Techniques for Soliciting Membership Approval of Amendments to Governing Documents

Homeowners associations frequently find it difficult, if not impossible, to obtain the consents of homeowners to proposed amendments to an Association’s governing documents. The difficulty in obtaining member consents is typically due to: (i) high voter approval requirements that are contained in the governing documents; (ii) general member apathy and lack of desire to become involved in the Association matters; (iii) absentee owners; (iv) poor internal management; and (v) insufficient communication about the necessity, effect, or merits of the proposed amendment.

In order to obtain the required consents of the homeowners to proposed amendments to governing documents, an association’s board of directors and management personnel must be able to effectively solicit membership approval for the desired amendments. As a result, the likelihood of success in obtaining the necessary consents is generally dependent upon the effectiveness of a proactive solicitation of the member votes. Furthermore, if it becomes necessary for the association to seek judicial assistance for the approval of proposed amendments, the association will have to demonstrate to the court that it made a sufficient effort to solicit member approvals before turning to the court.

To improve the likelihood of success, prior to the solicitation of member consents to a proposed amendment, the members should be provided with a draft of the proposed amendment and member comments and inquiries concerning the proposed amendment should be requested and encouraged. The period for member comments and inquiries will facilitate the identification of ambiguities or other issues concerning the amendment which can then be addressed before a formal vote is conducted.

Recognizing the foregoing, a process for soliciting member consents to proposed amendments to an association’s governing documents would employ the following steps:

- Early communication with all members regarding the proposed amendment(s) and the reasons for the proposed amendment(s);
- Distribution of copies of the drafts of proposed amendment(s) to all members;
- Establishment of a reasonable period of time for the submittal of member comments to the proposed amendment(s) prior to a formal vote;
- Solicitation of member approvals through the use of a written ballot;
- Provide all members with a cover that accompanies the written ballot, signed by all directors to show unanimous board support, that encourages a “yes” vote for the amendment;
- A summary of the proposed amendment(s) in a way that the average person will comprehend it;
- A copy of the full text of the proposed amendment(s);
- An appropriate ballot that complies with the laws of the state in question and the association’s governing documents.

The need to employ all or only part of the above procedures will depend in large part on the size of the homeowners association and the number of members whose consents are being solicited. Smaller associations where there is more personal contact and direct communications between the members may not need to employ the same degree of solicitation efforts as larger associations. Either way, the implementation of a well thought-out plan for soliciting membership approval of proposed amendments should have a positive effect on the number of consents that are obtained.