

Know how ballot, proxy are different

Posted: Saturday, Apr. 24, 2010

To homeowner association property managers, spring is known as "meeting season," since so many HOAs have their annual meetings this time of year.

Annual meetings provide a forum for the election of directors, a review of the HOA's business for the past year, and a forecast for the coming year. This column will explain some of the topics and jargon that arise in connection with membership meetings.

Most HOAs are organized as nonprofit corporations, which are governed by their bylaws and by the statutes in the N.C. Nonprofit Corporation Act. These statutes contain "default" provisions that dictate how certain matters are to be handled if the bylaws are silent on the issue.

One example pertains to quorums. A quorum is the percentage of members that must be present at a meeting for the HOA to conduct any business. The statutory default provision is 10 percent. The bylaws may contain a higher or lower percentage.

Notices of annual meetings must be mailed out between 10 and 60 days in advance of the meeting. Typically, the notice of meeting includes a "proxy" form. Many people confuse proxies with ballots. They are not the same.

Unless the corporation's bylaws prohibit proxy voting, votes may be cast by a member either in person at the meeting, or by proxy. A proxy is a document signed by the member that gives another person authorization to cast the member's vote and otherwise act on behalf of the member at the meeting.

So, a proxy allows a member's vote to be cast if the member cannot attend the meeting in person. Often, representatives of an HOA will begin contacting members in the weeks before a meeting and soliciting proxies from members to ensure that a quorum is present.

Often, the proxy form provided by the HOA will state that unless the member appoints a specifically named person as his or her proxy, then the president or vice president will be deemed to be the appointed proxy by default.

A ballot, on the other hand, is a document that is used for actually casting the member's vote. It is typically a form handed out at the meeting that contains a list of the directors who are running for election and a list of "for" and "against" checkboxes for other matters that will be put to a vote.

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If homeowner "Joe" cannot attend the meeting, he can sign a proxy form appointing his neighbor "Sam" as his proxy. Sam will take the proxy form with him to the meeting, and the HOA's secretary will give Sam two ballots to cast: one for himself, and one for Joe.

Sometimes HOA members will be asked to vote on certain matters via written ballot, without a meeting. The statutes say that, unless the HOA's governing documents prohibit it, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter, and the ballot states a deadline to return the ballots.

Most HOA bylaws allow the use of a proxy, so it is important that members and directors know and understand the difference between a proxy and a ballot.

Actions that are approved using an incorrect method of voting are subject to dispute and can cost the HOA unnecessary expenses to defend a legal challenge.

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