

**ELECTION RULES**  
**PACIFIC ISLAND VILLAGE III**

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# ELECTION RULES

## PACIFIC ISLAND VILLAGE III

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**ELECTION RULES  
PACIFIC ISLAND VILLAGE III**

**ARTICLE I.**

**GENERAL SECRET BALLOT ELECTION RULES**

Section A. Elections Requiring Secret Ballots

1. The purpose of these Election Rules (“Election Operating and Voting Rules”) is to provide secret ballot election procedures that are in compliance with California Corporations Code and California Civil Code, including Sections 5100-5145 or any comparable successor statutes. These election operating and voting rules govern the following types of elections requiring secret ballots:

- Election of Directors,
- Removal of Directors,
- Assessments Requiring Membership Approval,
- Amendments to the CC&Rs and Bylaws, and
- Grants of Exclusive Use of Common Area Property.

2. The rules defined in this document as they apply to each election type shall be considered to be the Secret Ballot Election Operating Rules for the Pacific Island Village III Homeowners Association.

Section B. Inspector of Elections

1. At the onset of a secret ballot election, the Board of Directors shall select an independent third party as an Inspector of Elections (“Inspector”). There may be one (1) or three (3) Inspectors.

2. For the purposes of this section, an independent third party includes, but is not limited to, a volunteer pool worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services other than serving as an Inspector of Elections.

3. Inspectors of Elections must perform their duties impartially, in good faith, to the best of their abilities, as expeditiously as is practical and in a manner that protects the interest of all members of the Association. (Civil Code §5110(d).) As provided for in Civil Code §5110(c), Inspectors of Elections must:

- a) Determine the number of memberships entitled to vote and the voting power of each.
- b) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote. If there are three Inspectors, the decision of a majority shall be effective in all respects as the decision of all. (Civil Code §5110(d).)

- c) Determine when the polls shall close.
- d) Count and tabulate all votes. The Inspector is allowed to appoint and oversee additional persons to verify signatures and to count and tabulate votes provided that the persons are independent third parties.
- e) Verify the member's information and signature on the return envelope prior to the meeting at which ballots are tabulated.
- f) Determine the tabulated results of the election. (Civil Code §5120(a).)
- g) Promptly report the tabulated results of the election to the Board which: shall be recorded in the minutes of the next meeting of the Board; shall be available for review by members of the Association; and, within 15 days, shall be reported to the membership via general notice. (Civil Code §5120(b).) Any report made by the Inspector(s) is prima facie evidence of the facts stated in the report (Civil Code §5110(d).)
- h) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with the Davis-Stirling Act, the Corporations Code, and all applicable rules of the Association regarding the conduct of the election that are not in conflict with The Davis-Stirling Act.
- i) Keep custody (at a designated location) of the sealed ballots, signed voter envelopes, voter list, and Candidate Registration List until after the tabulation of the votes, and until the time allowed by Civil Code §5145 for challenging the election has expired, at which time custody shall be transferred to the Association. (Civil Code §5125.)

### Section C. Membership Voting

#### 1. Single Class of Membership.

The Association shall have only one (1) class of voting membership.

- a) Each member shall be entitled to cast one (1) vote for each separate interest owned by such member whose name must be on title.
- b) Only one vote per separate interest is allowed. Two (2) or more persons whose names are on title of a single separate interest shall be deemed to be one (1) member with only one (1) vote for voting purposes.

#### 2. Eligibility to Vote.

- a) All Members are eligible to vote in an Association election.
- b) The Association shall do all of the following:
  - (1) Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.
  - (2) Prohibit the denial of a ballot to a person with general power of attorney for a member.
  - (3) Require the ballot of a person with general power of attorney for a member to be counted if returned as required for that election.

(a) If a member chooses to use the services of a person with general power of attorney to vote for him/her in an election, either the member or agent must notify the Association in writing 30 days in advance of the election date identifying the name of the agent and the election to be voted. It is *highly recommended* that a copy of the signed identification page of the General Power of Attorney be provided for verification. A nonmember with a general power of attorney is authorized by statute to vote on behalf of a member. (Civil Code §5105(g)(3).)

(i) The Inspector(s) shall be notified of this action prior to the counting of the ballots.

(ii) The Inspector(s) shall record all such actions in the Election Report.

### 3. Membership Voter List

a) The Association shall establish and maintain a membership voter list (Civil Code §5105(a)(7)) that includes the name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the membership voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used. The membership list will also include email addresses. The membership list will not include information for members who have opted out pursuant to Civil Code §5220.

b) The Association shall permit members to verify the accuracy of their individual information on the membership list at least 30 days before the ballots are distributed. The Inspector shall ensure that reported errors/omissions shall be corrected within two (2) business days.

c) For each secret ballot election the Association shall prepare a membership voter list, correct as of the date the ballots were distributed, for use by the Inspector.

### Section D. General Secret Ballot Election Procedure

1. Articles II, III, IV, V, and VI in this document provide election procedures for each of the five types of secret ballot elections.

2. For each election it is *recommended* that the Board prepare a schedule of election events including:

a) the date the election will be announced,

b) the date the Inspector(s) of Election will be established

c) the dates of any pre-election actions (e.g., distributing proposed document amendments for membership review; or distributing Application for Candidacy for the Board of Directors form, etc.),

d) the date the election materials and general notice will be distributed,

e) the date of the actual election ballot counting meeting, and

f) the dates of all post-election actions (e.g., recording a CC&Rs amendment with the County, and distributing amended CC&Rs, etc.).

3. For each election the Board shall prepare and distribute to all members General Notice that includes the following:

- a) Date, time, and physical location to mail or hand-deliver ballots to the Inspector,
- b) Date, time and location of the ballot counting meeting, and
- c) Details and effects of the election subject and proposed action or list of candidates that will appear on the ballot and quorum requirements.

#### Section E. Secret Ballot Election Requirements

1. Proposed Action. The ballot must set forth the proposed action by the membership and provide an opportunity for members to specify approval or disapproval of any proposal.

2. Quorum. Ballots must indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of directors, must state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted. (Corp. Code §7513(c).)

3. Return Instructions. Ballots must also contain information on how to return them to the Inspector of Elections. (Civil Code §5115(a).)

4. Envelopes. In order to preserve voter confidentiality, the voter will not be identified in any way on the submitted ballot and a double-envelope system must be used. The ballot and two envelopes with instructions on how to complete and return the ballot shall be provided to every voting member not less than 30 days prior to the voting deadline.

5. The completed ballot is not signed by the voter. It is inserted into a blank white envelope that is then sealed. This sealed blank white envelope is inserted into a pre-addressed return envelope that is then sealed. In the upper left corner of the pre-addressed return envelope, the voter signs his or her name and indicates the voter's name and separate interest identified that entitles the member to vote.

6. The return pre-addressed envelope is addressed to the Inspector of Elections, in care of the designated custodian, who will collect and provide a running tally of ballots received upon request. The pre-addressed envelope may be mailed or delivered as stated in the election instructions. The member may request a receipt for delivery.

7. Custody Prior to Election. The returned sealed ballots shall be in the custody of the Inspector at all times, or at a location designated by the Inspector, until after the tabulation of the vote. (Civil Code §5125.)

8. Once a secret ballot is received by the Inspector of Elections or the designated custodian, it shall be irrevocable.

9. Any candidate or other member of the Association may witness, at a reasonable distance determined by the Inspector, the counting and tabulation of the votes. No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

10. The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board and shall be available for review by the

membership. Within 15 days of the election, the Board shall give general notice pursuant to Civil Code §4045 of the tabulated results of the election.

11. Election materials are retained as described in Section K. Retention of Election Materials.

#### Section F. Cumulative Voting Prohibited

Cumulative voting is not permitted in Pacific Island Village III Association elections.

#### Section G. Floor Nominations Prohibited

Floor nominations are not permitted in Pacific Island Village III Association elections.

#### Section H. Write-In Candidates Prohibited

Write-in candidates are not permitted in Pacific Island Village III Association elections.

#### Section I. Equal Access

1. The Association shall ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall 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. (Civil Code §5105(a)(1).)

2. The Association must also ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election. (Civil Code §5105(a)(2).)

#### Section J. Association Funds in Campaigns

1. Association funds shall not be used for campaign purposes in connection with any Association Board election. Funds of the Association shall not be used for campaign purposes in connection with any other Association election except to the extent necessary to comply with duties of the Association imposed by law. (Civil Code §5135)

2. For the purposes of this section, “campaign purposes” include, but are not limited to, the following:

- a) Expressly advocating the election or defeat of any candidate that is on the Association election ballot.
- b) Including the photograph or prominently featuring the name of any candidate on a communication from the Association or its Board, excepting the ballot, ballot materials, or a communication that is legally required, within 30 days of an election. This is not a campaign purpose if the communication is one for which subdivision (a) of Civil Code §5105 requires that equal access be provided to another candidate or advocate.

### Section K. Retention of Election Materials

1. Election materials include the: voter list, ballots, signed voter envelopes (may be inspected but not copied) and candidate registration list. Also recommended is the Inspector of Election Report and material provided for the purpose of holding the election.

2. The election materials shall at all times be in the custody of the Inspector or at a location designated by the Inspector, until the time allowed by Civil Code §5145 for challenging the election has expired, at which time custody shall be transferred to the Association. (Civil Code §5125)

3. The Association shall retain the election materials for the time periods of the current fiscal year and for each of the previous two (2) fiscal years so that they are available for member inspection. (Civil Code §5210(a)(1).)

### Section L. Inspection of Records

The Association shall make available election materials for the time periods and within the time frames provided in Section K. Retention of Election Materials, Paragraph (3) for inspection by a member of the Association, or the member's designated representative. (Civil Code §5205(a).) If there is a recount or other challenge to the election process, the Inspector(s) shall, upon written request, make the ballots available for inspection and review by an Association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote under the supervision of the Inspector. Signed voter envelopes may be inspected but may not be copied. (Civil Code §5125.)

### Section M. Judicial Enforcement of Election Procedures

A member of the Association may bring a civil action for declaratory or equitable relief for a violation of this article by the Association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date that the Inspector or Inspectors of Elections notifies the Board and membership of the election results or the cause of action accrues, whichever is later. (Civil Code §5145)

### Section N. Amendments

1. Any amendment to this document must be scheduled so that the members have the amended document no less than 118 days before the election to which the change is to be applied. This includes the 90-day limitation for amendments (Civil Code §5105(h)) and the 28-day notice period for membership review. (Civil Code §4360(a).)

2. The Board shall provide general notice to the Association members pursuant to Civil Code §4045 of a proposed rule change at least 28 days before making the rule change. The notice shall include the text of the proposed rule change and a description of the purpose and effect of the proposed rule change.

3. A decision on a proposed rule change shall be made at a regular Board meeting after consideration of all comments made by the Association members. The rule change shall be approved by at least a majority of the Directors present, provided a quorum is established.

4. Any such rule change shall be recorded in the minutes of the next meeting of the Board.

5. As soon as possible after making a rule change, but not more than 15 days after making the rule change, the Board shall deliver general notice to the Association pursuant to Civil Code §4045 of the rule change.

## **ARTICLE II.**

### **SECRET BALLOT ELECTION RULES FOR ELECTIONS OF DIRECTORS**

#### Section A. Director Candidate Qualifications

A candidate for the Board of Directors shall meet the following qualifications at the time of nomination:

1. The candidate must be a member (on title of a separate interest) of the Association. If title to the separate interest is held by a legal entity that is not a natural person, the entity shall have the right to appoint a natural person as the “member” for purposes of this article.
2. The candidate must have been a member for at least one (1) year.
3. Only one (1) member per separate interest shall be eligible to serve on the Board at any one time. A candidate may be disqualified if the person if elected would be serving on the Board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or is an incumbent director. (Civil Code §5105(c)(2).)
4. Pursuant to Civil Code §5105(d), a person may be disqualified from nomination for nonpayment of regular and special assessments, but not for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:
  - a) The person has paid the regular or special assessment under protest pursuant to Section 5658.
  - b) The person has entered into a payment plan pursuant to Section 5665.
5. A person shall not be disqualified from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Civil Code §5910.
6. The candidate must not have a past criminal conviction that would either prevent the Association from purchasing the fidelity bond coverage required by Section 5806 should the person be elected or terminate the Association’s existing fidelity bond coverage as to that person should the person be elected. (Civil Code §5105(c)(4).)

#### Section B. Candidacy Nomination Procedure

1. Complete a PIV III Application for Candidacy for the Board of Directors form at the announcement of the election. This will be distributed via first-class mail and will also be available online. See Appendix A.
2. The deadline for the receipt of the PIV III HOA Application for Candidacy for the Board of Directors will be stated on the form along with the return address instructions.

3. The Board, and the Inspector, if requested, shall review the Application for Board of Directors Candidacy forms for qualification.
4. Upon verification that a member is qualified the Inspector shall:
  - a) Ensure that the candidate's name and Application for Candidacy for the Board of Directors form is included accurately in the voter package.
  - b) Ensure that the member's name is accurately included in the Candidate Registration List.

#### Section C. Secret Ballot Election Procedures for the Election of Board Directors

Step 1. It is *recommended* that the Board prepare a Schedule of Events for the Election of Directors. See Appendix B.

Step 2. The Board shall establish the Inspector(s) of Elections (Inspector). The Inspector shall be an independent third party meeting the qualifications of Article I., Section C. of the General Election Rules.

Step 3. At least 90 days before the Election Meeting date, the Board shall announce the election to the membership, providing general notice with the dates for the Election Meeting, distribution of voting materials, deadline for receipt of Application for Candidacy for the Board of Directors forms, and identifying the Inspector for the election.

Step 4. Pre-ballot notice of all of the following shall be provided at least 30 days before the ballots are distributed:

- a) The list of all candidates' names that will appear on the ballot.
- b) The members' right to verify accuracy of their individual information on the Candidate Registration List and the Membership Voter List. The Inspector shall ensure that reported errors/omissions shall be corrected within two (2) business days.
- c) Individual notice of the above shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

Step 5. The Inspector shall deliver, or cause to be delivered election materials to the members at least 30 days before the election date. These include:

- a) A ballot, the candidate names, candidacy statements, ballot handling instructions, envelopes, and ballot return instructions.
- b) The date and time by which, and the physical address where, ballots are to be returned by mail or hand-delivered to the Inspector at the ballot-counting meeting.
- c) Election Rules, either by posting them on an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:" or by individual delivery.

See Appendices C. Sample Notice of Annual Meeting, and D. Sample Secret Ballot for the Election of Directors.

Step 6. All ballot envelopes received by the Inspector or his or her designated agent, shall be retained in a secure facility until they are provided to the Inspector at the Election Meeting for counting. Once a secret ballot is received by the Inspector or his or her agent, it shall be irrevocable.

Step 7. The Inspector shall verify that all signed ballot envelopes are from Association Members and that quorum has been met.

- a) The quorum at the first attempt to conduct a meeting is at least one-third (1/3<sup>rd</sup>) or 28 of the owners represented by ballot.
- b) If quorum is not met, the members present may adjourn the meeting to a time not less than 48 hours and no more than 30 days from the time the original meeting was called in order to meet quorum. The quorum for the second or any subsequent attempts to conduct a meeting is at least twenty-five percent (25%) or 21 of the dwelling units represented by ballot.
- c) In the election of members for a seat on the Board of Directors, the seat shall be awarded to the candidate receiving the most votes for a seat, once quorum is met.
- d) All such actions shall be recorded in the minutes of the next meeting of the Board.

Step 8. Once the Inspector confirms that quorum has been met, the Inspector will announce that the polls for the election are closed and the ballot counting can commence.

Step 9. The votes shall be counted and tabulated by the Inspector at the Board of Directors Elections Meeting. The counting and tabulating action shall be visible, as by display at a reasonable distance, to all members, attending the meeting.

Step 10. As provided for in Civil Code §5120(b), the tabulated results of an election must be:

- a) promptly reported to the Board of Directors,
- b) recorded in the minutes of the next meeting of the Board,
- c) made available for review by the membership, and
- d) within 15 days of the election, reported to the membership.

Step 11. The Inspector shall promptly prepare and submit a signed Inspector of Election Report to the Board stating the election issue(s) and results; quorum requirements; and certification that all duties were performed impartially to conduct the election with fairness to all members in compliance with these Election Rules. See Appendix E.

Step 12. The election voter materials shall be managed so as to preserve the voter secrecy and comply with the requirements in ARTICLE I, Section K. Retention of Election Materials.

#### Section D. Retention of Election Materials

1. The Inspector shall preserve all the Association election materials listed in ARTICLE I, Section K. Retention of Election Materials, along with the list of registered candidates and associated candidacy statements.

2. These election materials shall at all times be in the custody of the Inspector, or in a location designated by the Inspector, for one year from the date of the election, at which time custody of the materials shall be transferred to the Association. If there is a recount or other

challenge to the election process, the Inspector shall, upon written request, make the ballots available for inspection and review by an Association member. Any recount shall be conducted by the Inspector in a manner that preserves the confidentiality of the vote.

### **ARTICLE III.**

#### **SECRET BALLOT ELECTION RULES FOR DIRECTOR RECALL ELECTIONS**

##### Section A. Recall Petition

The process of removing a director (or directors) begins when the Board is put on notice with the receipt of a valid recall petition signed by 5% or more of the membership. (Corp. Code §7510(e).)

##### Section B. Requirements for the Director Recall Election

1. Within twenty (20) days from receipt of the petition, the Board must set a date, time, and location for the special meeting for the recall election and give General Notice. The special meeting must be scheduled to take place not less than 35 nor more than 90 days from receipt of request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice. (Corp. Code §7511(c).)

2. Business at the meeting is limited to noticed items only; no other business may be transacted. (Corp. Code §7511(a).)

3. The Board must appoint an Inspector of Elections (Inspector) who will tabulate and report the special meeting secret ballot recall election results.

4. The Inspector shall deliver, or cause to be delivered ballots with General Notice to the members at least 30 days before the special meeting recall election date. These materials include:

- a) A ballot, ballot handling instructions, envelopes, and ballot return instructions.
- b) The date and time by which, and the physical address where, ballots are to be returned by mail or hand-delivered to the Inspector at the ballot-counting meeting.
- c) Election Rules, either by posting them on an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:" or by individual delivery.

##### Section C. Secret Ballot Recall Election Special Meeting

The president of the Association chairs the meeting, or someone other than the president as may be determined by the Board. The agenda for the meeting may include only those matters which are to be voted on by the membership as provided for in the General Notice. (Corp. Code §7511(a).) Such matters must be on the ballot sent to the membership in advance of the meeting.

#### Section D. Recall Election Results

1. The Inspector will verify the ballots received and count the votes before reporting the results to the Board.
2. The removal is approved by the affirmative vote of a majority of a quorum. (Corp. Code §7222(a).) For purposes of this section, “quorum” means at least one third (1/3<sup>rd</sup>) of the members. The director(s) will remain on the Board if there are insufficient affirmative votes.
3. The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board and shall be available for review by members of the Association. Within 15 days of the election the Board shall give general notice pursuant to Section 4045 of the tabulated results of the election.
4. Election materials are retained as described in ARTICLE I, Section K. Retention of Election Materials.

#### Section E. Replacing Recalled Electors

Once members remove a director, or directors, his/her replacement(s) must be elected by the membership, not appointed by the Board. (Corp. Code §7224(a).)

### **ARTICLE IV.**

#### **SECRET BALLOT ELECTION RULES FOR ASSESSMENTS REQUIRING MEMBERSHIP APPROVAL**

#### Section A. Assessment Approval Requirements

1. When the Board finds the need to impose an assessment that exceeds the limitations stated in Civil Code §5605(b), a secret ballot election must be held in which approval of the assessment must be obtained by a majority of a quorum of the members.
2. For the purposes of this section, “quorum” means more than 50 percent of the members.

#### Section B. Special Assessment Election Procedure

Step 1. The Board shall distribute to the members:

- a) an explanation justifying the need for the assessment and requisite election,
- b) the election events schedule,
- c) the members’ right to verify accuracy of their individual information on the Member Voter List. The Inspector shall ensure that reported errors/omissions shall be corrected within two (2) business days.
- d) Individual notice of the above shall be delivered pursuant to Civil Code §4040 if individual notice is requested by a member.

Step 2. The Board shall establish the Inspector of Elections (Inspector).

Step 3. The Inspector shall deliver, or cause to be delivered election materials to the members at least 30 days before the election date. These include:

- a) A ballot, the explanation justifying the need for the assessment, ballot handling instructions, envelopes, and ballot return instructions.
- b) The date and time by which, and the physical address where, ballots are to be returned by mail or hand-delivered to the Inspector at the ballot-counting meeting.
- c) Election Rules, either by posting them on an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:" or by individual delivery.

Step 4. The ballots shall be counted by the Inspector at a meeting of the Board and the results shall be announced to the members and recorded in the minutes of the next meeting of the Board.

Step 5. If quorum is not met, the Board shall terminate the election process.

Step 6. The Inspector shall prepare an Election Report.

Step 7. The Board will report the election results to the membership within 15 days.

Step 8. The election materials shall be retained by the Inspector for one year before transferring them to the custody of the Board. See ARTICLE I, Section K. Retention of Election Materials.

**ARTICLE V.  
SECRET BALLOT ELECTION RULES FOR AMENDMENTS  
TO THE CC&Rs AND BYLAWS**

Section A. Election Rules for Amendments to the CC&Rs (the Declaration)

1. Preparation for a CC&Rs amendment election.

- a) The Board must issue a CC&Rs Amendment Proposal ("proposal") that includes the new or revised text and the reason for the change to the membership for review.
- b) The Board shall schedule an open review meeting of the membership of the Association for discussion. It is *highly recommended* that *all* objections be resolved in advance. A membership-approved draft is optimal to increase the probability of a successful election.
- c) RECOMMENDATION: The Board shall arrange that in order to provide for lender objection of any change to the CC&Rs, the draft of the proposed document shall be presented to all holders of mortgage or deed of trust on Member owned PIV III dwelling units. The document shall be sent by registered mail with a letter instructing the lender that unless a reply is received within a designated time period it is concluded that the lender has no objection to the contents of the changed document. At the end of the designated time period:
  - (1) If any lender has any objection(s) the Board shall arrange to resolve the issue(s) with them and schedule a re-review of the updated amendment. Once these issues are resolved, the Board will begin again with scheduling another membership review meeting (as described in b) above) and repeat the process. The purpose of

the review meeting is for clarification only. No changes may be made to the lenders' agreed upon document.

- (2) If there are no lender objections, the CC&Rs amendment secret ballot election shall commence.

## 2. Election Procedure for Amendments to the CC&Rs:

Step 1. The Board shall announce to the members the need for a CC&Rs amendment secret ballot election. The announcement shall include:

- a) the proposed CC&Rs amended/restated text
- b) the election events schedule
- c) the establishment of an Inspector of Elections. (Inspector)
- d) the CC&Rs amendment approval requirement being the affirmative votes of at least three quarters ( $\frac{3}{4}$ ) of the owners of dwelling units in the Association (i.e., 63 of the 84 owners) provided that for the owners who have a mortgage, the owner's approval is effective only if the owner's lender has also given approval, as stated in the CC&Rs.
- e) the members' right to verify accuracy of their individual information on the Member Voter List. The Inspector shall ensure that reported errors/omissions shall be corrected within two (2) business days.
- f) Individual notice of the above shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

Step 2. The Inspector shall deliver, or cause to be delivered election materials to the members at least 30 days before the election date. These include:

- a) The proposed amended/restated CC&Rs, a ballot and two envelopes and the secret ballot return instructions.
- b) The date and time by which, and the physical address where, ballots are to be returned by mail or hand-delivered to the Inspector at the ballot-counting meeting.
- c) Election Rules, either by posting them on an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:" or by individual delivery.

Step 3. The ballots shall be counted by the Inspector at a meeting of the Board. The results shall be announced to the membership and recorded in the minutes at the next meeting of the Board.

- a) If the number of affirmative votes meets or exceeds the requirement for approval, the amendment is effective after:
  - (1) that fact has been certified in a writing executed and acknowledged by the president of the Association, and
  - (2) the amendment has been recorded in the office of the Recorder of Orange County, California.

b) If the number of affirmative votes does not meet the requirements for approval, the election is closed.

(1) The Association may seek judicial authorization of the amended CC&Rs per Civil Code §4275.

Step 4. The Inspector shall prepare an election report and shall retain custody of the election materials for a year before transferring them to the custody of the Association. See ARTICLE I, Section K. Retention of Election Materials.

Step 5. Within a reasonable time after the amendment is recorded the Association shall deliver to each member, by individual delivery, a copy of the amendment, together with a statement that the amendment has been recorded.

### Section B. Election Rules for Amendments to the Bylaws

1. Preparation for a Bylaws amendment(s) election.

a) The Board must issue a Bylaws Amendment Proposal (“proposal”) that includes the new or revised text and the reason for the change to the membership.

2. Secret Ballot Election Procedure for Amendments to the Bylaws

Step 1. The Board shall announce to the members the need for a Bylaws amendment election. The announcement shall include:

a) The proposal

b) The election events schedule, which shall include an open review meeting to be held no less than 30 days prior to the distribution of the ballot materials.

c) The establishment of an Inspector of Elections. (Inspector)

d) The proposal approval requirement being the affirmative votes of the majority of a membership quorum. For the purposes of this section, “membership quorum” means at least one-third (1/3<sup>rd</sup>) of the members.

e) The members’ right to verify accuracy of their individual information on the Member Voter List. The Inspector shall ensure that reported errors/omissions shall be corrected within two (2) business days.

f) Individual notice of the above shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

Step 2. The Inspector shall deliver, or cause to be delivered election materials to the members at least 30 days before the election date. These include:

a) The proposed amended/restated Bylaws, a ballot and two envelopes and the secret ballot return instructions.

b) The date and time by which, and the physical address where, ballots are to be returned by mail or hand-delivered to the Inspector at the ballot-counting meeting.

c) Election Rules, either by posting them on an internet website and including the corresponding internet website address on the ballot together with the phrase, in at

least 12-point font: “The rules governing this election may be found here:“ or by individual delivery.

Step 3. The ballots shall be counted by the Inspector at a meeting of the Board. The results shall be announced to the membership and recorded in the minutes of the next meeting of the Board.

Step 4. The Inspector shall prepare an election report and shall retain custody of the election materials for a year before transferring them to the custody of the Association. See ARTICLE I, Section K. Retention of Election Materials.

Step 5. The Board shall issue the election results to the membership within 15 days.

3. The Board shall arrange for the distribution of the amended and signed Bylaws to the Membership.

## **ARTICLE VI.**

### **SECRET BALLOT ELECTION RULES FOR GRANTS OF EXCLUSIVE USE OF COMMON AREAS**

#### Section A. Application for the Grant:

If a Member has a need for the use of some part of the Common Area, the Member shall submit an application petitioning the Board for a Grant for Exclusive Use of a specific part of the Common Area. (Civil Code §4600)

The application shall include:

1. A description and reason for such a need.
2. A legal description of that part of the Common Area.
3. A description of any alternative(s) and basis of selection.
4. The proposed maintenance responsibility.
5. The proposed insurance responsibility.
6. Any monetary considerations.

#### Section B. Consideration by the Board:

1. The Board shall consider the application in terms of:
  - a) Conflict with the Association governing documents.
  - b) Adverse impact on the appurtenant Common Area.
  - c) Impact on property value
2. The Board may call on the Architectural Committee for an evaluation.
3. The Board shall decide whether to let the petition approval process continue.
4. If the Board does not approve the application, the member is informed and there is no need for an election.
5. If the Board approves the petition the Board shall initiate the election process.

Section C. Secret Ballot Election Procedure for Grants of Exclusive Use of Common Area:

Step 1. The Board shall announce to the members the need for a secret ballot election including the following information:

- a) The application.
- b) The election events schedule, which shall include an open review meeting to be held no less than sixty (60) days prior to the election date. The members shall have at least 30 days to respond.
- c) The members' right to verify accuracy of their individual information on the Member Voter List. The Inspector shall ensure that reported errors/omissions shall be corrected within two (2) business days.
- d) Individual notice of the above shall be delivered pursuant to (Civil Code §4040) if individual notice is requested by a member.
- e) The establishment of the Inspector of Elections. (Inspector)
- f) Petition Approval Requirements: For any petition subject other than those in Civil Code §4600(b), the petition approval requires the affirmative vote of at least 67% of the owners of separate interests.

Step 2. The Inspector shall deliver, or cause to be delivered election materials to the members at least 30 days before the election date. These include:

- a) The complete application for the grant of exclusive use of Common Area, a ballot and two envelopes and ballot return instructions.
- b) The date and time by which, and the physical address where, ballots are to be returned by mail or hand-delivered to the Inspector at the ballot-counting meeting.
- c) Election Rules, either by posting them on an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:" or by individual delivery.
- d) The election materials must specify whether the Association will receive any monetary consideration for the grant and whether the Association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

Step 3. The ballots shall be counted by the Inspector at a meeting of the Board. The results shall be announced and recorded in the minutes of the next meeting of the Board.

Step 4. The Inspector shall prepare an election report and shall retain the election materials for a year before transferring them to the custody of the Association. See ARTICLE I, Section K. Retention of Election Materials.

Step 5. The Board shall report the election results to the membership within 15 days.

Step 6. The Board shall ensure the preparation and recording of the requested grant and ensure that a copy is provided to the petitioner.