BARRY MALLIN & ASSOCIATES, P.C.

BOARD ELECTIONS:
CONDUCTING PROPER ELECTIONS

Checklist of Key Points

1. Date of Annual Meeting

    Every corporation must conduct Annual Meeting to elect directors. Date of Annual meeting must be inserted in the By-Laws.

2. Notice of Meeting

    Must be in writing. Must state the place, date and time of meeting.

3. How is the Notice Served

    Must be personally given to every shareholder (for example, slipping the notice under the apartment door) or mailed by first class mail. Posting the notice in the lobby does not constitute personal notice.

4. How Much Notice is Needed

    Each shareholder must have at least 10 days notice of the meeting and not more than 50 days. If a shareholder receives less than 10 days notice, but makes no protest at the meeting, than the shareholder has waived his/her right to object to the short notice.

5. What Constitutes a Quorum

    Attendance at the meeting, in person or by proxy, of a majority of the shareholders eligible to vote constitutes a quorum. In determining whether there is a quorum, you need a majority of the shareholders in good standing.

6.   Eligibility to Vote

All shareholders in Good Standing are eligibility to vote. A shareholder is not in good standing if he/she is two months behind in maintenance.

7.   Record Date for Eligibility.

The Corporation must have current maintenance records available at the election in the event of disputes and a list of eligible and non-eligible shareholders. Under the by-laws, the cut-off or record date for determining eligibility is ten days before the election. **CLEAR, ACCURATE AND CURRENT MAINTENANCE RECORDS ARE ESSENTIAL FOR SETTLING DISPUTES.** It is advisable to contact those shareholders who are two or months in arrears prior to the meeting to advise them of their loss of voting rights and to settle any disputes on this issue. If a dispute on voting eligibility cannot be settled, then a majority vote of the current Board of Directors must make a decision on the issue prior to the meeting.

8.   Voting at the Meeting

Each apartment unit is entitle to one voting ballot at the election meeting. (If more than one shareholder is on the share certificate, the shareholders are allowed to split the one vote.) The Directors are elected by a majority vote of the eligible voters present at the meeting, either in person or by proxy.

9.   Proxy Voting

If a shareholder cannot attend the meeting, then a shareholder can appoint another person to vote for him/her at the meeting. The proxy authorization must be in writing and signed by the shareholder. It does not have to be notarized. The proxy must be submitted to the Secretary prior to the start of the meeting. No shareholder can hold more than one proxy beside his/her own vote.

10.   Secret Ballot

The by-laws permit a voice vote (for example, a show of hands), but any shareholder can demand that the voting be by written ballot. Most board elections are conducted by written, secret ballot. Each shareholder is given a blank ballot without the shareholder' s name and apartment number on the ballot.

11.   Voting for Directors

The number of directors must be inserted in the By-laws. This number can be changed by a shareholder amendment to the By-laws. **THE SHAREHOLDERS ONLY VOTE FOR THE DIRECTORS. THE SHAREHOLDERS DO NOT SELECT THE OFFICERS.** The Officers are chosen by the new Board.

12.   Eligibility to Run for the Board of Directors

Same eligibility as for voting. No shareholder can be elected to the Board if he/she is two months behind in maintenance.

Special Problems

1.   Failure to Hold Annual Meeting

If the Board fails to call for a annual meeting, then a **Special Meeting** of shareholders can be called for the purpose of holding an election. A special meeting of shareholders can be called by either (i) the president or (ii) by the board of directors or (iii) by ten (10) percent of the shareholders eligible to vote. The notice of meeting must state the date, time and place of the meeting. It must be served on all shareholders personally or by first-class mail at least 10 days before the meeting.

The notice of a special meeting also must state: **WHO IS CALLING THE MEETING** and that the **PURPOSE OF THE MEETING IS THE ELECTION OF DIRECTORS.** No directors may be elected at the meeting unless the notice clearly states the purpose of the meeting.

2.   Failure to Obtain a Quorum.

If there is no quorum at the meeting, a majority of the shareholders present may adjourn the meeting for a future date. If no quorum is obtained at the next meeting, then a special meeting may be called under ' 603 of the Business Corporation Law. This law allows the Board or ten percent of the shareholders to call for another meeting in which directors may be elected, even if a quorum is not present. If a quorum is not present at such a meeting, then the only official business that may be conducted is the election of directors.

3.   Counting Votes

To avoid the appearance of unfairness, it is advisable to have a non-shareholder (for example, the corporation=s managing agent, attorney or technical assistance provider) to assist in the election procedure and to count the ballots. Such a person can be asked to prepare an affidavit certifying the results. To deal with particularly contentious situations, there is a procedure under ' 610 and '611 of the Business Corporation Law for appointing an inspector of the election with broad powers to supervise the election, resolve disputes and certify the results.

4.   Powers of State Supreme Court

In situations involving contested elections, any shareholder may bring a court action in State Supreme Court under '619 of the Business Corporation Law to either confirm or overturn the election and/or ask that the Court order a new election. The Court can order that the new election be supervised by a court-appointed referee. The referee would have the power to conduct the election, resolve eligibility disputes, count the votes and certify the results.