

14--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, including the number of votes constituting a Quorum.¹

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.² If there are incumbents on the Board, those directors will continue holding office until an election with a proper Quorum is held;³ 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.⁴ 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.⁵ 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 over a period of many years. Washington courts are unlikely to invalidate actions taken by an unelected Board, provided that the members have attempted to obtain a Quorum to hold annual elections pursuant to

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their Bylaws and have acted consistent with relevant statutory requirements.

In December of 2016, a Washington appellate court looked at the issue of a Board comprised only of appointed members. It held that even though the Association failed to reach a Quorum for at least seven years, while the Board Members' terms were for one year, the appointed Board Members had full legal authority to act for the Association and impose assessments.⁶ The court noted that the Association had attempted, every year, to reach a Quorum and elect new Board Members. In the absence of a Quorum necessary to hold new elections, the court found that the Board Members were entitled to—and indeed had no other choice—but to continue holding their respective positions or appoint new members when someone resigned.

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.⁷ Those Proxies or directed Proxies may be returned by mail, email, fax, etc. WUCIOA also authorizes voting through absentee ballots and some Governing Documents set out a process for nominating and electing Board Members by mail.⁸ More members may submit votes if they do not have to appear in person.

¹ 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.

The New Act, at RCW 64.34.324 (Bylaws), requires that:

(1) Unless provided for in the Declaration, the Bylaws of the association shall provide for:

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- (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...

The HOA Act, at RCW 64.38.030 (Association Bylaws), similarly requires that:

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;

WUCIOA, RCW 64.90.435 mimics these provisions, stating:

(1) Unless provided for in the declaration, the organizational documents of the association must:

- (c) Specify the qualifications, powers and duties, terms of office, and manner of electing and removing board members and officers and filling vacancies in accordance with RCW 64.90.410 of this act...

² Each community's Governing Documents must be examined to determine the rules specific to that community.

³ *Parker Estates Homeowners Ass'n v. Pattison*, 198 Wn.2d 16, 28-29 (2016) ("Thus, when no board member is elected, as occurs when no quorum can be garnered, directors can continue to serve until an election occurs.")

⁴ The New Act, at 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."

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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.

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.

"Stated simply, until a valid election for a director position, the term of the director does not expire, so the board can continue to appoint willing individuals to fill vacancies in such positions." *Parker Estates* at 29.

WUCIOA, RCW 64.90.310 continues this practice:

- (4) The board may not, without vote or agreement of the unit owners:
 - (d) Elect members of the board, but may fill vacancies in its membership not resulting from removal for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of board members...

⁵ 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 shall have been selected and qualified."

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.

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This has been confirmed by the courts. *Parker Estates* at 29. (“The effect of [the statutory appointment power and Bylaw 3.4] is that an officer’s term of office is for one year or, if no election occurs, extends until the election of his or her successor.”)

WUCIOA, RCW 64.90.310(1) addresses this issue directly and also approves, stating:

- (c) Unless provided otherwise in the declaration or organizational documents, board members and officers must take office upon adjournment of the meeting at which they were elected or appointed or, if not elected or appointed at a meeting, at the time of such election or appointment, **and must serve until their successor takes office.**

⁶ *Parker Estates*, 198 Wn. App. 16, 22 (2016). The association had failed to obtain a quorum and hold an election for the previous six years, and thus the Board members had either held their positions since the previous election or had been appointed by the Board when their respective predecessors resigned. The court rejected the owners’ argument that the board lacked the authority absent an election, finding that the association had “attempted to duly elect board members every year” and that “in the absence of a quorum of its membership, it [was] permitted to remedy that situation by interpreting and acting pursuant to [its] Bylaw[s], RCW 64.38.025(2), [and] RCW 24.03.105,” all of which allowed the board members to continue serving in their respective positions, or to appoint others to replace them, until a quorum could be achieved and a new election held. *Id.* at 31.

⁷ RCW 64.34.340 (Voting – Proxies) (applicable to New Act and Old Act condos.)

⁸ WUCIOA, RCW 64.90.455

- (3)(d) Whenever proposals or board members are to be voted upon at a meeting, a unit owner may vote by duly executed absentee ballot if:
 - (i) The name of each candidate and the text of each proposal to be voted upon are set forth in a writing accompanying or contained in the notice of meeting; and
 - (ii) A ballot is provided by the association for such purpose.
- (4) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.