

## **STREETERVILLE ORGANIZATION OF ACTIVE RESIDENTS**

### **LEGAL ISSUES EVERY BOARD MEMBER SHOULD UNDERSTAND**

**February 17, 2010**

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- II. REQUIREMENTS OF THE CONDOMINIUM ACT
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Sec. 22.1. (a) In the event of any resale of a condominium unit by a unit owner other than the developer such owner shall obtain from the Board of Managers and shall make available for inspection to the prospective purchaser, upon demand, the following:

(1) A copy of the Declaration, by-laws, other condominium instruments and any rules and regulations.

(2) A statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing as authorized and limited by the provisions of Section 9 of this Act or the condominium instruments.

(3) A statement of any capital expenditures anticipated by the unit owner's association within the current or succeeding two fiscal years.

(4) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board of Managers.

(5) A copy of the statement of financial condition of the unit owner's association for the last fiscal year for which such statement is available.

(6) A statement of the status of any pending suits or judgments in which the unit owner's association is a party.

(7) A statement setting forth what insurance coverage is provided for all unit owners by the unit owner's association.

(8) A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are in good faith believed to be in compliance with the condominium instruments.

(9) The identity and mailing address of the principal officer of the unit owner's association or of the other officer or agent as is specifically designated to receive notices.

(b) The principal officer of the unit owner's association or such other officer as is specifically designated shall furnish the above information when requested to do so in writing and within 30 days of the request.

(c) Within 15 days of the recording of a mortgage or trust deed against a unit ownership given by the owner of that unit to secure a debt, the owner shall inform the Board of Managers of the unit owner's association of the identity of the lender together with a mailing address at which the lender can receive notices from the association. If a unit owner fails or refuses to inform the Board as required under subsection (c) then that unit owner shall be liable to the association for all costs, expenses and reasonable attorneys fees and such other damages, if any, incurred by the association as a result of such failure or refusal.

A reasonable fee covering the direct out-of-pocket cost of providing such information and copying may be charged by the association or its Board of Managers to the unit seller for providing such information.

(Source: P.A. 87-692.)

(765 ILCS 605/22.2)

When ...	Then ...
<ul style="list-style-type: none"> <li>the Condo Project Manager (CPM) Expedited Review process,</li> <li>the Fannie Mae Review process, or</li> <li>the FHA-approved Project Review.</li> </ul>	<ul style="list-style-type: none"> <li>the project met all of the applicable eligibility requirements on the date of the note and mortgage for that unit</li> <li>they are not aware of any change in circumstances since the review of the project that would result in the project not satisfying Fannie Mae eligibility criteria.</li> </ul>

### Related Announcements

The table below provides references to the Announcements that have been issued that are related to this topic.

Announcement	Issue Date
Announcement 08-34	December 16, 2008



## B4-2.1-02, Ineligible Projects (10/30/2009)

### Introduction

This topic contains information on ineligible projects, including:

### Ineligible Project Types

Fannie Mae will not purchase or securitize mortgages that are secured by units in certain types of PUD, condominium, or cooperative projects, regardless of the characteristics of the unit mortgage.

Loans secured by units within the following types of projects are not eligible for purchase or securitization by Fannie Mae.

Ineligible Project Types	
✓	Projects in which individual units are operated as a commercial hotel or motel
	Projects that include registration services and offer rentals of units on a daily basis
	Projects with names that include the words "hotel" or "motel"
	Projects that restrict the owner's ability to occupy the unit

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<b>Ineligible Project Types</b>	
	<p>Projects with mandatory rental pooling agreements that require unit owners to either rent their units or give a management firm control over the occupancy of the units.</p> <p><i>Background</i>            These formal agreements between the developer, homeowners' association, and/or the individual unit owners, obligate the unit owner to rent the property on a seasonal, monthly, weekly, or daily basis. In many cases, the agreements include blackout dates, continuous occupancy limitations, and other such use restrictions. In return, the unit owner receives a share of the revenue generated from the rental of the unit.</p>
	Projects with non-incident business operations owned or operated by the homeowners' association such as, but not limited to, a restaurant, a spa, a health club, etc.
	Investment securities (i.e., projects that have documents on file with the Securities and Exchange Commission, or projects where unit ownership is characterized or promoted as an investment opportunity)
	Common interest apartments or community apartment projects are projects or buildings that are owned by several owners as tenants-in-common or by a homeowners' association in which individuals have an undivided interest in a residential apartment building and land, and have the right of exclusive occupancy of a specific apartment in the building
	Timeshare or segmented ownership projects
	Houseboat projects
	New projects where the seller is offering sale/financing structures in excess of Fannie Mae's eligibility policies for individual mortgage loans. These excessive structures include, but are not limited to, builder/developer contributions, sales concessions, HOA or principal and interest payment abatements, and/or contributions not disclosed on the HUD-1 Settlement Statement.
/	Projects where more than 20% of the total space is used for nonresidential purposes
/	Projects where a single entity (the same individual, investor group, partnership, or corporation) owns more than 10% of the total units in the project
	Multi-dwelling unit condos or co-ops—projects that permit an owner to hold title (or stock ownership and the accompanying occupancy rights) to more than one dwelling unit, with ownership of all of his or her owned units (or shares) evidenced by a single deed and financed by a single mortgage (or share loan)

conveyed or be under a bona fide contract for purchase to principal residence or second home purchasers.

Fannie Mae is increasing the pre-sale eligibility requirement for attached new or newly converted condominium projects reviewed under the Lender Full Review process. Accordingly, at least 70 percent of the total units in the project or subject legal phase must have been conveyed or be under a bona fide contract for purchase to principal residence or second home purchasers.

CPM Expedited Review will continue to have more flexible presale requirements for attached new or newly converted condominium projects.

### **Delinquent HOA Dues for Units in Attached Condominium Projects**

Announcement 07-18 states that when using CPM Expedited Review and Lender Full Review for an established project consisting of attached units, no more than 15 percent of the *condominium/association fee payments* can be more than one month delinquent.

↳ Fannie Mae is updating its delinquent HOA dues policy for the CPM Expedited Review and Lender Full Review processes to require that no more than 15 percent of the *total units* in a project can be 30 days or more past due on the payment of their condominium/association fee payments. This new policy applies to the review of both new and established attached condominium projects.

### **Fidelity Insurance for Units in Attached Condominium Projects**

The *Selling Guide*, Part XII, Chapter 5, Section 504, Fidelity Insurance, states fidelity bond/fidelity insurance is required for new condominium projects with 20 or more units reviewed using the CPM Expedited Review, Lender Full Review, and FHA-approved project review processes. Fannie Mae is updating this policy to require fidelity bond/fidelity insurance for new and established condominium projects with more than 20 units. This new policy applies to all condominium project review types including the Limited Review process.

### **Hazard Insurance for Units in Attached Condominium Projects Including 2-4 Unit Projects**

The *Selling Guide*, Part XII, Chapter 5, Insurance Requirements require that lenders verify that hazard insurance for all condominium projects with attached units, including two- to four- unit projects, covers fixtures, equipment, and other personal property inside individual units if they will be financed by the mortgage.

↳ The updated policy now requires that the borrower obtain a “walls-in” coverage policy (commonly known as HO-6 policy) unless the lender can document that the master policy provides the same interior unit coverage. The master policy must include replacement of

## **Clarification of Owner-Occupancy Ratio Requirements**

Fannie Mae requires that established condominium projects consisting of attached units have an owner-occupancy ratio of at least 51 percent at the time the loan is originated (purchase or refinance) if the mortgage loan being delivered is secured by an investment property. Established projects where borrowers will occupy the unit or use the unit as a second home are not subject to any owner-occupancy ratios.

Due to current market conditions, many condominium projects are experiencing higher numbers of financial institution- owned REO units, which many lenders may be counting as non-owner-occupied under Fannie Mae's current requirements.

Fannie Mae is clarifying its condominium project owner-occupancy ratio policy to include REO units that are for sale (not rented) as owner-occupied units in the owner-occupancy ratio.

Projects where a borrower is an investor and the project does not meet the owner-occupied ratio of 51 percent will only be eligible if the lender submits the project to Fannie Mae for review under PERS and the project is approved or as a single-loan project eligibility waiver and Fannie Mae approves the waiver based on its review of the overall risk of the project.

## **Condominium Association Project Insurance Clarifications**

*Selling Guide*, Part XII, Section 501: Hazard Insurance; and *Servicing Guide*, Part II, Section 205.01: Amount of Coverage

Fannie Mae is clarifying the requirements for master or blanket project insurance (hazard, windstorm, and flood) for condominiums. Lenders must review the entire condominium project insurance policy to ensure that the owners' association maintains a master or blanket type of insurance policy for only the project in which the individual condominium unit will be financed. The following are not permitted:

- a blanket policy that covers multiple unaffiliated condominium associations or projects, or
- a self insurance arrangement whereby the owners' association is self insured or has banded together with other unaffiliated associations to self insure all of the general and limited common elements of the various associations.

As a reminder, condominium association project insurance must cover 100 percent of the insurable replacement cost of the project improvements, including the individual units in condominium project. Coverage does not need to include land, foundations, excavations, or other items that are usually excluded from insurance coverage. Fannie Mae expects lenders to verify hazard insurance (including wind and flood insurance, if applicable) coverage at the project level as part of their review of a project. Lenders must verify that

Once a project qualifies for FHA mortgage insurance, FHA may insure mortgages for buyers in a condominium up to a certain percentage of units.

### **What FHA Criteria Apply to Condominium Associations?**

The FHA mortgagee letters outline criteria that lenders or FHA will examine to determine whether a condominium association qualifies for mortgages insured by FHA. For existing condominium associations, these criteria include:

**Eligible Projects** - Eligible projects are declared condominium projects that exist in full compliance with appropriate state law. Condominium hotels, timeshares, houseboat projects, multi-dwelling unit condominiums and projects not deemed to be residential are not eligible for FHA insurance under the regulations.

**Eligibility Requirements** - All condominium project approvals must meet the following requirements:

- Projects must consist of two or more units.
- Projects must be covered by hazard and liability insurance and flood and fidelity insurance where applicable.
- Right of first refusal is permitted, provided it does not violate the Fair Housing Act regulations found in 24 CFR Part 100.
- • No more than 25 percent of the total floor area can be used for commercial purposes. The commercial portion must also be of a "nature that is homogenous with residential use."
- • No more than 10 percent of the units may be owned by one investor. This limitation also applies to developers/builders that subsequently rent out vacant and unsold units. For projects with 10 or fewer units, no single entity can own more than one unit.
- • Delinquent Homeowners Association Dues [Assessments]: No more than 15 percent of the total units can be in arrears (more than 30 days past due) of their condominium association fee payments.
- At least 30 percent of the total units must be sold prior to endorsement of a mortgage in on any unit. After December 31, 2010, the pre-sale requirement will increase to 50 percent. (*See Presale section below*)

- At least 50 percent of the units of a project must be owner-occupied or sold to owners who intend to occupy the units. For proposed, under construction or projects in their initial marketing phase, FHIA will allow a minimum owner occupancy amount equal to 50 percent of the number of presold units. *(Through December 31, 2010, or otherwise provided by FHA, bank-owned properties, vacant, or tenant-occupied real estate-owned properties are excluded from this calculation.)*

**Budget Review** - Mortgagees must review all homeowner's association budgets (actual budgets for existing projects and projected budgets for new projects) for all project approvals.

- The review must determine that the budget is adequate and:
- Includes allocations/line items to ensure sufficient funding for upkeep of amenities and features unique to the project.
- • Provides for the funding of replacement reserves for capital expenditures and deferred maintenance amounting to at least 10 percent of the budget.
- Provides adequate funding for insurance coverage and deductibles (as required under the insurance requirements section).
- If the documents do not meet these standards, the mortgagee may request a reserve study to assess the stability of the project. The reserve study cannot be more than 12 months old. In reviewing the reserve study, consideration must be given to items that have been replaced after the time that the reserve study was completed.

**Insurance Requirements-** Condominium projects must be covered by hazard, flood, liability, and other insurance as required by state or local laws, or acceptable to FHIA under the following criteria:

Hazard Insurance: The Condo Association is required to maintain a master or blanket property insurance equal to 100 percent of current replacement costs exclusive of land, foundation, excavation, or other normal exclusions. If the association does not maintain 100 percent coverage, unit owner gap coverage does not satisfy meeting this requirement.

- • H0-6 Coverage: In cases in which the master policy does not include interior unit coverage, the borrower must obtain a "walls in" coverage policy (H0-6).

- Liability Insurance: The association is required to maintain comprehensive general liability insurance covering all common elements, commercial space owned and leased by the owner's association, and public ways of the condominium project.
- Fidelity Bond/Fidelity Insurance: New or established projects with more than 20 units are required to carry fidelity bonds/insurance for all officers, directors, and employees of the association, and all other persons handling or responsible for funds administered by the association in an amount equal to three months aggregate assessments on all units plus reserve funds.
- Flood Insurance: Insurance coverage equal to the replacement cost of the project less land costs or up to the National Flood Insurance Program standard of \$250,000 per unit, whichever is less. If insuring a residential building, the maximum building coverage is \$250,000 times the number of units in the building. The association, not the borrower, is responsible for maintaining adequate flood insurance under the NFIP when the building is located in a Special Flood Hazard Area.
- Determining Need for Flood Insurance: If the property is located in a 100-year flood plain, flood insurance is required. If the project is not located in a 100-year flood plain, it is not subject to the flood insurance requirement if documentation is provided (documentation that includes either a final Letter of Map Amendment or a final Letter of Map Revision).

**If My Condominium Association Is Already FHA approved, Do We Need to Take Any Additional Action?**

Projects that received FHA approval prior to October 1, 2008, will be required to recertify on or before December 7, 2009.

Projects approved between October 1, 2008, and December 7, 2009, will follow the recertification requirements defined below:

Recertification: Condominium projects will expire within two years from the date of placement on the list of approved condominiums. Further participation in the program after this two-year period has expired will require recertification to determine that the project is still in compliance with the HUD's Owner-Occupancy requirement and that no conditions currently exist which would present an unacceptable risk to FHA. Items that must be given consideration are:

## Details on Amended Exterior Façade Inspection Ordinance

The Chicago City Council recently passed an ordinance that changes the inspections of exterior facades. This ordinance lowers the cost of conducting high-rise inspections by reducing the frequency of some inspections and changing the required coverage.

Almost every high-rise is impacted by the ordinance, but the extent will vary depending on the building. In most cases, the amount of inspection coverage may be reduced.

### Potential Reductions in the Cost of Conducting a Critical Exam Inspection:

- Reduce the amount of inspection coverage required for non-terra cotta buildings from 50 percent and all corners to 25 percent and all corners.
- Reduce the amount of invasive inspection openings from two per facade to one per facade.
- Allow the use of scaffolding, boatswain chairs, and/or lifts for the critical inspection, rather than require only scaffolding.

### Reducing the Frequency of Critical Exam Inspections:

- Certain buildings will be reclassified from Category III (critical examination required every four years) to Category II (required every eight years), so long as corrodible metal on building is protected by flashing and attached with corrosion resistant metal anchors.
- The Commissioner of Buildings is allowed to reset the timeframe for the reporting cycle on a building that underwent significant repairs after the last report was submitted. To reset the timeframe, the owner must submit a new critical examination report that shows that the building was examined as required for a critical during the repair project.
- The Commissioner of Buildings has the option for extending the first examination on new construction to 10 years from occupancy if the design professional of record involved in the construction of the facades certifies that the facades are safe. This is available only for buildings that have a valid certificate of occupancy on file.

### Reducing the Frequency of Interim Ongoing Inspections:

- The amended ordinance also reduces the requirement for Ongoing Inspection and Repair Report "Short Forms" from every second year to every sixth year for Category I buildings and from every second year to every fourth year for Category II and IV buildings.

### Building Categories

**Category I buildings** – constructed with exterior walls and enclosures primarily reinforced with, or in direct contact with, non-corrodible metal, have a 12-year cycle.

**Category II buildings** – constructed with exterior walls and enclosures primarily reinforced with, or in direct contact with (i) corrosion resistant metal, or (ii) corrodible metal protected by flashing and corrosion-resistant metal anchors, have a eight-year cycle.

**Category III buildings** – constructed with exterior walls and enclosures primarily enforced with, or in direct contact with, corrodible metal, have an four-year cycle.

**Category IV buildings** – constructed with exterior walls and enclosures primarily secured to the substrate by adhesive bond or with masonry headers, have an eight-year cycle. Mortar or cement connects the façade to the actual building structure.

### Frequently Asked Questions

**Q. My building was recently constructed; when is my first critical examination due?**

A. The initial critical examination is due four years after construction. Rule 3.7 of the proposed revised Rules and Regulations allows owners to appeal to the Commissioner for an extension of up to six years provided that: (a) a certificate of occupancy was issued; and (b) the professional involved in the construction of the exterior walls and enclosures certifies and they are in a safe condition.

**Q. We did major repairs after our last critical examination. Why do we have to examine the building again so soon?**

A. If the repairs performed on your building qualify as a critical examination, it is possible that the data from the repairs can be compiled as a critical examination. Building managers should discuss this with the architect or structural engineer involved in the repairs. If the building was examined as required for a critical examination, (a minimum of 25% and all corners for non-terra cotta buildings) the data should be prepared in the same format as a critical examination report. Two copies of the report and the required filing fee should then be submitted to the Department of Buildings. If the report is acknowledged as true to form by DOB, the time frame for inspection will be reset to reflect the most recent inspection.

**Q. Is the time frame is being extended for examinations?**

A. Yes, the time frame is extended for certain critical examinations. Buildings that were formerly categorized as Category III that have properly installed flashing can be re-categorized as Category II, extending the time frame between critical examinations from every four years to every eight years. Category II and IV buildings will be required to file a short form every fourth year after submission of a critical examination instead of every two, and Category I buildings will be required to file short forms every sixth year instead of every second year.

**Q. The Department is now allowing the use of suspended equipment (boatswain chairs) for the critical examinations. Are there any advantages to using scaffolding?**

A. If it is the intent of the owner to perform repairs in conjunction with the inspection, scaffolding must be used.

**Q. Can I submit my critical examination report electronically?**

A. Anyone wishing to submit an electronic copy must also submit two paper copies.

**Q. Can I get an extension for submitting my report?**

A. Extension requests will be noted in the file and consideration may be given as to the level of enforcement; however, the ordinance does not permit any formal extension.

For more information about the amended façade ordinance or façade inspection reports, please call Allison Sullivan at 312.743.3522 or Jose Aparicio at 312.743.3511.

## RULE 2 FILING REQUIREMENTS

**Rule 2.1** Owners of occupied buildings may choose to file Ongoing Inspection and Repair Report "Short Forms" every second year and not file critical examination reports at category mandated frequencies provided that all of the following conditions are met:

- a. There is a critical examination on file and that report has been acknowledged by the Department of Buildings as true to form.
- b. The most recently filed report, either critical examination or ongoing inspection and repair report, classified the building as "Safe" or "Safe with Repair and Maintenance"
- c. Owners notify the Department of Buildings in writing of their intention to choose this filing option by emailing the address posted on the Department of Buildings web site under "Exterior Wall Program". Owners will receive confirmation that the specified building meets all requirements.

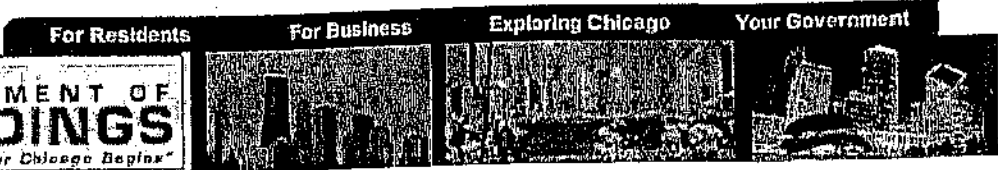
**Rule 2.2** Owners of vacant buildings must file critical examinations every 4<sup>th</sup> year, regardless of building category, for the time that the building remains vacant.

**Rule 2.3** Owners of occupied buildings where the most recent report classified the building as "unsafe and imminently hazardous" must file critical examinations and ongoing maintenance reports at the intervals required for the building category until such time as the building can be considered "Safe" or "Safe with Repair and Maintenance".

**Rule 2.4** Owners of newly constructed buildings are permitted to begin the "Short Form Only" program without an initial critical examination provided that dangerous and hazardous conditions have not been discovered on the building. The initial report will be required 2 years after first occupancy.

## RULE 3 EXAMINATIONS OF EXTERIOR WALL BALCONIES, FIRE ESCAPES, CHIMNEYS, HANGING AIR CONDITIONERS, MARQUEES, ATGRADE CANOPIES, SIGNS, FLAGPOLES, AND WINDOW WASHING AND EXTERIOR MAINTENANCE SYSTEMS

**Rule 3.1** For purposes of examining exterior wall balconies, fire escapes, chimneys, hanging air conditioners, marquees, at-grade canopies, signs, flagpoles, and window washing and exterior maintenance systems (collectively the "Appurtenances"), the examination shall be performed in compliance with Rule 4. The examination shall be limited to a visual examination of the surface of the exterior wall where the appurtenances are in contact with the wall, and their impact, if any, on the integrity of the exterior wall.



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## Date for Life Safety 1 & 2 Way Communication Systems moved to 2015

The City Council recently approved an ordinance that amends the life safety ordinance and changes the date for the installation of one- and two-way communication systems from January 1, 2012 to January 1, 2015.

One and two-way voice communication systems allow first responders and firefighters to make important announcements to building occupants during emergencies. The systems also help facilitate communication between firefighters and command personnel on separate floors.

Building owners still have the option of installing these systems prior to the deadline, but the extended time will provide financial flexibility during these difficult economic times.

This ordinance does not have an impact on the other deadlines and requirements of the life safety ordinance, such as installation of fire rated enclosures around exit stairs, fire-stopping of penetrations through fire rated floors and walls or providing door self closing devices where required. The only change is the compliance date for the communication systems.

[FAQ](#)

[Contact info](#)

or not the term "charter" or "special charter" is used in such  
 22 special act.

23 (p) Unless otherwise prohibited by ~~to the extent permitted~~  
 24 in the articles of incorporation or the bylaws of the  
 25 corporation, actions required to be "written", to be "in  
 26 writing", to have "written consent", to have "written approval"

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1 and the like by or of members, directors, or committee members  
 2 shall include any communication transmitted or received by  
 3 electronic means.

4 (Source: P.A. 92-33, eff. 7-1-01; 92-572, eff. 6-26-02.)

5 (805 ILCS 105/103.12) (from Ch. 32, par. 103.12)

6 Sec. 103.12. Private foundations - Federal tax laws. In the  
 7 absence of an express provision to the contrary in its articles  
 8 of incorporation, a corporation, as defined in Section 509 of  
 9 the Internal Revenue Code of 1986, as may be amended from time  
 10 to time 1954, during the period it is a private foundation:

11 (a) Shall not engage in any act of self-dealing as defined  
 12 in Section 4941(d) thereof;

13 (b) Shall distribute its income for each taxable year at  
 14 such time and in such manner as not to become subject to the  
 15 tax on undistributed income imposed by Section 4942 thereof;

16 (c) Shall not retain any excess business holdings as  
 17 defined in Section 4943(c) thereof;

18 (d) Shall not make any investment in such manner as to  
 19 subject it to tax under Section 4944 thereof;

20 (e) Shall not make any taxable expenditure as defined in  
 21 Section 4945(d) thereof.

22 (Source: P.A. 84-1423.)

23 (805 ILCS 105/107.10) (from Ch. 32, par. 107.10)

24 Sec. 107.10. Informal action by members entitled to vote.

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1 (a) Unless otherwise provided in the articles of incorporation  
2 or the bylaws, any action required by this Act to be taken at  
3 any annual or special meeting of the members entitled to vote,  
4 or any other action which may be taken at a meeting of the  
5 members entitled to vote, may be taken by ballot without a  
6 meeting in writing by mail, e-mail, or any other electronic  
7 means pursuant to which the members entitled to vote thereon  
8 are given the opportunity to vote for or against the proposed  
9 action, and the action receives approval by a majority of the  
10 members casting votes, or such larger number as may be required  
11 by the Act, the articles of incorporation, or the bylaws,  
12 provided that the number of members casting votes would  
13 constitute a quorum if such action had been taken at a meeting.  
14 Voting must remain open for not less than 5 days from the date  
15 the ballot is delivered; provided, however, in the case of a  
16 removal of one or more directors, a merger, consolidation,  
17 dissolution or sale, lease or exchange of assets, the voting  
18 must remain open for not less than 20 days from the date the  
19 ballot is delivered. ~~without a meeting and without a vote, if a~~  
20 ~~consent in writing, setting forth the action so taken, shall be~~  
21 ~~signed either: (i) by all of the members entitled to vote with~~  
22 ~~respect to the subject matter thereof, or (ii) by the members~~  
23 ~~having not less than the minimum number of votes that would be~~  
24 ~~necessary to authorize or take such action at a meeting at~~  
25 ~~which all members entitled to vote thereon were present and~~  
26 ~~voting.~~

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1 (b) Such informal action by members ~~If such consent is~~  
2 ~~signed by less than all of the members entitled to vote, then~~  
3 ~~such consent shall become effective only: (1) if, at least 5~~  
4 ~~days prior to the effective date of such informal action~~  
5 ~~consent, a notice in writing of the proposed action is~~  
6 ~~delivered to all of the members entitled to vote with respect~~  
7 ~~to the subject matter thereof, and (2) if, after the~~