

**OFFICE OF THE COMMON INTEREST COMMUNITY OMBUDSPERSON**  
**COMMUNITY ASSOCIATION VOTER AND ELECTION SERVICES<sup>1</sup>**

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**Election of Directors, Voting Procedure: Secret Ballot**

The success of Community Associations<sup>2</sup> depends in large part on the manner in which the Association conforms to and complies with the codes and laws that govern them.

The Common Interest Community Ombudsperson's Act requires the Ombudsperson to develop and publicize procedures intended to result in fair elections for members and officers of a common interest community associations.<sup>3</sup>

The following "Voting and Election Policy and Procedures" assure a community association of a professional, fair and unbiased election of officers governing the association.

The purpose of these procedures is to ensure and protect the integrity of association elections by adopting and implementing specific election processes and procedures for election by secret ballot.

The Office of the Ombudsperson will provide monitors and vote counting services, intended to result in fair elections for members and officers of a Community Association, when 15% of the total voting interest of a Community Association or 6 unit owners, whichever is greater, petition the Ombudsperson to do so. A charge commensurate with and approximating all costs necessary to defray actual expenses of the services will be payable to the Office of the Ombudsperson.<sup>4</sup>

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<sup>1</sup> Based loosely upon the California Homeowners Associations' Election process and the DUCIOA. CA HOA's procedures are in turn based upon California State Legislature adopted the "Election Procedure" laws (SB-61) in 2006 (amended several times since); the laws have been recorded in the California Civil Code and include Sections 5100 thru 5145 of the Davis Sterling Act. A number of changes and additions are included in this draft to localize the procedure to Delaware.

<sup>2</sup> "Community Associations" is a shorthand term meaning "Common Interest Community Associations" defined as:

"A unit owners' association must be organized no later than the date the first unit in the common interest community is conveyed. The association must have an executive board and the membership of the association at all times consists exclusively of all unit owners ... The association may be organized as a profit or nonprofit unincorporated association, corporation, trust, limited liability company or other lawful form of legal entity authorized by the laws of this State." 29 *Del. C.* §81-301. "Organization of unit owners' association." Associations include: "maintenance corporations;" "condominium councils;" "cooperative councils;" "homeowners associations;" or any other name appropriate to the type of Association.

<sup>3</sup> 29 *Del. C.* §2544 (5)

<sup>4</sup> 25 *Del. C.* §§2544 (6), (15).

These procedures can be adopted if bylaws of the association do not set out a fair voting procedure. These procedures are intended to provide fairness and clarity to the election of officers and members of Executive Boards, and to removal of officers from office. However, they can be used for the many types of votes and voting without a meeting, as described in the DUCIOA:

- Assessments;
- Special Assessments;
- Amendments to Governing Documents;
- Granting of the Exclusive Rights to Use Common Area;
- Budgets;
- Amendments to plats, or property descriptions;
- Changes to rules to restrict uses, or behavior;
- Termination or merger of common interest communities;
- Any other vote required by law;
- Any subject determined by the Association;
- Any Petition signed by a majority of the Associations' members.

Associations may consider alternatives to the procedures set out here. For information concerning voting using internet based services use the search term "online voting and election" or "HOA online voting and election" your web search.

## **VOTING AND ELECTION POLICY AND PROCEDURES**

Election voting is by Secret Ballot and is restricted to unit owners only, unless voting by proxy, as explained below.

### **1. CALL FOR ELECTION OR OTHER VOTING MEETINGS**

The call for a meeting to conduct the business of the Association including the “Notice of Meeting and Agenda” will proceed in the same manner set forth in the Association’s bylaws. The form and timing of notice must be reasonably calculated to reach all unit owners.

An Association must provide notice of the meeting to call for elections or other voting at least 7 days in advance of the meeting, unless the bylaws provide a longer time.

Notice for this Voting Procedure is sufficient if delivered to each Unit Owner by:

- (1) hand delivery;
- (2) delivery by United States mail, postage paid, or commercial delivery service to the mailing address of each unit, or to a different address if the Unit Owner has given the Association one in writing;
- (3) electronic means, if the Unit Owner has given the Association prior written authorization and an electronic address; or
- (4) any other method reasonably designed to provide notice to the Unit Owner.<sup>5</sup>

The notice of any meeting must state the date, time and place of the meeting and the items on the agenda.<sup>6</sup>

All Association members, even those who are in arrears on payment of their assessments are entitled to vote on any matter submitted to a vote of unit owners, even if they are delinquent and other privileges have been suspended because of the delinquency.<sup>7</sup> The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers in filling vacancies is as provided by the bylaws.<sup>8</sup>

### **2. NAME IN NOMINATION**

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<sup>5</sup> DUCIOA § 81-127. Notice.

<sup>6</sup> DUCIOA § 81-308. Unit Owners Meeting

<sup>7</sup> DUCIOA § 81-302 (11).

<sup>8</sup> DUCIOA § 81-306 (3).

The Association shall deliver a “Candidate Nomination Form” and an “Issue Form” to all unit owners at least sixty (60) days prior to the election. The Form must be returned to the Association at least forty-five (45) days prior to the election.

A person related by blood or marriage to a sitting board member will be presumed to have a conflict of interest to the Association, and may not be nominated for election to the board.

Members of the Association may nominate themselves or other members of the Association.

### **3. ELECTION INSPECTORS**

The Executive Board must select or appoint “independent third parties” to be the Election Inspectors or Monitors. The Board may choose to have either one or three Election Inspectors. An “independent third party” includes, but is not limited to, a volunteer poll worker with the County Board of Elections, a licensee of the Delaware Board of Accountancy, or a notary public. An independent third party may be a member of the Association, but may not be a member of the Executive Board, or a candidate for the Executive Board, or related to a member of the Executive Board or a candidate for the Executive Board.

The Executive Board must appoint Election Inspectors after the close of candidate nominations but before delivery of the secret ballots to unit owners. Election Inspectors determine where and to whom unit owners must return the secret ballots.

#### **The Duties of Election Inspectors:**

1. Determine the number of homeowners or unit owners entitled to vote and the voting power of each.
2. Determine the authenticity, validity, and effect of proxies, if any.
3. Receive ballots.
4. Hear and determine all challenges and questions arising out of or in connection with the right to vote.
5. Count and tabulate all votes.
6. Determine when the polls close.
7. Determine the result of the election.

8. Perform any acts proper to conduct the election with fairness to all members in accordance with this procedure and all applicable rules of the Association regarding the conduct of the election that are not in conflict with this procedure.

#### **4. SECRET BALLOT**

The ballots cast by unit owners must remain confidential until counted. The ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the Association to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a ballot must not identify the voter by name, address, lot, parcel, or unit number.

All solicitations for votes by ballot must: 1) State the number of responses needed to meet the quorum requirement; 2). State the percentage of approval necessary to approve each matter other than election of directors; 3). Specify the time by which the ballot must be delivered to the Association in order to be counted, which shall not be less than three days after the date the Association delivers the ballot; and 4). Describe the procedures including time and size and manner by when unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.<sup>9</sup>

The voter must not sign the ballot.

- Once the voter completes the ballot, the voter inserts the ballot into an envelope that is then sealed. This is the secret ballot.
- The voter inserts the envelope containing the secret ballot into a second, pre-addressed return envelope and seals it.
- In the upper left hand corner of the outer envelope, the voter must print and sign his or her name, address, and lot, or parcel, or unit number that entitles him or her to vote.
- The outer envelope must be pre-addressed to the Election Inspectors, who will tally the votes.
- The voter mails or delivers the Secret Ballot in person to the location specified by the Inspectors of Election.
  - As an alternative, the voter may complete the ballot at the meeting set for the election, in the same fashion.

The Election Inspectors only count the ballots delivered prior to the polls closing.

Voters may deliver their secret ballots in person on the day and within the time called for the election.

If only one of several owners of a unit is present at a meeting or submits a secret ballot, that owner is entitled to cast all the votes of for that unit.

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<sup>9</sup> DUCIOA § 81-310 (f) (2).

If more than one of the owners is present or votes by secret ballot, the votes allocated to that unit must be in accordance with the agreement of the majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest by any of the other owners of the unit, made promptly to the person presiding over the meeting. The election inspector resolves all protests and disputes.<sup>10</sup>

### **Electronic Ballot or Ballot Without Meeting**

Any action the Association may take at any meeting of members it may also take without a meeting, if the Association delivers a written or electronic ballot to every member entitled to vote on the matter.

Approval of the ballot is valid only if: 1). The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and 2). The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.<sup>11</sup>

A ballot cannot be revoked after delivery to the Association because of the death, disability or revocation by the person who cast that vote, unless the declaration or bylaws state otherwise.<sup>12</sup>

Failure to follow the election procedure as adopted by the association will invalidate the ballot and the unit owner's vote.

### **5. PROXY BALLOT**

The "Secret Ballot" process eliminates or reduces the need for a proxy vote since the unit owner may cast their vote by mailing in the secret ballot. However, any instruction given to a proxy holder directing the vote the proxy holder is to cast shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the owner's vote by secret ballot.

A unit owner may revoke a proxy only by actual notice to the person presiding over the meeting for the election.

A proxy is void if it is not dated. A proxy is void if it states it is revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.<sup>13</sup>

### **6. COUNTING THE VOTES**

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<sup>10</sup> DUCIOA § 81-310 (a).

<sup>11</sup> DUCIOA § 81-310 (f) (2), (3).

<sup>12</sup> DUCIOA § 81-310 (f) (4).

<sup>13</sup> DUCIOA § 81- 310 (b).

The Election Inspector shall check off on a "sign-in sheet" that a ballot was received for a unit, as the ballots arrive. The first secret ballot received for any unit is the ballot of record and that is the vote counted. Any additional ballot(s) for the same unit are invalid and void.

All votes shall be counted and tabulated by the inspector or inspectors of the election in public at a properly noticed open meeting of the Executive Board or unit owners. Any candidate or other member of the Association may witness the counting and tabulation of the votes. No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

A majority of the votes cast in person, by proxy or by ballot at a meeting of unit owners for the election shall determine the outcome of the election, so long as the number of votes cast in favor is at least a majority of the number of votes required for a quorum for that meeting.

## **7. RESULTS OF THE ELECTION**

The results of the election shall be promptly reported to the Executive Board of the Association and shall be recorded in the minutes of the next meeting of the Executive Board and shall be available for review by members of the Association. Within 15 days of the election, the Board shall publicize the results of the election in a communication directed to all Unit Owners.

Ballots shall be retained by the Board for no less than 90 days after the results are publicized.