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New Trustee Election Procedures Mandated by PREDFDA: Planned Real Estate Development Full Disclosure Act

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On July 13, 2017, a new law was enacted in New Jersey amending the Planned Real Estate Development Full Disclosure Act (PREDFDA). While primarily governing the development of community associations (homeowners associations, condominium associations, and co-ops) PREDFDA also has many requirements relating to their operation and governance.

The new amendments to PREDFDA were created in reaction to litigation involving a community called the Radburn Association, which lacked by-laws that mandated fair and open trustee elections. However, the amendments will also apply to community associations which do have by-laws with seemingly-sufficient election procedures, and that may be a surprise to many community association board members and managers. A few of these important provisions which relate to board elections are summarized below.

Some of the provisions apply to all community associations, no matter how many units, and are effective immediately:

- Proxies used in board member elections must contain a prominent notice that states: use of the proxy is voluntary on the part of the granting owner, that the proxy can be revoked at any time before the proxy holder casts a vote, and that absentee ballots are available.
- If proxies are used for a board member election the association must make absentee ballots available.
- Good standing – as applied to voting in board elections, voting to amend by-laws, and nominating or running for a position on the board – is defined as payment of all assessments and other proper charges to the unit. It does not include rule violations even if the by-laws define it that way. For master deed or declaration amendments or other actions involving good standing – except voting in board elections, voting to amend the by-laws, or nominating or running for the board – the definition of good standing as set forth in the by-laws would apply.

Associations with 50 or more units must follow their by-laws but must also comply with the following requirements no matter what their by-laws say; these do not take effect until October 1, 2017:

- Board terms shall not exceed 4 years; board members may, however, run for successive terms and may continue to serve until a successor is elected.
- The “call for candidates” must be provided to unit owners at least 30 days before the notice of election meeting is mailed. (For example, if the notice of election meeting is being mailed on October 1, the “call for candidates” must be provided to unit owners no later than September 1.)
- The “call for candidates” must inform unit owners they have the right to nominate themselves or other association members in good standing to run for the board.

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- The nomination deadline shall not be less than 14 days from the mailing of the “call for candidates”. (For example, if the “call for candidates” is mailed to unit owners on October 1, the nomination deadline must be no earlier than October 15.)
- Regardless of any nomination deadline in the “call for candidates”, nominations must remain open until absentee ballots and proxies are mailed to unit owners. (To avoid reprinting, boards and managers will want to ensure that printing and mailing are done at the same time.)
- Absentee ballots and proxies may not be mailed earlier than (a) the day following the nomination deadline, or (b) where there is no nomination deadline, the business day prior to the mailing of the notice of the election.
- Written notice of the election meeting must be provided no less than 14 days and no more than 60 days prior to the meeting.
- Notice of the election shall be delivered by personal delivery, mail, or electronic means (if permissible – see below). When mailing, the notice is effective when deposited in a mailbox with proper postage. Notice by electronic means is only permitted if (a) the unit owner has agreed in writing to accept notice by electronic means, or (b) the governing documents permit electronic notice and provided another form of voting by absentee ballot or proxy is available.
- Notice of the election meeting must include a proxy ballot and an absentee ballot (unless prohibited by the by-laws). There is some debate over this language. One must consider that if the by-laws permit voting in person and by proxy only, they essentially prohibit voting by absentee ballot. On the other hand, this provision could be interpreted as requiring an absentee ballot unless the by-laws expressly prohibit them.
- Candidate names must be listed in alphabetical order on ballots.
- Voting by electronic means must be accepted if the board decides to employ such voting and the unit owner consents to casting a vote in that manner.

Associations with fewer than 50 units also have requirements for board elections under the new law which are not as extensive. Most communities likely have by-laws or election rules that already require these provisions (notice of election, nomination and voting procedures for members in good standing, opportunity for owners to review candidacy qualifications, available information on when and how to vote, counting of ballots and verification of eligibility to vote, etc.)

[Read the full text of the PREDFDA amendment here.](#)

Community association board members and managers are bound to have questions about these election procedures for their first trustee election on or after October 1. Legal counsel should be consulted to ensure compliance where necessary.

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