

THE PROPERTY LINE

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Avoid the “Spoiled” Board Vote

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Has this situation ever happened to you? On the agenda for the Board of Directors meeting is the approval of a newly proposed contract with Hack and Whack Landscapers. Of the five-member Board, one director is the owner of Hack and Whack Landscapers, another director is delinquent in the payment of assessments, and two other directors are absent from the meeting. The bylaws specify that three directors are required to make a quorum. Is a quorum present to vote on the matter? Is the owner of Hack and Whack Landscapers disqualified from being counted towards the quorum? Is the delinquent director disqualified from being counted towards a quorum?

Although the owner of Hack and Whack Landscapers would be considered an “interested” director, this director may still be counted towards the quorum. However, this director must refrain from voting on approval of the contract. Furthermore, in order for a contract with a director to be valid, (1) the material facts of the contract and of the director’s interest in the company must be fully disclosed to the Board and (2) the contract must be just and reasonable to the association.

To be elected to the Board, the association’s governing documents (typically the bylaws) usually require that the member candidate be in good standing. To be in good standing, the member candidate must, among other things, not be delinquent in payment of assessments at the time of the election. However, once elected, a Board member who becomes delinquent may still be able to serve and vote on association matters unless the association’s governing documents specify that the Board member may be removed for failure to maintain good standing status. Also, keep in mind that, just as with other association members, the delinquent Board member is entitled to a hearing before determining that he or she is not in good standing.

Having a quorum present and obtaining the necessary proper approval of the Board is a must to assure the validity of a Board’s resolutions and actions. If you have any concerns regarding this matter, please do not hesitate to contact Angius & Terry LLP.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Angius', written over a white background.

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