

# Voting Procedures and Proxies

Thank you for joining us, the presentation will begin shortly.



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# Voting Procedures & Proxies

The purpose of this presentation is to provide an overview of voting, secret ballots, proxies, and other information for your communities.



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## HOA Information & Resource Center

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# Disclaimer:

The information provided during this presentation is for educational purposes only and is not meant to provide, nor should it be construed as legal advice.

Any legal questions should be directed to a qualified attorney licensed in Colorado.



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# What Is the HOA Information & Resource Center?

- What the HOA Information & Resource Center does:
  - Provides information to homeowners regarding their basic rights and responsibilities under the Colorado Common Interest Ownership Act (“CCIOA”).
  - Gathers, analyzes, and reports information through complaints and HOA registrations.
  - Creates resource materials.
  - Provides education and forums.
  - Provides a website with information for the public.
  - Registers HOAs pursuant to §38-33.3-401(1), C.R.S.
  - Provides an Annual Report to the Legislature.
- What the HOA Information & Resource Center does not do:
  - Is **not** a regulatory program.
  - Does **not** mediate/arbitrate.
  - **Cannot** provide legal advice.
  - Does **not** act as an advocate.
  - **Cannot** assess fines or penalties.
  - Does **not** enforce an HOA’s failure to register.



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# Who Is This Presentation For?

- Home Owners-
- Board Members-
- Community Association Managers-



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# Quorum

- What is a Quorum?
  - the minimum number of members of an assembly that must be present at any of its meetings to make the proceedings of that meeting valid.
- Who should count for a quorum?
  - Physically Present at the beginning of the meeting (or electronically, if allowed)
  - Appearing By Proxy at the beginning of the meeting
- *Note: Quorum is going to be different for board meetings and unit owner meetings.*



# How Is A Quorum Determined?

- How is a quorum determined for a CCIOA Community?
  - Look first to your governing documents. It may define a quorum explicitly. If so, this definition controls.
  - **Unit Owner Meeting:** If the governing documents are silent, a quorum is deemed present throughout any meeting if persons entitled to cast twenty percent, or, in the case of an association with over one thousand unit owners, ten percent, of the votes which may be cast for election of the executive board are present, in person or by proxy at the beginning of the meeting. See § 38-33.3-309(1), C.R.S.
  - **Board Meeting:** If silent, a quorum is deemed present if persons entitled to cast fifty percent of the votes on the board are present, in person or by proxy at the beginning of the meeting. See § 38-33.3-309(2), C.R.S.
- What about for Pre-CCIOA Communities:
  - **For Any Type Of Meeting:** Twenty-five percent of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter. See § 7-127-206(1), C.R.S.



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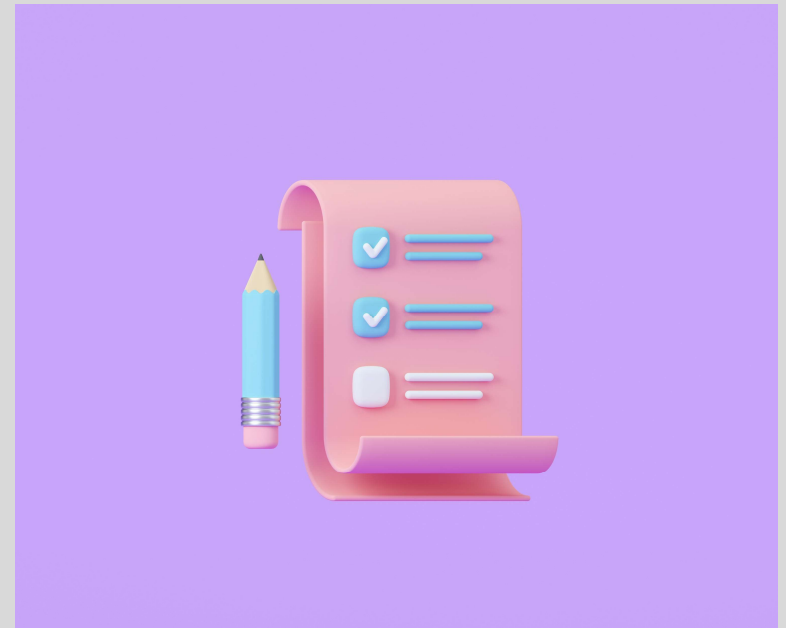


# Voting

**Determining Voting Allocations:** See your association's Declaration of Covenants, Conditions, and Restrictions ("CCRs"). The allocation of voting shares between the various units in your community is required to be set forth in the Declaration.

*Note: Different associations allocate voting shares differently: might be one parcel one vote, might be by square foot.*

*Note: Most communities prohibit splitting votes and may only be cast in accordance with an agreement of the majority in interest of the owners.*



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# Ballots

*Once you understand how votes are allocated, you can start to think about the actual voting process.*

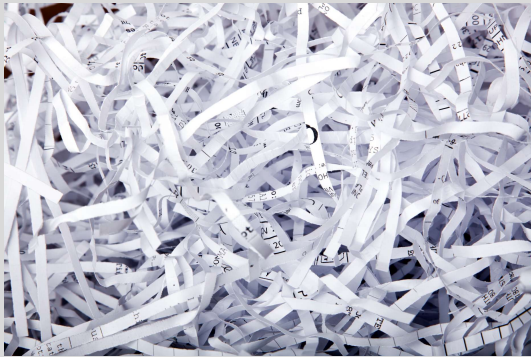
*Let's start with the written ballot!*

For written ballots, to comply with §7-127-109, C.R.S. of the Colorado Nonprofit Corporation Act, a written ballots must:

1. State each proposed action, and
2. Provide an opportunity to vote for or against each proposed action. In most cases, this is a “Yes” or “No”.
3. In the case of an election for directors, provide the names of every candidate and INCLUDE blanks for write-in nominees.



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## Secret Ballots

§ 38-33.3-310, C.R.S. requires secret ballots be utilized at membership meetings under certain circumstances.



*Note: Do not shred your ballots like in this picture. Colorado law requires that ballots, proxies, and other records relating to elections must be maintained for 1 year following the election.*

# When Secret Ballots Are Required?

- Secret ballots **MUST** be utilized for contested positions on your board of directors. This means secret ballots must be used when there are more candidates than open seats. (*Exception: the requirement does not apply if your governing documents provide for the election of directors through delegates who cast votes on behalf of a segment of the membership.*)
- Secret ballots **MAY** be used at the discretion of the board of directors.
  - Some boards like to use secret ballots for every item which is voted upon at a membership meeting. This gives members the ability to cast their vote without any perceived pressure from the board or their neighbors.
- Secret ballots **MUST** be utilized on any issue where 20% of the owners, present in person or by proxy at the meeting of the members, request use of a secret ballot on an issue.



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# Counting Secret Ballots

- Once votes are cast at a membership meeting by secret ballot:
- The ballots MUST be counted by:
  - (1) a neutral 3rd party, or
  - (2) a committee of volunteers.
- *Note: In most cases, a Community Association Manager can serve as a neutral 3rd party*
- *Note: If a committee of volunteers is utilized, the president of the board (or the individual presiding over the membership meeting) should select members of the association to serve on the committee of volunteers. **The volunteers cannot be members of the board or a candidate in a contested election for a position on the board.***



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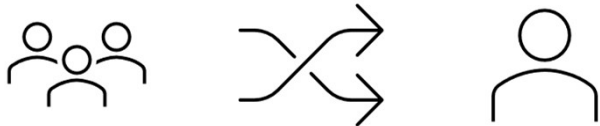
# Proxies

- A proxy can be defined as:
  - a writing
  - that an owner provides to another person
  - that authorizes the other person to act on behalf of the owner in accordance with its terms.
- *Note: SB22-059 recently amended § 38-33.3-310, C.R.S. to clarify that proxies terminate eleven months after its date unless the proxy itself indicates an earlier termination date.*



# Why Use Proxies?

- Ensure That Quorum Is Met So Business Can Be Conducted
- Member Apathy In Your Community
- Affect Change Though The Democratic Process



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# Validity of Proxies

A Proxy shall not be valid if obtained through fraud or misrepresentation. *Example: Do not promise to vote FOR a resolution when obtaining a proxy, if you intend to vote AGAINST it.*

- **Invalidating Proxies, written ballots**: The association is entitled to reject a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation if the secretary or other officer or agent authorized to tabulate votes, **ACTING IN GOOD FAITH**, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the unit owner.
- **Challenging the Invalidation Process**: Any action of the association based on the acceptance or rejection of a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation under this section is valid unless a court of competent jurisdiction determines otherwise.



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# **Presenting Proxies For Vote**

- **Form of proxy**: Check your association's governance policies. If your association has approved and voted on a specific form of proxy, use that form. If no such form has been approved, proxy forms can readily be found on the internet.
- **Effective Date**: A proxy is effective against the association when received, including via electronic transmission. See § 7-127-203, C.R.S.
- This is usually completed by presenting the proxy at the meeting when the vote will take place.
- It can also be reasonable that proxies be provided to the board or the Community Association Manager at a date certain before the vote.



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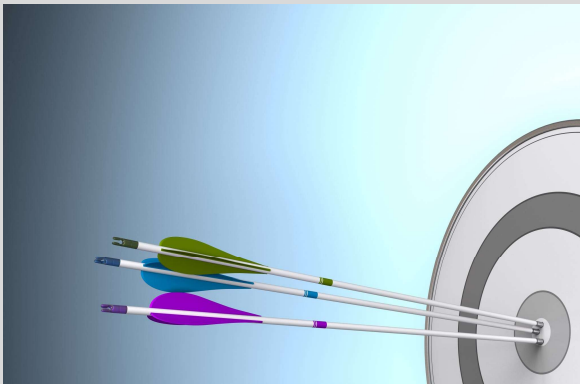
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# Announcing Results

- When the vote is held, the association should announce the results promptly.  
*This means as soon as practicable.*
- Communicate the results:
  - Announcement at Meeting
  - Email
  - Mail
  - Newsletter
  - Website/Web Portal



# Pro Tips

1. **Board members:** Retain copies of ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate. See § 38-33.3-317(1)(n), C.R.S.
2. **Board members:** Fear of harassment and retaliation are common. By establishing a policy that all votes will be taken by secret ballot might help lessen these concerns.
3. **Unit Members:** If assigning your vote by proxy, assign it to a trusted member of the community.
4. **Board Members:** Do not forget to schedule your meetings (board meetings AND unit owner meetings), especially those that will require a unit owner vote, at times that allow for unit member participation. This increases likelihood of reaching quorum and increases communications in the community.
5. **Board Members:** Ensure transparency in the community. Announce the results of any ballot measure or election and effectively communicate the results to everyone in the community.



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## HOA Information & Resource Center

Check Out HOA Resources For Yourself At:

- Web: <https://dre.colorado.gov/hoa-center>
- Send Inquiries Via E-mail To: [dora\\_dre\\_hoainquiries@state.co.us](mailto:dora_dre_hoainquiries@state.co.us)



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