



## **TECHNO-DEMOCRACY:** **How the Radburn Legislation Cleared the Way for Electronic Voting in New Jersey Community Associations**

By Jonathan H. Katz, Esq.  
*Hill Wallack LLP*



**“Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time.”**

— Sir Winston Churchill

Like most organizations, community associations are constantly evolving and adapting to today’s rapidly changing technology. If you wanted to contact your association’s manager as little as ten or fifteen years ago, you took a walk to the on-site office, made a telephone call, or sent a hand-written letter through the U.S. mail. While you still can (and many still do) communicate using these methods, advances in technology, including email text and instant messaging, and internet-based alerts and work orders, have made it much easier for community managers to communicate and interact with their residents, contractors, and professionals (and *vice versa*).

While all of these technological advances have allowed

community associations to offer additional avenues of communication and have helped to increase productivity, many associations have been slow to adopt and implement electronic notice and voting procedures for association elections. However, the recent Radburn legislation has created an opportunity for community associations to take advantage of this ever-changing technology.

Before discussing electronic voting by association members,<sup>1</sup> it may be helpful to briefly define the types and methods of voting. “In-person” voting means an association member physically attends and votes at an association meeting, usually by written ballot. An “absentee ballot” or “mail ballot” is a written ballot that members can cast without attending the meeting. It can be mailed or otherwise delivered/transmitted to an association’s secretary, management, or other representative.

“Electronic voting” is a ballot that is cast online or through other electronic means without attending the meeting, and which is delivered directly to an association’s secretary,

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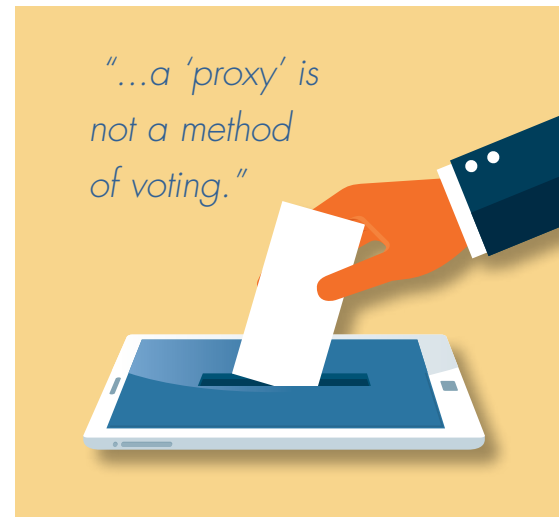


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management, or other representative through a website, e-mail, or other program prior to the meeting. Electronic voting is, in essence, an absentee or mail ballot transmitted through a website or other secure portal.

Finally, a "proxy" is not a method of voting. Rather, a proxy is a grant of authority by a member/voter to authorize a representative or agent to vote on behalf of the member. A



proxy may be used as allowable by law and pursuant to an association's governing documents.

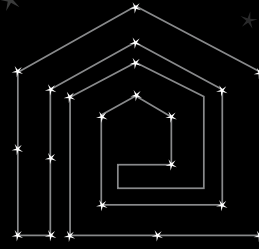
Proponents of electronic voting in community associations assert that it can reduce the attendant costs of conducting an election or voting on a specific question, such as a proposed amendment to the governing documents. Another advantage to electronic voting is the ease and quickness of tabulating the ballots, as well as eliminating the potential for tampering or human error and safeguarding voter confidentiality. And perhaps most importantly, electronic voting increas-

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es overall participation with respect to both the election process and for the association in general.

While those are all worthwhile objectives, until Radburn, there was no specific statutory authority for a community association to permit electronic voting. Neither the New Jersey Condominium Act nor Planned Real Estate Development Full Disclosure Act addressed electronic voting in board elections. Likewise, New Jersey's Non-Profit Corporations Act does not specifically address or authorize electronic voting. In addition, the Non-Profit Corporations Act requires that elections and other actions could only be taken at an in-person meeting of members or, if no meeting is to be held, by unanimous consent of the members.

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Thanks to the Radburn legislation, this has now changed.

With a little help from CAI-NJ's Legislative Action Committee, the Radburn bill passed both the State Assembly and the State Senate in May 2016 and was signed into law by Governor Christie on July 13, 2017. The legislation enacted significant changes to the Planned Real Estate Development Full Disclosure Act, altering procedures for board elections and voting in every condominium, homeowners association, and cooperative in New Jersey.

While most community associations are by now familiar with the Radburn's new requirements regarding election and voting procedures, one of the Radburn law's somewhat overlooked provisions is that it now provides statutory authority for New Jersey community associations to vote electronically. Specifically, the new law authorizes an association to use electronic voting procedures: (1) when the board determines to allow voting by such means; and (2) when an association member consents to casting a vote electronically.

Please note, however, that electronic voting *does not* mean that an asso-

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*"...electronic voting does not mean that an association or its management can just accept ballots by e-mail or other electronic means."*



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association or its management can just accept ballots by e-mail or other electronic means. Rather, electronic voting means that ballots are cast online or through other electronic means without

attending the meeting, and ballots are delivered directly to an association through a website or other secure service prior to the meeting. In essence, it is a secure absentee or mail ballot transmitted electronically rather than by mail, facsimile, or hand delivery.

In addition, just because Radburn

authorizes electronic voting does not mean that associations can jump right into the deep end of the pool. Allowing electronic voting in an association requires implementing a specific electronic voting procedure, which may necessitate amending an association's by-laws and/or adopting a resolution to allow voting by electronic means. As with most new technology, there are vendors that can assist associations by creating association-specific websites and/or online voting portals, which make casting a ballot secure, confidential, and relatively easy. And again, once an association implements an electronic voting procedure, association members will be required to consent to voting electronically. Since obtaining full compliance in a community association regarding anything is always difficult, it will be necessary to make traditional paper ballots available for in-person and absentee voting for those who do not or will not agree to "optin" to the electronic voting procedures.

When implemented properly, electronic voting could reduce the costs of conducting an election or vote of the members while providing a secure and confidential voting process, potentially increasing member participation. Community associations who are interested in implementing electronic voting procedures should consult with their association's counsel to discuss options for meeting these new statutory requirements. ■

### END NOTE:

1 Please note that this article is limited only to the issue of voting in board elections or questions by an association's membership; it does not discuss voting by the members of an association's board of directors or trustees. Electronic voting by an association's board is an entirely different issue that warrants its own discussion.



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