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Preparing for an Annual Meeting

Getting ready for an annual meeting can often seem routine:

- *Pick date, time and location*
- *Reserve room*
- *Send meeting notice, proxy and budget to owners*
- *Draft agenda*
- *Print list of owners*
- *Print list of delinquent owners*
- *Set up registration table and chairs*
- *Wait for everyone to come*

However, embedded in this routine process are a number of questions that can often blindside a board of directors. The annual meeting season can bring about a host of questions and issues concerning procedures, voting, quorums and proxies, just to name a few. The following are some of the more common questions that often arise.

MEETING NOTICES

Question: Is the board required to send annual meeting notices to every owner, even if the owner is delinquent, in violation of the covenants or lives out of town?

Answer: Yes. Although an owner may not be able to vote at the meeting, the owner (as a member of the corporation) has the right to attend the annual meeting. Therefore, the association has the obligation to send the meeting notice to ALL owners.

Question: What if the association does not have the owner's current address?

Answer: If the association does not have a current address for an owner, the meeting notice should be sent to the property the person owns in the community.

Question: Can the board send annual meeting notices to the owners via email?

Answer: It depends on the association's legal documents. If the documents allow meeting notices via email or the website, then the association is permitted to send notices in that manner. However, the association must provide written notice to all owners who do not have access to a computer. Most association documents do not contain the necessary language to send electronic notices to the owners. An amendment to the bylaws would remedy this problem.

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QUORUM

Question: What is a quorum?

Answer: The quorum is the minimum number of people that must be present (in person or by proxy) at a meeting to call the meeting to order and conduct official corporate business.

Question: How many owners does it take to obtain a quorum?

Answer: The number of owners, units or lots necessary to meet a quorum requirement usually is specified in the association's legal documents. Quorums commonly range anywhere between 10% to a majority of the owners, units or lots. In condominiums, the quorum may be based on the ownership percentages assigned to the units.

Question: Who counts towards a quorum?

Answer: Every unit or lot counts towards a quorum unless the documents or the law states otherwise. Here is an example of different types of quorum provisions from association documents:

- Owners of 1/3 of the lots must be present in person or by proxy for a quorum.
- Owners holding 1/3 of the total eligible association vote must be present in person or by proxy for a quorum.

The first sentence requires the presence of owners of 1/3 of ALL properties in the community. Even if the lot owner's vote is suspended, that person still constitutes an "owner." The second sentence requires the presence of owners holding 1/3 of the total eligible association vote, which contemplates that some owners will be ineligible to vote. This will be a lower number than the first sentence.

Question: What if our bylaws do not have a quorum requirement?

Answer: If the association's legal documents are silent about how to calculate a quorum, the quorum requirement depends on the type of community. If the community is subject to the Georgia Condominium Act ("GCA") or the Georgia Property Owners' Association Act ("POA"), both state that a quorum is obtained if members entitled to cast more than one-third of the votes are present in person or by proxy at the beginning of the meeting. This means that the quorum is more than one-third of the total votes, and votes could be suspended, reducing the quorum, only if authorized in the community's legal documents.

For example, imagine a condominium with 100 units. Assume that owners of 10 units are ineligible to vote for some reason, such as a



delinquency, which automatically suspends voting rights under this community's legal documents. Assume, also, that the bylaws do not specify the number needed to obtain a quorum. According to the GCA, the annual meeting could be called to order if owners representing at least 31 units are present in person or by proxy at the beginning of the meeting. $100 \text{ units} - 10 \text{ units ineligible to vote} = 90 \text{ voting units}$. $\text{One-third of } 90 = 30$. Accordingly, people representing 31 units would need to be present in person or by proxy at the beginning of the annual meeting in order to meet the GCA requirement that MORE THAN one-third of the votes are needed for a quorum.

If the association's legal documents are silent about how to calculate a quorum and the property is not subject to the GCA or POA, then we need to look at the Georgia Non-Profit Corporation Code ("NPCC"). The NPCC states that 10 percent of the votes entitled to be cast on a matter must be represented at a meeting of the members to constitute a quorum on that matter. Therefore, a homeowner association that is not subject to the POA, and has no quorum specified in its legal documents, can call a meeting to order with as little as 10 percent of the voting members present in person or by proxy at the beginning of the meeting.

These rules, of course, only apply if an association's bylaws do not contain a quorum requirement. If the bylaws specify a quorum, that quorum would apply.

Question: What if we do not get a quorum?

Answer: If a quorum of members does not attend the annual meeting, the association cannot conduct any voting business. The association could do no more than, essentially, conduct a "town hall meeting" to present information to the members. The board members provide reports and inform the members about the status of the community, but the corporation cannot take an action at the meeting (no elections, no voting, no official action).

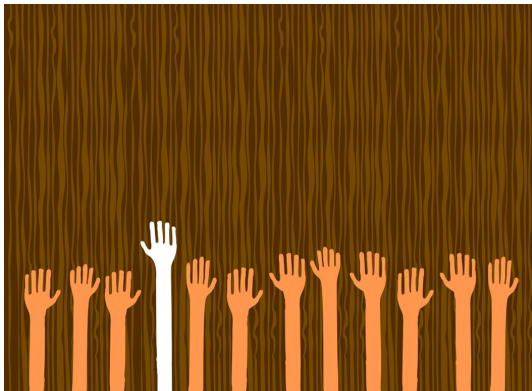
PROXIES

Question: What is a proxy?

Answer: A proxy is a document appointing someone else to act on behalf of an absent member. The law allows proxies to be used for all meetings unless prohibited or limited by the association's legal documents. Sometimes proxies are general, and the absent member gives the proxy-holder complete discretion to act on behalf of the absent member at the meeting. Sometimes the proxies are "directed." With directed proxies, the absent member gives the proxy-holder authority to act only on certain matters or vote a certain way at the meeting.

Question: Who can give a proxy?

Answer: Only members who are permitted to vote and who cannot attend the meeting may give a valid proxy to someone else. If a member is ineligible to vote and the member gives a proxy to someone else, the proxy may help establish a quorum for the meeting (depending on the language in the association's documents) but the proxy-holder will not be able to cast a vote on behalf of the absent owner.



Question: Who can act as a proxy-holder?

Answer: Almost anyone can act as a proxy-holder. Unless the association documents have limiting language, the proxy-holder can be another owner, a non-owner, a delinquent owner, someone in violation of the covenants, or even a tenant at the property. The proxy-holder can be someone from a different city or even a different state. The proxy-holder is simply a substitute for the absent member. The proxy-holder has the same rights or limitations as the absent member.

Question: What if someone brings a proxy that is signed, but the board cannot tell who signed it?

Answer: Board members have the ultimate authority to accept or reject a proxy form. If the board reasonably cannot tell who gave the proxy, the board is entitled to reject the proxy. If there is a reasonable amount of information from which to determine the identity of the absent member, then



the board has the authority to accept the proxy. This decision is within the board's reasonable discretion.

Question: How many proxies can one person have for a particular meeting?

Answer: Unless the association legal documents limit the number of proxies a person can hold, a proxy-holder can be appointed as the proxy for any number of members. In fact, one person can be a walking quorum all by himself if he has enough proxies!

BOARD ELECTIONS

Question: What if the bylaws require a nominating committee, but one is never formed?

Answer: If the candidates for the board are supposed to be nominated by a committee prior to the meeting and that is never done, technically the association is in breach of the bylaws. However, the failure to use a nominating committee will not invalidate an election where the vote is taken from the floor. It is rare for an association to get volunteers interested in serving on a nominating committee. For this reason, most nominations are taken from the floor at the annual meeting. If a nominating committee is required by an association's bylaws, but rarely formed, it is best to amend the bylaws and remove the requirement for a nominating committee.

Question: Are there any qualifications for board members?

Answer: Unless additional qualifications are described in the association's legal instruments, the NPCC requires board members to be natural persons who are at least 18 years old. Other than age, the law does not set additional requirements. Some associations have created additional qualifications for board members. For instance, sometimes candidates for the board cannot be delinquent in association fees, or be in violation of any of the association's covenants or rules and regulations. Sometimes board members are required to own property in the community, or to be on-site owners. We have created candidate applications for some communities that allow the

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association to run background and credit checks against board candidates. If the board wants to establish candidate or director qualifications, these should be added to the bylaws by amendment. Alternatively, if the legal documents give the board the authority to create qualifications, the association can do so by board resolution.

Question: How can we conduct elections if we do not have a quorum at the meeting?

Answer: If an association does not obtain a quorum at the annual meeting, elections cannot take place at that meeting. Normally, association documents state that directors shall serve until their successors are elected. If successors cannot be elected, the current directors remain in place until successors are elected or those directors resign or are removed.

Some bylaws permit elections outside of a meeting by ballot – either by mail or electronic means. If an association is not permitted to conduct elections outside of a meeting, we suggest amending the bylaws to permit this process because this likely will be the way elections are conducted in the future.

Other bylaws contain provisions allowing directors to resign and permitting the remaining directors (without a vote of the membership) to fill the vacancy created by the resignation. This allows new directors to take office if some current directors want to resign.

Question: Do we have to call another meeting if we do not get a quorum?

Answer: Generally, no. Unless the community legal documents require the board to call additional meetings, the law does not require the board to try to hold additional annual meetings that year after not obtaining a quorum.

There are so many questions that arise during the preparation for an annual meeting. Always check the association legal documents first and if the documents do not address the issue, please contact us at 404-350-1192.

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