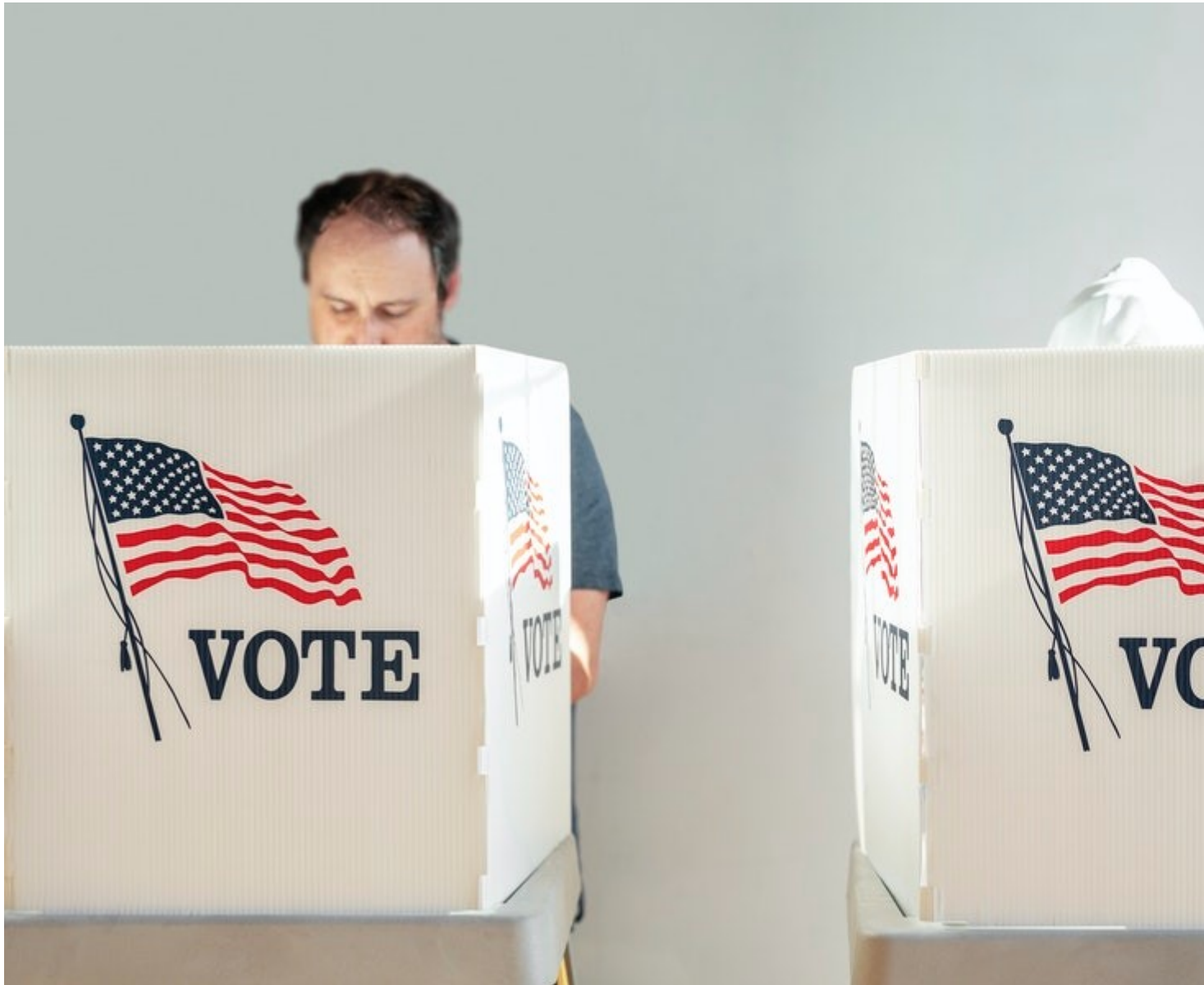


Voting and Elections In Community Associations — Homeowners Protection Bureau, LLC

Tips to Prevent And Resolve Conflict Between Board Members and Homeowners



While there are some variations in state law depending on where a homeowners' association is based, these are some general concepts that should provide members with general guidance to issues related to elections.

Most often, membership voting in homeowner's associations occurs in connection with the election of officers to serve on the [Board of Directors](#), special assessments of fees and or increases in fees or items such as the removal of board members.

Voting rights and procedures for members of a community association are extremely

important as the right to vote for the Board of Directors and other important issues that affect a member's ownership and use of his or her property are central to an HOA members fundamental interest.

Thus, members of homeowners' associations should familiarize themselves with the applicable bylaws and rules of the community so that the processes and procedures are known and understood. This knowledge will prepare members to vote on important issues with a clear understanding of the processes involved.

This article is designed to provide community members with basic knowledge concerning their rights to vote on various matters related to the administration of the association. While there are some variations in [state law](#) depending on where a homeowners' association is based, these are some general concepts that should provide members with general guidance to issues related to elections.

Rules of Order for HOA Boards

The first place to start in understanding membership voting rights in homeowners' associations is with an understanding of the rules of order that apply to such elections. It will vary based upon the community bylaws as well as applicable state law.

Some associations have adopted a system which is known as [Robert's Rules of Order](#) to govern the basic procedures for elections and other related matters. However, in some cases, Robert's Rules of Order actually conflict with state law so associations must understand the hierarchy of legal authority when carrying out the rules.

Most community associations have detailed bylaws and [Covenants, Conditions, and Restrictions](#) (CC&Rs) and other Corporate documents that lay out the specifics on election procedures such as those items requiring membership votes. Thus, the first place to start is to look at the homeowners' association's bylaws to gain a basic understanding of the rules that apply elections.

Whether an HOA is governed by Robert's Rules of Order or not will depend largely on the state in which the association sits and when the association is formed. Parliamentary procedures are also typically governed by the same rules as elections in general which may be Robert's Rules of Order as noted above, depending on the association.

Notice Requirements for Annual and Special Meetings

The method and timing of notice for [annual and special meetings](#) of community members is generally governed by the association's bylaws, and also by state law. There are some differences in how much notice must be given and how it may be given.

Many states are now authorizing notice via email and more contemporary methods. In the past, generally notice would be given by ordinary mail and typically would require 30 days' notice in advance of an annual meeting and often 10 days' notice of a special meeting, depending on the particular association.

Review of the bylaws of each homeowners' association will provide clear guidance on how much notice is required in a particular situation. Most HOA bylaws also require a greater amount of notice for issues such as amendments to the CC&Rs and bylaws and there are also typically more requirements on what must be included in the notice so that members of the

community are adequately informed prior to the meeting in question.

Voting Methods

There are various voting methods that might be authorized in [HOA elections](#) and related matters. Among those are options such as secret ballot, ballot, proxy as well as other similar types of voting procedures. Which option is used in a particular association will be based upon what the homeowners association's bylaws allow, as well as applicable state law that dictates how such matters must be handled.

Secret ballot is a method that does not reveal the identity of the voter and hence the voter remains anonymous. Another option is simply a written ballot which has the voter's name or other identification on it and is more of a standard form ballot. Voting by proxy is a method where certain voters give their right to vote to another voter to be cast. This is often done when a voter cannot be present at an HOA meeting and perhaps proxy votes are collected in advance of the meeting.

“Majority Vote” and Lack of Quorum

Typically, a “majority vote” means a majority of those members present at a meeting who are entitled to vote on the issue in question. In other words, more than fifty (50) percent of those members present at a meeting who are entitled to vote on an issue.

The other related issue that typically goes along with questions of “majority vote” is whether a quorum of members is present such that a vote can occur. For example, if a particular issue such as elections requires at least fifty percent of all members to be present in order to constitute a “quorum” to transact business at the meeting, then if those numbers are not met, there is a lack of a quorum and there is also a lack of legal authority to conduct the vote on the issue in question.

It is also important to note that certain issues require more than a majority of the members present in order to “pass” a vote. For example, sometimes removal of a board member requires a 2/3 majority of those present and sometimes special assessments and similar issues require a greater level of approval than a majority.

Do Renters Have Voting Rights?

Typically, tenants who are renting properties that are governed by a homeowners' association are not entitled to any rights to vote in elections of the community. The legal right to vote in such membership elections is normally vested with the legal owner of the property.

Challenging an Election

There are several things that could invalidate election results in an HOA. Among those items might be things such as failure to give proper notice as required by the bylaws, fraud in the voting process (for example, a forged ballot or failure to count appropriately cast ballots) or a lack of quorum as required by the bylaws might also be another reason to invalidate election results.

Sometimes in order to carry out a challenge to the election results, members must petition the

court in the jurisdiction in which the association sits. The exact process will vary by state but in general, it is necessary to challenge such an election in court, unless another process is available.

Finding Your Community's Voting Rules

Community members can find out the rules and requirements for membership voting within their association by *a)* reviewing the association's bylaws and *b)* reviewing any other applicable rules and regulations that the association has enacted. Sometimes this requires contacting the secretary or other administrative assistant for the board. Many homeowners' associations also publish pamphlets or provide members with an outline of voting procedures to streamline the voting process.

Changing the Voting Rules

In general, community members who have a desire to change the bylaws must first determine what process is required. This is typically done through a special meeting as may be indicated in the homeowners' association's bylaws. There may be a petition process whereby the member must propose the amendment to the Board of Directors who then place the proposed amendment on a special meeting notice that must be given to members.

Typically, the special meeting notices must note the proposed bylaw change, and also usually requires more significant notice as amendments to the bylaws are viewed as a larger organizational change that requires more notice and typically a greater level of approval than a simple majority.

Court Opinions

Election challenges in homeowners' associations are certainly part of the fabric of litigation that has resulted in HOA communities. Whether the litigation is based upon a failure to give proper notice or the balloting process, there are many cases that have been decided over the years related to HOA elections.

In a recent California case, the Court rejected an argument by a group of homeowners that was objecting to a special vote to amend the organization's CC&Rs to require a smaller percentage of affirmative votes necessary to amend the CC&R's - [Orchard Estate Homes, Inc. v. Orchard Homeowner Alliance, \(2019\) 32 Cal.App.5th 471](#). In this case, the court essentially held firm to the requirements of California law that specify what is required to accomplish an amendment to the CC&R's. The court was unwilling to impose an additional requirement not included in the statute.

Another area of litigation that has been prevalent is whether or not attorneys' fees and court costs are recoverable by those petitioning for relief concerning elections and related matters in homeowners' associations.

In a California case, it was held that an HOA's attorney's fees and costs are generally not recoverable by a homeowners' association if the association prevails in an election dispute. However, if the HOA member prevails in an election dispute, the member does have the opportunity to recover attorneys' fees and costs. [That v. Alders Maintenance Assoc.](#) (Cal. App. Fourth Dist., Div. 3; June 15, 2012) 206 Cal.App.4th 1419.

This is important to note because even if the HOA prevails, it will have the expense of attorneys' fees and costs which ultimately get passed on to all members of the HOA, and the same is true if the HOA loses. For this reason, the cost of litigating election battles can be quite an issue for HOAs.

