



KEOUGH MOODY

April
2019
Newsletter

It appears that Spring has finally sprung! Hopefully, we are done with the cold and snow until much later this year. In this month's newsletter, we provide a refresher on handling annual elections. If your association has a contested election, the attorneys at Keough and Moody are always available to attend to help ensure the integrity of the election and address any issues which may arise with respect to eligibility, voting rights, and proxies.



To retainer, or not to retainer, that is the question. Many of our boards and managers approach us from time to time regarding whether it is advisable to establish a retainer agreement with a law firm. Under a retainer agreement, certain legal services are provided to the association at a set monthly cost. The retainer fee is billed to the association, regardless of whether any legal services were provided to the association in that month. Therefore, the answer to whether your association should be on a monthly retainer depends upon the needs of your individual association. If you are routinely seeking legal advice or review of contracts, a retainer may be something to consider for your association. If not, a retainer agreement may not best serve the needs of your association. Please contact either Dawn Moody at d1m@kmlegal.com or Gabriella Comstock at grc@kmlegal.com if you would like to further discuss retainer agreements.

Chuck Keough

A REFRESHER ON ANNUAL ELECTIONS

The April 2019 Consolidated Election is now behind us. We hope that everyone took advantage of the opportunity to vote for their local elected officials. With this most recent, local election concluded, it is an ideal time to discuss an even more local election - the election of board members for your association.

Most associations (see footnote 1 below) should be calling for an election on an annual basis. This procedure normally starts by issuing a call for candidates to the membership or forming a nominating committee, as may be required by the terms of the governing documents. Unless your association's governing documents specifies some other qualifications, the sole requirement to serve as a member of the Board is to be an owner of a unit or home within the association. Therefore, in most instances, it matters not whether the owner is current in the payment of his/her common expenses or in compliance with all association rules and regulations; the owner is eligible to serve as a board member nevertheless.

Once the potential board candidates have been identified, the association can proceed with issuing the meeting notice, which should be sent to all members not less than ten (10), nor more than thirty (30) days prior to the date of the election. Included with the notice are often the candidate information sheets, which outline each individual's qualifications and reasons for wanting to serve as a director. Depending on the type of association, as well as the terms of the governing documents, either a proxy or mail-in ballot should also accompany the meeting notice. Such documents should provide space to permit owners to write-in a candidate, who has not previously made his/her candidacy known. For those associations governed by the Common

Interest Community Association Act, owners, who are not able to attend the annual meeting, may vote via proxy, mail-in ballot, or if provided by rule, acceptable technological means (electronic voting). For condominium associations, unless the association has adopted rules at least 120 days prior to the annual election permitting owners to vote by mail-in ballot or acceptable technological means (electronic voting), owners, who are unable to attend the annual meeting, can vote via proxy.

Proxies permit an owner to designate another party to vote in his/her stead at the annual election. The proxy should designate an individual who intends to appear in person at the meeting; the proxy should not designate the Board of Directors as the proxy-holder. The proxy may either permit the proxy-holder the authority to cast the ballot however the proxy-holder deems fit or to cast the ballot for designated individuals. In order for the proxy to be valid, it must be executed by a member and dated. Unless otherwise noted, proxies are only valid for 11 months from the date of execution.

In order for the annual election actually to occur, a quorum of the membership must be present in person or by proxy/ballot. If a quorum is not present, the annual meeting cannot occur; existing Board members continue to serve in office until such time as an annual election does occur and their successors are elected. It is important to note for condominium associations, quorum is generally calculated not by the number of individuals or units present, but by the number of units present by percentage of ownership. Therefore, it is always important to ensure that a complete owner listing, with percentage of ownership, is available at the meeting. In the event that a quorum is not present at the annual meeting, it is within the Board's discretion whether to recall the annual election again. In the event that the Board declines to do so, both the Illinois Condominium Property Act and the Illinois Common Interest Community Association Act outline a procedure by and through which the members can compel an election. If an election does not occur in a calendar year, a situation often arises where the entire Board is up for election the next year. Therefore, the members should do whatever they can to ensure that a quorum is present for the annual meeting.

Assuming that a quorum is present, the annual election may proceed. In addition to those individuals who previously announced their candidacy, owners should be given the opportunity to run from the floor, if they so desire. Once nominations have been closed, ballots should be provided to those present. In addition, the proxies should be exchanged for ballots. For condominium associations, the percentage of ownership should be clearly marked on the ballot as voting is generally on a percentage basis. This process (i.e. formal voting) is recommended to be followed even in cases where the election is not contested, as the association has an obligation to maintain proxies and ballots for a period of one (1) year and make the same available for inspection upon written request. In other words, we recommend against doing annual elections by acclamation. Once voting has ended and the votes are tabulated, the winners of the election are announced and take their seats as directors of the corporation for their applicable term.

Contested elections can often go askew. It is important to ensure that the election process is followed consistently with the terms of applicable law and the association's governing documents. This requires advance planning by the board and/or association management. In the event there are questions regarding the validity or use of any proxy or the process itself, those questions should be directed to the association's legal counsel, who may need to be present at the meeting itself. Finally, for those associations who are consistently unable to obtain quorum for its election, it may be time to adopt rules providing for the use of mail-in ballots (for condominium associations) or electronic voting.

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Section 1-25 of the Common Interest Community Association Act provides that elections shall occur no less frequently than once every 24 months.

UPCOMING EVENTS:

CAI Legal Forum - Abbingdon Distinctive Banquets in Glen Ellyn - April 12, 2019.
Attorneys Dawn L. Moody and Jonathan D. Wassell will be speaking from 1:10 p.m. to 2:30 p.m. at the session entitled "That Was Then, This is Now".

For more information about the event and to register, please visit <https://www.cai-illinois.org/event/legal-forum-2019/>.



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