

Rules

how to:

Revise Governing Documents

The board had decided to revise its bylaws and proprietary lease. Now what?

It is a familiar story: the co-op corporation's bylaws and proprietary lease were antiquated. Both documents were poorly drafted, rife with internal inconsistencies and conflicts with current law. There were no longer relevant provisions regarding the original sponsor, and they were not adequately meeting the current needs of the co-op. The time to update had clearly come, and the board asked its attorneys to draft revised documents. And that is where the story ends for far too many boards.

Preparing revised documents is the easy part. Getting to the desired result – obtaining approval of two-thirds of the shareholders – is the hard part. But we helped our client achieve it. How?

First, we made sure the entire board supported all the proposed changes. Revisions that are endorsed by only four out of seven board members will never garner the support of enough shareholders. We worked tirelessly with the board revising, tweaking, and amending the proposed changes until we had a document that everyone unanimously supported.

Then, we gave a presentation to the shareholders. Would the revisions be presented to the shareholders as

all or nothing? Would a piecemeal approach run the risk of eviscerating the changes so all the effort yields no meaningful result? Together with the board, we devised a hybrid approach. We organized the proposed revisions into a few meaningful groups: those that brought the corporation into compliance with laws and current practices of well-run buildings, those that eliminated no longer relevant provisions, and those that affected the quality of life and the board's ability to manage the building effectively.

The materials were sent to the shareholders, together with proxies and ballots. The board members actively solicited the shareholders' support. The date of the annual meeting arrived, and it appeared that the overwhelming majority of those present were in favor of the changes. Success? No. Only slightly more than 50 percent of the shares were represented at the meeting, making it impossible to achieve the necessary two-thirds approval.

Takeaway

If the proposals were put to a vote, months of effort would have been

- Check for internal inconsistencies and conflicts with current law.
- Delete provisions regarding the original sponsor.
- Explain the documents and get creative, if necessary, to get two-thirds approval.



Adam Leitman Bailey

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Size:

Partners: **8**
Associates: **15**
Of Counsel: **2**
Paralegals: **10**

Co-op / Condo
Specialists:
Partners: **3**
Associates: **3**
Of Counsel: **1**

Board Clients: **250+**

Location:
NYC: **99%**
WC: **1%**

for naught and the process would have had to begin again the following year. Instead of letting that happen, we advised our client to take two procedural steps. First, not to have the voting proceed. To accomplish that, a motion was made, seconded, and voted upon to postpone the vote to a later date. And then, rather than conclude the annual meeting, a motion was made to adjourn to a date to be determined. Had the meeting concluded, the ballots and proxies would have been of no use for the next gathering. But by adjourning to a later date, we kept the meeting and proxies "alive," saving

the directors from going back to the people who had already voted, and allowing them to focus exclusively on collecting proxies from those who had not yet voted. Additionally, by adjourning to a date to be determined, the board could wait until it knew sufficient votes were in hand and only then reconvene the meeting for the purpose of voting. Once in hand, the meeting was reconvened, the voting (by now, a mere formality) took place, and the new documents took effect.

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