

TO INFINITY AND BEYOND!



ELECTRONIC VOTING IN COMMUNITY ASSOCIATIONS

Jonathan Katz, Esq.

“Times and conditions change so rapidly that we must keep our aim constantly focused on the future.”

-Walt Disney.

The premise of Walt Disney’s Carousel of Progress, which was created for the 1964 New York World’s fair and is now located in the Magic Kingdom at Walt Disney World in Florida, is an exploration of the advent of electricity and other technological advances during different parts of the 20th century. As would be expected, the attraction has changed significantly since it debuted in 1964, and its final scene currently features high-definition television, virtual reality games, voice-activated appliances, along with other recent innovations.

Much like the family portrayed in the Carousel of Progress, community associations are constantly adapting to rapidly changing technology. For example, twenty years ago if you wanted to contact your association manager, you walked over to the office, made a telephone call or (gasp!) sent a hand-written letter through the U.S. mail. While you still can (and many still do) communicate in these methods, advances in technology, including electronic-mail (“e-mail”), text and instant messaging, on-line alerts, and work orders, have made communication that much easier for association managers to interact with their residents, contractors, and professionals (and *vice versa*).

While these technological advances are helping to foster greater communication and productivity in community

associations, in most cases condominium and homeowners associations have been slow to adopt and implement electronic voting procedures for association elections to take advantage of these innovations.



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Before discussing electronic voting by association members, it may be helpful to briefly define the types and methods of voting. “In-person voting” means an association member actually attends and votes at an association meeting, generally by written ballot. An “absentee ballot” or “mail ballot” is a written ballot that may be cast by a voter without attending the meeting and may be mailed or otherwise transmitted to the association. “Electronic voting” is a ballot that is cast on-line or through other electronic means without attending the meeting, delivered directly to an association through a website, e-mail, or other program prior to the meeting. It is, in essence, an absentee or mail ballot transmitted electronically. Finally, a “proxy” is not a method of voting. Rather, a proxy is a grant of authority by a member/voter to a representative or agent to vote on behalf of the member. A proxy may be used for each of the methods of voting discussed above 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 holding an election or voting on a question, such as an amendment to the governing documents, and, perhaps more importantly, increase owner participation in the association. However, many states’ non-profit corporate statutes, including New Jersey and Pennsylvania, do not specifically address and/or authorize the option of electronic voting. In addition, most corporate statutes provide that elections and other action can only be taken at an in-person meeting of members or, if no meeting is to be held, by unanimous consent of the members.

However, that is not the case in some other states; Virginia, Texas, and Washington all allow some form of electronic voting. Virginia’s common interest community statutes have been amended to allow for the “use of technology” and generally state that unless an association’s documents expressly provide otherwise, any notice required to be sent or any signature, vote, consent or approval required to be obtained by the members may be accomplished by using the “most advanced technology available at the time.” Similarly, Texas provides that the voting rights of an owner in a community association may be cast or given: (1) in person or by proxy; (2) by absentee ballot; or (3) by electronic ballot. The statute goes on to define an “electronic ballot” as a ballot given

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by e-mail, facsimile, or posting on an internet website for which the identity of the property owner submitting the ballot can be confirmed and for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

As stated above, while neither the non-profit corporate statutes nor the enabling community association statutes in New Jersey and Pennsylvania specifically address or authorize the option of electronic voting, that does not mean that an association that is inclined to incorporate electronic voting is prohibited from doing so. However, below are some considerations that must be addressed before your community association can implement electronic voting in your association:

Request an opinion from association counsel as to whether your governing documents – in conjunction with state law – allow for the use of electronic voting;

Outline your election/voting procedures prior to consulting with any vendor regarding a program or system for online voting;

Advertise the option for online voting early and often through various channels – the association's website, - mail blasts, newsletters and direct mailings;

Take care to ensure that by offering an electronic voting option, the association is not restricting access to vote. The ability to vote using a "paper" option for those who cannot or who are not comfortable voting electronically should still be made readily available;

Consider making a computer available for electronic voting in a common area, such as a clubhouse or recreation center; and

Make sure technical assistance is available to any owners who have questions about or problems with the electronic voting process.

As discussed above, the goal of electronic voting should be to reduce the costs of holding an election and/or vote of the members while increasing member participation. Assuming that the law allows for, or is adapted to allow for such use of technology, electronic voting is another way to increase

communication and participation in community associations and should be encouraged with proper oversight. It is true: times and conditions change so rapidly that we must keep our aim constantly focused on the future. Or, as another Disney character would say, "To infinity and beyond!"

FOOTNOTES

1. Please note that this article pertains only to voting on elections or questions by an association membership, it does not discuss voting by 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.

2. For example, New Jersey's Non-Profit Corporations Act, N.J.S.A. 15A:5-6 authorizes decisions to be made in lieu of an in-person meeting only "if all the members entitled to vote thereon consent thereto in writing." Further, N.J.S.A. 15A:5-20(a) authorizes the by-laws of a non-profit corporation to provide that elections of trustees *may* be conducted by mail, but as noted above, the statute is silent as to voting by electronic means.

3. See Virginia Stat., §§ 55-79.71.1 and 55-513.3.

4. See Texas Property Code, §§ 209.0058 and 209.00592.

ABOUT THE AUTHOR

Jonathan H. Katz is counsel in the Princeton, N.J. office of Hill Wallack LLP and a member of the firm's Community Associations practice group. Mr. Katz concentrates his practice in the areas of community association law and general litigation, representing condominium and homeowners associations throughout New Jersey and eastern Pennsylvania. Jonathan H. Katz is counsel in the Princeton, N.J. office of Hill Wallack LLP and a member of the firm's Community Associations practice group. Mr. Katz concentrates his practice in the areas of community association law and general litigation, representing condominium and homeowners associations throughout New Jersey and eastern Pennsylvania.

Mr. Katz currently serves as chair of CAI's Communications & Content Committee and also serves as a member of the Pennsylvania & Delaware Valley Chapter of CAI's New Jersey Regional Council. He can be reached by e-mail at: jkatz@hillwallack.com

