Top 15 Questions Regarding Annual Meeting Balloting

By

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MINUTES

All matters, including any of the above agenda items, that were attended to at the meeting and any action approved or taken at the meeting should be summarized in written minutes of the meeting prepared by the secretary or other duly authorized person.

Minutes should be taken of all membership, and shareholder meetings, not just board meetings. The board should, or the bylaws may, designate a particular person, for example, the Secretary, to take minutes of each annual and special meeting. The minutes of each meeting of the members, or shareholders, should be voted on, and approved by, ***the members or shareholders at the next meeting of that group***. Minutes of meetings of the members are not approved by the board. Under the *Corporations Code*, minutes of membership and shareholder meetings, just as minutes of board meetings, must be kept ***in written form***, not on computer disk or on tape. These minutes are among the corporate records which must be available for inspection and copying by a member upon proper written request. However, unlike minutes of board meetings, minutes of meetings of members and shareholders are not subject to the precise requirements of the Open Meeting Act (*Civil Code* Section 1363.05) which provides that minutes of ***board*** meetings be made available to the members or shareholders within thirty (30) days after the meeting and that annual notice be given to the members or shareholders advising them of their right to receive copies of minutes of ***board*** meetings.

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It is hoped that this article has provided helpful guidance to managers and directors who are responsible for overseeing the conduct of elections of directors in community associations and in taking the mystery out of the process.

of shareholders in an election of directors by mailed ballot outside of a meeting. It does provide for a similar process, however, in the form of the written consent of the shareholders but the *Corporations Code* expressly makes that procedure inapplicable to director elections. Therefore the following discussion will be applicable only to community associations which are nonprofit mutual benefit corporations. Even for those associations, election of directors by mailed written ballot instead of at a meeting is not permitted if the bylaws provide for the use of cumulative voting in the election of directors. Accordingly, the following discussion of the written ballot process applies only to incorporated nonprofit associations and only to those whose bylaws do not provide for cumulative voting.

When the association has business to conduct or decisions to make requiring a vote of the members, the board of directors acting on behalf of the association usually has the right to choose either to call a meeting of the members or to obtain the members' votes by means of a "written ballot" which a member fills out and signs and then returns to the association, either by mail, or by personally delivering it. In the case of a "written ballot," the ballot is to be completed and returned to the association without the holding of a formal meeting of the members. Subsection 7513(a) of the *Corporations Code* provides that "unless prohibited in the articles or by laws" association members may take any action without the holding of a regular, or special meeting, if the association distributes a written ballot to every member entitled to vote on the matter in question. Since few associations have an express prohibition in their governing documents, most associations have the option of conducting a vote by distributing written ballots in lieu of calling a meeting of members.

Under *Corporations Code* Section 7514, a written ballot is subject to the same requirements as a proxy. It must set forth the ***proposed action***, must provide an ***opportunity to specify*** approval, or disapproval, of any proposal, and must provide a ***reasonable time*** within which the members may return the ballot to the association. Although unusual circumstances may properly result in a shorter time period, we believe that, generally, a "reasonable time" is a minimum of 30 days after distribution of the written ballot. The *Corporations Code* also requires that a written ballot or the solicitation materials which accompany it state the number of ballots which must be returned in order to meet the association's ***quorum*** requirements and the number or percentage of ballots containing "yes" votes that must be returned in order for the measure to pass. Such a written ballot must clearly inform the members of the ***specific deadline date*** by which the ballot must be returned to the association in order to be counted, and the person and/or address to which the ballot must be returned. Typically, ballots will be returned to the association either by mail or by personal delivery.

The other type of ballot, which may be used by both regular corporations, and nonprofit corporations, is one which is used to obtain the members' vote(s) ***at a meeting***. Examples would be ballots for the election of directors or for the approval of a special assessment or for a vote on a particular proposal.

It is hoped this discussion has clearly illustrated the differences between a proxy and a ballot. And the proper uses of each. In summary, a proxy represents the proxyholder's "right to vote" on behalf of a member, and a ballot represents an actual written vote which is cast, either by a member or by a proxyholder.

PROXY DISPUTES

Sometimes a "proxy fight" can occur at a meeting of members or shareholders. This will often occur in the context of a hotly contested election of directors. In such a case, more than one proxy may be submitted to the corporation on behalf of a member or shareholder, with each proxyholder claiming to be entitled to vote on behalf of the absent person. The *Corporations Code* confers on the corporation, acting through the board or through "inspectors of election" appointed by the board, the authority to determine the validity, or invalidity, of any proxies. The *Code* provides for the appointment of either one (1) or three (3) inspectors of election to act at any meeting. Such inspector(s) when appointed have the power, among other powers, to determine the existence of a quorum; ***determine the authenticity, validity and effect of proxies;*** hear and determine all challenges and questions in any way arising in connection with the right to vote; determine the result of the vote; and do such acts as may be proper to conduct the election, or vote, with fairness to all members or shareholders.

If a board chooses to appoint inspectors of election for any election of directors, it is the Board's prerogative to appoint either one (1) or three (3) inspectors **if the board acts prior to the meeting at which the election is conducted**. If a board has not appointed inspectors of election before commencement of the meetings, one or more community member may request the appointment of inspectors at the meeting and, in that case, the members or shareholders and the proxyholders present vote on whether there are to be one (1) or three (3) inspectors of election. Once that vote is conducted, however, it is the Board which has the authority to designate the specific person or persons who are to serve as inspectors.

Inspectors of election are required by law to perform their duties impartially, in good faith, to the best of their abilities and as expeditiously as is practical. When they have completed performance of their duties, the inspectors should submit a report to the board and the report is *prima facie* evidence of the facts stated in it.

In the absence of inspectors of election, by virtue of its statutory authority (*Corporations Code* Sections 300 or 7210) to conduct the activities and affairs of a corporation and to exercise all its corporate powers, a board of directors has the inherent authority to determine proxy disputes and to rule individual proxies either valid or invalid. Corporate action based on the acceptance or rejection of a ballot consent, waiver, or proxy appointment is valid unless a court of competent jurisdiction determines otherwise based on evidence presented by someone challenging the action who will have the burden of proof.

BALLOTS

As discussed above, a proxy appoints a proxyholder to act in the place of the person who gives the proxy. In contrast to a proxy, a ballot is a legal document by which either a member or shareholder or his or her proxyholder actually ***casts a vote***. There are two types of ballots. One is a ballot used ***at a meeting*** and the other is a ballot on which votes are cast by mail ***as an alternative to holding a formal meeting***. The General Corporation Law does not provide for taking the vote

It is possible, however, to provide that the proxy will be valid for a particular period of time rather than for just a particular meeting. For example, if a member, or shareholder, is going to be away for an extended period of time (perhaps a year's sabbatical), he, or she, may give someone else a proxy authorizing the proxyholder to vote on his or her behalf on any community matters that may come up for vote at any time for the duration of the proxy. Any vote cast by the proxyholder on behalf of the proxy-giver would be valid and binding upon that person as long as it is cast within the period of time specified and in accordance with any instructions stated on the proxy.

Under the *Corporations Code*, although a proxy may set forth a longer period of time during which it may be effective, unless it expressly states a longer period of time it expires by law eleven (11) months after its date. A proxy given by a member of a nonprofit mutual benefit corporation cannot be valid for longer than three (3) years.

Any proxy can be revoked at any time prior to its normal expiration date. A proxy is revoked in any of the following ways: (a) by a written notice delivered to the corporation stating that the proxy is revoked, (b) by a subsequent proxy executed by the person who executed the previous proxy and its presentation at a meeting of the corporation, (c) by the proxy-giver's attendance at a meeting and voting in person, and (d) by the death or incapacity of the person who executed the proxy, but only if written notice of such death, or incapacity, is ***actually received*** by the corporation prior to the counting of the vote.

Some community associations like to use what is known as a "quorum only" proxy. This is a proxy used only for the stated purpose of achieving a quorum at a particular meeting but which does not authorize the proxyholder to cast any vote on behalf of the member or shareholder. Any corporation intending to use such a "quorum only" proxy should be aware that it is not clear whether, under California law, such proxies are valid.

Corporations Code Sections 178 and 5069 state that a proxy is a "written authorization . . giving another person . . . power to ***vote***" on behalf of the person giving the proxy. The *Code* further provides that any member or shareholder may authorize another person or persons to ***act*** by proxy with respect to the membership, or shares, of the person giving a proxy.

Does showing up at a meeting, without performing any affirmative act such as voting on matters presented to the meeting, mean that the proxyholder "acts" with respect to the membership, or shares, of the person giving the proxy? Maybe, but the answer is by no means clear. Thus, any corporation considering the use of a "quorum only" proxy should understand that the validity of such proxies is questionable and should appreciate the risk that it and any corporate decisions made, or actions taken at a meeting where a quorum has been achieved only through the use of "quorum-only" proxies, could be ruled invalid.

does not have to be the board, or any individual member of the board or, indeed, even a member or shareholder, of the corporation. It can be, for example, the member or shareholder's Aunt Martha who lives across town. A proxy is a legal document that, in essence, says: "I hereby give to you [name] the right to vote on my behalf at the meeting to be held on [a particular date]." Upon the execution, and delivery, of a proxy by the member or shareholder, the proxyholder becomes the legal agent of that person with the right to act on his or her behalf and to bind that person by his or her actions.

Because professional consultants to an association, such as the association's attorney or the manager, should maintain their professional relationship with the **association** as an entity, it is usually not a good idea for such persons to be named as proxyholder by an individual member or shareholder. These professionals should also stand clear of association politics including the solicitation of proxies and "signing up" of members or shareholders.

A person giving proxy authority ***may***, but is not legally required to, direct the proxyholder ***how*** to vote on any matter. As will be discussed, the *Corporations Code* requires that a proxy be written so as to provide an ***opportunity*** for the member or shareholder to specify how his or her vote is to be cast.

If the proxy-giving person ***does*** give instructions as to how his or her vote(s) should be cast, the proxyholder is legally bound to comply with those instructions. If no instructions are given, the proxyholder may vote as he, or she, sees fit. However, whether a proxyholder actually complies with instructions is a matter between the member, or shareholder, and his or her agent (the proxyholder) and is not a matter in which the corporation need become involved.

The *Corporations Code* (Sections 604 and 7514) establishes certain requirements for proxies when they are distributed to at least ten (10) members, or shareholders, of a corporation having one hundred (100) or more members or shareholders. It would be prudent for smaller corporations which manage CIDs to also comply with these prerequisites. Under the *Code* requirements, such a proxy must be drafted ***to afford an opportunity for the member or shareholder to specify a choice*** between approval, or disapproval, of each matter, or group of matters, to be voted upon and, further, such a ***proxy must state*** that, where the person giving a proxy to another person specifies a choice, the vote shall be cast in accordance with that choice. While a failure to draft the proxy in compliance with the foregoing requirements will not necessarily invalidate any action taken on the basis of such a vote, such failure may be the basis for court challenge to a proxy and, thus, to the result of the vote.

A proxy is effective for such purposes and for such period of time as it expressly states, subject to certain legal limitations. Usually a proxy is limited to a particular meeting. For example, someone who knows he, or she, will be on vacation at the time of an annual meeting may give his or her next-door neighbor a proxy authorizing that neighbor to vote on his or her behalf at that annual meeting. Once the annual meeting has been finally adjourned, the proxy is no longer effective and the neighbor has no further authority to vote at any subsequent meeting because the authority conferred by the proxy is limited and applies only to the identified meeting. The proxy continues to be effective, however, for any continuation of the original meeting, if it is recessed.

The use of paper ballots is strongly recommended for election of directors for community associations. Paper ballots are required for associations whose bylaws provide for the election of directors by "secret written ballot" and are recommended for all director elections so that a record of the results of the election can be maintained by the association.

In conducting any meeting of members or shareholders, whether annual or special, the board should establish a procedure for identifying the persons (members, shareholders or proxyholders) who are entitled to vote and for providing paper ballots to those persons so that they may cast a ballot as to each matter voted on at the meeting. Having one ballot for each separate matter to be voted on rather than one, "omnibus" ballot is preferred and makes for easier record-keeping. This is especially important in director elections which are often contested and members and shareholders may wish to inspect records to confirm fairness and correctness of the procedures followed as well as the result.

Each association should ensure that clear and orderly procedures are adopted to implement the proper collection of proxies and distribution of ballots to those entitled to vote. In many cases the procedure established by the board includes providing a sign-in table at the entrance to the meeting room staffed by the manager, one or more directors, or other representatives appointed by the board. As each member, shareholder or proxyholder enters the meeting room, he or she signs in. Upon sign-in each person entitled to vote is given the number of ballots to which he or she is entitled. For example, if a particular member owns two lots or units, or is lessee of two apartments in a coop building, he or she would be entitled to two ballots on each matter to be voted on, one for each separate interest owned. Similarly, each proxyholder surrenders his or her proxies and, in exchange, receives the number of ballots to which he or she is entitled based upon the number of proxies held.

With respect to any vote by the members or shareholders of an association, including especially the election of directors, it is essential to understand the difference between a proxy and a ballot.

There is often confusion about the difference between a "ballot" and a "proxy." A proxy and a ballot are two different things and have different functions. Also, in the case of a nonprofit mutual benefit corporation, there are two different types of ballots.

PROXIES

A proxy is similar to a power-of-attorney in that it **appoints** a proxyholder and confers on that person the authority to act in the place of the member or shareholder giving the proxy. By means of a proxy, a member or shareholder, can assign to another person his or her right to vote on matters coming up for vote at a meeting.

The proxyholder can be ***anyone*** the member or shareholder chooses. Although he, or she, often is a director, or an officer, of the corporation (or even the board as a whole), the proxyholder

A. Call To Order
B. Establishment of the Presence of a Quorum
C. Reading and Approval of Minutes of the Previous Meeting of Members or Shareholders (whether annual or special)
D. Announcements
E. Presentation of Reports (of officers, committees, others)
F. Nomination and Election of Directors (at an annual meeting and, if appropriate, a special meeting)
G. Other Business
H. Adjournment

NOMINATION AND ELECTION OF DIRECTORS

Before an election of directors is conducted, candidates must be nominated. Often a nominating committee has produced a slate of candidates for election to the Board. The names of those candidates should be formally placed into nomination at the meeting. This is typically done by the chairman of the nominating committee announcing the names of those candidates selected by the committee and then nominating them ("I nominate the following individuals . . . .") Some community association bylaws provide for nomination of candidates by petition signed by a certain number or percentage of the members or shareholders and filed with the Board. In these associations, the chairman of the meeting will usually place the names of all candidates nominated by petition into formal nomination at the meeting. Most bylaws also provide for nominations to be made from the floor at the meeting. After the nominating committee's slate of candidates and any candidates nominated by petition have been nominated, the chairman of the meeting will usually call for nominations from the floor. Any member or shareholder, or the proxyholder of a member or shareholder, may then nominate one or more persons for election to the Board.

Nominations do not usually require seconds. When it appears that there are no are no further nominations from the floor, the chairman will call for a motion to close nominations. A motion is then made and seconded, and then a vote on the motion is taken. When nominations have been closed, the election is conducted. If an association's bylaws or election procedures provide for verbal statements by the nominees, those statements are presented to the meeting. When it is time for the vote, ballots should be disseminated to those entitled to vote if they have not already been distributed and the members or shareholders or the proxyholder of any member or shareholder will complete the ballot by marking it to identify those nominees for whom the votes are being cast. The completed ballots will be placed in a ballot box if one is provided or otherwise collected as provided under the association's procedures.

Except where the corporation's bylaws provide otherwise, the vote of members or shareholders at a meeting may be by a show of hands, by voice vote or by formal paper ballot. Although a paper ballot is not a legal requirement, it is clearly the preferred way for members, or shareholders, to cast their votes on any matter of significance because, unlike a vote by hands, or by voice, a vote by ballot allows the corporation to document the vote that was actually cast and the result of the vote.

simply be announced by the President or by the board. The *Corporations Code* requires that a majority of those members, or shareholders, present either in person, or by proxy, must approve such recess or adjournment.

Two provisions of law should be kept in mind with reference to reconvened meetings. First, as noted above, with regard to any reconvened meetings conducted under decreased quorum requirements, the *Corporations Code* specifies that the only matters which may be voted upon, if the meeting is attended by less than one-third (1/3) of the voting power of the membership, are those matters "the general nature of which was given with the notice of the meeting." Second, the *Code* provides that ***no*** meeting, either annual or special, may be recessed or adjourned for more than 45 days from the date of the original meeting.

One frequently hears about a "majority of a quorum" being required for approval of certain proposals. This term, however, 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 or shareholders actually present in person or by proxy***.

PARLIAMENTARY PROCEDURE

The Davis-Stirling Act at *Civil Code* Section 1363(c) requires that meetings of association members, or shareholders, must be conducted in accordance with "a recognized system of parliamentary procedure or such parliamentary procedures as the association may adopt." This provision applies to membership, or shareholder, meetings only and not to meetings of the board of directors or of a committee. "Parliamentary procedure" means a set of rules for conducting meetings in an orderly manner. The purpose of parliamentary procedures is to ensure that meetings are run fairly, democratically and in such a manner that everyone has an opportunity to participate, consistent with business being conducted efficiently. Although there are other "recognized" systems of parliamentary procedure, probably the best known and most commonly used is Robert's *Rules of Order Newly Revised.* Although it is now required by law that membership, or shareholder, meetings be conducted in accordance with ***some*** parliamentary procedure, it is not required that an association follow Robert's *Rules of Order* or any other established parliamentary procedure. An association has a ***choice*** to follow ***either*** some generally recognized system of parliamentary procedure, such as Robert's, ***or*** a set of its own specially adopted rules and procedures. One possibility would be a set of rules and procedures for the conduct of meetings ***based upon*** Robert's *Rules of Order*, but as ***modified*** to reflect the community's particular circumstances and needs. Before proposing any particular set of parliamentary rules and procedures, a board of directors would be well advised to consult with the association's attorneys.

Under a system of parliamentary procedure, a meeting would normally be conducted in accordance with a pre-established schedule such as the following:

There are special provisions in *Corporations Code* Sections 601(c) and 7511(c) governing Notice of a membership, or shareholder meeting, called at the request of the permitted percentage of the members or shareholders. When at least the specified percentage of the members or shareholders wants to call a special meeting, they may present a written request to the board, or to the president, vice-president, or secretary of the association.

Upon receiving such a request, the board should first verify that the required minimum number of members or shareholders has actually signed the request and that the subject matter of the request is properly voted upon by the members or shareholders. If they have, the board has twenty (20) days from ***receipt*** of the request to give written Notice to all members or shareholders 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*** or **60 days** after that date with respect to nonprofit corporations and regular corporations, respectively. If the board does not respond to a legitimate request of members or shareholders for a special meeting, the requesting group themselves may give Notice of the meeting, or they may request the Superior Court to order the meeting held.

ACHIEVING A QUORUM

A "quorum" is the ***minimum*** number of members who must be present at a meeting, either in person or through a proxy, in order for the members to conduct any business at that meeting which includes any election of directors. Most association bylaws we have seen provide that at least a majority of the voting power is required to establish a quorum. The Nonprofit Mutual Benefit Corporation Law now provides that one-third (1/3) of the voting power, i.e., of the total votes of the entire membership, shall constitute a quorum except that the bylaws may set a different quorum requirement. The General Corporation Law does not include a similar provision for stock corporations and the "default" quorum provision in the *Code* continues to be a majority of the total voting power.

Both portions of the *Corporations Code*, and many bylaws, provide that, if an insufficient number of members attend a meeting, those who are present may "recess" or temporarily "adjourn" the meeting and it may then be reconvened at a later time. At such a reconvened meeting a ***lesser*** percentage of the total voting power than is required in the fist instance may be sufficient to establish a quorum, if the bylaws explicitly say so. This reduced quorum requirement allows a corporation, in the event of continued poor turn out, to still conduct important business in a relatively timely fashion.

Whether or not the bylaws allow for a reduced quorum, if a meeting is recessed or adjourned to a later time, a new written notice of the new time and place is ***not*** required as long as that information is announced before the original meeting is recessed, or adjourned, and as long as the time for reconvening that meeting is not longer than forty-five (45) days after the original date. It is important to note, however, that a decision to recess or adjourn a meeting to a later time cannot

might otherwise not be aware of when, or where, the annual meeting is held and increase the chances of achieving a quorum at the meeting.

Corporations Code Sections 600(d) and 7510(e) identify those who may call a special meeting of the shareholders or members. Under these provisions, it is the board, its chairman or president, "or such other persons, if any, as are specified in the bylaws" who may call for a special meeting of the members or shareholders. Thus, the bylaws may legitimately provide who may call a special meeting of members in a particular community in addition to those persons identified in the *Corporations Code*.

Section 7510)e) further states that special meetings of the members of a nonprofit mutual benefit corporation may be called at the request of five percent (5%) or more of the members, and under Section 600 a special meeting of shareholders of a regular "for profit" corporation may be called by shareholders entitled to vote at least ten percent (10%) of all shares. ***Also under the Corporations Code it is the Board, not the requesting members, who determine the date, time and place of the Special Meeting***, as long as the Board acts within 20 days to schedule the meeting within the time period established by law.

GIVING PROPER NOTICE

Closely related to but separate from the question of **who** may call a meeting is **how** is a meeting scheduled? It is scheduled by giving written notice of the date, time and place of the meeting in accordance with the *Corporations Code*. The Code states that Notice of a meeting may be given by personal delivery, or by mail, either first class, registered or certified. It provides that, if personally delivered, or mailed by first class, registered or certified mail, written Notice of meetings of members is to be given ***not less than 10 days nor more than either 60 days or 90 days*** before the date of the meeting, depending on whether the corporation is a nonprofit corporation or a regular corporation. The 60 day period applies to a general corporation, the 90 day period to a nonprofit corporation. If a board chooses to transmit its Notice by mail other than 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 and regardless of which type of corporation is involved.

Typically, bylaws will itself include a provision governing the time frame within which Notice of a meeting must be given to members or shareholders. As long as a bylaw provision is not inconsistent with the *Corporations Code* requirements, that provision is valid and should be complied with. For example, a bylaw provision requiring that Notice of a meeting be given to members or shareholders "at least 15 but not more than 60 days prior to the meeting," although not the same as the *Corporations Code*'s 10- to 90-day or 10- to 60-day requirement, is ***within*** the *Code*'s limits, and is thus proper, and should be complied with. A Notice mailed to members on the ***10th*** day preceding the meeting, however, while in compliance with the *Corporations Code*, would not comply with the association's tighter bylaw requirement and could be subject to challenge. The corporation's Notice of any meetings of members or shareholders should, therefore, comply with its bylaws.

CONDUCTING DIRECTOR ELECTIONS

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Usually once each year, a community association[1] will conduct an election of directors. In some associations all directors are elected every year for terms of one year each. Other association's have provided for "staggered" director terms with only some, but not all, directors being elected each year to terms which are usually either two-year or three-year terms.

The bylaws normally include procedures for the proper calling, notice and conduct of meetings of members or shareholders, whether regular or special. While it is unusual, special meetings are sometimes called to elect directors in mid-term where, for one reason or another, there is a vacancy on the board which has not been filled by the remaining directors . Incorporated associations and corporations which manage cooperative apartment buildings will also find legal direction in the applicable provisions of the California *Corporations Code*. This article will discuss the distinctions between calling annual and special meetings, the ways to properly give notice of meetings of members and shareholders, quorum requirements, conduct of meetings and the differences between proxies and ballots and how they should and should not be used. It will also discuss the differences between the General Corporation Law which applies to many cooperative corporations and the Nonprofit Mutual Benefit Corporation Law which applies to most homeowners associations.

CALLING THE MEETING

A corporation's bylaws will usually designate either the particular ***day*** each year (e.g., the first Tuesday in March) or the ***month*** each year in which the annual meeting of members or shareholders is to be held. Even when the bylaws provide that the annual meeting is to be held on a particular day of a particular month, the board of directors is charged with the obligation of "calling" the meeting. This is done by sending a written Notice to the members or shareholders informing them of the date, time and place of the annual meeting. In addition to carrying out the *Corporations Code* requirement, sending a Notice of the meeting will also serve as a helpful reminder to members shareholders who

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[1] In this article the term "community association" will be used to include both traditional homeowners associations which manage condominium projects, planned developments and other common interest developments which are managed by nonprofit associations and cooperative corporations which are either nonprofit corporations or general stock corporations which manage cooperative apartment buildings. For simplicity's sake, all of these organizations will be referred to by the general term "association" even though in some instances that may not be technically correct.