

# The DBPR's Proposed Electronic Voting Rule

ONE MORE STEP FORWARD FOR CONDOMINIUM E-VOTING

BY DAVID B. HABER AND  
JONATHAN S. GOLDSTEIN

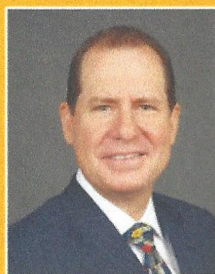
**O**n November 3, 2015, Florida condominiums took another step toward electronic voting functionality when the agency that regulates residential condominiums proposed a new administrative rule to govern and clarify aspects of the nascent electronic voting (or “e-voting”) process. On July 1, 2015, new legislation took effect enacting Section 718.128, Florida Statutes, permitting e-voting by consenting condominium unit owners through the use of “an Internet-based online voting system.” The Florida Department of Business and Professional Regulation, Division of

Florida Condominiums, Time Shares and Mobile Homes, is empowered to enact administrative rules to implement and regulate aspects of the “Florida Condominium Act”, including the new e-voting process. The Division has now proposed Administrative Code Rule 61B-23.00211 to interpret, clarify, and regulate condominium electronic voting. This proposed rule, still subject to change, raises questions even as it answers them.

The e-voting statute requires associations to adopt a board resolution approving electronic voting before they can commence e-voting. The resolution must determine the manner in which e-voting will be conducted (i.e., procedures, deadlines, opportunities to consent to and participate, and opt out thereafter). A copy of this resolution must be provided to the owners along with the mandatory 14 days of notice of the board of directors’ meeting at which it will be considered. If adopted in its current form, Rule 61B-23.00211 will require this resolution to provide that:

“(a) All unit owners receive notice of the opportunity to vote through an online voting system prior to each election or other unit owner vote in which the association authorizes online voting; and (b) The deadline to consent, in writing, to online voting must be no less than 14 days before the election or other unit owner vote in which the association authorizes online voting.”

The first of these clarified requirements will ensure continual notice under circumstances in which e-voting is conducted on an ongoing



**DAVID B. HABER,  
FOUNDER, HABER SLADE, P.A.**

David B. Haber is the founding partner of Haber Slade, P.A. He is a commercial litigator with 29 years of experience who has handled multiple, complex commercial disputes throughout Florida, including condominium and homeowners association’s disputes. He can be reached at [dhaber@dhaberlaw.com](mailto:dhaber@dhaberlaw.com). Jonathan S. Goldstein is a senior associate attorney with the firm. Jonathan’s practice areas include condominium and homeowners association (HOA) law,

construction litigation, and commercial litigation. Jonathan can be reached at [jgoldstein@dhaberlaw.com](mailto:jgoldstein@dhaberlaw.com). Haber Slade, P.A. is located on the Internet at [www.dhaberlaw.com](http://www.dhaberlaw.com) and can be reached at (305) 379-2400.



**JONATHAN S. GOLDSTEIN  
SENIOR ASSOCIATE ATTORNEY,  
HABER SLADE, P.A.**

basis, avoiding situations where new owners are unaware of their right to opt in. The latter prevents issues arising from last minute consents. The following are some of the other significant clarifications contained in the proposed rule:

- Consent to e-voting required by the e-voting statute as a precondition for electronic voting may be obtained via e-mail.
- The e-voting systems must provide the owner with a receipt, including the specific vote cast, the date and time of submission, and the user identification.
- The e-voting system must also produce an official record for the association identifying the specific votes cast on each ballot and the date and time of receipt of each electronically submitted ballot. The association must then maintain this record.
- Votes in an election of directors shall not be accessible to the association prior to the scheduled election. Failure to comply with this subsection will void the election, requiring the association to renote it.

Although the new regulation provides clarity and protections regarding several critical aspects of e-voting, it is notable for what details regarding the e-voting process are still unclear. For example, the e-voting statute contains requirements for authenticating the identity of a voter (and preserving the secrecy of their identity, in the case of elections), which will likely require scrutiny and guidance. The technical parameters that will be required to safeguard such information and the method of confirming such safeguards are still a mystery. Many associations require the submission of a “voting certificate” to clarify voting authority for a unit owned by multiple unmarried owners or corporate owners, and the interplay of timing issues relating to such designation with the identity authentication requirements of the e-voting statute is another area for clarification. These are the type of details regulation can assist with through the input of the various stakeholders and e-voting experts.

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