

# E K M A R K & E K M A R K, L.L.C.

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## ATTORNEYS AT LAW

When preparing for an annual meeting, it is crucial to understand the difference between regular voting and cumulative voting. The best way to explain this is to consider a hypothetical election in which there are four candidates running for three spots on the Board. The candidates are Amy, Bob, Carol and Dave.

When using regular voting, each member who is voting can cast one vote per candidate and can select up to three candidates. Thus, the voter could cast one vote for Amy, Bob and Carol. The voter could also cast one vote for Amy and one vote for Bob and choose not to use the final vote. Finally, the voter could choose to cast just one vote for one candidate. For example, the voter could cast one vote for Amy and leave the rest blank.

There are two keys regarding regular voting. First, the voter can only cast one vote per candidate. Second, the voter can select how many candidates he or she would like to vote for up to the number of vacancies. Obviously, the voter cannot select four candidates when there are only three vacancies.

Cumulative voting is different in that the voter can take all of his or her votes and does not have to spread them equally among the candidates. The voter gets a number of votes equal to the number of spots open on the board. The voter may then divide the votes equally, put them all on one candidate or divide them as he or she sees fit.

Getting back to the hypothetical, the voter would get three votes since there are three spots open on the board. The voter may give Amy, Bob and Carol one vote each. However, the voter could put all three votes on Amy or give Amy two votes and Bob one vote.

It is also important to understand when to use cumulative voting and when to use regular voting. Cumulative voting should only be used if the association's Articles of Incorporation, Bylaws or CC&Rs specifically state that cumulative voting is required or allowed. If the governing documents state that cumulative voting shall not be allowed, regular voting must be used. Likewise, if the governing documents are silent regarding cumulative voting, regular voting must also be used.

Please note that if cumulative voting is required or allowed by the governing documents, for the members to exercise cumulative voting, one of the following must take place as required by the Non-profit Corporation Act: (1) the meeting notice or statement accompanying the notice states conspicuously that cumulative voting is authorized or (2) a member who has the right to cumulate votes gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes during the meeting. If a member gives this notice, all members have the right to cumulate their votes. Because of the fact that associations must allow voting by absentee ballot, it makes sense to explain cumulative voting in the absentee ballot and conspicuously state in the meeting notice that cumulative voting is authorized.

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