

YOUR HOME

Co-ops Get Flexibility On Rules

By JAY ROMANO

CO-OP shareholders have often been told that one of their most significant responsibilities is to attend the annual meeting. But it might come as a surprise to some to learn that this year, attendance really does matter.

The reason, co-op lawyers and managers say, is that recent amendments to the state's Business Corporation Law allow co-op corporations to make significant changes in the annual-meeting process.

The amendments, which took effect in February, allow boards and shareholders to make voting by proxy easier; set standards and requirements for the nomination of directors; establish specific procedures for conducting shareholder meetings, and, perhaps most significantly, permit co-ops to adopt greatly relaxed procedures for allowing shareholders to act without even holding a shareholders' meeting.

The best way to determine whether changes are appropriate for a particular building, they say, is for the shareholders to participate in the decision-making process. And there's no better forum for that than the annual meeting.

"There's nothing like a good old-fashioned hot controversy to get shareholders excited about the annual meeting," said Dennis Greenstein, a Manhattan co-op lawyer. "But it's just as important to encourage people to come to the meeting when there's nothing particularly controversial on the agenda."

Under previous law, Mr. Greenstein said, for a shareholder to vote by proxy, the shareholder had to submit a signed, original proxy to the managing agent or board before the meeting date. Now proxies can be submitted by fax and even by telegram.

"The beauty of being able to fax a proxy is that it facilitates getting a quorum for the meeting," Mr. Greenstein said. In most co-ops, if fewer than 50 percent of the co-op's outstanding shares are represented at the annual meeting, either by shareholders attending in person or by proxy, the meeting



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Changes in law allow greater leeway on proxies, nominations, quorums and meetings.

cannot be conducted and the directors continue to serve until another election is held.

"Some buildings fail to get quorums year after year," Mr. Greenstein said. "What they end up with is a board that essentially elects itself by waiting until the next year to hold the next election."

Faced with a potential inability to obtain a quorum, he said, boards or shareholders could contact out-of-town shareholders, fax a proxy to them, have the shareholder sign the faxed document and then return it, also by fax. The same procedure could also be used to obtain the broadest shareholder participation possible when addressing important or controversial issues, close votes, or even hotly contested elections.

"We've been recommending that co-ops amend their bylaws to specifically allow for proxy voting by fax," he said, adding that such an amendment would typically be addressed at the annual meeting.

Andrew P. Brucker, another Manhattan co-op lawyer, said that the changes to the Business Corporation Law also permit co-ops to lower the percentage of shares that must be represented at a meeting, either through the shareholder's presence or by proxy, from 50 percent to 33 1/3.

"The change has to be made in the corporate documents," Mr. Brucker said, explaining that it is generally necessary for a co-op to amend its certificate of incorporation to lower the threshold required for a quorum. "You obviously want to encourage shareholders to attend the meeting. But sometimes the 50 percent requirement for a quorum gets in the way of conducting corporate business."

In addition, Mr. Brucker said, he is now encouraging boards to amend their bylaws to adopt another new procedure encouraged by the recent changes in the Business Corporation Law: the establishment of specific written standards and procedures for nominations of directors.

"Many co-ops take nominations for directors from the floor on the day of the annual

meeting," Mr. Brucker said. But by allowing nominations to be accepted so late in the process, he said, those who vote by proxy, even those who fax proxies just before the meeting, do not have the opportunity to make informed choices about the newly nominated candidates.

As a result, Mr. Brucker said, he is encouraging co-op clients to amend their bylaws to require all nominations to be made far enough in advance to allow everyone, including those voting by proxy, to know who all the candidates will be.

"Requiring all nominations to be submitted before the meeting also gives shareholders an opportunity to meet with all the candidates and find out where they stand on the issues," he said.

Something else shareholders and boards might want to consider regarding nominations for directors is whether minimum standards should be set.

"Many of our co-ops are now saying to potential board candidates, 'If you want to be on the board, you better not be in default of your maintenance,'" he said, adding that as unbelievable as it might sound, he has seen instances in which a candidate for the board was in arrears on maintenance payments.

"For someone like that to be running for the board is an insult to the other shareholders," Mr. Brucker said.

Finally, Mr. Brucker said, the changes in the law have also greatly relaxed the requirements for co-op corporations to take action without the necessity of calling a shareholders' meeting.

Under the old regulations, he said, if a particular action required shareholder approval — an amendment of the proprietary lease or bylaws, for example — the board would have had to call a shareholders' meeting. The only way to avoid a meeting, Mr. Brucker said, would have been to obtain the written consent of 100 percent of the shareholders.

Now, however, the law allows for shareholder action without a meeting with the written consent of whatever percentage of shareholders would be needed to pass the action at a meeting.

So, for example, a resolution that would require a majority vote of shareholders at a meeting can now be adopted without a meeting by getting the written consent of a majority of the shareholders.

Mr. Brucker said that the only way to take advantage of the law's liberalized provisions was for the shareholders to amend the certificate of incorporation.

And when might be a good time to decide whether all or any of the above changes were appropriate for a particular co-op? "I would say the annual meeting is as good a time as any," he said. ■