



# Community Association Management Insider®

Helping You Run Your Condo or Homeowners Association Legally and Efficiently

**DECEMBER 2016**

## FEATURE

*Online voting can not only save you time and money, but also increase member participation.*

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## Make the Transition to Online Voting for Board Elections

Much of the national conversation and controversy regarding the 2016 presidential election has centered on the integrity of the voting process. Speculation that voting results can be influenced by hacking has been in the media. And whether high-tech interference with the voting process is a reality or an unfounded fear, it's still worth considering. So is it a good idea to use technology for board elections at your community? Most likely, issues like hacking aren't even on a community association manager's radar, but making the community run better certainly is. So if you want to streamline elections at your community, use online voting for members. Here's what you need to consider when making the decision about whether online voting is right for you.

### Factors to Take Into Account

Community association websites are ubiquitous and incredibly useful. They've paved the way for boards to switch from paper to online balloting, to save money and make the process easier. Although online voting has been around for several years, it hasn't caught on at all communities—and the demographic of some communities is directly related to its popularity. For example, aging-in-place community members might not be as tech savvy as young families or professionals in condominium buildings in urban areas. Computer availability among members is potentially the most important factor, as they—or in some cases, smartphones that have a data plan—are necessary for online voting. So take a look at the breakdown of community members according to tech savviness and availability of resources to cast online votes.

You'll need to also revise your bylaws to accommodate online balloting while continuing to offer voting alternatives to members who don't have online access or are intimidated by the process.

Know that, typically, an association seeking to take its election online will hire a company that specializes in online voting. The online voting company will have its own secure data collection methods, by which votes will be tabulated. An outside vendor allows for voter

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## Online Voting

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confidentiality and security in a neutral, third-party environment. This shields the board from possible voter fraud accusations by disgruntled members whose preferred candidates weren't elected.

### Benefits to Online Voting

If you're on the fence about using an online voting system, here are the immediate benefits:

**Cost effectiveness.** Not only will you save money on printing ballots, but you also save tabulation costs associated with ballot returns. Often, an association will hire an accountant to count the votes and to certify the election results. With an online balloting system, the system will count the votes. It's fully auditable and anonymous.

If your community's governing documents allow you to notify your members of an upcoming election or other vote by email, rather than by traditional mail, you can save on the cost of postage. If a board that proposes to change a bylaw is required to provide the full text of the governing documents along with its proposal, the cost of postage can be significant. Meanwhile, notifications through email and PDF attachments of governing documents can save an association in postage.

**Increased voter participation.** Once paper ballots are mailed, it's often difficult to communicate with voters to encourage them to vote and mail the ballots back or to show up at a specific voting site. This method requires work on the voter's part.

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## Online Voting

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An online election system will allow emails to be sent as broadly or as targeted as needed. After sending email notices, you can send targeted mail reminders to members who have not yet voted.

Most associations see a significant increase in voter participation when they move from paper to online balloting. Convenience is a big consideration in the increase.

**Everybody is included.** An online balloting system can accommodate paper ballots for those members without access to computers or who choose not to vote online. So associations can still process paper votes if they use a company that has an administrative section where paper votes can be collected and then manually entered into the system by an administrator.

**Scalable voting systems.** Election vendors can offer different packages depending on the number of members; some companies can accommodate management companies responsible for multiple associations, thus saving time and money across the board.

### Successful Transition Indicators

Will your association easily make the jump to online voting success? There are some telltale signs. The more online-based applications an association has adopted, the greater the chance for a smooth transition from paper to online ballots. When an association already has an online-based infrastructure in place, the association knows who its members are and has the means to communicate with them online. A robust association website has up-to-date member lists that an election vendor will then input into its own database and customize for a community.

Also, with a good website, association members are already accustomed to paying dues and receiving e-newsletters. So online voting for these communities becomes a natural extension of the services offered on the website. Election vendors can offer a hosted application that can carry the look and feel of the association website.

### Increase Member Participation

Be aware that online voting isn't a "build it, and they will come" scenario. If members are fired up about an election, they will vote regardless of the medium. As a result, member participation is an outcome of election marketing and how invested the members are in the community. Ideally, you'll have an effective association website that gathers current email addresses. These email addresses can be used to explain issues, send newsletters, and, generally, to get the word out about the election.

Don't underestimate online discussion forums that can help create a sense of community. The more ways you can reach members and foster a sense of community, the more they will participate and feel engaged in the process. Hosting a debate takes a lot of effort, but if that's too much, you could place online videos of candidates' statements on your association's website, which will not just be

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informative, but also create excitement about the upcoming election and generate the type of member participation you see.

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**PRACTICAL POINTER:** Set up a voting demonstration at an open meeting. Members can view the sample ballot online and try out the system. This will create a buzz about the move to online balloting. But make sure to consult the association's attorney before using online voting. Some state laws have specific requirements for board elections.

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## Make Your Job Easier

Elections are time-consuming, from accepting nominations to publishing the results, but they are one of the most important global things that a manager can handle for her association. Taking advantage of online balloting to save yourself from having to dedicate an inordinate amount of time to the process, which, without an online method, entails printing ballots and biographies, mailing election packets, collecting them, and tallying, tabulating, and publishing the results. That's time that could be better spent managing the community in a way that pleases members, regardless of who ultimately is elected to serve on the board. ♦

## Q&A

### Collecting Rent from Delinquent Members' Tenants

**Q** Some of the economically distressed members in the community I manage have decided to lease their homes to tenants to help cover their expenses. At the same time, the landlord-members seem to have made paying assessments a low priority and may have become delinquent. Can an association collect rent directly from a tenant to pay any delinquent assessments? If so, what is the best way to do this?

**A** Although the economy has steadily improved since the downturn several years ago, that doesn't mean that individual members are out of the woods financially. The effects of that recession are lingering for some people, and it sounds like your members might be some of them. Some associations are dealing with weakening finances because a percentage of their members still are unable to pay their assessments on time for various reasons. You should take the following steps to ensure you can collect rent from tenants.

### Check Governing Documents for Additional Collection Powers

Standard collection powers in typical governing documents allow an association to impose late fees, apply interest to outstanding balances, impose liens for past-due assessments, and grant the association power to foreclose on the association liens.

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Many community association documents will allow for further collection powers such as suspension of use and services. An association may suspend a delinquent member's right to vote, to use a recreational facility, or to use some services paid for as a common expense, such as Internet or cable.

One special collection power is the assignment of rent to the association. Rent assignments allow an association to demand that a tenant of a delinquent owner submit all monthly rental payments to the association until the member's delinquency is paid in full. Without this clause or some other language in the governing documents allowing for a "rent assignment," an association would have to go through a court procedure and basically sue the member, get a judgment, and obtain a court order to collect the rent from the tenant.

Your association can pursue only those collection remedies that are permitted under your governing documents. If your documents do not contain a provision for an assignment of rent, you can amend your governing documents to include one. You can use our *Model Bylaw: Create Right to Collect Delinquent Assessments Directly from Tenants* to amend your governing documents to allow for this specific collection power.

**Add Assignment of Rent Clause to Lease Addendum**

Some governing documents say that if a member is leasing his home, the member has to include a clause in the lease that states that the tenant has to abide by the governing documents. And the tenant will sign that he has received a copy of the governing documents. This, in effect, will put the tenant on notice of the assignment of rent provision.

A clearer way to put the tenant on notice is to not only amend the governing documents, but also require a lease addendum to the lease between the member

*(continued on p. 6)***MODEL BYLAW****Create Right to Collect Delinquent Assessments Directly from Tenants**

Here's a model bylaw that you can adapt and use to create the right for your association to collect rent directly from a delinquent member's tenant. Check with your attorney before adapting this bylaw for use at your community.

**LIABILITY FOR ASSESSMENTS**

When a Member who is leasing his or her Unit fails to pay any Annual Assessment or other Assessment or any other charge to be paid by the Member to the Association pursuant to this Declaration for a period of more than thirty (30) days after it is due and payable, then the delinquent Member hereby consents to the assignment of any rent received from the Tenant during the period of delinquency, and upon request by the Board, Tenant shall pay to the Association all such rent until all unpaid amounts owed by the Owner to the Association have been paid in full. All such payments made by Tenant shall reduce, by the same amount, Tenant's obligation to make monthly rental payments to Member. The above provision shall not be construed to release the Member from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible.

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**Q&A***(continued from p. 5)*

and his tenant that includes this assignment. The lease addendum creates a contractual relationship among the member, the tenant, and the association that is helpful in the event assessment payments from the owner fall behind schedule. For an example of a clause to add to your community's lease addendum, see our [\*Model Contract Language: Add Assignment of Rent Clause to Members' Lease Agreements\*](#).

**Collecting Tenant Rents Through Receivership**

In some special cases, associations have been collecting rents directly from tenants through a court-sponsored receivership process. A receiver is an independent third party, unrelated to the association or the member, appointed by a court to take possession and control of the property. If the property is already rented when the receiver takes possession, the receiver is typically able to collect rent directly from the tenant that would otherwise have been paid to the member.

Collecting rents through receivership gained popularity during the recession in states such as Florida where foreclosure rates and the number of absentee owner-members were extremely high. But it still is used today. In these special instances, a bank has commenced foreclosure proceedings against a member but not taken possession of the unit, the association has filed a lien against the delinquent member for past-due assessments, the delinquent member has declared bankruptcy, and the member has a renter in the unit and is collecting rent.

*(continued on p. 7)***MODEL CONTRACT LANGUAGE****Add Assignment of Rent Clause to Members' Lease Agreements**

Here is model language to add to a lease between a member and his tenant. You can add this language with a lease addendum. An addendum states additional terms, conditions, and rules that are incorporated into the lease between the tenant and the member. The following clause puts both the tenant and member on notice of the association's right to collect rent from the tenant if the member is delinquent. Be sure to show this clause to your association's attorney. State law may dictate changes and deletions.

**ASSIGNMENT OF RENT**

If at any time during the term of the lease, including any extension or renewal thereof, Landlord becomes delinquent in the payment of any amounts owed to the Association, the Association, at its option, may demand and receive payment from Tenant of all such amounts due or becoming due, up to an amount sufficient to pay all sums due from Landlord to the Association, and any such payment from Tenant to the Association shall be deemed to be a full and sufficient payment of rent to Landlord in accordance with the Lease, and Tenant shall be discharged from any obligation to pay such amounts directly to Landlord so long as such payments are made to the Association, until Landlord's delinquency to the Association has been fully cured. Furthermore, Landlord and Tenant agree that if Tenant receives a bill from the Association containing the amount of any such delinquency, it shall be conclusive proof of the amount owed to the Association and may be relied upon by Tenant in paying said delinquency to the Association in lieu of rent to Landlord.

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Under the receivership program the association itself does not go into receivership. The receiver is appointed by the court for only those units that are currently under foreclosure by the association, or which may become under foreclosure in the future, and which are occupied by a tenant paying rent. As with almost all association issues, you should consult your attorney for guidance. ♦

## DEALING WITH MEMBERS

### Keep Grip on Meeting Where You Allow Members to Speak

To encourage member participation in community affairs, many boards permit association members to attend and speak at board meetings, even when the bylaws do not give the members that right. But if a member speaks too long, rambles off topic, or intentionally antagonizes the board or other members, he makes it hard for the meeting to be productive.

Clearly, the answer is not simply to forbid members to attend board meetings. A number of states require open board meetings, and a wise board recognizes the value of member input, even vigorous debate. The key is to control the input so that the meeting can proceed and the board can tend to the business for which it was elected.

So how can you allow your members to speak at your board meetings without losing control over the meeting? Below we'll give you seven things to do to accomplish this, and a Model Bylaw that you can use to incorporate these recommendations into your board meetings.

#### Silencing Dissent Can Lead to Lawsuits

Trying to silence member dissent can lead to problems that quickly get out of hand. This not only hinders the management of the association, it can also cost a lot of money if a lawsuit comes to fruition. To raise the money, your association might have to assess its members.

#### How to Control Member Input

The goal for your association should be to encourage member input at board meetings while still allowing the meeting agenda to proceed efficiently. Of course, you don't have to give as much leeway for member comment during regular board meetings as you should during the annual meeting of the membership, which is the members' main forum to express their opinions. You can do this by creating a bylaw that allows members to speak during regular board meetings, yet gives the board the flexibility and authority it needs to keep the meeting from getting out of hand or dragging on too long.

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## Dealing with Members

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You can also create a member comment period by establishing rules, rather than a bylaw. Choose whichever best suits your needs, but either way, it's a good idea to write procedures down, rather than just rely on the board to exercise good judgement. While most boards will do so, not all will. Also, having an established procedure reassures your members that the process will be fair, which will help increase members' trust in their board.

### What Bylaw Should Say

Your bylaw, like our *Model Bylaw: Member Comment During Board Meetings* should:

**Schedule member comment period for early in board meeting.** Plan to hold the member comment portion of your meeting early in the agenda [Bylaw, par. 1]. There are several reasons for this:

Members become frustrated at having to sit through a long meeting just to be heard; they'll appreciate being allowed to speak early in the evening.

Most members will leave the meeting after having an opportunity to speak. That will make it easier to get onto all of the other business the board usually needs to cover.

Many board actions are taken without the need for a vote of the membership. For such actions, if the member must wait until the end of the meeting to speak, whatever it was that he wanted to talk about may already have been decided. This will only lead to resentment and a feeling of alienation by the member. Usually, members just want to feel they're being listened to.

An early member comment period makes it easier for the board to control the duration of the meeting. By setting aside a specific amount of time for member comment early in the meeting you can end that part of the meeting by saying it's time to move on to other business. But if you leave the comment period until all other business has been concluded, there's nothing else to move on to and so no need to terminate member comment. It's especially a problem if the meeting is being held in the community clubhouse, where there is no specific time by which everyone must leave.

**Set aside specific amount of time for member comment, but remain flexible.** Set aside a specific amount of time for member comment. But also say the board can, in its discretion, increase or decrease that time period. Give the board the flexibility to use its collective common sense to increase or decrease the member comment period, depending on the situation on any given night [Bylaw, par. 2]. It's a mistake to make the bylaw too rigid, though. You need to leave the board some wiggle room.

The board should have the flexibility to set aside more or less time for member comment based on: the number of people at the meeting who wish to speak; the amount of other business that the board must get to on the night in question; and how controversial the issues before the board are, because that will affect how much each member might want to say.

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For a routine meeting, 30 minutes is a reasonable amount of time to set aside for member comment. If it seems as though a lot of members will want to speak at the meeting, the board president can make an announcement at the start of the meeting that the time for member comment will be increased that night.

**Authorize board to call special meeting if necessary.** If any topic to be discussed is especially controversial and will inspire a lot of comment from the members, the board should have the additional option of calling a special meeting to discuss that issue only. At that special meeting, the board can set aside however much time for member comment it seems necessary [Bylaw, par. 3].

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### MODEL BYLAW

## Member Comment During Board Meetings

### MEMBER COMMENTS

1. **Member Comment Period.** Following the recital of specific topics of business to be discussed, each regular meeting of the Board will include a member comment period ("Comment Period") during which any member in good standing who wishes to speak will have the opportunity to do so, time permitting.
2. **Length of Comment Period.** This Comment Period shall not exceed 30 minutes in its entirety, unless the majority of the Board, in its sole discretion, determines that a longer time is warranted.
3. **Special Meetings.** If the Board determines that more members wish to speak on a particular issue than time will allow, the Board shall have the option but not the obligation to call a special meeting of the Board for the purpose of allowing all members to speak on that particular issue. Should the Board choose to call such a special meeting, it shall hold such meeting within a reasonable time of the then current meeting.
4. **Individual Time Limits.** The President or acting chair of the meeting may place reasonable limitations upon the time given to each member seeking to comment, to allow sufficient time for as many members as possible to comment.
5. **Sign-Up Sheets.** During the week before the scheduled Board meeting, a sign-up sheet will be made available in the management office or any other central location as the Board may select. Any member wishing to comment at the ensuing Board meeting may add his/her name to the sign-up sheet. Members will be recognized for comment at the Board meeting in the same order as their names appear on the sign-up sheet. All members wishing to comment who have not placed their names on the sign-up sheet will nonetheless be permitted to speak, time permitting. The President of the Board or acting chair shall, to the best of his/her ability, allocate minutes to each member for comment so as to allow as many members as possible to speak.
6. **Curtailment of Member Comment.** Should the President or acting chair determine that any member has spoken for a sufficient amount of time, the President or acting chair shall have the authority to instruct that member to yield the floor, and that member will be obligated to comply with the President or acting chair's instruction.
7. **No Obligation.** Anything herein to the contrary notwithstanding, the Board is not obligated to permit all members wishing to speak an opportunity to do so, nor is it required to permit any member to speak for however long that member may wish. The failure to provide an adequate Comment Period or opportunity for each member wishing to comment to do so will not be a basis upon which any action otherwise properly taken by the Board may be voided.

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## Dealing with Members

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**Authorize board to allocate speaking time among members.** It will be up to the board to decide how long each member gets to speak. To do this, the board will have to take into account how many others wish to speak and how much other business the board still has to get to, among other factors. The board should try, to the best of its ability, to allot time so as to give everyone who wants to speak a chance to do so [Bylaw, par. 4].

**To determine the order in which members can speak, give priority to members who sign up in advance.** To make sure the members know that the board is impartial about whom it allows to speak and in what order, it's a good idea to have a sign-up sheet available in the management office, or some other central location, during the week before the meeting. At the meeting, the members will be given a chance to speak in the order in which they signed up [Bylaw, par. 5].

But don't go overboard. Don't allow members to speak only if they signed up in advance. That's not the purpose of the sign-in sheet. Use it only to decide the order in which the members get to speak.

Those members who didn't sign up should still get a chance to speak after those who did sign up have finished. And the board still should try to allot the minutes given to each member so that everyone gets a chance to speak, whether they signed up or not. Again, in order to do this, you must remain flexible with each member's time limit and with the overall time limit for the member comment period.

**Authorize board president to tell disruptive member to step down.** Even with a bylaw setting out the rules for orderly member participation, you may from time to time encounter a disruptive member. To prepare for an encounter with such an individual, give your board president the right to tell that member that his time to speak is over and that he must step down [Bylaw, par. 6].

**Tell members that inadequate member comment period will not void any actions taken by board at the meeting.** It's important to tell your members that the board is not under an obligation to allow every member who wants to speak to have a chance to do so. No state or federal law requires a member comment period. The members have that right only to the extent and in the form that your bylaws define it. So as long as your bylaw or rule says so, the fact that a member feels as if he was not given enough—or any—time to speak doesn't invalidate any actions the board takes at that meeting [Bylaw, par. 7].

## Dealing with Disruptive Members

If a member refuses to stop talking after his allotted time has ended or otherwise disrupts the meeting, use a three-step process:

**Step #1:** The meeting chairperson should issue an oral warning that if the member continues to disrupt the meeting, either it will be adjourned or the police will be called to remove the individual.

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## Dealing with Members

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**Step #2:** If the member continues to disrupt the meeting, the meeting chairperson should call a recess and speak directly to the member, reiterating that either the meeting will be adjourned or the police will be called.

**Step #3:** If the member still refuses to cooperate, the meeting chairperson can choose whether to adjourn the meeting to another time or to call the police. If you decide to call the police, you can have the member removed as a trespasser. Most community association members have the right to use the common elements only to the extent that their behavior conforms to the association's rules and regulations. Or you can have the member removed as a disorderly person.

But it's important to realize that each one of these options depends on the specific circumstances. A member who is voicing an opinion that the board doesn't like isn't necessarily disrupting the meeting. The board needs to realize that the rantings of a person who lacks credibility in the community will not carry much weight, and if the board reacts in too heavy-handed a manner, it will only lend credence to the member's comments. ♦

## RECENT COURT RULINGS

### ► Adult Supervision Rule for Playground Was Discriminatory

**FACTS:** A married couple who owned a home in a planned community sued the homeowners association and its property management company for housing discrimination, negligence, and unfair business practices. They alleged that the overly broad community rules requiring adult supervision effectively prohibited their children from playing outside in the common areas, apart from a small playground onsite at the complex.

**DECISION:** A California trial court ruled in favor of the members.

**REASONING:** The court noted that in regards to an adult supervision rule used for common areas in a planned community or condominium building, if the restriction is overly broad, then it is not valid. Here, the members have pleaded facts that demonstrate discrimination under a theory of disparate treatment: the playground has a sign that states "children under the age of 14 must be accompanied by an adult at all times." They also received notices that state the community streets are "not intended to be used as a playground for children." The trial court ruled that the restriction was too broad and therefore not enforceable. ♦

- Caldera v. Aliso Villas Condo. Assn., October 2016