

# AVOIDING THE ELECTION NIGHTMARE

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**W**hether self managed or professionally managed, all condominium association board of directors must run their properties according to the laws of their specific state. In Illinois, the criteria are dictated in the Illinois Condominium Property Act (ICPA). In addition to these rules, all condominiums have recorded Declarations and Bylaws, which further govern how their property should be administered. Deviations from these laws and criteria will leave the board members vulnerable to challenges to their roles as the managing directors of the property.

What is a *challenge*? Anytime an owner or group of owners feels the Board has acted improperly, or made a wrong decision, they can challenge the Board's action under various scenarios which will interfere with the function of the management of the property, and may also cause turmoil among owners and board members. The conflicts that result decrease harmony in the building, allow tempers to flare and meetings to become nightmares.

The basic logic to avoid this is to follow proper protocols, starting with the Annual Members' Meeting. Elections must be held every year. They should be properly and openly run. Regardless of whether the Board thinks no one else wants to run, an election is required by law. Section 18 (a) (1) of the ICPA clearly states that the terms of at least one third of the members of the board shall expire annually; therefore, an election must be held every year. If a board member up for election wishes to stay, he/she must run and be voted in again.



One of the main purposes of the Annual Members' Meeting is to determine who will serve on the board for the next year and, possibly,

the next two years if staggered terms are required by the Bylaws. If done correctly, all owners will be given the opportunity to serve on the

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Board, owners will have the right to send a proxy with specific directions for their choice of candidates, and the Board will have accomplished all aspects of the meeting within the legal guidelines of the ICPA. If done incorrectly, the process could be challenged, resulting in a dissolution of the actions taken, and the necessity to hold the meeting again.

Each association is different so it is important to review the Association's specific guidelines as set forth in the Bylaws. Such pertinent items include: meeting date; number of board positions; terms of office; quorum; cumulative vs. non-cumulative voting; secret ballot; and mail-in ballot. Procedures appropriate for the specific association should be clearly spelled out.

Once the date of the meeting is determined, the **Schedule** should be set by tracking backwards at least 30-45 days. This allows the board to prepare for the proper notifications, an invite to all owners to apply for the board, setting of agendas, proper proxy format and establishment of a quorum. For example, the annual meeting notice must go out no less than ten and no more than 30 days. Additionally, various other forms and processes are time sensitive. The time periods mentioned below are guidelines and can be changed as appropriate.

For efficiency, we recommend the preparation of three information and action packets for distribution to the owners. **Packet #1** should include:

1. Notification of meeting and call for applicants
2. Board application form

The initial notice of the Annual Meeting will allow owners to save the date in advance, and should be accompanied by an application to run for the board with instructions for completing and returning by a certain deadline. This process will ensure fair and equal treatment to all owners. This would be a good time, also, for announcement of any socialization to accompany the meeting, including refreshments. This often increases attendance at the meetings and encourages more community involvement. Once the board application forms have been submitted **Packet #2** and be prepared and should include:

1. Annual meeting reminder notice, including the day, date, time, location of the meeting, and an explanation of the enclosed proxy.
2. All completed board applications

3. Applicable proxy for the association (either cumulative or non-cumulative) – if this is an association that uses proxies; those with direct voting may not.

4. Agenda for the Annual Members' Meeting

5. Minutes of the previous year's Annual Members' Meeting.

6. Possibly Agenda for Annual Board Meeting.

This information should be sent approximately two to three weeks prior to the meeting date, which will meet the 10 - 30 day requirement.

In addition to the Annual Members' Meeting, the law requires that the Board hold an Annual Board Meeting. Again, it is efficient to hold this immediately after the Annual Members' Meeting. If so, an agenda for this meeting should be included in **Packet #2**.

A proxy is designed to allow an owner who cannot attend the meeting to appoint another person to vote in their *stead* at the meeting. Unless otherwise specified in the Bylaws, the Proxy also will assist in creating a quorum to open and hold the meeting. The proxy is sent to owners prior to the meeting, includes all known candidates running for the board, and must allow for write-in candidates. A proxy is not a Ballot. It is the direction of the owner to the person they are designating as their "Proxy" on how the Ballot should be completed at the meeting. The person voting as "Proxy" must complete the Ballot at the meeting as directed on the proxy.

All proxies and ballots must state whether the voting is cumulative or non-cumulative. Cumulative voting means that if there are three seats open for the board, an owner may place all three votes for one person. As an example, if the owner's percentage of ownership is 3%, and there are three seats open, he/she may place all three votes for one person, resulting in 9%, or he/she may place one vote for each of the three seats (or any combination). In Non-Cumulative voting, the owner may only vote one time for each person of his choice. In this example, each candidate could only receive a total of 3% from this owner.

As the meeting date approaches, it is time to prepare **Packet #3**, which will be used and/or distributed at the meeting itself. Packet #3 should include:

1. One Ballot for each Member Unit (**either** Cumulative or Non-Cumulative)

2. Sign-in sheet
3. Process to tabulate ballots
4. Agenda for Annual Members' Meeting
5. Agenda for Annual Board Meeting (if applicable)

The Ballot will be distributed to each owner (or his/her proxy) upon arriving and signing in at the meeting. When owners/proxies arrive at the meeting, they will be asked to sign in, either as "in person" or "by proxy" for another owner. The Sign-In Sheet should be customized in advance so that it will identify each owner, unit number and/or address and percentage of ownership. Personal signatures in the appropriate columns are important to this process for legal evidence that the meeting was held correctly and a proper quorum was present.

Following the agenda, the Board will proceed through the meeting, qualifying a quorum, identifying the nominees, requesting nominations from the floor (if applicable) and collecting and counting the ballots. Generally, two volunteers from the audience can help count the ballots. There are many variations of this process; some associations computerize the counting tabulations and/or hire an outside firm to assist with the tabulations. A more simplified version is the use of a sheet for each candidate, with a % of Ownership vote marked on separate lines as taken from the ballots. In Cumulative Voting, be sure to account for any multiple votes for each individual candidate.

Once the tabulations are done, a summary sheet can be completed. This will place the applicants in order of the highest votes received and will identify the candidates that will serve on the board. In a staggered term or rotation process, those

receiving the highest number will serve for a two-year term and the ones with fewest votes will serve for a one-year term if there are such vacancies. The Board would then announce the new members, address any other business before the membership, and adjourn the Annual Meeting.

If the Board is holding the Annual Board Meeting on the same night, it should be called to order immediately after the adjournment of the Annual Members' Meeting. The most important agenda item for this meeting is the election of board officers. While owners vote for who will serve on the board, the Board votes on who will serve as President, Secretary, Treasurer and/or other positions as required by the Declaration and Bylaws. In addition, the Board may address current issues, as stated on the agenda, and/or set the time and place for the schedule of future board meetings and adjourn.

Important to the Annual Meeting process is taking accurate minutes. Each meeting should have separate minutes. Be sure to reference the completed sign-in sheet as an attachment. Although they will not be offi-

cially approved until the next year's annual meeting, it is still a good idea to get them done as quickly as possible and either make available or distribute them to the owners, marked with the word "draft."

As a final step, all Annual Meeting notices, forms, sign-in sheets, ballots and proxies should be put in a folder labeled "Annual Members' Meeting—Month/Year" and kept in the Management or Secretary files. As a reminder, many association files should be kept for a minimum of seven years. Follow your attorney's or CPA's advice on the retention of the ballots themselves.

While the process for the Annual Members' Meeting may seem a bit daunting at first, once the templates and protocols have been applied, subsequent Annual Meetings will move effortlessly and accurately. The Board can be confident that it has applied all legal aspects to the voting process, has eliminated the fear of a challenge to their protocols, and has presented a fair and equal right to all owners to be a part of the board while encouraging an active participation in the process. This will lead to better-educated board members and more satisfied owners.



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