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Question of the Month

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Q. If an owner is on the ballot, is it acceptable/legal for that individual to have the ballots returned to her? Can they also be the named proxy holder? Finally, is an owner entitled to view the proxies along with the ballots after the election?

A. These questions are governed by sections of the Illinois Condominium Property Act (“ICPA”) that apply to all Illinois condominium associations, regardless of contrary provisions in an association’s Declaration of Condominium.

ICPA Section 18(b)(9)(A) provides that a unit owner may use a proxy to cast his or her votes for election of directors at the annual meeting, unless the association has adopted a direct voting rule (that is, a rule that requires use of a “mail-in ballot” to the express exclusion of proxy voting). ICPA Section 18(a)(18) allows anyone to be designated as a unit owner’s proxy, so a unit owner who is a candidate for election to the board can surely be designated as another owner’s proxy.

In order to expedite the vote count at the annual meeting, associations generally request that completed proxy forms be deposited into a voting box or returned directly to the association. However, candidates and their supporters may lawfully request that completed proxy forms be delivered directly to them, rather than to the association, and those proxy forms may be accumulated for submission at the annual meeting.

ICPA Section 19(a)(8) gives every unit owner the right to examine and copy ballots (and related proxy forms) cast within the prior 12 months, subject to some significant limitations. First, the unit owner must make a written request to see those voting materials that specifies a “proper purpose” for the request. Proper purpose is determined on a case-by-case basis, but mere curiosity is not a proper purpose; however, an unsuccessful candidate seeking to audit the results of the election would have a proper purpose.

If the board determines that a proper purpose has been stated, the requesting unit owner may examine and copy the ballots and proxy forms, unless the association has adopted a rule that mandates use of a “secret ballot” that does not reveal the unit owner’s name or unit number. When a secret ballot rule is in place, the requesting owner may examine and copy the secret ballots, but not the underlying proxy forms (which would disclose unit owner names and unit numbers and thereby defeat the purpose of the secret ballot rule).