

Q&A: Entitled to Tabulated Election Results?

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Q&A



Q Do the shareholders in a New York City co-op have the right to obtain the tabulated results of a board of director's election, rather than simply the names of the shareholders that won? If you are a shareholder who is running for the board, are you entitled to know how many votes (shares) you received? Are you entitled to know how many votes (shares) your opponents' received?

—*Frustrated Shareholder*

A "It can be very difficult for a shareholder who is not a board member to gain access to cooperative election materials such as proxies and ballots," says Stephen M. Lasser, an attorney shareholder in the Manhattan office of the law firm Stark & Stark. "The law governing the rights of shareholders to inspect corporate documents requires that shareholders be given access to minutes from shareholder's meetings and a list of shareholders. The law also requires that shareholders be provided with a copy of the cooperative's annual financial statement upon request. There is no legal requirement to provide shareholders access to proxies and ballots. "The letter writer's concern seems to be that the proxy and election process in his or her

cooperative is not being conducted properly. Proxies used at cooperative elections are generally used for the dual purpose of obtaining a quorum and voting. It is also common for boards to solicit and collect proxies, so the proxy scenario described does not sound illegal or unusual on its face.

“One way that the letter writer may gain access to proxies and ballots is to be appointed as an inspector of election. A simple request to the president or management may result in the writer’s appointment as an inspector of election, thus giving him or her access to proxies and ballots as well as the vote tabulation process. If the writer is unable to gain access in this manner and strongly believes that the proxy and ballot process is tainted, he or she can start a lawsuit in State Supreme Court to overturn the election results.

“During the course of such litigation, the writer should gain access to the proxies and ballots. However, if the letter writer loses the lawsuit, he or she may be responsible for reimbursing the cooperative for the legal fees it incurred defending the lawsuit. This will depend on the language in the cooperative’s proprietary lease. (Many leases have been amended to contain this defense cost reimbursement language in order to discourage frivolous lawsuits.)

“The applicable laws do not specify how long proxies and ballots must be maintained as corporate records. However, it would be prudent for the custodian of these records to maintain them for several years (the longer the better) in case they are needed as a reference source. At the very least, these documents should be retained for four months, which is the statute of limitations period for challenging an election.”

COMMENTS



JUUH on TUESDAY, JANUARY 22, 2013 1:03 AM

When I voted I was given two ballot pperas, a green one and a white one. Obviously I found the candidate who'd get my vote and put a cross next to it. Yet the green paper I had no idea what it was about, until I asked and told it was for the local elections. My point is if I hadn't asked and as

the candidates were familiar candidates, as I had seen them previously, then I could have voted using the green paper only, thinking it was the general election candidate and ignored the white one. At these polling stations it's important for the clerks to explain everything so those who don't question have everything explained and do the correct thing. If I hadn't questioned this I could have done things incorrectly and wasted a ballot paper.
