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NOTICE

PROXIES

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THE PROXY

Next: the proxy. "Proxies are statements by a shareholder or unit-owner authorizing another person – the proxy-holder – to vote his/her shares or common interests," explains Bruce Cholst, a partner at the law firm Rosen Livingston & Cholst. "Since the issuing apartment-owner is not typically present at the association's meeting to affirm his statement, the proxy must designate a specific proxy-holder; the failure of an issuing apartment owner to deputize a particular person to cast his votes renders the proxy form useless. Since the proxy is a personal delegation of power, it must be issued to an individual. The document must contain language empowering the proxy-holder to cast the issuing apartment-owner's votes."

If your governing documents allow it, send out proxies with the notice of meeting. "There are a number of cooperatives and condominiums that don't even permit proxy voting," says attorney Mark Hankin, a partner at Hankin & Mazel. "Voting is either done by voice [in a conference call] or in person."

Be aware of the different types of proxies. "There are some proxies that merely give the proxy-holder the right to vote for the quorum so the meeting can be held," observes attorney Stuart Saft, a partner at Dewey LeBoeuf. "There are also proxies that give the proxy-holder the right to vote the shares or units. And then there are proxies that provide that, unless the proxy-holder gives specific instructions on how to vote, the proxy-holder has the right to vote as he or she sees fit."

Proxies can be the key to an election, particularly if the sponsor or an investor controls a large block of shares. But getting enough valid proxies can be tricky. The most common reason for contested proxies

is that a shareholder submits multiple proxies, or the proxy bears an invalid signature, or, in rare cases, the shareholder dies after signing.

"Even if the managing agent numbers the proxies and sends them out with a notice of the meeting at least 10 days before the meeting, it doesn't help if someone wants to create their own proxy, or if they want to appoint someone to appear for them and vote for them," says Marcie Waterman Murray, a partner at the law firm Deutsch Pane Waterman & Wurtzel.

One way of avoiding contested proxies, she adds, is to make sure that each one includes the time of

day and date it was signed. The most recent one will be the valid one. "It's not a question of who gets to the shareholder first," she says. "It's a question of who gets to the shareholder last."

The typical co-op or condo annual meeting in New York City attracts about 50 percent of the shareholders or unit-owners – nearly as dismal as the typical turnout for a U.S. presidential

election. Since major changes to the governing documents require approval by a "super-majority" – usually from two-thirds to three-fourths of the residents

– gathering proxies before the meeting is crucial. Beyond that, there is the even more fundamental issue of achieving a quorum.

The Business Corporation Law states that a co-op's annual meeting has achieved a quorum if more than half of the building's total shares are present, either in person or by proxy. For condos, a quorum is anything greater than 50 percent of the authorized votes, which are based on a percentage of the common interest. Without a quorum, it is not possible to have a valid election.

Many buildings have a perennial problem obtaining quorums. The two most common reasons are that

shareholders or unit-owners are so apathetic that they can't be bothered to attend; or they're so satisfied with the way the building is being run that they can't see the point in attending. Regardless of the reason, the one tried-and-true method for getting over the difficulty is the bare-knuckles approach.

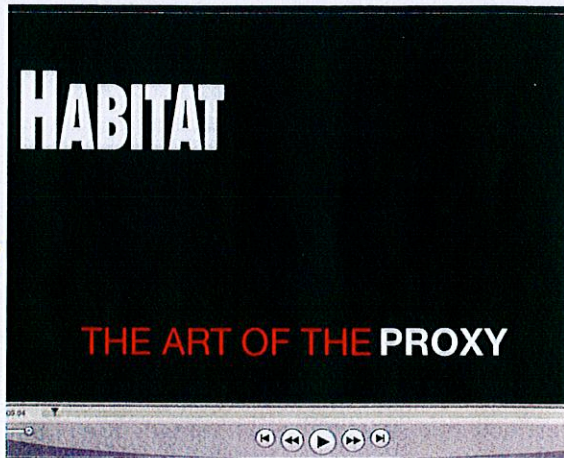
"If you perpetually have a problem getting a quorum, one of the things you can do is get someone to knock on doors to collect proxies before the meeting," says Murray. "It's a pain in the neck, but if it's not done then someone is going to have to knock on doors during the meeting."

That's not the preferred way of doing business, but it's surprisingly common. Attorney Robert Tierman, a partner at Litwin & Tierman, experienced it at an annual meeting last fall. "They were five percent short of a quorum," he recalls. "So the managing agent and several shareholders knocked on doors during the meeting, getting signatures on proxies until they got their quorum. The better way of doing business is to push people to return proxies before the meeting."

VOTING

Voting for the board is a major reason for the annual meeting and can be accomplished in one of two ways. Most use straight voting, although some cooperative boards are elected through a process called cumulative voting.

"With a seven-member board and straight voting, each shareholder or unit-owner can vote his/her shares or common



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