Dealing With HOA Member Apathy When Action, Approval or Consents Are Needed

Member apathy with respect to the activities and affairs of community associations is a common problem in the operation of homeowners associations. A lack of involvement or participation by homeowners often makes it impractical or impossible to secure needed member actions, approvals, or consents. To deal with the problems associated with member apathy, most states have incorporated provisions into their statutes that provide for such things as flexible voting, and voting by proxy or written ballots. As a last resort, state laws have provisions for court intervention into internal association affairs.

Allowing member voting by written ballot voting eliminates the need for a member to be present (in person or by proxy) at a meeting to exercise his or her voting privileges; thus a good way to increase membership participation in voting is the use of written ballot. Before utilizing a vote by written ballot, a homeowners association must be authorized to do so by provisions that are contained in the association’s bylaws. Such provisions should detail the mechanics of the process for voting by written ballot. A sample of provisions contained in an association’s bylaws that allow for voting by written ballot is attached hereto (please note: the sample provisions are for informational purposes only and should not be incorporated into an association’s bylaws or other governing documents without appropriate legal consultation and assistance).

Associations that find it unduly difficult to call or conduct a meeting of its members or otherwise to obtain member consents to needed action in the normal manner that is accordance with the association’s bylaws and the laws of the state in which the association is located, may seek an order from a local court having jurisdiction over the homeowners association. Courts have been called upon to order such things as:

- The call of a meeting;
- A method of notice reasonably designed to give actual notice to all parties, regardless of whether the method results in actual notice;
- A determination of who the members are;
- That a written ballot or other form of obtaining the vote of members be authorized in a manner that the court deems fair and equitable under the circumstances;
- Dispensing with any requirement relating to the holding of and voting at meetings;
- Dispensing with any requirement regarding the number or percentages of votes required to establish a quorum or to approve the action;

A petition seeking such relief from a court may generally be filed by any director, officer, or member of the association, although the association is a necessary party. Unless a state has specific statutory procedures that simplify the process for the benefit of lay persons, the filing of a petition seeking assistance from a court regarding these issues should always be done by an experienced attorney in the jurisdiction of the homeowners association. A meeting or other method of obtaining the vote of members or directors that is conducted in accordance with a court order will be treated as a valid meeting or vote, and will have the same force and effect as if the action was taken in accordance with the association’s governing documents and the applicable state laws.