

# SOUTH COAST HOMEOWNERS ASSOCIATION

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## IN THIS ISSUE

Upcoming Meetings

A Problem with the Independent Contractor Registry

Ballot Wars Basics – A Primer for HOA Elections

## UPCOMING MEETINGS

### **Thursday, March 22, 2001 – Life in your Community Association (What Thomas Jefferson overlooked in drafting the Declaration of Independence!)**

Isn't America a free country? Why can't I park more than 2 cars in the common area? I pay my dues, I can do what I want! You can't fine me for playing my stereo. I demand a hearing!

Do you have board members who want to unilaterally punish members for CC&R violations? Do you have residents who have no clue about what community association living is all about? Have you felt threatened by another member's conduct? Do you have trouble getting members to serve on the board? Why is there a homeowners association in the first place?

South Coast is privileged to have Bay Area resident, **Mr. Larry Pothast, PCAM** from Union Bank of California, as the leader of this very entertaining, yet thought-provoking program. Larry has given presentations to us before, but not recently. He'll make you laugh as well as think and brings many years of experience in association management to this program. Larry is in demand throughout the United States for his expertise and entertaining style. The best part for you is that there is no charge to attend this special evening. Reservations Requested

**Space is limited to the first 60 reservations! You may reserve your space as follows:**

**Call 805-964-7806 (after 6 PM, please) and leave a message**

**Email – [gartzke@silcom.com](mailto:gartzke@silcom.com)**

**Fax a note to 805-967-9654**

**Location Information on next page**

Please indicate the name of your association or business and the names of those who will be attending. You might give some thought as to someone in your association who has been troublesome or “challenging” and invite them to come. Perhaps this program will help them gain a better understanding as to why the association has governing documents and why they must be followed. Let’s fill the room! If you haven’t been to a South Coast meeting before or if it’s been a long time, come to this one.

**Thursday, March 22, 2001  
Holiday Inn  
5650 Calle Real, Goleta  
7 – 9 PM**

**Saturday, May 19, 2001 – ABCs (A Basic Course) for Community Association Leaders**

In conjunction with the Community Association Institute area chapters (Mid-California and Channel Islands), we are pleased to offer this national curriculum to South Coast members. Save the date now but watch for our registration flyer soon. This all-day class covers law, finances, maintenance, rules enforcement, problem solving and running a board meeting. We offered this class in 1998 and 1999 and it was well received. We missed last year so it’s back by popular demand! Continental breakfast and lunch included.

**ABCs for Community Association Leaders  
Elephant Bar Restaurant  
521 Firestone Road, Goleta  
(On Hollister, one block west of Fairview)  
8:15 – 8:45 Registration and Breakfast  
Program start 8:45  
Cost - \$49 before May 11  
\$59 after  
limited to 40 participants**

**A PROBLEM WITH THE CALIFORNIA INDEPENDENT CONTRACTORS  
REGISTRY**

According to the CalCPA, the trade organization for CPAs in California, the EDD is asking businesses to “make every effort” to obtain an independent contractor’s social security number (SSN). If an independent contractor has a tax id #, e.g. a ‘95’ or ‘77’ number, he is not required by federal law to provide his SSN. In the event that the contractor will not provide this information, you can still report him by putting all zeroes in the SSN field on the DE-542 form. Do your best to comply with this state law but know that Federal law supercedes California law in this instance. For a complete discussion of the independent contractor reporting requirements, see the December 2000 issue of the South Coast HOA newsletter.

**PLEASE FEEL FREE TO MAKE COPIES FOR YOUR BOARD MEMBERS  
SHARE THIS NEWSLETTER WITH YOUR ENTIRE BOARD OF DIRECTORS**

## BALLOT WARS!

... And You Thought Voting In Florida Was Complicated

by Steven Weil, Sandra Bonato, Dana Marron and Jim Devereaux  
Berding & Weil, Attorneys at Law, Alamo, CA

**Editor's Note:** This article recently appeared in the *Community Association Alert*, a newsletter published by the Berding & Weil law firm in Northern California. Many members of the firm have been active in Homeowner Association activities in California. Tyler Berding is currently President of ECHO, the Northern California HOA group. Steve Weil is active as a writer and speaker at HOA events and editor of the firm's newsletter. Sandy Bonato is chair of ECHO's legislative committee while Jim Devereaux provided legal support for the association involved in the 1994 *Nahrstedt* case (pet prohibitions). Questions regarding ballots, proxies and voting come up at all our legal forums. Needless to say we are pleased that the firm has generously allowed us to reprint the following article for the benefit of the South Coast membership. If you have any questions, you can direct them to the firm as follows:

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Even if you were swamped in November distributing budgets, you probably know more about Chads, Dimples and Butterfly Ballots than you ever thought you'd care to. But did you realize that many of the issues debated in Florida and across the nation can and do come up right here in your own community association backyard? As with our national election, how a vote is conducted and counted, how those who do the counting and reporting handle themselves, and even the way the ballot is written can enhance or diminish the respect voters will have for the successful candidate, the association, and its manager.

At our firm, we get questions all year long about ballot and voting issues, and for us the national discussion has had eerie resonance. As a result, we thought you might be interested in our summarizing some of the similarities for you. We call them Ballot War Basics. When all's said and done, community associations may not have electoral colleges ...

but they do have politics.

## BALLOTS AND PROXIES

### Ballots, Written Ballots, and Proxies

Believe it or not, there is a difference between a "Ballot" and a "Written Ballot" (also called a "Ballot and Written Consent"). Unfortunately, the differences can create a lot of confusion for directors and managers when it comes to membership meetings.

## Ballots

A Ballot (let's call it a "Simple Ballot") is one of the three ways members can cast a vote at a meeting. (The other two ways are by voice vote or by a show of hands, both of which are legal unless the bylaws otherwise provide.)

The key concept here is that a Simple Ballot is the paper ballot **used at a meeting**. It lists the items being voted on at the meeting and gives voters who are present a choice as to those items. A Simple Ballot does not contain any information that identifies the voter, in other words, it's "secret." Usually, persons who sign in at the meeting receive one Simple Ballot for themselves and one for each of their Proxies (which are turned in at registration).

## Written Ballot

A Written Ballot, on the other hand, is used **when votes are cast by mail as an alternative to holding a formal meeting**. The legal requirements for a proper Written Ballot are much more rigorous than for a Simple Ballot because "mail in" voters do not necessarily have an opportunity to ask or have their questions answered about the voting process and more information is needed on the Written Ballot to assure a fair and valid election. A Written Ballot is subject to many of the same requirements of a Proxy (see below) and must also contain information about the quorum and number of votes required for passage of the proposed action.

The portions of a sample Written Ballot included on the following pages illustrate just some of the basic legal formalities required in a Written Ballot. Because so many concepts go into a properly drafted Written Ballot (and because so many association-drafted Written Ballots are legally deficient and, thus, subject to being set aside by a court), no Written Ballot should ever be distributed to members for their vote without review by the association's attorney. The expense of legal review is money well spent.

*Why does the law use the confusing terms "Ballot" and "Written Ballot" if they are used for different purposes?*

No reason; it's dumb.

## Proxies

Proxies weren't used in Florida (thank goodness!). However, they're a special complication for you.

A "Proxy" is a document that tells one person how to cast a Simple Ballot for another person at a meeting. In other words, **the Proxy is not a Simple Ballot; it's an instruction**. A Proxy gets exchanged for a Simple Ballot, which then gets voted as the Proxy giver instructs.

A Proxy is different from a Simple Ballot in critical ways. First of all, a Proxy is not and cannot be secret because it must identify the Proxy giver and Proxy holder. Also, a Proxy contains

certain language intended to clearly assign authority to the Proxy holder. A Proxy may or may not include information on specific matters to be voted on by the association. Then again, for some issues to be voted on or for certain kinds of meetings, the Proxy **must** contain particular information or the Proxy is invalid.

Confused yet?

The Proxy is turned in to the association before the meeting, by mailing it in or by sign-in time for the meeting. (Bylaws address this in different ways; it pays to check.) Each Proxy is exchanged for a Simple Ballot, which is then cast according to the instructions contained in the Proxy. You can imagine how complicated this can make the sign-in process. Well-prepared associations give themselves plenty of time to handle sign-in expediently.

### **"Proxy-Ballots"?, Sorry, No Way**

There is no such thing as a "Proxy-Ballot." A Simple Ballot is given out at a **meeting** to those who attend or submit a Proxy. A Written Ballot is used when there is a mail-in vote (**no meeting**). The phrase "Proxy-Ballot" is a combination of the two that is not recognized in the law.

### **Power to the Board!**

Sometimes, members assign their Proxies to the "Board of Directors." Then what? Does the board divide them up equally? Must the directors vote them all the same way? What if they can't agree? Should the board debate in front of the membership at the meeting how board Proxies will be voted? May the board decide before the meeting and, if so, must it be at an open meeting? What if the Proxies are assigned to the "Secretary of the Association", does the Secretary personally receive and cast Simple Ballots for all Proxies received, or is this kind of assignment really meant for the board?

Some bylaws may have special rules for voting Proxies that help (not always clearly) answer these questions but, whether your bylaws have special rules or not, the answers to each one of these scenarios have legal bases. Beyond that problem, however, is the fact that each one can cause a lot of political misunderstandings and threaten membership confidence in how a contested election or vote is resolved. This is especially true where board members themselves are divided on how to cast the votes.

### **When A "General Proxy" Is Given To "The Board"**

A member at an annual meeting of a 200-unit condominium association makes a motion from the floor for a \$30,000 special assessment to pay for new roofs. The meeting is attended by 195 people, 95 in person and 100 by proxy given to the board. 90 people actually attending the meeting vote against the assessment while the remaining 5 vote in favor.

This Association had previously distributed to the members a "General Proxy" which authorizes a vote in any manner deemed appropriate by the proxy holder, in this case "the board". As it turns out, 3 members of the board support the special assessment and 2 do not. The 3 members voted to cast all 100 proxies in favor of the assessment. Result? The \$30,000

special assessment passed even though it was only specifically supported by 5 out of 195 people in the association!

Thus the "popular" vote at the meeting is trumped by the "electoral" (Proxy) vote of the board. You can imagine how stirred up the audience would be by the result.

### **Special Rules For Election of Directors by Written Ballot**

Must Be Authorized By Governing Documents. Directors cannot be elected by Written Ballot, unless allowed by the governing documents.

Prohibited for Associations with Cumulative Voting. Directors cannot be elected by Written Ballot if the governing documents authorize cumulative voting. Again, the goal here is fairness. Technically, members may not cumulate their votes unless someone announces their intent to cumulate at a meeting thus putting all others on notice that they may also cumulate their votes. Without a meeting, no one can make such an announcement. Thus, the law prohibits voting by mail for the election of directors, when the governing documents authorize cumulative voting.

List of Nominees. The Written Ballot should list the nominees. There is no need to provide an opportunity to specify approval or disapproval for each candidate. Instead, the members may simply check a box next to their selections for director.

### **Be Careful When Using Forms**

It is potentially embarrassing and risky to use Notices, Proxies and Simple or Written Ballots that are not clear or are arguably unlawful. Also, forms used for one association might be invalid if used for another. The form on page 8 is to illustrate certain important voting principles but, like any form, should not be used without conferring with experienced community association counsel.

## **THE ANATOMY OF A VALID WRITTEN BALLOT**

### **"Voting By Mail"**

The Corporations Code states that "Any action which may be taken at any regular or special meeting of members may be taken without a meeting if the corporation distributes a written ballot to every member entitled to vote on the matter." Unless your governing documents say otherwise, the board does not need to hold a meeting to vote on matters, but can simply conduct a vote by mail by distributing valid Written Ballots (also called Ballots and Written Consents).

We've prepared a sample Written Ballot for the mythical Happy Hills Association to illustrate some of the key requirements for a valid "mailed in" vote to make repairs.

**1. Description of Proposed Action.**

Common sense and the Corporations Code dictate that the Written Ballot set forth the proposed Resolution. While this sounds easy, it is essential that careful drafting be used. For example, if the members approve an assessment for "roofing repairs," could the money also be used to pay for interior damage caused by roof leaks or the cost of a construction manager to supervise the roof repairs? In this case the answer is yes because we drafted the Written Ballot to incorporate a Notice that was also sent to the members that specifically referenced these additional tasks. Note also that the last sentence of the Resolution requires at least 30 days notice prior to the assessment due date (as required by law) yet gives the board the flexibility to select what that date will be.

**2. Opportunity to Specify Approval or Disapproval.**

The Written Ballot must allow members to specify a choice between approval or disapproval of the proposed measure. The goal here is to take care not to skew the Written Ballots unfairly in a biased direction, for example, by using wording that might confuse a voter as to whether they were voting in favor or against a particular action.

**3. A Reasonable Deadline.**

The Written Ballot must provide [and state] a reasonable" time for its return to the Association. The Corporations Code does not specify what is a reasonable time and, in reality, much will depend on the circumstances surrounding the measure. How urgent is the vote? Are the ballots being mailed during a time of year when members are likely to be away on vacation? Generally speaking, two to four weeks should be considered reasonable. The board may be able to extend the voting deadline depending on a number of factors.

**4. The Quorum Requirements.**

A vote by mailed Written Ballot is only valid when the number of votes cast within the time period specified equals or exceeds the quorum which would be required if the matter were voted on at a meeting. Unlike the requirements for a Simple Ballot or a Proxy, this number must be specified either on the Written Ballot or in the solicitation materials that are mailed to the members with the ballot.

**5. The Approval Requirements.**

Also, unlike the rules for a Simple Ballot or a Proxy, the Written Ballot or the accompanying materials must state the percentage of approvals necessary to pass the measure submitted.

Finally, remember that the Written Consent must be distributed by the Association [not by members] to all of the members entitled to vote.

**FOOTNOTES REGARDING SAMPLE BALLOT AND WRITTEN CONSENT**

<sup>1</sup> Description of Proposed Action

<sup>2</sup> Space to indicate approval or disapproval

<sup>3</sup> A reasonable deadline

<sup>4</sup> The number of responses which equals the quorum requirements

<sup>5</sup> The approval requirement for this 100 unit development

**BOARD OF DIRECTORS  
HAPPY HILLS ASSOCIATION  
JANUARY 31, 2001  
BALLOT AND WRITTEN CONSENT**

(To vote on Imposition of Special Assessment to Fund Roof Repairs)

I/we are the record owner(s) of the Unit described below which is located within the Happy Hills Development. I/we have received a copy of the Notice and Information Regarding Proposed Special Assessment for Roof Repairs from the Board of Directors dated January 31, 2001 regarding a Special Assessment for the purpose of providing funds to make roof repairs, and I/we hereby cast my/our vote as follows:

RESOLVED, that a Special Assessment in the aggregate of \$ 100,000, or \$1,000 per Unit, be levied equally upon the Members of the Happy Hills Association. The purpose of the Special Assessment is to provide funds for roof repairs, as more particularly described in the January 31, 2001 Notice and Information Regarding Proposed Special Assessments for roof repairs.<sup>1</sup> The Special Assessment shall be paid in equal monthly installments of \$100 per month for a period of ten months. The first payment shall be due on or before April 1, 2001, or, in any event, not sooner than thirty days from the date of mailing of a notice informing the Members that this Resolution has been approved by the Members.

APPROVE             DISAPPROVE <sup>2</sup>

DATED: \_\_\_\_\_ SIGN NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

DATED: \_\_\_\_\_ SIGN NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

UNIT ADDRESS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

NOTE: This Ballot and Written Consent must be returned NOT LATER THAN February 28, 2001. <sup>3</sup> You may mail your Ballot to the Board of Directors, Happy Hills Association; c/o XYZ Management Company, Attn: Mary Smith 1234 Main Street, Anywhere, CA, 93199. Any Ballot and Written Consent not received by the Board of Directors on or before the deadline date of February 28, 2001, cannot and will not be counted except that the Board reserves the right to extend the deadline by which the Ballots must be returned.

The minimum number of Ballot and Written Consent forms that must be returned to the Board in order to meet the established quorum Requirements is 51. <sup>4</sup> In order for the Resolution to pass, a majority of the votes cast <sup>5</sup> must vote in favor of the Resolution.



## **INSPECTORS, ACCOUNTABILITY AND ELECTION CHALLENGES**

As we know, a vote that is or appears to be tainted can leave the electorate and the candidates with a sense that the system hasn't worked; it can undermine confidence in elected representatives and the integrity of our decision-making processes. The principles we discuss below are intended to do the opposite: to inspire membership confidence in election results and provide certainty to the election process.

### **Inspectors of Election**

Everyone's interested in seeing that elections are conducted properly and that vote counts are "full, fair and accurate." One way of inspiring confidence in election results is to appoint inspectors of election.

Among their duties, inspectors of election determine if a quorum of the members is present, decide whether proxies are valid and effective, tabulate votes and ballots, hear and determine challenges, and see that the election or vote is conducted fairly. The number of inspectors is either one or three, to avoid decisions ending in a tie.

By observing inspectors who are generally one's neighbors - willing to put their heads together and make impartial decisions, the members' confidence in the outcome of the election is enhanced. Inspectors generally sign or initial each proxy decision, vote and ballot tallies and other records, and such certificates are "prima facie evidence" of the election or ballot results.

While not per se illegal, inspectors of election should probably not be current directors, board candidates, members of their families or management staff, if other persons are available to serve as inspectors. Selecting persons who are perceived to be unaligned with one side or another lends a heightened aura of fairness. The association's attorney is obligated by law to be impartial in corporate elections and often serves as inspector of election or is asked to advise those who are selected.

### **Disclosing the Vote or Written Ballot Results**

Election and balloting **results** are neither confidential nor secret. Anytime within 60 days following an election or vote by Written Ballot, a member may request (in writing) to be informed of the vote count, and the association is **required by law** to provide the information.

The requesting member is entitled to know the number of votes cast for, against, abstaining or withheld in a particular ballot measure. If the matter voted on was an election of directors, the association must report the number of votes cast for each nominee for director. If the association has more than one class of members, the information must contain the numbers of votes cast for nominees by class of membership. Some associations shy away from publicly announcing voted counts per candidate, on the premise that revealing the actual counts can embarrass persons who garner little or no support. Other associations routinely announce how many votes each candidate has received, concluding that running for the board is an open process and nominees voluntarily assume the risk that the results may be

unflattering. Neither approach is necessarily wrong although an Association's Bylaws may address how and whether the vote should be announced.

### **Parliamentary Procedure**

State law requires associations to conduct member meetings using a "recognized" form of parliamentary procedure. Robert's Rules of Order is one but there are others. The procedure is intended to provide a forum for the right of members to hear reports on association happenings, elect leaders, and speak out on issues that a member finds important. State law gives all members the right to speak at membership meetings, subject to reasonable rules set by the board.

The chair of the meeting should be reasonably familiar with the basic rules of meeting procedure. The chair is not, however, expected to be an expert in parliamentary process. The goal is to conduct the meeting fairly, openly, and orderly and not to have extended debates over procedural fine points. Some associations, particularly those experiencing political upheaval, retain a professional parliamentarian to advise the chair on the conduct of meetings.

### **It's Hard To Challenge Inspector Decisions and Elections**

A 1997 amendment to the Corporations Code expressly confers on an association, either through the board or election inspectors, the authority to accept or reject individual proxies or ballots in certain circumstances and are immune from damage claims if the statutory procedures are followed in good faith; decisions regarding voting documents or proxy appointments are valid unless a court determines otherwise. Also, an action challenging the validity of the election of a director must be filed within nine months; if no action is so filed, absent fraud, the election is presumed valid.

### **Candidate Statements and Materials**

A sense of fairness in the nomination and election process is enhanced when an association sets in place reasonable, even-handed policies pertaining to nominations and elections of directors.

Every association is required by law to establish reasonable nomination and election procedures that are appropriate for the specific nature, size and operations of the association. Recognizing that associations are diverse, the law does not set forth any particular requirements, just that they be reasonable. This includes establishing reasonable practices for distributing director candidate materials to the membership.

### **Fair Nomination Procedures**

Large associations (those with 500 or more members) may, if it makes such an offer to one candidate, offer to permit all candidates to solicit votes or include materials in an association mailing, providing equal space and equal prominence to all. State law doesn't require the association to extend the offer but if it does, the procedure will be presumed reasonable. This practice could be used in "small" associations as well as larger ones.

Candidates are entitled, as members, either to access the association's membership list or to be given a reasonable, alternative means of communicating with the members about their candidacy and qualifications to be elected to the board. In lieu of providing the membership list, the association can offer to mail a candidate's materials, at the candidate's expense.

### **Prior Planning is Key**

Associations can institute other reasonable procedures for nominations and elections, but the point is that, as election time nears, the board must give more than passing thought to how the association will handle nominations, distribution of candidate information, and the entire election process in a fair and equitable way. Many bylaws call for specific nomination procedures, establish nominating committees, permit nominations from the floor of the meeting, and state director and candidate qualifications (e.g., be in "good standing," membership in the association, be "record owner" of a separate interest). The bylaws will instruct on whether secret ballots are required and whether cumulative voting is authorized. Proxy rights are described in the bylaws, as are record dates (sometimes), notice requirements, and the percentage of members that constitute a quorum. Every one of these pieces of information is needed to prepare proper meeting notices, proxy forms, ballot forms, and sign-in sheets, and to effectively organize voting-related materials.

Involve the association's attorney in planning elections. No set of bylaws or "historical practices" of a community are identical. Forms may be outdated or based on the needs and requirements of other developments. It's better to have issues resolved and questions answered before an election than to have the process spin out of control at a meeting without having gotten the right help.

### **NOTICING MEETINGS AND DETERMINING IF A VOTE "PASSED"**

Inspiring confidence in the fairness of an election of directors or a vote of a matter of Association importance begins with the perception that the notice of each was fair and reasonably intended to inform the community's membership. Below are some basic "notice" rules found in the California Corporations Code.

#### **Noticing Membership Meetings Called by the Board**

Notice of a meeting may be given by personal delivery or by mail, either first class, registered or certified. If personally delivered or mailed by first class, registered or certified mail, written Notice of meetings of members must be given not less than 10 days nor more than 90 days before the date of the meeting. If other than by first class, registered or certified, Notice must then be sent at least 20 days prior to the date of the meeting, regardless of the bylaw provisions. As long as a bylaw provision is not inconsistent with the Corporations Code requirements, that provision is valid and should be complied with.

#### **Noticing Special Meetings Demanded by the Members**

Special rules govern meetings requested by members [at least 5% of the membership] or less than a majority of the board. The board has twenty (20) days from receipt of the request

to give written Notice to all members that a special meeting will be held. The board may set the date for the meeting, but the date selected may not be earlier than 35 days after receiving the members' request nor more than 90 days after that date. If the board does not respond to a legitimate request of members for a special meeting, the requesting members themselves may give Notice of the meeting or they may request the Superior Court to order the meeting held.

### **The Content of the Notice of Annual Membership Meetings**

Notice of all meetings of members, annual or special, must specify those matters the board intends to present for action by the members. In the case of an annual meeting, with some exceptions, any matter can be voted on, even if not specified in the notice. Often, the agenda for the meeting is included in the Notice.

### **Exceptions You Don't Often Hear About**

There are several exceptions to the rule that allows voting on issues that have not been Noticed. Here are two big ones: if the bylaws say the quorum is less than 1/3 of the members, the membership cannot vote on anything at the meeting that was not contained in the Notice [this is the same Notice rule that applies to "Special Membership Meetings"]. Also, unless set forth in the Notice, the members can't vote to remove directors.

### **DID THE VOTE PASS?**

Sometimes, the issue isn't the number of votes cast and received but, instead, how many votes are needed to approve a particular action. Governing documents are not always clear about this basic question. Often, the language is confusing and contradictory.

### **Quorum**

For any vote to count, whether at a meeting or by written ballot, a "quorum" must be achieved. A "quorum" is the **minimum** number of members who must be present at a meeting, either in person or through a proxy, [or who cast written ballots] in order for a proper vote to be taken. The quorum is often established in the bylaws [and most we have seen provide that at least a majority of the voting power is required to establish a quorum] but if not, the Corporations Code provides that 1/3 of the voting power, i.e., of the total votes of the entire membership, shall constitute a quorum.

### **Was the Action Approved?**

It is sometimes said that a proposed action requires the approval of a "majority of a quorum." This term, however, is not an accurate legal concept and can be misleading. When one refers to a "majority of a quorum", the technically correct term is "simple majority." A simple majority means the vote, after a quorum has been established, of a majority of those members actually present in person or by proxy or who have voted by written ballot.

Other times, approval requires the consent of a "majority of the total voting power," which means a majority of all votes which could have been cast in a particular election. Whether

this means all possible votes or only the votes of those in "good standing" is not always clear and often depends on an interpretation of specific voting provisions of the bylaws.

Of course, where the governing documents or the law specify the percentage of members necessary to approve an action, that percentage will apply and determine the outcome of a vote or election.

## **ARE ASSOCIATION ELECTION DISPUTES RARE?**

Actually, not as rare as you think. And, when they do arise, it is essential that the association, acting through the board, with management's assistance, respond honestly and promptly to legitimate election challenges. Doing so is consistent with the board's fiduciary duty and acts to preserve the Association's authority, both legal and moral, and builds membership confidence in their community and its representatives.

**Editor's Note:** Last fall, a local association asked me to serve as an inspector for an election where the board was up to be recalled. In accordance with the Corporations Code and the association's bylaws, a petition requesting the meeting was submitted by 5% of the members. The meeting was called by the board within the time frame specified by the Corporation Code and proxies were mailed by the board to all owners by the association. In addition, the petitioning party gained access to the association's membership roster as it was allowed to do and mailed information concerning its position and its own proxy form to all the members. Proxies were collected by the board and by the petitioners during the days prior to the meeting. The day before the meeting, I collected the proxies from both groups and cross-referenced the proxies to the association roster and dealt with duplicate proxies and those that superceded an earlier proxy. I assigned a simple ballot to each proxy-holder based upon the number of proxies that each received.

To facilitate the handling of proxies and ballots at the meeting, I enlisted two additional people to work with me at the meeting. (Three inspectors). We signed members in at the meeting, returned their proxies if they had previously submitted a proxy and distributed a ballot to them based upon the number of votes that they were entitled. (Some members owned more than one unit). We then determined the number of members present in person and by proxy and certified the quorum. While we were doing this, the association President conducted the meeting and allowed members to discuss the issues and share their concerns. Given that the issue was the recall of the board, emotions were high. By having independent inspectors, the board, the petitioners and the members were free from the tasks of running the election. At the conclusion of the meeting, we inspectors counted the ballots and announced the results to the members present.

It should be noted that due to the concern of members regarding the identity of those who submitted the proxies, I was asked to keep the proxies after the meeting. You should consider having proxies kept by your attorney or another independent party in the event that the issues are contentious. Again, our thanks to Berding and Weil for their permission to reprint the above article.

## MEMBERSHIP DIRECTORY SPONSORS

As a result of my delay in getting last fall's questionnaire results tabulated, the 2001 South Coast Membership Directory has not yet gone to press. (The results will appear in the directory). Since a number of professional members paid to place an ad in the directory, I am listing their names here and thank them for their support of South Coast HOA.

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### CONSTRUCTION MANAGEMENT

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### BANKING SERVICES

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### INSURANCE

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