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### **Board of Directors: Can Board members be elected without a quorum?**

A quorum is required for an election of Board members (or any other action) at an Association's meeting to have effect. Each Association's Governing Documents should specify the procedures for electing Board members,<sup>1 2 3</sup> including the number of votes constituting a quorum.<sup>4</sup>

If a quorum is not met, an Association has two options for filling vacant Board member positions:

- 1) the Association may set another meeting for a later date to elect the Board.<sup>5</sup> If there are incumbents on the Board, those directors will continue holding office until an election with a proper quorum is held; or
- 2) the existing Board members may appoint new members to fill Board vacancies for the duration of their unexpired terms, provided that the Governing Documents do not limit their authority to do so.<sup>6 7 8</sup> For all Associations, the Board has the power to fill vacancies unless the Bylaws or Articles provide a different method.

Board members remain in office until their terms have expired, and continue in office after that until a new director is either "elected" or appointed.<sup>9</sup> It is not uncommon for an Association's Board to be comprised of directors appointed by other directors and to have no "elected" Board members because a community cannot get a quorum of Association members to elect the Board over a period of years.

If an Association has difficulty achieving a quorum to elect a Board, its members may amend the Governing Documents to

lower the quorum requirement. The Association may also use proxies or directed proxies to effectively allow for voting without attending the meeting. Those proxies or directed proxies may be returned by mail, email, fax, etc. More members may submit votes if they do not have to appear in person.<sup>10</sup>

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<sup>1</sup> RCW 64.34.324 (Bylaws) provides:

(1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies...

<sup>2</sup> RCW 64.38.030 (Association bylaws) provides:

Unless provided for in the Governing Documents, the bylaws of the association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

<sup>3</sup> *The Old Act is silent on the manner of electing Board members. RCW 64.32.250(2) (Application of chapter, declaration and bylaws) provides:*

*All agreements, decisions and determinations made by the association of [unit] owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all [unit] owners.*

<sup>4</sup> For detailed information about quorums, see chapter entitled: "Quorums: What are they and how are they met?"

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<sup>5</sup> Each community's Governing Documents must be examined to determine the rules specific to that community.

<sup>6</sup> RCW 64.34.308(2) (Board of directors and officers) provides, in relevant part, that "the Board of directors may fill vacancies in its membership of the unexpired portion of any term."

RCW 64.38.025(2) provides, in relevant part, that "the board of directors may fill vacancies in its membership of the unexpired portion of any term."

<sup>7</sup> *RCW 24.06.135 (Vacancies) provides:*

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed, as the case may be, to fill a vacancy, shall be elected or appointed for the unexpired term of his or her predecessor in office.

<sup>8</sup> *RCW 24.03.105 (Vacancies) provides:*

Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining board of directors even though less than a quorum is present unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office.

<sup>9</sup> For Associations incorporated under the Nonprofit Corp. Act, RCW 24.03.100 (Number and election or appointment of directors) provides, in pertinent part, that "each director shall hold office for the term for which the director is elected or appointed and until the director's successor

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shall have been selected and qualified.” The Governing Documents may provide that appointed Board members serve only until the next election.

For Associations incorporated under the Nonprofit Misc. Mutual Corp. Act, RCW 24.06.130 (Number and election of directors) provides, in relevant part:

... directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

<sup>10</sup> RCW 64.34.340 (Voting – Proxies) (applicable to New Act and Old Act condos). For more information, See chapter entitled: “Proxies: How is their validity determined?”