

Three Cases Test California Standards

Nomination Procedures Challenged



BY JOEL M. KRIGER, ESQ.

In three recent cases, two in California and one in New York, members have challenged nomination procedures of their association claiming that they were unfair. In contested association elections, nomination procedures can control the outcome of the election. This article will look at these three nomination-related cases, one hypothetical situation, and the California standards for nominating procedures.

Sketches of Three Cases and a Hypothetical

In *Ridgeway v. Diaz*, 2003 WL 22922651 (nonpublished, not a legal precedent), two community association members sought to run for election for the association's architectural committee and were refused inclusion on the ballot by the existing committee. Instead, four others ran for office and were elected. The members who had been denied a spot on the ballot sued.

In *Schrobilgen v. Ocean Towers*, 2004 WL 33407 (nonpublished, not a legal precedent), a dissident member of the association sought nomination for office at the nominations meeting. Ms. Schrobilgen's nomination was rejected on the basis that she was a dissident and was in litigation against the association. Nominations were suspended. When nominations reopened, the board had enacted a rule disqualifying any owner in litigation. Subsequently, the board informed her that she could be nominated from the floor. Because this would place her at a disadvantage by exclusion of her name on the proxies, she sued for an order requiring her to be included in the nominations and the proxy.

In our last case, *Liberty County Owners v. Board of Managers*, 24 N.Y. App. Div. Lexis 725, out of New York, an owner sued the board claiming that the procedure allowing nomination from the floor at the time of the election was not a fair

and effective method for nominating board members.

Next is the hypothetical. An owner not in good standing is seeking nomination. This owner may be delinquent in their dues, have outstanding violations, or outstanding monetary fines. Can this individual be disqualified from running for the board?

These cases raise interesting questions that often erupt in contested elections. Unfortunately the courts did not decide these cases on their merits but on technical grounds and thus are of little guidance. Therefore, I will provide you my thoughts on how these cases would have come out had they been decided on their merits.

California Law at a Glance – Nomination and Election Procedures

First a brief review of California law. Corporation Code 7520(a) provides that there shall be available to the members reasonable nomination and election procedures given the nature, size and operations of the corporation. The code goes on to specify requirements for nonprofit corporations in excess of 500, 5000 or a million members. None of these nomination procedures are required for the average homeowners, association which is typically less than 500 members.

California law specifies for larger corporations that members may be nominated by any method authorized by the Bylaws or by a petition signed by a required percentage of the membership. If any material is published that solicits votes for nominees at the association's expense, then the association must provide equal space to all nominees in that publication. Keep in mind that nominees in any size association are entitled to a mailing list of the members, names and addresses to personally mail their own solicitations for election.

One last item. The current 10th Edition of Robert's Rules of Order (2000) provides that in the absence of a bylaw or an established custom pre-

scribing a nominating process, nominations are to be made from the floor or as otherwise directed by a vote of the association at the time of each election.

Case-by-Case Analysis

Now let's look at the cases. In *Ridgeway*, plaintiffs sued claiming unreasonable nomination procedures because they were denied the opportunity to run for the architectural committee. The nominations committee must be impartial and not composed of the elected body which has a vested interest in maintaining control. Because the architectural committee made its own decisions regarding nominees, I would rule that the nomination procedure was unfair requiring a new election.

In the *Ocean Towers* case the board sought to disqualify a nominee they considered a dissident. The plaintiff was in litigation with the association over their failure to produce records. After an initial nomination meeting, where owners can announce their candidacy, the board enacted a rule disqualifying any owner in litigation with the association. In my opinion, this rule is not valid because it was enacted after nominations were opened and for the purpose of excluding Ms. Schrobilgen from the election. Therefore, I would rule in favor of the plaintiff requiring Ocean Towers to place her name in nomination and on the proxy.

In the New York *Liberty Court* case, plaintiffs argued that nominations from the floor are not a fair and effective method for nominating board members. In this instance the association's bylaws did not have any specific procedures for nomination. The bylaws did provide that meetings of the members are to be governed by the current edition of Robert's Rules of Order. As such, Robert's Rules of Order allow nominations from the floor and therefore, the nomination procedure of the association was fair and reasonable.

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The last case is hypothetical. Here we have a member seeking nomination who is not in good standing with the association. The bylaws of the association list only one qualification to run for the board of directors – membership. Under these circumstances, reluctantly, I would rule in favor of the nominee because the nominee is qualified under the bylaws to run for office.

Bylaw Changes on Qualification of Nominees

Qualifications for nominations to the board must be listed in the bylaws. These qualifications can

include being a member in good standing. Good standing must be defined.

A sample definition would be:

A member who is not delinquent in their dues with no outstanding violations of the governing documents and/or outstanding unpaid monetary penalties.

In my opinion it would be reasonable to adopt a rule to disqualify nominees who are in litigation with the association. Serving on the board under those circumstances would be a direct conflict of interest and,

therefore, a reasonable basis for exclusion from the board. Adopting such a rule after nominations are opened to disqualify a particular candidate is not appropriate.

In conclusion, the Corporations Code provides few specifics to associations of 500 or fewer members and only requires that the nomination and election procedures be reasonable given the nature, size and operations of the association. ■



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