

# The New York Times

## Real Estate

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Q. & A.

### Doubts About Results of a Co-op Vote

**Q** We had a shareholders meeting in our co-op to elect a board. The ballots were counted by our managing agent, and the inspector of election who certified the vote was the chief executive of the management company. The newly elected board feels there is a discrepancy in the count and has asked the management company to return the ballots, but the ballots are being held in the company's office. How can the board get the ballots back? Also, isn't it unlawful for the chief executive of the management company to be the inspector of election? ... Esther Hauser, Rego Park, N.Y.

**A** Howard Schechter, a Manhattan co-op lawyer, said there is no requirement in New York law that any particular person or company count the ballots in the annual election of directors.

"It is not at all unusual that the building manager, management company or other professional engaged by the co-op do the counting," Mr. Schechter said. "And unless the bylaws of the corporation contain other specific directives concerning the manner in which the vote should be conducted and the ballots counted, the only requirement is that the election be conducted fairly."

At the same time, Mr. Schechter said, the manager is an agent of the co-op corporation — under the direction and control of the board — and the ballots are the property of the co-op. "The manager may not keep the

ballots if the board demands their production," he said, adding that the board should adopt a resolution directing the manager to deliver the ballots and all other documents related to the election to the board.

The ballots may then be reviewed for accuracy. If the manager refuses to turn over the ballots, Mr. Schechter said, the management company should be fired and the co-op should get a court order requiring the manager to comply.

Mr. Schechter said that if, after the ballots are received and reviewed by the board, there is a dispute about the results that winds up in court, the ballots will have to be produced for judicial review. And unless the board can show that the ballots have not been tampered with, it may not be able to avoid a new election.

"It is therefore important to assure that the custody and safety of the ballots are carefully accounted for," he said.