOTES, AND ANNOUNCE RESULTS AT ANNUAL MEETING.**

The final step in the process is to collect the votes, certify the results of the election, and announce the new directors at the annual meeting. To maintain transparency over the process, associations may consider appointing an election committee to receive and count votes. A board member or members should be a part of the process as well.

If the association is planning to accept votes by email or fax, to the extent possible, it is most efficient to have dedicated fax lines or email addresses set up for the receipt of the votes.

At the close of the voting period, the election committee or the board should verify that enough votes were received to satisfy the quorum requirement for the association. Once quorum is verified, the votes can be counted. Then, the results can be announced at the annual meeting and/or by notice to all owners.

For many associations, conducting elections outside of a meeting has provided the much needed solution to poor community turnout and annual meetings fraught with conflict. Association members are often excited to have options for participation that work with their busy lives, and associations are happy to finally be able to elect directors. Electronic elections and voting outside of the meeting is no longer the way of the future, it is something that all associations should investigate and implement now. If you would like more information or assistance with setting up your elections, please contact us.

For most associations looking at holding an election outside of a meeting, the first question that arises is whether or not the vote can be taken electronically. In most cases, the answer to this is yes.



## **Contact Us:**

To learn more about the services and programs we offer our clients, please feel free to contact us directly at:

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