

Pamela Abbott Moore

PAMELA ABBOTT MOORE
PAMOORE@PAMOORELAW.COM

NICHOLAS J. WOLFSEN
NICHOLAS@PAMOORELAW.COM

1111 E. KATELLA AVENUE, SUITE 200
 ORANGE, CA 92867

TELEPHONE
 (714) 288-0180

FACSIMILE
 (714) 288-0998

January 1, 2020

BOARD OF DIRECTORS ELECTION TIMELINE
Civil Code Section 5105 and 5115

The following is a sample timeline to be used for informational purposes when scheduling annual elections. The days are suggested time periods in order to comply with the hard deadlines and allow time for mailing and return of information from owners.

110 Days Before the Election (At least 30 days before the nomination deadline)	A notice of election that includes the call for candidates and procedure for nominations must be sent to the members by general notice.
80 Days Before the Election	Director Nomination Deadline.
60 Days Before the Election (At least 30 days before sending the ballot materials)	<p>“Save the Date” sent to members. This must include the following:</p> <ol style="list-style-type: none"> 1. Candidate List; 2. Notice of the date, time, and address of where to send the ballots or deliver to the inspector; 3. Notice of the date, time, and address of where the meeting to count the ballots will be held; 4. Statement of members’ right to verify the accuracy of individual information on the Candidate List and Voter List; 5. Statement of members’ right to request individual delivery of the above items. <p>Also, allow owners to verify the accuracy of their individual information on both the candidate registration list and voter list. (This requirement must be completed at least 30 days before ballots are distributed.)</p>
At least 30 Days Before the Election	<p>Ballot Packet Sent. This must include the following:</p> <ol style="list-style-type: none"> 1. Ballot and two pre-addressed envelopes; 2. Instructions on how to return ballots; 3. Copy of the Election Rules or the following statement on the ballot in 12-point font: “The rules governing this election may be found here: (enter website where rules are posted)”
Day of the Election	The Inspector of Election opens and counts ballots at open meeting.
Within 15 Days After the Election	Notice of Election Results given by General Notice unless Individual Notice is requested.

LAW OFFICES OF

Pamela Abbott Moore

PAMELA ABBOTT MOORE
PAMOORE@PAMOORELAW.COM

1111 E. KATELLA AVENUE, SUITE 200
ORANGE, CA 92867

TELEPHONE
(714) 288-0180

FACSIMILE
(714) 288-0998

NICHOLAS J. WOLFSEN
NICHOLAS@PAMOORELAW.COM

Election Bill SB 323 Becomes Law January 1, 2020

As of January 1, 2020, associations are required to implement new election rules and follow new procedures for conducting elections. The attached election rules are those required by this change in the law and include the following:

Management companies, CPAs and attorneys who work for associations can no longer serve as inspectors of election. Associations will have to hire independent third-party inspectors.

There is no acclamation for associations with less than 6,000 members. Even if there are equal numbers of candidates and available seats, elections must be conducted.

Candidates who wish to serve on boards must be members at the time of nomination regardless of what is stated in the Bylaws. Members may be disqualified if they have a prior criminal conviction that prevents the association from maintaining its fidelity bond. Members cannot be disqualified for nonpayment of assessments if they were paid under protest or the member has entered into an assessment payment plan. If there is a basis for disqualification for nonpayment, the Association must "provide the opportunity" to engage in IDR. Members may also be disqualified if there will be more than one member per household. They can also be disqualified if they have owned their home for less than a year.

Only members can run for the Board. The above qualifications for members to run for the Board are legally permitted regardless of what is stated in the Bylaws.

Those who supported SB 323 claimed that individuals were kept from running for boards and were not provided notice to enable them to place their names on the ballot and vote at the elections. As a result, there are numerous additional notice requirements that are included in the attached rules. All of the changes to the rules are mandatory except for the qualifications to run that are listed above.

The Board of Directors is not amending the Bylaws to comply with this law since the law overrides the Bylaws. Please review the attached election rules. You are welcome to provide input on the qualifications, but all other changes to the election rules are mandatory and the Board does not have discretion to change them.

Thank you in advance for your consideration of the election rules and the Board's implementation of these new procedures.

Parkside Homeowners Association

Election Rules Effective January 1, 2020

Pursuant to California Civil Code Sections 5100, 5105, 5110, 5115, 5125, 5145 and 5200, the following rules and procedures shall apply for the election of Directors:

1. Meeting at Which Secret Ballots Shall Be Tabulated

1.1 The Inspector(s) of Election shall tabulate the ballots for the election of directors at the annual meeting of the owners or at a special meeting of the Board of Directors duly noticed for the same date, time and place, as the annual meeting called for the purpose of counting ballots. The Board of Directors shall determine the date, time and place of said annual meeting of the owners and the concurrent special meeting of the Board in accordance with the Association's Bylaws.

2. Nomination of Candidates

2.1 At least one-hundred and ten (110) days before the date of the meeting at which the ballots for the election of directors are to be counted, the Association shall provide a notice of election that includes the call for candidates and procedure for nomination by general notice.

2.2 There are to be five (5) directors who must be Members.

2.3 Owners may nominate themselves or another person if they are qualified to serve on the Board. The Association permits all members to run for the Board except for the following:

(a) Individuals who have been members for less than a year, with membership requiring ownership of the property;

(b) Individuals with a past criminal conviction that interferes with the Association's ability to maintain fidelity bond coverage;

(c) Individuals who are delinquent in the payment of regular or special assessments only, not including fines and other charges. Individuals who are delinquent in the payment of assessments shall be qualified to run for the Board if they make payment in full under protest or have entered into a payment plan. Delinquent Members cannot be disqualified if they have not been provided the opportunity to participate in Internal Dispute Resolution.

(d) Individuals who would be serving on the Board at the same time as another person who hold joint ownership in property.

2.4 Any candidate nominated by another person will be contacted to confirm that such candidate consents to having his or her name placed in nomination for election to the Board.

2.5 All candidates who meet the qualifications to serve on the Board and, if appropriate, have confirmed their willingness to run for election to the Board, shall be listed on the secret ballot.

2.6 The Candidate Nomination Form must be returned to the Association at the address provided on, and by the deadline stated on, such form, which deadline must be at least eighty (80) days before the date the ballots for the election of directors are scheduled to be counted. Candidate Nomination Forms received after this date will not be considered and the nominee will not be included on the ballot.

2.7 The Candidate List, notice of the date, time and address where to send the ballots or where to deliver ballots to the Inspector and date, time and address for the meeting to count the ballots must be sent out at least thirty (30) days before the ballots are mailed out. This notice must advise members to check the accuracy of their individual information on the candidate registration list and voter list.

2.8 The Ballot Packet must be sent out with two-pre-addressed envelopes at least thirty (30) days before the election. A copy of the Election Rules must be sent with the ballot or the ballot must state in 12-point font: "The rules governing this election may be found here: (insert website where rules posted).

3. Inspectors of Election

3.1 The Board shall appoint one (1) or three (3) independent third parties as Inspectors of Election. An independent third party includes, but is not limited to a volunteer poll worker with the county registrar of voters; a licensee of the California Board of Accountancy; a notary public; a member of the Association provided such member is not a member of the Board of Directors or a candidate for the Board of Directors or related to a member of the Board of Directors or a candidate for the Board of Directors and are in good financial standing with the Association.

3.2 The secret ballots shall be returned to the Inspector(s) of Election.

3.3 The inspectors of election shall do the following:

3.3.1 determine the number of memberships entitled to vote and the voting power of each.

3.3.2 deliver at least 30 days before the election the ballot packet including the items referenced in Section 2.8.

- 3.3.3 determine the authenticity, validity, and effect of proxies, if any;
- 3.3.4 receive ballots and appoint and oversee additional persons to verify signatures and count and tabulate votes as long as they are independent third parties;
- 3.3.5 hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
- 3.3.6 determine when the polls shall close;
- 3.3.7 count and tabulate all votes
- 3.3.8 determine the election results;
- 3.3.9 perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section and all applicable rules of the Association regarding the conduct of the election that are not in conflict with this section.

3.4 An Inspector(s) of Election shall perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical. The decision or act of a majority shall be effective in all respects as the decision or act of all.

3.5 Any report made by the Inspector(s) of Election is prima facie evidence of the facts stated in the report.

3.6 The Board may remove and replace any Inspector(s) of Election prior to the tabulation of ballots if the Inspector(s) of Election resigns or if the Board reasonably determines that the Inspector(s) of Election will not be able to perform their duties impartially and in good faith.

4. Secret Ballot Procedure: Record Date

4.1 Ballots and two pre-addressed envelopes with instructions on how ballots shall be mailed by first-class mail or delivered by the Inspector(s) of Election to every member not less than 30 days prior to the deadline for voting.

4.2 Ballots must ensure the confidentiality of the voters.

4.2.1 A voter may not be identified by name, address, or lot, parcel, or unit number on the ballot;

4.2.2 The ballot may not require the signature of the voter;

4.2.3 The ballot itself is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand corner of the second envelope, the voter prints and signs his or her name, address, and lot, or parcel, or unit number that entitles him or her to vote. The second envelope is addressed to the inspectors of election, who will be tallying the votes. Failure to do so will invalidate the ballot or member's vote.

4.3 Owners may return their secret ballot by mail, hand deliver it to the meeting, or complete the ballot at the meeting; provided, only those ballots which are delivered to the inspectors of election prior to the polls closing shall be counted.

4.4 A member may request a receipt for delivery.

4.5 The record date for purposes of voting shall be the date the ballots are mailed to all of the owners.

5. Campaigning

5.1 All candidates or members advocating a point of view during a campaign, including those not endorsed by the Board, shall be provided equal access to Association media, newsletters, or internet websites (if any) for purposes that are reasonably related to the election. The Association may not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the Association, is responsible for that content.

5.2 All candidates, including those who are not incumbents, and all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election, shall be provided equal access to any common area meeting space, if any exists, during a campaign at no cost.

6. Handling of Ballots

6.1 As secret ballots are returned to the Inspector(s) of Election, the Inspector(s) of Election will mark off on a sign-in sheet that a ballot has been received for such unit. The first secret ballot received for any unit shall be the ballot that is counted. Any subsequent ballots for the same unit that are received shall be ruled invalid and shall be discarded.

6.2 The sealed ballots shall at all times be in the custody of the Inspector(s) of Election. After the counting of the ballots and the certification of the election results by the Inspector(s) of Election, the Inspector(s) of Election shall retain the ballots for one year at which time they shall be transferred to the Association.

6.3 After tabulation, the Inspector(s) of Election shall, upon written request, make the ballots, envelopes and sign in sheets available for inspection and review by members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

7. Tabulation of Votes: Quorum Requirement

7.1 All votes shall be counted and tabulated by the Inspector(s) of Election in public and at a properly noticed open meeting of the members or of the Board, at which a quorum of members is present or a quorum of Board members, as the case may be, must be present. For purposes of this section, Article II, Section 2.03 of the Bylaws defines a quorum for purposes of a membership meeting as the presence in person or by proxy of at least a majority of the voting power of the Membership of the Association. If there is not a quorum, the meeting may be adjourned for not less than five (5) days nor more than thirty (30) days from the original date at which time a quorum shall be twenty-five (25%) percent of the votes of the total voting power. If there are less than one-third (1/3rd) of the voting power of the Association present, notwithstanding the presence of a quorum, no matter may be voted upon except matters notice of the general nature of which was given.

7.2 The Inspector(s) of Election shall confirm that no more than one ballot was returned for each unit.

7.3 Any candidate or other member of the Association may witness the counting and tabulation of votes.

7.4 In order for the vote for the election of directors to be valid, ballots must be returned by at least a quorum of the owners.

8. Announcement of Results

8.1 The results of the election shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by members of the Association.

8.2 Upon certification of the election results by the Inspector(s) of Election, the newly elected Board members shall be deemed to have taken office.

8.3 Within 15 days of the election, the Board shall publicize the result of the election in a communication directed to all members.

9. Other Voting/Campaign Issues

9.1 All members shall be permitted to vote.

9.2 Cumulative voting is required pursuant to Article IV, Section 4.05 of the Bylaws.

9.3 Association funds may not be used for “campaign purposes” in connection with any board election. The term “campaign purposes” is defined to include, without limitation, (1) “expressly advocating the election or defeat” of any candidate that is on the ballot; or (2) “including the photograph or prominently featuring the name of a candidate on a communication” from the association (except the ballot and voting materials and equal access communications sent pursuant to the Section, above, entitled “Campaigning”).