

# JULY 2007

## Changes to Virginia Law Affect Some Association Annual Meetings

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Those community association clients that are located in Virginia **and** that are incorporated as non-stock corporations should review their annual meeting and election procedures to confirm that the association's procedures are updated to reflect the newly enacted legislation that significantly revised the Virginia Non-Stock Corporations Act (Va. Code Section 13.1-801, *et. seq.*).

While some of these changes were briefly reported to you previously in our May 2007 client memorandum, the amendments to the Virginia Non-Stock Act that were adopted on July 1, 2007 that relate to the obligations of an inspector of election and the criteria to review and accept proxies warrant a more detailed discussion.

Specifically, Section 13.1-847.1 of the Act, as amended, now requires any persons appointed as election inspectors to oversee the election of directors at a membership meeting to **sign** and take an oath to faithfully execute their duties as an inspector with strict impartiality and according to the best of his or her ability.

Section 13.1-847.1 of the Act further requires appointed inspectors of election to: a) ascertain the number of members and voting power of each, b) determine the number of members represented at a meeting and the validity of proxies and ballots, c) count all votes, d) determine, and retain, for a reasonable period a record of the disposition of, any challenges made to any determination by the inspectors, and e) certify their determination of the number of members represented at the meeting and count all of their votes. The Act allows election inspectors to retain the assistance of other persons or entities in the performance of their duties, which would permit those members of the Association who are appointed as inspectors to obtain the assistance of the Association's managing agent in performing the election inspector's duties.

Even if management staff assist the election inspectors in performing their obligations to determine quorum, the validity of proxies and ballots, the counting of votes and the certification of the election results, it is the appointed inspector that must sign a written document attesting that the inspector has

“faithfully executed their duties.” As a result of these obligations and oaths, we anticipate that it will be increasingly difficult to find owners who are willing to serve as inspectors of election and who will sign an oath to that effect.

It is important to note that the inspector of election requirements required by the Act are not required to be implemented by any unincorporated associations in Virginia. Also, the Act does not require those associations that are incorporated in the Commonwealth of Virginia to appoint any inspector of election unless the appointment is mandated by the association’s articles or incorporation, bylaws or duly adopted election procedures policies. In our experience, the articles, bylaws and policies of our incorporated community association clients vary on the procedures governing the election of directors, and some, but not all, incorporated community associations required to appoint inspectors of election. Consequently, it is important to review your association’s governing documents prior to your association’s next annual meeting to determine whether the Association is required to have inspectors of election. If so, then the new rules governing the appointment and functions of inspectors of election set forth in Section 13.1-847.1 of the Act will be binding on the Association.

On a related note, Section 13.1-847.1 of the Act also allows a Board of Directors to adopt policies allowing the Association to accept as a written ballot those ballots or instructed proxies that are submitted electronically by a member or the member’s proxy as long as the electronic transmission that accompanies the ballot or proxy includes sufficient information for the Association to confirm that the ballot or proxy was authorized by an association member. Like the legislation affecting inspectors of election, this provision of the Act concerning electronic transmission of proxies is only applicable to incorporated associations.

If your Board is interested in adopting a policy allowing for the electronic transmission of proxies or if you have any questions on the implementation of the rules affecting inspectors of election, please contact any one of our community association attorneys.