

“HOA Election Procedures Explained,” News-Press

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By: Joseph E. Adams



Q: What is the accepted practice that my homeowners' association should follow for opening and counting secret ballots used to elect the board? (J.D., via e-mail)

A: Section 720.306(8) of the Florida Homeowners' Association Act provides that if the governing documents permit voting by secret ballot by members who are not in attendance at a meeting of the members for the election of directors, such ballots must be placed in an inner envelope with no identifying markings and mailed or delivered to the association in an outer envelope bearing identifying information reflecting the name of the member, the lot or parcel for which the vote is being cast, and the signature of the lot or parcel owner casting that ballot. The double envelope procedure is used to preserve the secrecy of the vote.

Many homeowners' associations verify the outer envelope information in advance of the meeting by checking the signatures and parcel identification on the outer envelope against the association's list of qualified voters. If the eligibility of the member to vote is confirmed and no other ballot has been submitted for that lot or parcel, the inner envelope is removed from the outer envelope bearing the identification information, and it is placed with the ballots which were personally cast, and it is opened when the ballots are counted. If more than one ballot is submitted for a lot or parcel, the ballots for that lot or parcel are disqualified. Any vote by ballot received after the closing of the balloting may not be considered.

Most associations appoint an "election committee" to process and count the votes. The election committee should be owners who are not interested in the outcome of the election, including incumbent board members, candidates, or their families. At the annual meeting, the committee should open the outer envelopes. Then, the inner envelopes are opened and counted. If electronic voting has been authorized for the meeting, the "e-votes" need to be added to

the tally. A plurality of ballots cast decides the election.

It should be noted that the law allows but does not require homeowners' associations to use secret ballots in its elections. The law does say that the association must follow its bylaws when conducting elections. One of the most common mistakes I see in HOA elections is following procedures different than provided for in the bylaws, because it may be perceived as fairer or easier. My advice is to have the bylaws contain an election process similar to the one mandated by law for condominiums, which includes a right of all owners to self-nominate to run for the board, and an election procedure which ensures secret voting.

Q: My condominium association recently voted to amend the declaration of condominium. Because the board members are out of town, the amendment has not yet been recorded. Can the association still enforce the new restrictions in the amendment, before the amendment is recorded? (J.T., via e-mail)

A: No. Section 718.110(3) of the Florida Condominium Act provides that amendments to a declaration are effective when recorded in the public records of the county where the declaration is recorded. Section 718.112(1)(b) of the same statute provides that amendments to the bylaws and articles of incorporation are likewise not valid until they are recorded in the public records. Amendments to the articles of incorporation must also be filed with the Florida Secretary of State, Division of Corporations.

The Florida Statutes for homeowners' associations (Chapter 720) and cooperative associations (Chapter 719) contain similar requirements. Rules and regulations of condominium and cooperative associations do not need to be recorded to be legally effective. Homeowners' association rules must be recorded, although a Bill currently pending in the Florida Legislature, which is said to have a high chance of passage, would change that.

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