

ELECTIONEERING

THE RADBURN BILL ENACTS MANDATORY CHANGES TO ELECTIONS,
VOTING & OTHER PROCEDURES FOR NJ COMMUNITY ASSOCIATIONS

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*"I will stop, I will stop at nothing
Say the right things when electioneering
I trust I can rely on your vote." -Radiohead, "Electioneering"*

Let's be honest: if you have ever sat through or been a part of a community association election, you know that they are not the most exciting few hours of your life. Now, thanks to a groundswell caused by the residents in an almost hundred year old association in northern New Jersey, elections in the Garden State just got a little more interesting (but still probably not that interesting).

Before we get to the nuts and bolts of the Radburn Bill's new requirements, let's start with a brief history lesson to set the stage for how this legislation came to be. The Radburn Association was established in Fair Lawn, NJ in 1929. At the time, it was one of the first and largest planned real estate developments in the United States. The community includes almost 500 diverse types of homes (single family homes, row homes, and semi-attached homes) and a network of parks, swimming pools, and recreational facilities, which account for almost 150 acres.

Unlike many other community associations, the Radburn's governing documents did not consider all of its 3,000+ residents to be members of the Association. Rather, the management and affairs of the Association were governed by a nine (9) person Board of Trustees made up of its "members," which were limited to only the current and former Trustees (approximately forty (40) of the more than 3,000 residents). Non-member residents of the Radburn were afforded only one (1) member of the Board, which was considered the "Radburn Citizen's Association" representative.

In the mid-2000s, a group of residents challenged these membership restrictions in Court; however, that litigation ended unfavorably to the residents in 2010. The continuing uproar regarding the outcome of the litigation caused State Senator Robert Gordon (D – Fair Lawn) to take notice, and in September 2016, he introduced legislation to make the Radburn's membership, election, and voting process more inclusive and transparent.

With an assist from CAI-NJ's Legislative Action Committee, the bill passed both the State Assembly and the State Senate in May 2016. Then, on July 13, 2017, Governor Christie signed the Radburn bill into law. The legislation enacted significant changes to New Jersey's Planned Real Estate Development Full Disclosure Act

("PREDFDA"), N.J.S.A. 45:22A-43 *et seq.*, regarding not just the Radburn Association, but also altering procedures for board elections and voting in every condominium, homeowners association and cooperative in New Jersey.

The provisions of the new law can be grouped into two categories: (1) the provisions that went into effect as of July 13, 2017, which deal primarily with who is considered a member of an association and who can vote for/serve on an association board; and (2) the provisions that went into effect as of October 1, 2017, which generally concern the required notice and conduct of association elections. The most relevant provisions of the new legislation are as follows:

Provisions Effective as of July 13, 2017

All owners are now considered members of the association and shall "have the right to nominate, run for, freely elect, and be elected to" the board that governs the association so long as they are in good standing.

PREDFDA now defines "good standing" an association member who is current on payments of common expenses, late fees, interest, fines, legal fees, or other charges lawfully assessed.

Members must also be considered in good standing: (1) if they are in full compliance with a settlement agreement with regard to past due assessment and other charges; or (2) if the member has a pending, unresolved dispute regarding these charges that has been initiated through a valid alternative to litigation or through court action.

Members must be in good standing to either run for or be elected to the association board.

It is permissible for by-laws to provide that only one (1) owner from each unit may serve on the association board at any given time even though each co-owner may be a member in good standing.

If an association's current by-laws do not provide for amendment by vote of the members or only allow members to amend by a majority vote exceeding two-thirds, amendments to the by-laws may now be adopted by "an

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affirmative vote of a majority of the total authorized votes in an association.”

“Total authorized votes” shall mean the total number of units minus any members who are ineligible to vote because they are not in good standing.

In addition, the new law can be interpreted to permit an association’s board to amend the by-laws without an affirmative vote of the association members: (1) if necessary to render the by-laws consistent with the State, federal or local law; or (2) if a ballot provided to the members to reject a proposed amendment fails to receive at least ten percent (10%) of the vote within thirty (30) days.

Election/Notice Provisions Effective as of October 1, 2017

Board members shall not serve a single term of more than four (4) years, although board members may run for re-election for additional terms if allowable pursuant to the governing documents.

However, board members may continue to serve for a period over and above their term until their successor is duly qualified and elected.

Association elections must be conducted at least every two (2) years if the governing documents do not specify a specific time or interval for an election to take place.

The association shall provide written notice to all association members of the right to nominate themselves or other association members in good standing for candidacy to serve on the association board.

Such notice (or call for nominations) must be provided to all members no later than thirty (30) days prior to mailing the notice of election meeting.

The period for submitting nominations shall not be less than fourteen (14) days from the mailing of the request for nominations.

The association must provide all association members written notice of the election by personal delivery, mail, or electronic means no less than fourteen (14) days or more than sixty (60) days prior to the scheduled election. Notice may only be sent electronically if the governing documents permit electronic notices or the member agreed in writing to accept notice by electronic means.

An association may use both proxies and absentee ballots (unless proxies are prohibited by the by-laws);

however, an association cannot use proxies without also making absentee ballots available.

Proxies must contain a prominent notice that the use of the proxy is voluntary and that it may be revoked at any time before the proxy holder casts a vote.

All election ballots are required to list the names of all candidates nominated in alphabetical order by last name.

Associations may utilize electronic voting when the board determines to allow voting by such means and when an association member consents to casting a vote electronically.

Notably, most of these newly enacted provisions will trump the current by-laws of every community association in New Jersey. Of course, however, there are certain exceptions to the above requirements that may apply (for example, there is an exception for community associations having less than fifty (50) units). As a result, board members and community managers should carefully review these new requirements with counsel to ensure compliance by the association.

ABOUT THE AUTHOR

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