

Counting Votes or Making Votes Count? Sweeping Legislative Changes to Condominium, Cooperative and Planned Community (HOA) Laws in Pennsylvania

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The Pennsylvania General Assembly recently adopted House Bill 1795, now officially known as [Act 115](#) (effective May 2023), which establishes new governing requirements for condominiums, cooperatives and planned communities (HOAs). This new piece of legislation will impact residents and board members who are part of, as well as property managers who work for, condo and homeowners associations in Pennsylvania. It will also affect developers of these types of communities, who may need to tailor their governing document forms, including bylaws, to address these changes.

Amid the pandemic, many communities struggled with holding meetings as well as conducting votes and distributing notices. Particularly, many older communities had bylaws that were silent as to the permissibility of electronic voting, leaving residents and developers scrambling with how to conduct valid meetings in the face of COVID-19 lockdown restrictions. With Act 115 in full swing, an association is now clearly authorized to host virtual meetings and take electronic votes without changes to the bylaws, as long as the bylaws (or declaration) do not expressly prohibit this type of conduct. This change is beneficial for communities with outdated and silent bylaws as it allows virtual meetings not only in the pandemic context, but also where a suitable (or affordable) meeting location is unavailable. While providing more flexibility, these changes also require associations who choose to accept virtual votes to confirm the identity of the unit owner and make sure the votes are being transmitted accurately, possibly adding a new layer of administrative burden.

When it comes to amending bylaws, Act 115 now requires 14 days' prior notice to be provided of a meeting to amend the bylaws and at least 51% votes in favor of an amendment. Developers are not permitted to provide for a lower threshold of votes to amend bylaws going forward. Developers should be aware of this change and ensure that bylaws taking effect after the effective date of this new legislation provide for at least a 51% vote to amend the bylaws. Interestingly, Act 115 also allows for electronic notices of meetings if it is expressly provided for in the bylaws. Electronic meeting notices will likely allow developers and associations to save on incidental costs (like stamps and paper) and property management fees. Developers should therefore consider making their form bylaws allow electronic notices.

The new legislation also reframed the election process for executive board members. Act 115 now requires that bylaws contain a provision that allows for "pre-election sessions" for elections where there are more candidates than open positions. At these sessions, candidates can meet with unit owners prior to the meeting to share their election platform. The law also requires communities with 500 or more units to use an independent election reviewer to

monitor and tally votes, however, communities with a lower number of units may implement the requirement with a 51% vote from unit owners. There are also requirements for what constitutes an independent reviewer, and if the independent reviewer is being compensated by the property manager or declarant, that must be explicitly disclosed at the meeting.

Before Act 115 takes effect, developers, in particular, may now wish to consider how best to address the Act's changes in their form HOA documents. Developers should also consider these issues when turning over association control. We recommend developers keep a checklist of key considerations for HOA turnover to keep track of these and other detailed requirements within the HOA laws.

If you have any questions regarding this new legislation or how to incorporate these changes in your form HOA documents, please contact [me](#) or anyone in the [Barley Snyder Real Estate Practice Group](#).

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