

Radburn Law Regulations

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Effective May 18, 2020, proposed regulations to PREDFDA were adopted and published by the New Jersey Department of Community Affairs, Division of Codes and Standards (DCA).

A Brief History

In July 2017, several amendments to PREDFDA (N.J.S.A.45:22A-43) were signed into law becoming known as the “Radburn Election Law” (P.L.2017, c. 106). These amendments broadly focus on membership voting rights, elections, and by-law amendments. In June 2019, proposed regulations to the Radburn Law were introduced and the public was given a period of time to comment on the proposed regulations. While comments were mixed, there was strong opposition to many of the provisions. The regulations have now been approved and published.

How This Impacts Associations

While the provisions of the Radburn Regulations are substantial, following are the provisions which are most significant and/or most relevant to the majority of community associations:

- Counting Ballots. All ballot tallying shall occur publicly. [5:26-8.9(h)]. ***Instead of sending judges off to a side room to count ballots while the annual meeting continues, the counting will have to be done publicly. Boards should talk to legal counsel about policies for coordinating annual***

meeting business with counting of ballots (or separating them) and to prevent interference with judges doing the counting. This could lead to some very late nights.

- Inspection of Ballots. Ballots shall be open to inspection by any member of the association for a period of 90 days from the date of the election. [5:26-8.9(h)]. ***Associations should talk to legal counsel about policies for maintaining and inspection of election materials including electronic materials.***
- Anonymous Voting Required. All ballots shall be cast in an anonymous manner. If the bylaws permit, and the association member consents, a ballot may be cast electronically if it is administered by a neutral third party and anonymity is maintained. [5:26-8.9(h)]. ***Boards should implement a system that allows for confirmation of member voting which preserves the anonymity of the vote. Most likely this means a double envelope system. Even votes cast electronically must maintain anonymity.***
- Write In Candidates. The ballot shall include space for write-in candidates for as many seats as are up for election. In the event a write-in candidate receives sufficient votes to be elected but is not eligible, such candidate shall not be deemed to have been elected. If this results in a vacancy on the board, the eligible candidate receiving the next highest number of votes shall be deemed to have been elected. [5:26-8.9(k)(l)] ***Associations with double ballot procedures - where a run-off election is required if there are more than twice the number of candidates as seats - should anticipate increased delays and costs associated with this requirement.***
- Sample Meeting Ballot Must be Provided with Notice of Meeting. The election meeting notice shall contain a copy of the ballot. [5:26-8.9(l)] ***In addition to an absentee ballot and proxy, associations will now have to include a meeting ballot marked "Sample" with the notice of meeting. Showing great optimism in its Response to Public Comment, the DCA stated that "because each document would be clearly labeled, it should not be difficult for association members to differentiate among proxies, absentee ballots, and a sample of the in-person ballot."***
- Notice of Good Standing Before Member Meeting. A minimum of 30 days prior to the election, the association shall notify residents who are not in good standing. Such notice shall state the reason why the resident is not in good standing. The notice shall state that residents have the right to contest the board's determination by requesting Alternative Dispute Resolution. Residents shall be allowed to rectify their standing up until five business days prior to the election date. [5:26-8.9(l)] ***Associations must work with legal counsel to ensure that these notices are appropriate under applicable law based on the status of the collection matter (especially those in collection with the attorney).***
- Board Representation by Affordable Owners. When affordable units, in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-304, represent a minority of units in the development, the bylaws shall reserve a

seat or seats on the executive board for election by owners of affordable units. [5:26-8.10(a)] ***It is unclear how the DCA will interpret this provision and communities should consult with their attorneys for further discussion. It will certainly add confusion to the election process for these communities.***

- Board Voting Procedure. The board shall provide a brief explanation of the basis for and cost entailed in the matter that is the subject of any binding vote and include the explanation in the minutes for the meeting. [5:26-8.12(a)] ***This requirement will change how many boards approve agenda items. Keep in mind that the explanation should be brief and may need to be reviewed by legal counsel before finalizing the minutes.***
- Notice of Board Meetings. [5:26.12(b)(c)(g)(h)] ***There are many changes to these provisions which must be carefully reviewed by boards and managers. Adequate notice has been increased from at least 48 hours to 7 days (with exceptions for emergent meetings). The manner of giving notice has changed as well. In addition to posting the open meeting schedule for the year, adequate notice of each noticed meeting must be given. No longer are associations required to send notice of open board meetings to two publications:*** The notice shall be prominently posted in at least one place on the property that is accessible to all owners at all times; ii. The notice shall be posted on the association's website and included in any association newsletter; ***or*** iii. The notice shall be personally provided to each member or designee by mail, hand-delivery, or electronic means. The notice shall be filed with the board member designated as responsible for administering association business. It shall be maintained by the executive board for a period of two years.
- Voting at Closed Board Meeting. A vote taken at a closed meeting shall not be binding. If the matter requires a binding vote, it shall be taken at a subsequent open meeting in a manner that does not disclose any confidences. If the closed meeting is to be part of an open meeting, the closed portion shall be convened either before the open portion or at the end of the open meeting portion of the agenda.[5:26-8.12(e)] ***As an example, if the board agrees at a closed meeting to terminate the building superintendent, it would make that binding vote in the open meeting in some vague way that does not "disclose any confidences". What could go wrong? Boards approving confidential matters - including assessment collection - should discuss appropriate language for these votes (and the minutes) with legal counsel in advance.***
- Recording Meetings. If a meeting is recorded electronically, a written record shall be taken of the matters addressed and the matters voted on. Association members shall have access to the electronic recording, as well as the written record, including the right to make a copy of electronic or written records. [5:26-8.12(f)] ***Most attorneys advise against recording meetings but boards and managers continue to do so. Those who do must be aware of this provision and consult with legal counsel about existing policies to destroy such recordings after approval of the minutes.***

- Fines for Noncompliance. [5:26-8.14(e)] ***The regulations state that the DCA may levy and collect fines against associations and board members. While the DCA advises that it will exercise restraint in levying fines and will only levy them against those who refuse to comply, all boards must be concerned about this authority.***

Where Do We Go from Here?

Again, these are just some of the more relevant and/or surprising provisions of which most community associations must be aware. Some of the DCA interpretations are unclear and others may be impermissible regulations and subject to challenge. There are many more provisions which may impact your association. Board members and managers should consult with legal counsel to ensure they are noticing and running meetings in accordance with these new Radburn Law regulations.

The Radburn Regulations, with comments, [can be viewed here](#).

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