

The COOPERATOR®

The Co-op & Condo Monthly

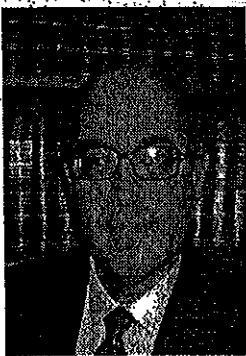
QUESTIONS & ANSWERS

Cumulative Voting?

Q My co-op has not had elections in many years, as the number of candidates always equals the number of seats on the board. This year, however, there will be more candidates than seats. Someone mentioned that we are supposed to have cumulative voting. The bylaws say that all voting shall be based on shareholders having one vote for each share and the majority decides any corporate action? Is this cumulative voting? What is cumulative voting?

—Manhattan Shareholder

A According to Andrew Brucker of the Manhattan-based law firm Schechter & Brucker, "Cumulative voting is not unusual in co-ops, although the majority of cooperatives in



New York do not have cumulative voting.

"The Business Corporation Law of New York (BCL), applies to and governs almost all cooperative corporations in New York. It sets forth all of the rules for governance and outlines just what other provisions (or deviations from the normal rules) a corporation may have, and exactly where these provisions should be found.

"The BCL provides that cumulative voting may be used in elections of directors, if the Certificate of Incorporation so provides. A provision in the bylaws of a co-op alone is not sufficient. Therefore, in determining whether a cooperative corporation has cumulative voting, the Certificate of Incorporation must be reviewed, for a review of only the bylaws will not be helpful.

"Cumulative voting is a concept which gives shareholders in the minority a greater chance for representation on the board. With cumulative voting, a shareholder gets to vote the number of votes equal to his shares multiplied by the number of seats to be elected. This 'cumulative' number of votes may be distributed between candidates in any manner. Thus, the cumulative number of votes may go to one candidate, two candidates, or more (up to the number of seats up for election). The votes may be distributed equally among those getting the votes, or unequally in the discretion of the shareholder.

"The best way to explain such voting is with an example. Assume a shareholder has an apartment with 100 shares, and there are nine seats on the board (and 11 candidates). In our example, directors have one-year terms, and thus all

nine seats are voted on each year. With normal voting, the shareholder can cast 100 votes for each of the nine candidates he prefers. If he only wants to support three candidates, he can vote for the three, but each one will only receive 100 votes. With cumulative voting, the shareholder has 900 votes, calculated by multiplying the number of shares (100) by the number of seats to fill (9). He can take his 900 votes and give them to whomever he wishes. Thus, if he desires to vote for only three candidates, he can cast 300 for each one. Or he can cast 600 for one of the three candidates, 200 for another, and 100 for the third. The shareholder can distribute his 900 in any manner he wishes (as long as he votes for no more than nine candidates).

"This type of voting gives power to small dissident groups in a cooperative (or even a sponsor who only holds a small percentage of the shares). For example, if a small group of shareholders in a coop with cumulative voting gets together and decides to 'pool' all of their votes by voting for only one candidate, they may (depending on the actual numbers) be able to elect one of the board members. There are mathematical formulas used to calculate just how this is done. Very often in non-cumulative building a small group of shareholders (say 15 percent) would be frozen out of any representation on the board".