

How to Opt Out of the New Accounting Requirements

Act 134 of 2013, codified as MCLA §559.157, amended the Michigan Condominium Act to require condominium associations with gross annual revenues greater than \$20,000 per year to have its books, records, and financial statements independently audited or reviewed on an annual basis by a certified public account in accordance with standards issued by the American Institute of Certified Public Accountants. The effective date of the act was January 14, 2014; any association with gross annual revenues exceeding \$20,000 whose fiscal year ends after January 14, 2014, **must** comply with the new provision, **unless** the association opts out by a majority vote its members. Opting out is not permanent; the association must opt out on an annual basis.

The Act provides that an association may opt out by the affirmative vote of a majority of members by any means permitted under the association's bylaws. All condominium bylaws provide a method by which the association calls a meeting of co-owners. However, some condominium bylaws allow an association to take action without a meeting simply by circulating a proposal and a ballot to be returned.

If a meeting is required

If your bylaws do not specifically authorize the association to take action without a meeting, then a meeting is required in order to opt out of the new Act. If your annual meeting will take place before the end of your fiscal year, you can simply place the matter on the agenda for next annual meeting.

If your annual meeting has already taken place, you will need to call a special meeting of co-owners to vote on opting out. You should comply with the specific requirements of your bylaws, but the process for calling a special meeting generally is as follows:

1. Draft and send a notice of special meeting. A sample notice of special meeting is attached as Exhibit A.
2. Include with the meeting notice a proxy form for the co-owner to use if he desires. A sample proxy is attached as Exhibit B
3. If authorized by your bylaws, include a written vote for the co-owner to use if he so desires. A sample written vote is attached as Exhibit C.
4. Hold the meeting. The usual formalities about checking in co-owners, qualification to vote, quorums, election inspectors, etc. apply, although a thorough discussion of them is beyond the scope of this seminar.
5. Conduct the vote. The measure requires the approval of a majority of co-owners, not just those present, or those qualified to vote. For example, assume the condominium project has 100 units with equal percentages of value. In that case, the affirmative vote, either in person or by proxy or by written vote, of at least 51 co-owners is necessary to opt out of the audit requirements. Any combination of votes (by persons

present, by proxyholders, or by written votes returned prior to the meeting) are sufficient to comply with the Act, so long as a majority of all co-owners has voted in favor of opting out.

If a meeting is not required

If your bylaws contain a provision allowing the association to take action without a meeting, you may use that provision to solicit co-owner approval for opting out of the audit requirement. Again, you should comply with the specific requirements of your bylaws, but process for taking action without a meeting generally is as follows:

1. Draft and send a notice of proposed action without a meeting. A sample notice is attached as Exhibit D. A ballot to accompany the notice is attached as Exhibit E. Even if your documents do not specifically require you to include a self-addressed, stamped envelope with the notice, doing so will increase the rate of return.
2. Wait the prescribed period of time, and then count the returned ballots. Just as with a meeting, a majority of all co-owners must return ballots voting in favor of opting out.

Whether done at a meeting or by action without a meeting, the association should retain the results of the election for a period of two years from the date of the vote.

Disclaimer: There is a great deal of variation between condominium documents. It is important that the procedures outlined in this handout, as well as the attachments, be modified to comply with your specific documents. Please contact competent counsel if you have questions about complying with your documents.

Exhibit A - Notice of Special Meeting

[Association letterhead]

[Date of Notice]

To: All Co-owners:

Re: Notice of Special Meeting of Co-owners

Please take notice that a special meeting of the co-owners will take place on [date] at [time], at [location]. The purpose of the special meeting is to consider opting out of the law requiring the association to have an audit or review prepared by a certified public accountant.

The Michigan Condominium Act requires condominium associations with gross annual revenues greater than \$20,000 per year to have its books, records, and financial statements independently audited or reviewed on an annual basis by a certified public account in accordance with standards issued by the American Institute of Certified Public Accountants. However, the Act provides that an association may opt out of the requirement by a majority vote of its members.

Our association has gross annual revenues greater than \$20,000 per year. Unless the co-owners vote to opt out, the association will need to have its records reviewed or audited in accordance with the Act.

A vote will be taken at the special meeting to determine whether the association will comply with or opt out of the Act's requirements. Please mark the date on your calendar and plan to attend.

If you are unable to attend but still wish to vote, you may do one of two things:

1. You may grant your proxy to someone else to attend the meeting and vote on your behalf. A proxy form is enclosed for your convenience. If you wish to grant your proxy to someone else, please fill in the name of the proxyholder, sign and date the form, and return it at or before the meeting (your proxyholder can bring it with him or her to the meeting).

2. You may sign and return a written vote. A written vote is enclosed for your convenience. If you already know how you want to vote on this issue, check the appropriate box on the form and return it at or before the meeting.

Very truly yours,

[Name of Association]
Board of Directors

Exhibit B – Proxy

[Name of Association]

Proxy

I appoint _____ to be my proxy.
[Print name of proxyholder]

Dated: _____

[Name of Co-owner]

[Signature]

Exhibit C – Written Vote

[Name of Association]

Written vote

I vote:

_____ In favor of

_____ Against

Opting out of the auditing requirements of the Michigan Condominium Act, MCLA §559.157

Dated: _____

[Name of Co-owner]

[Signature]

Exhibit D – Notice of Action Without Meeting

[Association letterhead]

[Date of Notice]

To: All Co-owners:

Re: Notice of Proposed Action Without A Meeting

The Michigan Condominium Act requires condominium associations with gross annual revenues greater than \$20,000 per year to have its books, records, and financial statements independently audited or reviewed on an annual basis by a certified public account in accordance with standards issued by the American Institute of Certified Public Accountants. However, the Act provides that an association may opt out of the requirement by a majority vote of its members.

Our association has gross annual revenues greater than \$20,000 per year. Unless the co-owners vote to opt out, the association will need to have its records reviewed or audited in accordance with the Act.

Under the condominium bylaws for [Name of Association], the association may take action without a meeting. This notice is being given under that provision of the bylaws.

[If desired, insert the reasons why the board believes opting out is in the best interest of the association; e.g., expense.]

This proposal requires the affirmative vote of a majority of members to pass.

If you want the association to opt out of the requirements of the act, you must mark the option “in favor of” on the enclosed ballot and return it to the association at [insert address for return of ballots]. Unmarked ballots cannot be counted in favor; you must check the box and return the ballot if you want the association to opt out of the requirement.

Ballots must be returned by [date]. Ballots returned after that date cannot be counted, so please sign and return your ballot as soon as possible.

Very truly yours,

[Name of Association]
Board of Directors

Exhibit E – Ballot for Action Without Meeting

[Name of Association]

Ballot

NOTE: This ballot must be returned not later than [date] to be counted.

I vote:

_____ In favor of

_____ Against

Opting out of the auditing requirements of the Michigan Condominium Act, MCLA §559.157

Dated: _____

[Name of Co-owner]

[Signature]