

Written Ballot vs. Proxies

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I am starting this blog for the purpose of addressing frequently asked questions, questions that should be asked frequently, and interesting situations that I and others in my firm often deal with as a community association attorney.

Planned communities and condominiums (I'll refer to both types of communities as community associations) are very much like small countries. The board of directors is the government, the declaration, bylaws, and rules serve as the constitution (along with a few state statutes), and the members are the citizens. Much like a country, one of the most important functions of a community association is to properly conduct a vote and one of the most important obligations of a member is to properly cast a vote. Unfortunately, many member votes are improperly held or receive little member participation. One common reason is the confusion between written ballots and proxies.

Written Ballot

A written ballot only should be used when membership action is not going to be taken at a member meeting. A written ballot is used in lieu of taking a vote at a member meeting. Section 55A-7-08 of the North Carolina General Statutes provides that unless the community association's articles of incorporation or bylaws prohibit action by written ballot, any action that may be taken by the members at any annual, regular, or special meeting of members may be taken without a meeting by written ballot.

A community association that wishes to act by written ballot must abide by the following rules:

- The community association must deliver a written ballot to every member entitled to vote on the matter.
- The written ballot must set forth each proposed action and allow the member to vote for or against the action.
- The number of votes cast by written ballot must equal or exceed the quorum requirement for an actual meeting authorizing the action, and the number of member approvals must equal or exceed the number of votes that would be required to approve the matter at a meeting at which the same total number of votes were cast.
- The written ballot must indicate the time by which a written ballot must be received by the community association in order to be counted. Unlike a proxy, a written ballot may not be revoked once cast and the deadline may not be extended.

Currently, North Carolina does not recognize absentee voting for community associations, so written ballots cannot be used as absentee ballots to be cast at an actual meeting. Community associations sometimes hold meetings to announce the results of a vote taken by written ballot, and this is fine, as long as the deadline to submit the written ballots is prior to the meeting.

Proxies

A proxy is not a ballot. A member may vote at membership meetings by either: (i) attending the meeting and casting his or her vote in person, or (ii) designating a proxy (who must attend the meeting) to cast a vote on behalf of the member.

A proxy can be general, directed, or a combination of both:

- General – A member appoints a proxy (who will attend the meeting) to cast their vote any way the proxy chooses.
- Directed – A member appoints a proxy (who will attend the meeting) to cast their vote a specific way (for or against) as directed by the member. It is the responsibility of the proxy holder to vote as instructed by the proxy giver. It is not the community association's responsibility to ensure that the proxy holder casts the vote as instructed unless the proxy holder is a board member or officer.
- Combination – A member appoints a proxy (who will attend the meeting) to cast their vote a specific way on some matters and any way the proxy chooses on others.

Regardless of the type of proxy used, a proxy is not a ballot, but authorization for someone else to cast that member's ballot.

Can Written Ballots and Proxies Be Combined?

No. A community association can conduct a vote by written ballot in lieu of a meeting or a community association can conduct a vote at a meeting and allow members who cannot attend to designate proxies, but the two cannot be combined. There is no right or wrong choice when it comes to voting by written ballot or voting at a meeting, but the vote must be conducted properly. Members only are allowed to vote on a few community association matters, so it's important to get it right.

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