



CCOC COMMUNICATOR

CHALLENGE! How To Avoid Election Disputes By Nicole Williams, Esq.

2014 is a national election year. But every year is election year for common ownership communities. Almost all associations conduct elections for their boards of directors at their annual meetings.

Every association is different. Some associations elect every member of the Board each year. Other associations stagger the terms of the individual Board members. Regardless of the number of open positions, there are certain

steps every association must follow. It is extremely important to make sure the association follows the requirements under the law (the Maryland Condominium Act, or the Maryland Homeowners Association Act), as well as what is required in the association's governing documents.

So, what are the most common challenges raised by a homeowner regarding an



election? Let's start with the notice of the meeting, because most challenges to an election, in my experience, allege that the election notices were improper. The Condominium Act provides that the bylaws of an association will state (continued on page 3)

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CCOC Releases Video Series on Community Associations

Montgomery County Executive Isiah Leggett (right) announced that the CCOC has released a set of 15 short informational videos on community association life. The videos have been posted to YouTube for easy access by all association members.

The videos are the first of their kind to be issued by a government agency and can be (continued on page 2)



Leggett Announces Release of CCOC Videos on Community Associations

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viewed at <http://www.montgomerycountymd.gov/OCP/ccoc/videos.html>.

The short (2-3 minute) videos vary in subject matter and are aimed at a wide audience, providing easy to understand information about responsibilities of both owners and associations.

“As one of the sponsors of the legislation that created the Commission on Common Ownership Communities in 1991, I applaud the hard work of this commission,” said County Executive Isiah Leggett. “These informative videos are a major educational tool for this community and I am proud that Montgomery County has once again led the way in providing consumer-oriented materials.”

The videos cover basic topics such as:

- Buying a home in a community association
- Elections
- Reserves
- Rights of members
- Duties of the board
- Architectural control and rule enforcement.

The videos texts were written by Commissioners Elizabeth Molloy and Arthur Dubin, and were produced by Cathy Grubman and Mike Springirth, who also produce “Consumer Compass” for Montgomery Cable TV.

The videos can be used to educate both members and board directors on essential aspects of community association life and management.

CCOC's Dispute Resolution Program Wins National Award

“A key component of the program's success is the use of ‘volunteer panel chairs.’ “



Montgomery County received a 2013 Achievement Award from the National Association of Counties (NACo) for the CCOC's Dispute Resolution Program. According to the NACo citation, “the program is the first of its kind in the United States, and is still one of the few such programs for resolving disputes within common ownership communities.”

The NACo award also noted that in addition to the volunteer services provided by the CCOC commissioners themselves, “a key component of the program's success is the use of ‘volunteer panel chairs. These local attorneys, most of whom specialize in common ownership law, conduct hearings and write decisions. The CCOC's ability to draw on these experts means that more than 90% of the CCOC's decisions are upheld on appeal.” The citation also praised the CCOC for the fact that two-thirds of all complaints filed with it are resolved by the parties without formal hearings.

The CCOC's hearing procedures are described in detail in its brochure, *How to Prepare for Your Hearing with the CCOC*, which is posted online at its website and which is available in hard copy by mail for \$2.00.

Almost all CCOC decisions are also online at its website, as is *The Staff's Guide to the Procedures and Decisions of the CCOC*. The *Guide* summarizes the decisions and organizes them by topic.

The CCOC is deeply grateful to all past and present panel chairs for their efforts to make this program a success. The current members' names are listed on page 8.



CHALLENGE! How to Avoid Election Disputes

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the method of calling a meeting of the unit owners and the manner of notifying the unit owners of a proposed meeting. Pursuant to the Condominium Act, the notice of the meeting of the council of unit owners must be mailed or delivered to each owner at least 10 days but no more than 90 days before the meeting. These notices must be sent to the address shown on the roster of members maintained by the Council of Unit Owners. However, Maryland Homeowners Association Act does not specify when notice must be provided for the annual meeting. Section 11B-111 of the Maryland Homeowners Association Act simply states, that all members of the homeowners association shall be given reasonable notice of all regularly scheduled open meetings of the homeowners association. The association's documents may provide additional specifics regarding notice to which must be adhered. But Section 10B-17 of the Montgomery County Code states that the association must notify all members of the election procedures and the date of the election not less than 10 day but no more than 90 days before the election. This section applies to all common ownership communities in Montgomery County, including cooperatives. It is imperative that the meeting is properly called and that notices are sent in a timely manner.

A condominium, homeowners association or co-operative may also send notice of the meeting via electronic transmission, such as email, fax, etc., if the requirements stated in the Condominium Act, HOA Act or Cooperative Housing Corporation Act are met. These statutes allow an association to provide notice of meetings by electronic transmission and to vote on matters by electronic transmission, if such notice and voting is not prohibited in the association's governing documents. In order to provide notice of meeting electronically or allow homeowners to vote electronically, the Board of Directors must authorize such action. The owner must provide written authorization to the association to provide them with notice of meetings via electronic transmission and the officer or agent of the association certifies in writing that the association has provided the notice of the meeting as authorized by the homeowner. Notice or delivery

of notice by electronic transmission is considered ineffective, if the association is unable to deliver two consecutive notices and the inability to deliver the electronic transmission become known to the person responsible for sending the electronic transmission. Also, if the association's governing documents require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, then voting by electronic transmission shall be permitted, if unit owners have the option of casting anonymous printed ballots.



A second common challenge to an election of the Board of Directors concerns whether there is a proper quorum. Section 11-109(c)(8) of the Maryland Condominium Act states that unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the council of unit owners if persons entitled to cast twenty-five percent (25%) of the total number of votes appurtenant to all units are present in person or by proxy. However, members should check their governing documents, as the bylaws might require a different number for the quorum. Cooperatives fall under the Maryland Corporations Article which states that a majority of all votes entitled to vote shall constitute quorum, unless the charter provides otherwise. The Homeowners Association Act is silent on this topic, so members should refer to the governing documents of the HOA.

The lack of a quorum at the annual meeting is a common problem. If your association fails to obtain quorum at the annual meeting, the members present in person or by proxy may vote to call a second election meeting at which the quorum will be met simply by all members who are present in person or by proxy, even if that number is less than the amount required by the governing documents.

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CHALLENGE! How to Avoid Election Disputes

(continued from page 3)

For the association to use this procedure, it must first have complied with Section 11-109(c)(8) of the Condominium Act (if a condominium) or Section 5-206 of the Corporations Article (for an HOA or a cooperative). Those laws provide that the initial notice of the annual meeting warns that the procedures of the Condominium Act or Corporation Article might be invoked if quorum is not obtained at the meeting.

Both statutes are very specific about the steps one must follow in order to call the next meeting. Both laws state that a majority of the members present at the first meeting must vote to call the additional meeting. Under the Condominium Act, the association must give 15 days notice of the time, place and purpose of the additional meeting to each unit owner. The notice must also contain the quorum and voting provisions of Section 11-109(c)(8)(iv) of the Condominium Act, under which the unit owners present in person or by proxy, no matter how few they might be, will constitute a quorum. The Condominium Act further states that unless the bylaws provide otherwise, a majority of the unit owners present, in person or by proxy, may approve any proposed action, including the election of the directors and the adoption of any rules or other measures.

Under Section 5-206 of the Corporations and Associations Article of the Maryland Annotated Code, an HOA or cooperative must provide notice to all of the members and publish notice about the additional meeting in a newspaper published in the county where the principal office of the association is located. The members of the association present, in person or by proxy, will constitute a quorum. Moreover, under the Corporations Article, unless the bylaws provide otherwise, a majority of the members present, in person or by proxy, may vote to approve any proposed action, including the election of directors and other measures.

The third typical challenge to an election concerns the nomination process. The Condominium Act is very specific regarding the nomination process, but it al-

lows associations to have different procedures, and therefore members should follow the procedures as indicated in their respective bylaws. Under the Condominium Act, the association must send a call for nominations to all unit owners at least 45 days before sending the notice of the election. Also, the Act states that nominations made at least 15 days before the notice of an election must be listed on the election ballot. The Condominium Act and the Montgomery County Code specify that candidates on a ballot shall be listed in alphabetical order, indicating no candidate preference. The Condominium Act goes further, stating that a unit owner may nominate himself or any other person to be an officer or member of the Board of Directors, and nominations may also be made from the floor at the meeting where the elections will take place. For those in HOAs and cooperatives, members must follow the nomination process as specified in the governing documents. The governing documents may call for a nomination committee responsible for collecting the nominations. If the governing documents do not call for a nominations committee or one does not exist, the Board of Directors may act in this capacity. Additionally, the governing documents may require owners to be in good standing in order to be a nominees for the Board.

The selection of election judges may become an issue as well. Make sure that the individuals who are appointed are impartial and do not have an investment in the outcome of the election. Voting inspectors should not be candidates or related to candidates for directorships. Although managers can be appointed to serve as election judges, they should not do so when, for example, an issue in the campaign is whether the association is properly managed. A wise option for associations that are deeply divided is the hiring of impartial election assistance, such as the League of Women Voters, a poll worker from the local Board of Elections, or some other neutral party.

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CHALLENGE! How to Avoid Election Disputes

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Proxy ballots must be carefully handled.

Only “directed” proxies can be counted as votes for directors, meaning the proxy ballot must name the specific candidates for whom it is to be voted. Therefore, proxies cannot be used to vote for any nominee, including those nominated from the floor, unless the name is printed or written onto the ballot. Any proxy, and any ballot, which tries to vote for more persons than there are eligible positions must be disqualified. If a proxy ballot is not “directed” it can still be counted to establish a quorum, and can be used to vote for or against any other proposal being considered at the meeting. In addition, the voting inspectors should look at the issuance date of such proxies to determine whether the proxy is still valid. Under the Condominium Act, proxies are effective for only 180 days after it is signed, unless granted to a lessee or a mortgagee. Under the Corporations Article (which applies to HOAs and cooperatives), proxies are valid for 11 months. Voting inspectors should verify that a person is eligible to vote, and did not vote for more than the number of vacant positions available, count the ballots, and review any challenges connected with the voting and voting results.

Voting procedures may also become an issue.

Some association documents may require voting by secret ballot. If the association requires secret ballots, then make sure proxy forms are returned to the Association in a sealed envelope or that the ballot portion of the form is separated from the identification portion of the form. The CCOC’s [Manual & Resource Guide](#) provides helpful advice. In addition, Section 10B-17 of the Montgomery County Code states that any unsigned absentee ballot must be received in a signed, sealed envelope, bearing the identification of the dwelling unit and proportional voting percentage, if any, on the outside of the envelope. The envelopes can be opened only at a meeting at which all the candidates or their delegates have a reasonable opportunity to attend.

The association documents may state that **members or owners who are not in “good standing” may vote.** Sometimes owners are not in “good standing” because they are delinquent in their assessment payments. However, Section 11-104(d) of the Condominium Act permits a condominium association’s bylaws to restrict the voting privileges of delinquent members only if the condominium has filed a lien on the unit and the lien has not been paid off.



The election materials prepared by the association must be impartial. The Maryland Condominium Act and Section 10B-17 of the Montgomery County Code state that any election materials prepared with funds of the association must list candidates in alphabetical order and may not indicate a candidate preference.

Elections may be challenged if a member believes that the Board of Directors of the association has failed to comply with the election procedure provisions of the association’s governing documents. A condominium or HOA member may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General. Condominium, HOA and cooperative members may also file complaints with Montgomery County’s CCOC.



Tips for Members on Filing Complaints with the CCOC

Two-thirds of all CCOC complaints are filed by members against their associations. In order to help members make the best case possible, we offer the following tips:

- Complaints must be filed against the association, not against its managers. Write the name and address of the association. You can also give the name and address of the manager or president of the board of directors.
- You must attach a complete copy of the governing documents (Declaration, Bylaws, rules & regulations). If you do not have a copy, ask the association for one. (There may be a fee for this service.)
- In addition, attach a copy of all documents that are connected to your complaint, such as notices you sent or that the association sent to you, photographs, etc.
- Avoid using staples. We prefer paperclips or binder clips.
- Pay special attention to the fact that the complaint must show that the board of directors either violated some rule or law, or that the board did not act when it was required to act. (For example, the board adopted a rule without following the

proper procedures, or the board failed to give you a hearing on a notice of violation.)

- Summarize your complaint in the complaint form and then give more details on extra sheets of paper.
- Describe your problem in chronological detail (date by date) as clearly as you can. When necessary, refer to the documents and photographs you have attached.
- You must show that you gave notice to the board of your complaint and followed any rules that applied to your dispute, or if there are no rules, that you gave the board a reasonable amount of time to respond to your notice.
- Be sure to check off at the end of the form whether or not you agree to try to settle the complaint in mediation.

Avoid making insulting or personal attacks on the board or its manager—such comments will not help your case.

Remember, if the complaint goes up for a formal hearing with the CCOC, **the complaint and its attachments will be the first thing the busy CCOC members will see.** Make the best impression that you can right at the start.

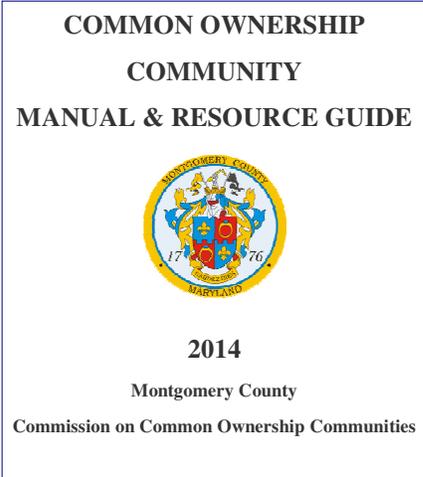
CCOC Releases Updated Manual & Resource Guide

The CCOC has issued a revised and expanded Manual for 2014. The Manual includes a new chapter on insurance requirements and best practices for all types of common ownership communities written by Robin Manougian, Agent and Community Insurance Risk Management Specialist. Ms. Manougian is a nationally-recognized expert on community association insurance issues who works for the John Manougian Insurance Agency in Silver Spring.

The new chapter reviews the various kinds of insurance available to associations and describes the options available for each kind. The chapter is not only thorough but is exceptionally easy to understand.

“The CCOC is deeply grateful to Ms. Manougian for her voluntary contribution to our education program,” said CCOC Chairperson Elizabeth Molloy. “Insurance is one of the vital components of every community association but it is also a complex topic. Ms. Manougian’s chapter is an excellent primer for all directors and interested association members. We will continue to expand our Manual to add to its usefulness in the years to come.”

The Manual is freely available online at the CCOC website.



Hard (paper) copies are available for \$15.00 by check made payable to “Montgomery County, MD” and mailed to the CCOC.



Save the Date: CCOC Annual Forum Will Be April 26, 2014

The CCOC will host its Annual Forum on Saturday, April 26, 2014, from 10am to 1pm at the North Creek Village Community Center in Montgomery Village. The Forum's focus will be on Reserve Planning.

The Forum will include expert presentations on:

- ◆ Reserve studies
- ◆ Legal issues pertaining to reserves
- ◆ Tax and audit issues
- ◆ Investing reserve funds
- ◆ Preventive maintenance.

The presentations will include the use of sample documents, such as copies of reserve studies, capital budgets, and other materials.

The best way to ensure that you will receive more information about the Forum is to sign up for the CCOC's free "eSubscribe" email list. You can enroll in the CCOC list by starting at: <https://public.govdelivery.com/accounts/MDMONTGOMERY/subscriber/new>. Or, you may go to www.montgomerycountymd.gov, click on "I Want To..." and follow the links to subscribing to the government digital newsletters and notices. The CCOC is listed under Consumer Protection.

Maryland Court Emphasizes Duty of Homeowner to Provide Resale Package Disclosures Even If Buyer Already Belongs to the Same Association

Flora and Roger Lipitz were members of a Baltimore-area HOA, and in late 2009 they put their home up for sale. They were contacted by William Hurwitz, an investor who already owned two other homes in the same HOA. The Lipitzes offered Hurwitz the HOA's resale package, but Hurwitz refused it several times, and the parties went ahead to make a sales contract. The Lipitzes rejected another offer on their home due to the contract with Hurwitz. One day prior to settlement, Hurwitz stated he was cancelling the contract because the Lipitzes had not given the required disclosures. The sellers sued for breach of contract, and the dispute eventually reached the Maryland Court of Special Appeals.

Although the sellers did not comply with their duty under the HOA Act to provide the resale package, the Court ruled that the buyer could not take advantage of the violation if the buyer persuaded them not to comply with their duty, and if, as a result, the buyers suffered financial loss or other harm. In this case, the sellers had offered the package, and the buyer had repeatedly told them that he did not need it because he already owned other homes in the same community.

The Court made several important points. First of all, it held that the buyer is legally entitled to the resale package of an HOA even if he already is a member of the same HOA. Secondly, it emphasized that sellers have an almost absolute duty to provide the resale package, and that the buyer can cancel the contract if they fail to do so. In this case, the Court allowed an exception only because Hurwitz knew of his right to the package, he rejected the sellers' offers to give him the package, the sellers had a right to rely on Hurwitz's refusals, and as a result they lost a sale they could have made to someone else.

Although this case does not directly affect associations, it is a reminder of the interest that Maryland courts are showing in resale package disclosures. Just two years ago, the Court of Appeals ruled that a condominium and its management company were both liable under the State's Consumer Protection Act for their failures to disclose known defects in the common areas in the condominium's resale packages. (See article on relevant CCOC publications, page 7 of this issue.)

Useful County Phone Numbers for Common Ownership Communities

Most County Government agencies may now be reached by phone by dialing “311” during ordinary business hours. The operator will then refer the caller to the proper agency. This service includes non-emergency Police services such as reporting abandoned cars and community outreach, Libraries, the Circuit Court, Landlord-Tenant Affairs, Housing Code Enforcement, the Office of the County Executive, Cable TV regulation, the Department of Permitting Services and the Department of Transportation.

Some County agencies may be called directly or through 311, including:

Office of Consumer Protection	240-777-3636 (email: consumerprotection@montgomerycountymd.gov)
CCOC	240-777-3766 (email: ccoc@montgomerycountymd.gov) (email preferred)
County Council	240-777-7900
Parks & Planning Commission	
Planning Board	301-495-4605
Parks Headquarters	301-495-2595

City of Rockville: residents should still call their City agencies directly.

Emergency services: 911

For more information on the 311 system or to search for agencies by computer, go to: <http://www3.montgomerycountymd.gov/331/Home.asp>

Sign up for our free “eSubscribe” emails by enrolling here: <http://www.montgomerycountymd.gov/mcg/esubscribe.html> (the CCOC is listed under Consumer Protection).

FY 2013 Commission Participants (as of March, 2014)

Residents from Condominiums/Homeowner Associations:

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Marietta Ethier Esq.

Rand Fishbein, Ph.D.

Bruce Fonoroff

Elayne Kabakoff

David Weinstein

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Mitchell Alkon, Esq.

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Terry Cromwell

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John Sample, Esq.

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Julianne Dymowski, Esq.

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Ursula Burgess, Esq.

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Charles Fleischer, Esq.

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Jennifer Jackman, Esq.

Kevin Kernan, Esq.

Bruce Birchman, Esq.

Mitchell Alkon, Esq.

Commission Staff

Ralph Vines, Administrator

Peter Drymalski, Deputy Assistant Editor

Brochures on Resale Packages and for New Members Available from the CCOC

The CCOC has two brochures available for new and prospective members of common ownership communities. The first is the 22-page booklet, *What You Should Know About Buying a Home in a Condominium, Cooperative, or Homeowners Association*. The booklet tells prospective purchasers about their rights to public offering statements and resale packages, and what those disclosures must include. It also helps to educate them on what life in a common ownership community is like, and what kinds of rules it might have on pets, noise, parking, etc. The CCOC encourages associations to distribute the booklet to members who are selling their homes and to include it in their resale packages. The booklet is freely available online at the CCOC's website, and hard (paper) copies are available for \$2.50 each, payable by check made out to "Montgomery County, MD."



The second brochure is a 1-page flyer, *What You Should Know About Your Condominium, Cooperative, or Homeowner Association*. This brochure summarizes the democratic nature of community associations, reviews what their important documents are and how to find them, and describes member rights to open meetings and access to association records. The brochure is an ideal way to familiarize new members, and to remind current members, of their rights and obligations. The CCOC hopes that associations include it in the welcome packages they give to new members and send it to all members every two or three years. The brochure is also freely available online, and single copies are free as well. (Bulk copies are available for 15 cents each.)

The CCOC believes that well-informed members are more likely to participate in their association's affairs and less likely to violate its rules and regulations.



Remember Your Annual Notices!



County law requires all associations to send a notice to their members advising them about the CCOC and the services it offers. There is no particular format for the notice, and it can be sent by paper or by email for those who opt for email notices, but it must go to every member. Simply posting it on the association's website is not sufficient.

The CCOC offers two sample notices: full page and half-page. The association can use that the format that best suits its purposes. Many associations send these notices with their annual meeting announcements or as part of their newsletters.

The CCOC will send copies of the sample notices on request. Just email us at ccoc@montgomerycountymd.gov and we will reply with both samples in Word format.

Thought for the Day

"If the board is well organized and efficient, that often results in even greater apathy. As long as the board is doing a good job, board meeting attendance is pretty low. I've heard one manager jokingly say that the only way to get good attendance at a meeting is to tell the owners that the assessments are going to go up by 100%!" (Jan Hickenbottom, *Questions & Answers About Community Associations* 2nd Ed., 2002.)



MONTGOMERY COUNTY, MARYLAND
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
 100 Maryland Avenue, Room 330
 Rockville, Maryland 20850

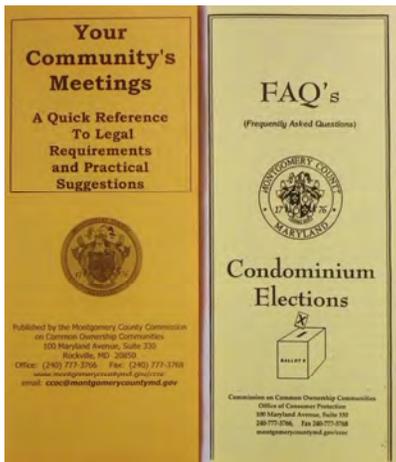
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CHALLENGE! How to Avoid Election Disputes (continued from page 5)

Proper elections are crucial for the health of the association. Election disputes can paralyze the management of an association, and cast doubt over the validity of all actions taken by a disputed board of directors. Both the Condominium and the HOA Acts allow homeowners to petition the Circuit Court for a court-appointed receiver if the association fails to fill vacancies on the Board of Directors sufficient to constitute a quorum. This should be an avenue of last resort, but it indicates that the law recognizes the importance of having a body to manage the affairs of the association. Serving on the Board of Directors of an association is a serious undertaking and affects everyone living in the community, as the Board's decisions affect the values of the homes within the entire community. Therefore, make certain those who are elected are elected properly.

(Nicole Williams is a partner in the law firm of Hileman & Williams, P.C., and a volunteer Panel Chair for the CCOC. The opinions expressed in this article are her own and not necessarily those of the CCOC.)

Information on Meetings and Elections from CCOC



The CCOC offers free information on meetings and elections. We have a brochure on Your Community's Meetings, which summarizes legal requirements and best practices for all association meetings. We also offer a brochure focusing on Condominium Elections. Finally, we offer a packet of checklists and sample forms called How To Hold An Annual Meeting which guides users through the process and which contains many of the forms referred to in Ms. Williams's article in this issue.

The brochures and the packet are freely available online at our website. To request charges for hard copies, contact us by email: ccoc@montgomerycountymd.gov

