

Community Associations: Proxies at Meetings are from Mars and Written Ballots are from Venus

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Most community associations, at least annually, are faced with action items requiring a vote of their membership. For example, community association membership participation is necessary on an annual basis to elect the Board of Directors and for ratification of the next year's budget.

But there are many challenges surrounding member voting at association meetings, and the largest one is often organizing in-person voting by hundreds, or even thousands, of members. It is often practically impossible to

get everyone into the same building to cast a vote in person. On the other hand, some associations have the reverse problem of not being able to even achieve participation of a quorum.

Voting Tools

Proxies and written ballots, if used properly, can be valuable tools for an association looking to garner member participation, as well as providing the option of avoiding the hassles and costs of in-person voting. But, if used incorrectly, they can do the exact opposite. Misunderstandings regarding the proper use of proxies and written ballots can lead to improperly conducted votes which can cost an association time and money. These two tools cannot be used simultaneously, and a solid understanding of the differences between them will allow an association to make the best use of its time and resources.

Simply put, a proxy is a tool to be used for voting purposes at a meeting when a member cannot attend, and a written ballot is to be used when the member vote is taking place outside other than during a meeting.

Proxies

The only way a member is permitted to vote at a membership meeting is if either the member:

- Is personally present at the meeting, or,
- The member has designated someone as a proxy in a written appointment of proxy form, usually returned to the association's secretary prior to the meeting, **AND** the proxy holder is personally present at the meeting.

The concept of a proxy is pretty basic; a member who has the power to cast a vote authorizes someone else to cast that vote for them. But that simple concept can lead to all sorts of trouble when a proxy is improperly authorized.

There are three important things a member who wants to participate in an association meeting by proxy must first do:

- Determine if the association's articles of incorporation or bylaws restrict the use of proxies. If they don't, the member is free to appoint a proxy to vote at any membership meeting.
- Fill out and sign and date an appointment form of proxy consistent with the requirements of the North Carolina Nonprofit Corporations Act and the association's governing documents.
- Decide what type of proxy the member wants to create.

The three most common forms of proxy are:

- General, when the member appoints the proxy to cast the absentee member's vote on all action items properly brought before the membership however the proxy holder desires;
- Directed, which instructs the proxy to vote in a specific way and may limit the proxy to voting only on certain action items; and,
- A combination of a general and a directed proxy which can only be applicable when there are going to be votes on multiple issues during the meeting. The member instructs the proxy to vote a certain way on one or more issues, but gives the proxy the freedom to vote as the proxy wishes on any other matters.

On matters for which the member uses a general proxy, the member is trusting the judgment of the proxy to "vote the right way" without directing the proxy as to what the member might think is the "right way." On matters for which the member uses a directed proxy, the member is trusting the proxy holder to vote the way the member instructs on the face of the proxy because the association has no responsibility to make sure the proxy holder votes consistent with the directed proxy instructions. Thus, regardless of which type of proxy is used, it is very important that the member giving the proxy appoint a trustworthy proxy holder.

Again, regardless of the type of appointment, for the proxy to be effective, the appointed proxy must attend the association meeting in person and actually cast the vote. A proxy is NOT an absentee ballot and cannot be counted as such.

Written Ballots

A written ballot is a tool that associations can utilize to obtain member approval without the necessity of holding a membership meeting. Written ballots are most commonly mailed or emailed out to all eligible voting members to be filled out and returned to the association by a date certain. If an association decides that it wants to use a written ballot, it's important for the association to understand that the ballot will be in lieu of, and not in addition to, an in-person vote.

A large part of a written ballot's usefulness is the broad range of actions for which it can be used. Unless the association's governing documents specifically prohibit voting by written ballot, any action that can be taken at a member meeting can be taken by written ballot.

A written ballot is not an absentee ballot, and trying to use it in that way may invalidate both the written ballots and the votes cast in person.

Once a written ballot is cast, it may not be revoked. This allows an association to open ballots as they come in, which, in turn, allows the association's Board of Directors to get a sense of how the vote is trending and to conduct targeted follow-up with members who have not returned their ballots. The ability to monitor trends and encourage everyone to vote is an obvious plus for an association conducting voting by written ballot.

Conclusion

Proxies and written ballots are both useful tools for an association that appreciates the differences and understands when to use each. Both tools address different problems, and they each come with their own specific pitfalls.

Just remember: proxies and written ballot cannot co-exist—it is an either-or proposition. The consequence of unauthorized association action can open an association up to liability or the invalidation of association action, so it is critical that an association work with its attorney to ensure any proxies or written ballots comply with the law and will stand up to scrutiny.

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