



Radburn's ELECTION REQUIREMENTS for Smaller Communities

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Much has been written about the impact that P.L. 2017, c.106 – commonly referred to as the Radburn Law – and regulations promulgated under the legislation by the Department of Community Affairs (DCA) in 2020, have had on common interest communities in New Jersey. While much of the Radburn Law and its attendant regulations apply equally to communities of all sizes, the law has separate requirements related to elections for communities with less than 50 units. For property managers and attorneys that represent associations of various sizes, it is important to recognize these distinctions when preparing smaller associations for their elections.

For communities with 50 or more units, the Radburn Law imposes specific requirements on all aspects of the election process including the term length for members, the nomination of candidates, meeting notice requirements, the tabulation of votes, tenant voting rights, etc. For communities with less than 50 units, however, the Radburn Law simply requires that the association adopt election procedures that meet minimum requirements. These procedures must include provisions that address the following questions:

- **How will members be given notice of the election?**
- **How can members nominate themselves or other members in good standing as a candidate in the election?**
- **How will the qualifications of candidates be reviewed to confirm that the candidate is qualified for election to the board?**
- **How will the association ensure that its members can be provided access to information on how and when to vote?**
- **How will ballots be counted and the eligibility of voters be verified?**

Such procedures must be in conformance with the association's governing documents. For example, if the bylaws require the association to send notice of the meeting no later than fourteen (14) days prior, the board cannot adopt procedures that allow for a shorter notice period. Further, the DCA has adopted regulations that place some additional limitations on smaller associations. With respect to notice,

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the regulations require the timeframe to be between fourteen (14) and thirty (30) calendar days prior to the election. The regulations also require that any member in good standing can be nominated or can self-nominate themselves as a candidate. At least fourteen (14) days before the election, the association must notify any resident who is not in good standing and must



"The association must keep any depository for physical ballots secured."

provide the reason why. The notice must state that the resident can contest that the resident is not in good standing by requesting alternative dispute resolution.

Provisions for write-in candidates may be established in the bylaws of the association. In the event a write-in candidate receives sufficient votes to be elected but is not eligible, such candidate shall not be deemed to have been elected. If this results in a vacancy on the board, the eligible candidate receiving the next highest

number of votes shall be deemed to have been elected.

There are additional provisions of the Radburn Law and its regulations that apply to associations of all sizes as well. These include the following:

1. Frequency of Elections. If the association's governing documents do not provide a specific time or interval, elections shall be held at two-year intervals.

2. Proxies. If an association allows proxies to be used, the proxy form prepared by the association must contain a prominent notice that use of the proxy is voluntary on the part of the granting owner, that it can be revoked at any time before the proxy holder casts a vote, and that absentee ballots are available.

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Absentee ballots must be made available if proxies are permitted.

3. Voting. The association must keep any depository for physical ballots secured. The ballots must be cast anonymously. This typically requires the use of a double envelope system where the voter will cast his/her vote on an unsigned ballot, seal it in an unmarked envelope, and then seal that envelope into a larger envelope which is mailed or otherwise provided to the association. Whereas the counting of votes for associations must be con-

ducted in a manner consistent with the Nonprofit Corporation Act, the Radburn Law expressly provides that such requirement is not imposed on associations with fewer than 50 units, meaning that in these smaller associations, the tabulation of votes can be conducted in a method that works best for that association as set forth in their election procedures.

4. Allocation of Votes. Each owner shall be entitled to an equal number of votes per unit except (a) where the governing documents provide for the voting interest to be proportional to a unit's value or size, (b) where the governing documents permit more than one vote to be cast by each unit

on an equal basis or a basis consistent with each unit's value or size; or (c) where the governing documents do not set forth the number of votes that may be cast by each unit, then in accordance with a rule adopted by the board that allows more than one vote to be cast by each unit, provided such rule assigns an equal number of votes to each unit.

5. Low- and Moderate-Income Housing. Election procedures cannot be established that would prohibit participation by the residents of low- and moderate-income housing units.

6. Petition for Election. If an association has not held an election in compliance with its governing documents in two or more years, it must hold an election within 90 days of the submission of a petition signed by 25% or more of the members in good standing, or the minimum number of members in good standing that constitute a quorum, whichever is greater.

7. No Board. If an association has no board members, any association member or group thereof may, at common expense and upon written notice to all owners, petition the court for authority to act temporarily on behalf of the association and to organize an election.

While the rules differ somewhat between associations with fewer or greater than 50 units, the spirit of the Radburn Law and its regulations provide the same requirements for associations of all sizes: that association elections be conducted in a manner that is fair, equal, and transparent. ■



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