Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

9 September 2009

SEC Opinion No. 09-27
Proxy: Non-eligibility for Election to the Board

ATTY. ALEXES M. ENRIQUEZ
Sanidad Abaya Te Viterbo
Enriquez & Tan
2nd Flr. Eastside Bldg.,
77 Malakas St., Brgy. Pinyahan
Diliman, Quezon City

Sir:

This refers to your letter requesting an opinion on whether it is permissible for a representative or proxy (designated by a natural person who is a member of a condominium corporation) to be elected to the Board of Directors/Trustees of the condominium corporation.

We reply in the negative. The Commission has previously issued an opinion on this matter in its *Opinion to Atty. Richard V. Funk*,[1] hereunder quoted in full:

> "February 17, 1986
>
> Atty. Richard V. Funk
> Suite 217, Comfoods Bldg.
> Buendia Avenue corner Pasong Tamo St.
> Makati, Metro Manila
>
> S i r:
>
> This has reference to your letter dated November 18, 1985 requesting opinion of this Commission on the query posed therein.
>
> It appears that Mid-Land Mansions Condominium Corporation is a non-stock, non-profit corporation formed pursuant to the provisions of the Condominium Act for the purpose of holding title to, and managing the common areas of said condominium. In your letter you claim that proxies

[1] 17 February 1986

representing members of said association can be elected as director therein.

Your query is: Can a proxy, who was elected as director, continue to act as such if and when, before the expiration of his term, the unit owner whom he represents, decides to withdraw his right to represent him?

Section 47 of the Corporation Code of the Philippines (BP Blg. 68) empowers the members of an association to provide in its by-laws the qualifications of its directors. Thus, Article II of your by-laws provides as follows:

> "SECTION 1. Composition, Election and Term of Office. — The corporation shall be governed and its affairs managed and controlled by Board of Directors composed of five (5) members elected by and from any of the non-delinquent members of the corporation."

On the other hand, Article I of the same by-laws provides:

> "SECTION 1. Members. — Membership in the corporation shall be limited exclusively to owners of condominium units in the Mid-Land Condominium Project, who, under the provisions of the Master Deed and Declaration of Registration of said project, automatically become members of the corporation. However, if a unit owner owns more than one unit in the said condominium project, **he may designate other persons to represent him as member of the corporation with respect** to such other units, provided, that such designation shall be in writing and filed with the Secretary of the Corporation, and shall continue in effect, for all intents and purposes, until receipt by the Secretary of a written revocation. Membership in the condominium corporation cannot be transferred or encumbered separately from the condominium unit of which it is an appurtenance. When a member ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member of the condominium corporation." (Emphasis supplied)

It is clear from the aforecited provisions of Article III of the by-laws of Mid-Land Mansions Corporation that the basic qualification of a candidate for director is his membership in the corporation and his being non-delinquent. **While Article I of your by-laws allows unit-members to be represented, the right to be a candidate is not a right that can be delegated. The right to be a director is peculiar only to members of the corporation. The proxy not being a member, it follows that he is not qualified to be a candidate as director**.

Anent thereto, the pertinent provisions of the Code states and we quote:

> "SECTION 23. The board of directors or trustees. — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all such property of such corporations controlled and held by the board of directors or trustees to be

elected from among the holders of stock, or **where there is no stock, from among the members of the corporation**..." (Emphasis supplied)

In view of the foregoing, the answer to your query is in the negative.

Please be advised accordingly.

Very truly yours,

(SGD.) JULIO A. SULIT, JR.
Associate Commissioner"

The rule admits of no exceptions, even in the case of corporations which, by their nature cannot act by themselves. Villanueva offers an insightful summary[2] of SEC Opinions on the matter:

"a. Rule on Corporate Stockholders

In cases of corporate stockholders or corporate members of a corporation, such entities cannot be qualified to be elected as such to the board of the corporation. A corporation cannot act by itself but only through its officers and agents, and as such a corporation cannot attend personally board meetings of the corporation wherein it is elected as a director, but only through representative or a proxy, which would contravene the established rule that a director may not be represented by a proxy at a meeting of the board. In addition **such corporate stockholders or members of the corporation cannot also designate an individual representative to be voted into the board of the corporation since the representative would not be a stockholder of record nor a member himself, which is a minimum requirement to be qualified to be voted into the board of the corporation.**

Therefore, in the case of corporate stockholders or corporate members, their representation can be achieved by making their individual representatives trustees of the shares or memberships, which would make them stockholders or members of record and thereby qualified to be elected to the board..."

For your information and guidance.

VERNETTE G. UMALI-PACO
General Counsel

[2] Villanueva, Cesar L. Philippine Corporate Law, at p. 294, citing SEC Opinion, 2 June 1998, XX SEC Quarterly Bulletin (Nos. 1 & 2, March & June, 1986); SEC Opinion, 16 July 1985, SEC Annual Opinions 1985, at p. 125; SEC Opinion, 26 June 1969, SEC Folio 1960-1976, at p. 381.