

Tax Status

How can my association set up a 501(c)(3) organization for parks and facilities? The process is fairly clear if you're going to use funds for scholarships, but what about using funds for parks and facility maintenance and improvement?—Sugar Land, Texas

A The Internal Revenue Service allows the establishment of a 501(c)(3) organization for various purposes, but the most relevant to this inquiry would be for a charitable purpose. The IRS broadly defines charitable purposes as services that are beneficial to the public interest. In order to establish a 501(c)(3), the parks and facilities that stand to benefit must be open to the public. If the parks and facilities were within an association and only open to its residents, then it would be highly unlikely for the IRS to grant 501(c)(3) status; this would be more of a 501(c)(4) social welfare organization. However, if the association assisted city-owned parks, it would probably satisfy the public interest requirement.

In addition, the charitable organization's membership also must be open to the public. All individuals must have the right to join. If there is a requirement that charitable organization members live in a certain community, it would not qualify. The IRS also will review where the organization receives its funding. The charitable organization cannot be financed using mandatory transfer or membership fees; all funds must be donated.

All organizations must apply directly with—and be approved by—the IRS. And because 501(c)(3) status is so difficult to attain, it would be highly beneficial to engage both an attorney and an accountant to assist in seeking qualifica-

tion. The attorney would help establish the entity under state laws and draft the proper governing documents. The accountant would prepare the 501(c)(3) application—IRS Form 1023.

» Robert G. Mitchell is an attorney in the Houston and Sugar Land law offices of Roberts Markel P.C.

Owner Info

Q I'm having a hard time understanding Florida's recently adopted SB 1196, which impacts community associations. There was a water leak in the association I manage that went from one unit to another below. The unit below wants the association to provide the name, address, telephone number and e-mail of the owner above so repairs can be made; the owner doesn't want to contact an insurance carrier. I'm being threatened with a lawsuit if I fail to provide the information the owner requested, but my understanding of SB 1196 is that I'm prohibited from sharing that information. Is that right? —*Weston, Fla.*

A There is somewhat of a conflict in the statute that makes compliance confusing. The 2010 legislation changed Section 718.111(12)(c)5 of Florida statutes to exclude "e-mail addresses, telephone numbers and emergency contact information" from the records that are accessible to members for inspection. However, Section 718.111(12)(a)7 of the Florida Condominium Act still requires the association to maintain certain information as part of its official records, including a roster of all unit owners and their mailing addresses, the unit, the authorized voter and, if known, telephone num-

bers. It also requires the association to remove e-mail addresses and telephone numbers from the roster if the unit owner revokes consent to receive electronic transmission of notices.

Reading these provisions together, the statute now prohibits the association's roster list—a required official record that is available for inspection by unit owners—from containing telephone numbers, e-mail addresses and other personal information other than the owner's name, unit address and mailing address. Official records must be made available for inspection within five business days from the date of written request. It seems the state legislature desired to protect unit owner privacy rights, including unwanted telephone calls and e-mails from other members.

Remember to forward—with the board's permission, of course—any letters threatening legal action to the association's counsel and insurance agent as notice of a potential claim.

» Lisa A. Magill is an attorney and shareholder at Becker & Poliakoff P.A., in Fort Lauderdale, Fla.

Signing In

Q Two years ago, greeters at my self-managed condominium association only put a check next to an owner's name on the sign-in list before meetings. Concerned that this could force the outcome of a vote if someone was dishonest or if a mistake was made, I started having owners verify their name, address and telephone numbers and then mark their initials on the sign-in sheet. Should owners sign their full name? What is the proper procedure for signing in to an association meeting? —*Smithfield, R.I.*

A There is no one proper procedure. Condominium boards have considerable discretion to impose reasonable controls to ensure the integrity of the voting and election process. Usually, the more controls in place, the less likely there is to be a dispute, although too many controls can lead to the disallowance of ballots, disputes and even litigation. It is a balancing act. Sign-in sheets and identification verification presumably eliminate the problem of an erroneous “check of the box.”

Other controls could include signed ballots, directed proxies, notarized proxies and pre-issued, non-alterable ballots or proxies. Proxies introduce another element to the voting process because a unit owner could show up at an election with 10 or more proxies, giving him or her the right to cast multiple ballots. The sign-in sheet does not come into play with proxies because they provide their own verification.

Proxies are sometimes difficult to

verify, which is why some condominium boards require them to be notarized. The Rhode Island Condominium Act provides that proxies are void if they're not dated or if they purport to be revocable without notice. The act also provides that proxies are valid for only one year, unless a shorter time is specified thereon. The only way proxies can be annulled is through delivery of a revocation to the person in charge of the meeting at which they are to be utilized. Some states have different requirements. New Hampshire, for example, mandates condominium boards use a unique proxy—bearing a control number or watermark—or conduct a random sampling of 10 percent of all proxies to verify accuracy.

Most elections require the presence of a quorum to proceed. Rhode Island statute calls for 20 percent, unless the bylaws specify otherwise. Association bylaws may specify what happens if a quorum isn't present. The bylaws also

might specify a minimum mandatory percentage to get elected, among other things.

Interestingly, when I voted in the mid-term elections last November, I noticed the local election officials only asked me for my name and the street where I live. They handed me the ballot once I answered; there was no further verification. In my opinion, our government could benefit from a verification process too. Condominium governance is one of the last remaining forms of pure democracy. If guided by that principle, you cannot go wrong.

» Edmund A. Allcock is an attorney and partner at Marcus Errico Emmer & Brooks P.C., in Braintree, Mass.

GOT A QUESTION? WRITE TO “ASK THE EXPERTS,” *COMMON GROUND*, 6402 ARLINGTON BLVD., SUITE 500, FALLS CHURCH, VA 22042. E-MAIL: COMMONGROUND@CAIONLINE.ORG. DUE TO THE VOLUME OF QUESTIONS WE RECEIVE, WE REGRET THAT WE CANNOT REPLY TO EACH QUESTION INDIVIDUALLY.