



# The Anatomy of Auditing an

By **Leslie Brown, ESQ.**



Leslie Brown is of Counsel with the law firm Schaner & Lubitz, PLLC, representing trade associations and philanthropies.

Previously, Leslie was Counsel with Chapter Benefactor Rees Broome, PC, where she represented community associations. Leslie served as a longtime member of the *Quorum* Magazine Editorial Committee from 2007 through 2014, and was Co-Chair of the committee in 2014.

**Y**ou send out the call for candidates. You secure a meeting space. The annual meeting notice and proxy forms are mailed to the membership within the allotted time frame. Check-in goes smoothly. A quorum of the membership is attained. Ballots are collected and staff and volunteers count the votes under the supervision of the election inspectors. The new directors to serve on the board are announced at the conclusion of the annual meeting. You breathe a sigh of relief and pat yourself on the back for orchestrating another successful annual meeting.

Or was it?

A vocal group of members are now raising concerns about the annual meeting process and election outcome. They are challenging the election result by claiming that proper formalities for the election were not followed.

Even though you know you did every-

thing correctly under the governing documents, you call legal counsel in a panic. Legal counsel recommends that an audit of the annual meeting election results be conducted. A what?

An audit of election results consist of a review of the election formalities to determine whether the annual meeting was conducted properly under the association's governing documents.

## **Gathering Documentation**

When legal counsel (or any other third party) audits the annual election result, the person conducting the audit will ask for all of the annual meeting materials to include the registration (check-in) list, proxy forms, ballots, a copy of the annual meeting notice, vote tallies, candidate forms, etc. to begin the review. These items should be maintained in accordance with the association's record retention policy.

### Annual Meeting Notice

The auditor will review the annual meeting notice and confirm whether the notice of annual meeting was sent in accordance with the requirements of the governing documents. They will also review meeting minutes to determine whether proof of notice of the annual meeting was verified at the annual meeting for this very purpose.

### Quorum

The auditor will review whether the quorum threshold contained in the governing documents was obtained. Verification for this will be done by reviewing the sign-in sheet from the annual meeting and also the proxy forms that were collected.

### Proxy Forms

The auditor will review whether the proxy forms submitted were properly executed

more candidates that there are open positions. The auditor will make sure that there are not more votes cast than there were total persons present at the annual meeting either in person or by proxy. The auditor will confirm whether all members voting in the election were in good standing to do so at the time the meeting was called to order.

### Findings

The auditor will then write up their findings and present them to the board of directors. Even if there are discrepancies between the initial election and the audit results, such discrepancies do not necessarily mean that the election results are void. For example, if the annual meeting notice was not sent in technical compliance with the governing documents, the fact that there was a large turnout at the

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# Annual Election

in accordance with the governing documents and applicable statute (signed, dated, witnessed, etc.). They'll review whether any duplicate or incomplete proxy forms were submitted and whether the person serving as the proxy has the authority to do so under the governing documents as some associations have restrictions as to who can serve as a proxy for a member.

### Voting Results

The auditor will determine whether the voting and tallying of votes was conducted properly. The auditor will re-count all of the ballots cast to determine the accuracy of the election result announced at the annual meeting. They will confirm how votes are to be tabulated (whether voting is based on a percentage interest, for example), then review the ballots to make sure that each ballot cast does not indicate

annual meeting or that quorum was attained could obviate the lack of technical compliance. Furthermore, minor counting errors may not change the overall election result.

### Claim

However, if there are material discrepancies in the ballots cast for each candidate outside of the margin of error, there may be cause to invalidate the initial election outcome. At such point, the board of directors will need to consult with legal counsel on the ramifications of the errors and what corrective action should be taken, which may include re-doing the annual meeting completely. Furthermore, the association may want to put its Directors & Officers liability insurer on notice of any forthcoming claim by the challenging members. ☐



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