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LEGISLATIVE UPDATE

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The theme of this month's magazine is "Checks, Balances, and Bylaws — the Governance Guide." In my legal practice, I have definitely seen a push in the last year or so by many associations seeking to update their original bylaws. I typically suggest a "two-step" process: (1) have the board make all amendments required by law in an open board meeting; and, (2) submit whatever other revisions that may be desirable to a vote by the owners either in a special meeting or pursuant to the negative vote protocol. However, there is a third voting protocol that is often overlooked and which may be useful in some scenarios. This protocol involves taking action on written consent without a meeting. The advantage of this process is that in a Title 15A corporation (like most condominiums and HOAs), the vote can be "left open" nearly indefinitely until enough unit owners sign off.

N.J.S.A. 15A:5-6 states, in pertinent part, that:

Except as otherwise provided in the certificate of incorporation or bylaws and subject to the provisions of this subsection, any action required or permitted to be taken at a meeting of members by this act, the certificate of incorporation, or bylaws, other than the annual or biennial election of trustees, may be taken without a meeting upon the written consent of members who would have been entitled to cast the minimum number of votes which would be necessary to authorize the action at a meeting at which all members entitled to vote thereon were present and voting, if (1) the corporation provides to all other members advance notification setting forth the proposed action consented to, (2) the proposed action is not consummated before

the expiration of 10 days from the giving of the notice and 20 days from the giving of the notice in the case of any action taken pursuant to chapter 10 of this act, and (3) the notice sets forth the existence of such 10-day period.

For the action on written consent to be successful, the association must assume that 100% of owners voted and must reach the majority required by the amendment provi-

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sion of the bylaws. For example, if the bylaw amendment provision requires a vote of a majority of members at a meeting at which a quorum is present, then in order to succeed you must obtain the consents of a majority of ALL owners. Typically, this is not an issue as many bylaw amendment provisions are already based on a plurality based on all owners, not just those in attendance at a meeting where a quorum is present.

Typically, the process would be as follows:

1. The board approves an appropriate resolution conditionally approving the bylaw amendments and submitting same to the consent procedure;

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2. A solicitation to owners is sent, and consents are collected;
3. When the requisite amount of consents are obtained, the 10-day notice is sent to all owners and the action is taken upon the expiration of the 10-day period.

This process may be very useful in scenarios where an amendment may be rejected under the Radburn 10% negative vote protocol, but where it may be difficult to obtain a supermajority vote in a special meeting. It is also useful in smaller associations to avoid the time and expense of having to conduct a special meeting.

In other news, we are pleased to report that S3992 has now passed both the Assembly and the Senate, and is on the Governor's desk for signature. As noted last month, these changes impact the reserve funding law requirement in several ways, including, among other things:

- a. A definition of "Adequate" reserves, which defines ade-

quacy as reserves not project to fall below zero during the 30 year life of the study.

- b. It requires that reserve provides present associations with a "baseline" funding alternative. It also expressly permits funding plans with escalating contributions.
- c. It corrects a typographical error in the original legislation that might cause one to believe that only associations subject to the structural integrity inspections must update reserve studies at least every five years.
- d. For a limited five-year period, it permits associations to fund reserves at only 85% of the baseline funding level, but only if the board provides a notice to owners (in large font) that the reserves are not being adequately funded and when a projected loan or special assessment may be required to bridge the gap. Purchasers of the unit must also be provided with the notice.

