



## **C-IHC Election Guide**

***This informational guide covers the basics of the Election Law (aka “The Radburn Law”) and how it applies to residential common-interest communities in New Jersey***

New Jersey’s 2017 election law and the 2020 election regulations are binding on all associations in the state. Collectively they provide for many requirements, including who can vote, advance notices for elections, that ballots be secret, the open counting of votes and access to ballots.

Following are some basic election provisions provided in the law. To see all the details refer to the statute: NJSA 45:22A-45.2 , 46 & 47 and implementing Regulations, NJAC 5:26-8.9, 10,11,12,13,& 14. NOTE: the following information does not include changes to the law relating to bylaws or open meetings.

### **What Are the Fundamental Aspects of this Law?**

The legislature recognized that associations are creatures of State law and have significant influence over the lives of the residents. It recognized that it would be unfair and contrary to American democratic values if those governing these associations were not elected in a fair and open manner.

Although all the requirements apply to associations with 50 or more units, those that are smaller must adhere to certain requirements. In associations with fewer than 50 units, homeowners have basic rights to advance notice of elections (at least 14 but not more than 30 days), a right to vote (which includes voting-eligible tenants when authorized by the association’s governing documents), and the right to serve if they win and are qualified to be a candidate and to non-fraudulent counting of ballots.

There is to be one vote per unit if the governing documents do not provide for a larger number of equal votes per unit. There can be no discrimination on residents in low or moderate units.

### **Who Can Vote in Elections?**

All owners and (if the governing documents and the owner permit in writing) tenants are eligible to vote if the owner is in good standing. (In this guide, use of “owners” when discussing voting, includes voting-eligible tenants). To be in good standing, an owner must

either have fully paid all lawfully assessed association obligations, or be in compliance with a settlement agreement for payment of association obligations or, if there is a dispute concerning financial obligations, have it pending in alternative dispute resolution or a court proceeding. To be eligible to vote as a tenant, in addition to the basic requirements, the owner of the tenant's unit must be in good standing.

In owner-controlled associations when there are multiple owners of or residents in a unit, only one owner in a given unit can serve on the board at any one time.

Anyone *appointed* to the board in order to fill a vacant seat is subject to an election within a year of the appointment.

Although associations can hold candidates' meetings and request that candidates submit resumes, participation is voluntary and cannot be made a condition of eligibility. A ballot will list candidates who submit their names but must make room for as many write-ins as there are positions available if bylaws authorize write-ins.

In associations with fewer than 50 units, the association must notify any owner it deems not to be in good standing of their status a minimum of 14 days prior to the election. In larger associations, the notice must be given 30 days prior to the election. In both cases, the notices must include the right to seek alternative dispute resolution (ADR). In the 50 or over associations, the owner can remedy the deficiency up to five business days prior to the election. (The law is silent on this aspect for associations with fewer than 50 units.)

### **Who Can be Nominated to Run for Election to the Board?**

Owners can nominate themselves or other owners in good standing as candidates. The law provides that association bylaws can include provisions for write-in candidates. A notice of the right to submit for candidacy must be sent a minimum of 30 days prior to the notice of election and owners must have a minimum of 14 days to act on candidacy.

### **When and How Must Associations Hold Elections?**

Associations must hold board elections in accordance with governing documents that do not conflict with the specifics in the law. Additionally, any association specifics must adhere to the requirement that elections are fair and open. If governing documents do not set an interval, elections must be held every two years. If an association is not in compliance with its governing documents or the law's election schedule, 25 percent of the owners in good standing can petition for one to be held. The petition can be submitted to any current board member. If that occurs, the association must hold an election within 90 days of the petition's submission. (Note: If governing documents provide for a greater than 25 percent to constitute a quorum, that percentage applies to the petition.) Also, if there is no sitting board or remaining board members, any owner or group can petition a court of competent jurisdiction (at the association's expense) to authorize the owners to hold an election which shall be scheduled within 90 days of the court order.

Governing documents can provide for specific board representation for those in different types of units and owners in such units can nominate candidates to represent their unit types. Low- or moderate-income units must have a board position dedicated to representing their interests. Although only owners in such units can vote for their representative, the person holding that position need not own such a unit but need only be an owner in good standing. Whether or not the right to vote for a specific seat precludes those owners from voting for at-large candidates is not specifically addressed, and is an open question. Considering that those in different types of units also have a general interest in the operation of their association, it would be consistent with the law's intent to also allow them to vote for general board seats.

### **What Election Notices Must Associations Give to Owners?**

Associations must give written notice of an election to owners (which term includes eligible tenants) at least 14 days but not more than 60 days prior to the election date. (These are *calendar* and not business days). If the governing documents provide or the owner agrees, the notice can be by electronic means.

The notice shall include a proxy and absentee ballot with the names of nominated candidates. At least 30 but not more than 60 days before that notice, the association must inform owners of the right to nominate themselves or others as candidates. Thus, if the minimum notice period is used, 44 days prior to the election owners would need to be informed of the right to submit their candidacy.

### **What are the Voting Rules?**

Where governing documents provide for electronic delivery of ballots, the association must also provide another form of voting directly or by proxy.

All ballots must be secret. For hard copy ballots, associations often use a two-envelope method with the outer one establishing eligibility and the inner one containing the ballot with no voter identification. In addition to ballots, associations can use proxies but they must include notification that use is voluntary, that it can be revoked before cast and that absentee ballots are available. Anytime proxies are used, absentee ballots must be made available.

Ballots must contain the names, in alphabetical order by last name) of all nominated candidates who are in good standing. The names must be in the same size and font type and color but shall not indicate whether the candidate is an incumbent.

In electronic voting, although the person or entity conducting the vote may know the identity of the voter, such recipient must maintain confidentiality the same as for hard-copy ballots.

When voting, if the bylaws provide for write-in candidates, owners have the right to write in votes for any eligible owner and thus ballots are to leave write-in spaces for as many seats are up for election.

Ballots must be maintained in a secure location until opened publicly.

## **What are the Rules for Counting Ballots?**

Ballots shall be opened and tallied publicly. Any owner can inspect the ballots for a period of 90 days after the election. Following covid restrictions, opening and tallying may be made available visually electronically in real time.

The law does not define “publicly.” When ballots are tallied in person at a physical location (as opposed to electronically), associations can reasonably apply the standards for the location of association open meetings at which the board takes binding votes. Associations are permitted to employ both in-person and electronic tallying.

## **What Are The Terms of Office?**

The maximum single term of office is four years (despite what association governing documents may provide), but an incumbent can remain until the election of a successor. The law does not provide a minimum length for a single term. Associations typically have board seat terms of one, two or three years or a mixture of them.

Although there is a limit on the length of a term to which a candidate can be elected, there is no limit on how many terms for which a candidate can be successively elected. Association governing documents can be more restrictive on this and may limit the number consecutive terms. It is an open question whether this conflicts with the law’s provision that the only standard for eligibility for election is being in good standing. However, considering the law’s admonition that elections be conducted in accordance with an association’s governing documents, it is likely not to be perceived as a conflict.

## **Can Board Members be Appointed?**

A board or (if authorized in the governing documents), the board president can appoint an owner to fill a vacant position. (The law prohibits a board from extending the term of a current member.) As noted above, the law permits only necessary appointments.

An appointed board member must stand for election within a year of appointment and does not serve out the term of that position. However, note that it is not unheard of for a person to resign and reconsider. Such a person could be appointed back to the board but would then have to stand for election within a year. If, however, an election is underway when the person reconsiders, such person should be made to submit as a candidate.

## **What About Umbrella Association Board Elections?**

Sometimes groups of independent associations share some elements in common (often roads or recreational facilities). In these cases an “umbrella association” (aka, a “master association”) manages these common elements. That association has a board that oversees operation and maintenance of facilities (or services) that are shared by the independent

associations. Members of the umbrella board must be elected by the owners of units within the umbrella association, except where the individual subsidiary association governing documents provide that each subsidiary elects its umbrella board member or the association board appoints representative(s) to the umbrella board. The same election rules apply to umbrella board elections as for any other association.

### **Can Owners Recall or Remove a Sitting Board Member?**

Owners can initiate the removal of an elected board member by a petition to the board signed by 51 percent of association members. An election must be held within 60 days of receipt of the petition unless an annual meeting is held before that date, in which case the election shall be at the annual meeting. Owners must get notice about the removal vote at least 14 days prior to the meeting. The law provides that owners must be in good standing to vote and be nominees, but it does not include that provision regarding eligibility to sign petitions.

An association can only remove a board member in accordance with bylaws or for good cause directly affecting the member's ability to serve.

Any board member who ceases to own a unit is ineligible to continue to serve.

Mere disagreement with the board majority is not grounds for removal.

Boards cannot remove a member for allegedly violating a confidentiality agreement without first affording the member alternative dispute resolution (ADR). To justify removal, the ADR provider must conclude that the facts show a breach that adversely affects the interests of the association, as opposed to those of the board.

### **Quorums & Post Election**

Association governing documents often set a fixed percentage or number of ballots to be cast or received in order to have a valid election. The law does not directly address this matter, leaving it to each association's governing documents. If a quorum is not obtained, the association must refer to its governing document provisions regarding how to proceed. An association may have provisions to hold a new election or to continue the election to solicit more votes. Regardless, the requirement remains that an election be held in accordance with the association's schedule, which, based on the maximum term of offices, effectively means no more than every four years. The failure to achieve a quorum can be taken to mean that effectively there was no election, so the time continues to run or a new election must be scheduled.

The law does not provide for the timing of when newly elected members are to be seated following the election. Owners must look to their governing documents and past procedures regarding the interval between election and seating. In the absence of specific provisions, typically the need for an election is triggered by the expiration of an incumbent's term. Because

an incumbent can only continue to serve until a successor is *elected*, the seat is effectively vacant until the person elected is seated.

### **How Are These Rules Enforced?**

An owner who believes they can document that the association is not in compliance with the election law can file a complaint with the [Department of Community Affairs \(DCA\), Bureau of Homeowner Protection, Association Regulation Unit \(ARU\)](#). To do so, the owner must complete and file such complaint forms as may be required. (Check the DCA's website.) One can expect to have to submit basic association information as well as a brief explanation of the election concern that you contend violates the law (as opposed to one grounded in perceived governing document violations).

Remember that the person reviewing the submission has no knowledge of the particular situation and most likely is dealing with many complaints, so take care to ensure that specifics are relevant and useful (e.g., don't use names without titles). If your complaint alleges that a provision in the association's governing documents conflicts with the election law, you should submit a copy of the pertinent portion(s) of the governing document (not the entire document).

### **A Final Note**

It is rare for any law on a broad topic such as elections to address every conceivable situation that can arise, and this law does not. Thus, in many cases there may not be a clear answer. It may turn out that, if the State cannot work out a solution, it may be necessary to litigate since there are numerous nuances that exist within the concept of a fair and open election.