

# A Nightmare on Elm Street

## A tale of tabulation terror

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**I**t is Friday the 13th, the night of the annual election of the Board of Directors for the Elm Street Condominium Association, and the property manager believes that all should go well. She has extra ballots printed up and ready to distribute, refreshments and cookies line the table in the meeting room, and signs about the election have been posted throughout the building for almost a week now. There are three positions up for election and only four people running. Everything is all set, so what could possibly go wrong?

Despite the thunder and lightning outside, the annual meeting begins promptly at 7pm. All Board members are present as well as the candidates, but as for unit owners, there are only eight in attendance in a building of 150 units. Despite the spooky date and poor turnout, the property manager remains optimistic. Once voting has opened up, she collects the ballots and proxies from those present, as well as the handful left on her desk, while she was out at lunch. An hour later, voting is officially closed and no further ballots or proxies are received. She quickly tabulates the votes and announces the three winners,

one of whom won by a very close margin. The meeting is adjourned and the night goes on without incident. One week has passed since the annual election and it is now long since out of the property manager's mind, when she receives a call from an attorney stating that he represents the candidate who had lost the election, Freddy Krueger. The attorney explains that Mr. Krueger is claiming that the property manager, under the direction of the previous Board of Directors, did not follow proper procedures and as a result, Mr. Krueger believes that the election may have been illegal. She quickly notifies the Association's

attorney and explains that the election was conducted as it had been in the past few years she has been managing the building, and there had never been any issues. The Association's attorney then asks her several questions. "Was there a quorum? Was proper notification given to unit owners about the election and the candidates? How many votes was each unit allowed? Did any unit vote more than once? Did you follow election procedures for the Association as outlined in their bylaws and the Illinois Condominium Act?" To which she responds: "I think we had a quorum, I had signs posted everywhere, I think it

was only three, the ballots were anonymous so I am not sure, and the Board did not make me aware that there were any formal procedures."

In the weeks that followed, while Mr. Krueger's attorney was building the case against the Association's former Board, Freddy, was stirring up trouble. He was telling every unit owner he could that the election was illegal, and as a result, a new member of the Board was elected who intends to pass a large special assessment. Many of the unit owners were enraged and felt that something must be done, so they too filed a suit against the Association's

former Board to declare a re-election. Eventually, the court orders the re-election of the Board and this time proper procedures had to be followed and the tabulation of the votes was to be conducted by an independent party.

The re-election date is set and Mr. Krueger's attorney engages a CPA firm to oversee the election along with himself and the Association's attorney. Upon inquiry and investigation, both attorneys and the CPA firm find that the Association's bylaws and the Illinois Condominium Act require a minimum of 20% ownership to vote in the election, in order for it to be valid. In addition, they discover the Association's bylaws do not allow secret ballots and votes must be based on ownership percentage, not whole votes. They also uncover an amendment in the Association bylaws, passed several years ago, prior to the current Board's tenure, which outlined other specific election procedures, such as the requirement for signature verification of unit owners voting by proxy. This was a potential issue as the property manager informed the attorneys and CPA firm that updated signature cards for all unit owners were not on file. Those must be obtained prior to the re-election.


Weeks later, with procedures firmly in place, signature cards obtained and best practices implemented, the re-election night has arrived. Ballots for individuals not attending the meeting have been deposited in a locked box located at the Association, for which only the CPA firm has a key. Ballots have been issued directly to all unit owners, with their unit number and ownership percentage pre-printed on the ballot. Blank ballots on different colored paper are present, but require the unit owners' signatures to be verified.

Unlike the last election, this one is well attended and tensions are running high. There are 89 unit owners present, along with the former Board, new Board, Freddy Krueger and both parties' attorneys. Due to the anger drummed up by Mr. Krueger and the physical threats made by some of the unit owners to the former Board, especially the member they believed would be passing a large special assessment, the police are also in attendance. The CPAs begin to verify signatures of any proxies received, sort the ballots by unit owner to look for any potential duplicates, and verify that a quorum is established. They then start tabulating the votes, all while under the supervision of both parties' attorneys. Despite the intensity in the room, from screaming unit owners to angry Board members, police and attorneys, the CPAs manage to complete the tabulation and announce the results. The outcome is different than the first election, as now Freddy Krueger is the new Treasurer and the unit owner who planned to pass the special assessment did not get elected this time. Thankfully it is all over and everyone leaves in one piece.

This property manager and Board have learned a lesson or two, as a result of this "election from hell," and now understand how important it is to follow the bylaws and Illinois Condominium Act, while implementing best practices for elections. Nobody wants to be accused of not following the rules, especially when the outcome can be

serious, such as lawsuits, being removed from the Board, or the need for police at any Association meeting. From now on this property manager will be reminding any future Boards about the written procedures included in their bylaws, amendments and the Illinois Condominium Act, hiring an independent party to conduct the tabulation, and ensuring that updated signature cards for all unit owners are on file.



**Don't let your Association end up like this Nightmare on Elm Street!** An election of a condominium Board of Directors can be straight forward or highly contentious, so it is best to be prepared and know the rules. If your Association does not have written procedures in place for its elections that agree with its bylaws and the Illinois Condominium Act, consult with your attorney in order to ensure that the procedures are legal and formerly adopted by the Association. 

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