

Suffolk Superior Court Rules in Favor of Electronic Voting

COVID-19 has altered our daily routines in many ways. It has also changed the way community associations attend to certain matters such as conducting meetings, campaigning and voting. Necessity has prompted a change in operations, and now Zoom™ meetings, as well as the use of designated proxies and electronic voting are becoming more common. Support for these platforms and alternative operations is growing, as evidenced by a recent decision of the Suffolk Superior Court.

Prior to the pandemic, a condominium in greater Boston chose to utilize electronic voting as an alternative to paper ballots for the election of its board members. Utilizing a link to an online ballot sent by e-mail or a tablet provided in the lobby of the condominium and at the annual meeting itself, this association experienced an unprecedented rate of participation at its annual meeting.

The two winners of the election received more than 42% of the votes, while the candidate with the lowest percentage challenged the election by filing a suit in the Suffolk Superior Court claiming that the association utilized an unauthorized means of voting for the election due to a lack of supporting language in the governing documents.

In this case, Connie Gutierrez v. Board of Managers Flagship Wharf Condominium, Civil Action No. 1984CV02125, the Court ruled in favor of the defendant and recognized the broad-based powers of the language in the condominium documents. The Court held that “The sound management of the condominium most certainly includes the holding of elections for selection of board members to achieve and maintain a board constituted as required in Section 2.1 (of the Association By-laws).” The Court went on to say that “The medium for the voting process is not specified beyond the entitlement of each unit owner, personally or through a designee, to vote in each annual election. The implementation of electronic voting, while not depriving any unit owner of voting in person at the meeting, gave unit owners the additional option of casting their votes electronically during the week leading up to the annual meeting.”

This case, while not controlling in all counties in Massachusetts, offers insight to how courts may consider actions taken by other boards who may be struggling with holding an in-person meeting or election during these difficult times.

Copies of the full case can be found by clicking "Articles" in the "Publications" section of our website.