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Holding Owner Meetings And Voting Via Electronic Communication

Stephen Lasser · Tuesday, April 14th, 2020

Even prior to the COVID-19 pandemic, a common issue facing cooperative corporations and condominiums is low attendance at annual owner meetings, which makes it difficult to elect a new board or for the existing board to take actions that require owner approval. This issue has become more difficult to address due to COVID-19.

Some of our clients have been inquiring about meeting and voting via electronic communication (e.g., videoconferencing, teleconferencing, or streaming) in order to conduct annual meetings and elections utilizing these technologies. Until the recent amendment of Section 602 of the Business Corporation Law ("BCL") on October 23, 2019, an annual meeting could not be legally be conducted in this manner.

Now, under the amended BCL 602(b), corporations (e.g., cooperatives) are authorized to permit remote attendance and electronic voting at a shareholders' meeting so long as the board implements reasonable measures (i) for a non-physically present person to participate in a meeting and vote on matters via electronic communication, and (ii) to verify that each non-physical person deemed present and voting at a meeting is indeed the individual permitted to attend and vote.

Although the amended BCL makes attendance and voting via electronic communication a legitimate option for cooperative boards to consider using, we do not think that conducting a meeting this way is logistically practical at this time since many people are still adjusting to these new technologies. (It is important to note that condominiums cannot legally conduct a meeting in this manner unless it is authorized by its governing documents since the BCL does not apply to condominiums. Consequently, permitting attendance via electronic communication is something a condominium board should consider if amending their governing documents.)

As a result, because of the COVID-19 pandemic, if your cooperative or condominium has its annual meeting scheduled for the beginning of May 2020, you should consider postponing it to the end of May or June 2020, or possibly even to fall 2020, and instead potentially conduct an informational meeting only (i.e., meeting with no vote) using these technologies on the originally scheduled date to update the owners on the current affairs and finances of the building. If your building does still plan on holding an in-person annual meeting in spring 2020, you should consider using electronic proxies for votes, which can be transmitted via email, since many people may still be reluctant to use the mail and meet in person in a few weeks. Since most cooperative and condominium governing documents provide that notice of the annual meeting should be sent

out no less than ten but not more than forty days prior to the meeting date, boards still have some time to decide how and when to hold their annual meetings scheduled this spring.

Boards looking to implement electronic attendance and voting and proxy procedures at annual meetings should consult with their management professionals and attorneys for specific advice on these procedures and how properly to utilize electronic attendance and voting methods.

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