

COUNSEL'S COMMENTS

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“GOOD STANDING”—WHAT DOES IT MEAN?

Increasingly in recent years, community association elections and politics have become more contentious. As a result, the right to vote in elections and the eligibility to serve as a board member have been challenged more frequently. Increasingly in recent years, community association elections and politics have become more contentious. As a result, the right to vote in elections and the eligibility to serve as a board member have been challenged more frequently.

A common ground for contesting the legality of a person's vote or qualification to serve on the board has been whether or not that person is in “good standing”, which is not a term which is utilized or defined under the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1, et seq. Rather the Act merely refers to “the members entitled to vote” with respect to voting rights and expressly provides that the trustees need not be members of the corporation unless the Certificate of Incorporation or Bylaws require other qualifications for trustees. N.J.S.A. 15A:6-1.

Generally, however, the bylaws of community associations do require that, with the exception of sponsor representatives, members of the association must be unit owners and that only unit owners can serve on the board. In addition, “good standing” requirements are often prescribed by the governing documents. By way of example, a “Member in Good Standing” is commonly defined as a “Unit Owner who has, at least thirty (30) days prior to the date fixed for any meeting or other Association action, fully paid all installments due for assessments made or levied against him and his Unit by the Board, together with all interest, costs, attorneys' fees, penalties and other expenses, if any, properly chargeable to him and to his Unit.”

In addition, many community association bylaws require that “Membership in Good Standing” shall be a qualification of any nominee or appointee to a trusteeship and for continued service on the Board.”

Clearly, most of the foregoing discussion is straight forward. However, it does not address the frequently recurring situation where title to a unit is held by only one spouse or co-owner or by children of the permanent occupants, primarily for liability or estate or other tax purposes. Indeed, it is a familiar scene where spouses serving on a community association board have been challenged or removed when it was discovered that record title was held by their spouse. These circumstances suggest that it is time for community associations and their attorneys to be more creative in order to attempt to avoid such situations and to permit otherwise qualified residents to serve their communities.

Obviously, one way to rectify this situation would be for the bylaws to be amended to permit any permanent member of the same household to be eligible to serve as a trustee provided that the consent of the record owner is obtained.

Another approach would be to cause a deed to the unit to be executed which would, for example, provide for joint ownership consisting of a “99% ownership interest for one spouse and a 1% interest for the other spouse.” A power of attorney from the record title holder to the spouse or other permanent resident of the same household might be a still different way to accomplish the same result, even though it may be more problematical from a legal standpoint.

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fer of voting rights to another permanent member of the household, proxies would seem to be the appropriate method. Clearly, a proxy can be given to any other person, so that this technique is not restricted by law or under the governing

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documents. The important thing to keep in mind is to obtain the proxy of the unit owner if the household member who casts the vote is not the record owner, either according to the records of the association or in fact.

In summary, the problem of who is a “Member in Good Standing” is arising more frequently. Associations should be aware of the circumstances in today’s society which give rise to the problem and address them, either through the amendment of the governing documents or by advice to their residents as to how they might comply with the requirements and to avoid being disenfranchised of their right to vote or of their eligibility to serve on the association board. ■

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