

**MANAGEMENT YOU CAN TRUST**

Click To Learn More...

[www.metpacproperties.com](http://www.metpacproperties.com)

*Honesty.  
Integrity.  
Professionalism.*

[Home](#) | [2008](#) | [2008 Feb](#) | [Q&A: Corporate Conflicts?](#)

[Home](#) | [Q&A](#) | [Q&A: Corporate Conflicts?](#)

## Q&A: Corporate Conflicts?

By Martin Kera

Can a designated trustee of a co-op apartment serve as a member of a co-op board in any role?

—Upper East Side Shareholder

### Free Sample Bylaws



[corporatebylaws.rocketlawyer.com](http://corporatebylaws.rocketlawyer.com)

100% Free! Print, Save, Download. Free Sample Bylaws. All States

**A** “The general answer to the question is yes provided that the bylaws of the corporation or the certificate of incorporation do not prohibit it,” says Martin Kera, a partner with the Manhattan-based law firm of Kera & Graubard. “The answer to the question for a particular co-op depends on the specific wording of the co-op’s bylaws and certificate of incorporation and the nature of the trusteeship. I am assuming that title to the shares of stock is in the name of a properly organized trust or the trustee and that the same trust or trustee is the proprietary lessee.

“The underlying question is who may be a director of a corporation. New York law is sparse. Section 701 of the Business Corporation Law (BCL) states the following:

“ ... the business of a corporation shall be managed under the direction of its board of directors, each of whom shall be at least eighteen years of age. The certificate of incorporation or the bylaws may prescribe other qualifications for directors.”

“Bylaws in common use during the first big wave of co-op conversions in the 1980’s didn’t specify who could become a director. However, at that time section 216 of the Internal Revenue Code, which controls the deduction of interest and real estate taxes by shareholders, prevented anyone but individuals from being a tenant-shareholder (with some exceptions carved out by case law and revenue rulings of the IRS). Therefore, some certificates of incorporation and (some bylaws) contained provisions limiting stock ownership to individuals. Section 216 was amended in 1986 by substituting “person” for “individual” with the intent of allowing a trust and a corporation to own stock.

“Many co-ops have amended their bylaws to specify who may become a director. Some bylaws state that only resident shareholders can be directors. Others allow non-resident shareholders to serve on the board of directors. Although it is not the question asked, some co-ops prohibit a trust or trustee from owning shares notwithstanding the Internal Revenue Code provisions. In the question asked, the trust already owns the shares so the trustee should be able to serve as a director if there is no language in the bylaws or certificate of incorporation that prohibits such service.”

### [Bargold Storage Systems](#)

Sponsor Ad

Bargold custom builds and installs your Tenant Storage System at No Cost To You while remitting 25% of the gross monthly rental income. Bargold handles all administration services and maintenance.

41-41 38th St., Long Island City NY 718-247-7000 X 111

[www.bargoldstorage.net](http://www.bargoldstorage.net)

## Comments

### Isabel

First of all, I have been recommending for a long time that HOAs and Condo Associations make some effort to assure that votes are counted and one way to do that is to have the inspector or manager contact people whose ballots will not be counted (if the return address is present so they know what property is involved) and provide some means of having them come in and correct the error which OFTEN is that they did not sign the outside envelope. Yes, it is true that owners tend to either ignore the instruction or forget to sign the outside envelope. Many boards feel that is the owner's fault for not following instructions but some are willing to set up a process whereby the owner can come in and sign their ballot envelope. However, do not interpret this suggestion as meaning the owner can retrieve the ballot package and take it away from the inspector. Once in the hands of the inspector it is not revocable. And depending on who the inspector is, and how

difficult, cumbersome or costly it is to set up such a process, it may not even be feasible. I would caution HOAs and Condo Associations that do not take these measures however. In a fairly recent Superior Court case (not a published opinion but indicative of what a court might do when there are uncounted ballots), the judge did not respond favorably to a Civil Code 1356 petition to approve restated CC&Rs because, in part, of the fact that there were 100 uncounted ballots. If a board is trying to pass an important or very material ballot measure, it would make good sense to do whatever is reasonably possible to encourage owners and to assist even those who do not follow instructions in a way that makes sure as many ballots as possible are counted.

Write your comment

Your name (optional):

Your Comment (required):

Verification (required): **ca96j v**  
Please copy the characters from the image above into the text field below. Doing this helps us prevent automated submissions.

Please allow up to 1 business day for your comment to be approved.

Newspapers

- [The Cooperator \(NY\)](#)
- [The New Jersey Cooperator](#)
- [New England Condominium](#)
- [The Chicagoland Cooperator](#)
- [The South Florida Cooperator](#)
- [The Western & Central Florida Cooperator](#)

Expos

- [The Cooperator's Co-op, Condo & Apt. Expo](#)
- [The New Jersey Cooperator's Condo, HOA, Co-op & Apt. Expo](#)
- [New England Condominium's Condo & Apt. Expo](#)
- [The Chicagoland Condo, HOA, Co-op & Apt. Expo](#)
- [The South Florida Condo, HOA, Co-op & Apt. Expo](#)
- [The Western & Central Florida Cooperator's Condo, HOA & Co-op Expo](#)

Use of this site is subject to the terms of [user agreement](#) ©2014 Yale Robbins, Inc. [Office Space in Manhattan](#) [Syndicate](#) 