

***SUCCESSFULLY AMENDING YOUR GOVERNING DOCUMENTS:
A CHECKLIST FOR EFFECTIVE SOLICITATION***

Communicate. Communicate with the Members early and often regarding the proposed amendments and the reasons they are being proposed. This can be done through notices or articles in the association's newsletters and in separate mailings.

Distribute. Distribute the proposed amendments in draft form to all members and provide for a Member comment period before initiating a formal vote on the proposal(s).

Solicit. Solicit Member approvals by the use of written ballot voting under *Corporations Code* Section 7513 (unless the development is small and has a high likelihood of attracting enough members, in person or by proxy, to a formal meeting). The solicitation materials should include:

- A. A brief cover letter, encouraging a "yes" vote (preferably signed by all directors to show unanimous board support);
- B. A summary explaining the proposed amendments in plain English;
- C. A ballot complying with *Corporations Code* Section 7513; and
- D. A copy of the complete text of the amendments.

WARNING: Although some associations only send summaries of the amendments to reduce expenses, this practice is very questionable because it exposes the association to subsequent challenges to the approval process based on claims that the summary did not accurately present the proposed amendment.

NOTE: If a draft of the amendment was sent to each Member during the Member comment period and the subsequent changes are few, mailing costs can be minimized by sending only the final revisions with the ballot. If final revisions or an "errata" sheet is used, however, the solicitation materials should clearly state that copies of the final draft of the proposed amendments, including all revisions resulting from the Member comment period, will be mailed to any Member on request.

Encouragement. To encourage responses, print the ballot on a pre-addressed, stamped postcard (if space permits) or include a stamped, return envelope. (If members must search for a stamp or prepare an envelope, the response percentage is very likely to decline.)

Balloting Period. Establish an initial balloting period of 30 to 45 days and reserve the right (on Board approval - in an open meeting) to extend the balloting for two additional periods of 30 days each if a sufficient number of Members do not respond during the initial balloting period.

- A. During the first extension, the board or management company should send a follow-up letter, containing a ballot clearly marked "second ballot" (on a different color paper), to Members who have not responded.
- B. During the final extension (if needed), send a letter on the stationery of the association's legal

counsel to Members who have not responded. This letter should receive more attention than routine association correspondence. It may be beneficial for the letter to contain a report on the status of the balloting to date (unless the vote was announced as a secret ballot), and to note the additional expense that will be incurred if a petition to approve the amendments by court order becomes necessary. In no event should any solicitations contain a statement such as “please vote, because the failure to vote has the same effect as a ‘no’ vote.” Although apathy is probably the principal cause when the ballots are not returned, opponents of the measure can use such comments to argue in any subsequent court proceeding that those members who failed to participate in the vote were consciously voting “no” by failing to return their ballots.

Grass-Roots Campaign. If, as the prescribed balloting period draws to a close, only a few votes are needed to gain approval, the board may want to organize a telephone or door-to-door solicitation campaign, or both, in the final days or weeks of the balloting period.

Newsletters. If the association is scheduled to publish one or more newsletter issues during the balloting period, include in the newsletter follow-up solicitations and additional copies of the ballot.

Petition to Amend. Keep a record of all critical dates and member communications during the entire drafting and voting process. That record will be a vital exhibit or declaration filed with the court if a petition seeking court-ordered approval of the amendments is necessary under either *Corporations Code* Section 7515 or *Civil Code* Section 1356.