

## **ELECTION PROCEDURES GUIDE**

### **OCEAN PARK IMPERIAL HOMEOWNERS ASSOCIATION**

The purpose of this Election Procedures Guide (“Guide”) is to answer common questions concerning new election requirements effective January 1, 2020 and January 1, 2022. This Guide coordinates with the accompanying Election Timeline and Election Rules. The Election Rules, Election Timeline and this Guide are designed to help you comply with changes in the Davis-Stirling Common Interest Development Act regarding elections (as amended and effective January 1, 2020 and January 1, 2022).

**Who should review this Guide?** The Board should review the Election Rules and this Guide prior to any election. The Election Rules and Guideline for Inspector(s) of Election should be given to and reviewed by the inspector(s) of elections upon appointment.

**When do Election Rules need to be amended?** Election Rules must be amended at least 90 days prior to the association’s next election and must be compliant with the existing law and new requirements found in SB 323. For director elections, this should not be an issue because the director election process takes at least 90 days to complete. Proposed changes to your Election Rules must be delivered by **general notice** to Members at least the longer of 28 days or the period required in your governing documents before the Board can adopt changes at an open Board meeting.

**Who can be appointed as Inspectors of Election?** An independent third party selected by the Association 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.

In the past, associations have commonly used their management company or CPA or legal counsel to handle the election. As of January 1, 2020, this is no longer allowed. A volunteer homeowner can still be selected as the inspector(s) of elections. If an Association member is chosen, they cannot be a director or a candidate for director or be related to a director or to a candidate for director.

**When does the Association need to appoint Inspectors of Election?**

The Association should appoint 1 or 3 inspector(s) of elections at least **65-75 days** prior to the voting deadline date. This timeframe allows the inspector(s) of elections to be involved in the election procedures.

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**What should the ballots say?**

Any ballot distributed to the members to vote on any issue other than the election of directors must set forth the proposed action and provide an opportunity to specify approval or disapproval of the proposal. Ballots in all elections must state the applicable quorum(s) for the matters to be voted on. All ballots must state the time by which the ballot must be received in order to be counted and should specify if the time may be extended for purposes of achieving a quorum or allowing additional participation by the members.

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## ELECTION TIMELINE

This Election Timeline contains the recommended time periods and procedures that comply with the statutory election requirements effective January 1, 2020 and January 1, 2022. The Association’s Bylaws or Election Rules may contain additional requirements pertaining to nomination/election procedures that may also need to be followed.

ACTION	RECOMMENDED TIMELINE
<p>1. <u>Select a Proposed Voting Deadline – (usually the same date as the annual meeting)</u>: Select a prospective date for the voting deadline. Most associations have the voting deadline on the same date as the ballot counting meeting, but some count ballots at a later meeting after the voting deadline. It should be at least <b>65-75 days</b> before the ballot counting meeting deadline for submitting nominations (item 2 below). You may need to start with an earlier nomination procedure mailing date to allow adequate time to complete all legally required notices.</p>	<p><b>65-75 days before voting deadline</b></p>
<p>2. <u>Select Inspector(s) of Elections</u>: At least <b>65-75 days</b> prior to the voting deadline, select 1 or 3 inspector(s) of elections. The inspector(s) must be selected before the pre-ballot notice is given. However, associations that intend to appoint member(s) to serve as the inspector(s) of elections should follow the 75-day recommendation to provide adequate time for such inspector(s) to understand their duties and delegate any tasks.</p>	<p><b>65-75 days before voting deadline</b></p>
<p>3. <u>Prepare Voter List</u>: At least <b>65-75 days</b> for election to the Board prepare:</p> <ul style="list-style-type: none"> <li>• A voter list containing the name, voting power and either: (1) the physical address of the voter’s separate interest OR (2) the parcel number OR (3) both. The voter list shall also contain the mailing address for the ballot, if it differs from the physical address of the voter’s separate interest or if only the parcel number is used.</li> </ul>	<p><b>65-75 days before voting deadline</b></p>

ACTION	RECOMMENDED TIMELINE
<p>4. <u>Notice of Voter List Correction Deadline:</u></p> <p>At least <b>35 days</b> before the ballots are distributed, give <b>notice by any method</b> of the voter list correction deadline. The notice should advise the members that the Association has prepared a voter list for this election and that they have the right to verify the accuracy of their individual information only on the voter list on or before the deadline.</p> <p>The deadline should be at least <b>40 days prior to the voting deadline</b>, that being <b>at least 10 days before ballots are mailed or otherwise delivered</b>. This allows time for corrections to be made before the ballots must be delivered.</p>	<p><b>65-75 days before voting deadline</b></p> <p><b>40 days before voting deadline</b></p>
<p>5. <u>Allow Members to Verify Accuracy of their Individual Information on Voter List:</u> Beginning <b>at least 30-35 days (preferably 35)</b> before the ballots are distributed and until the deadline established in the prior section, allow members to verify the accuracy of their individual information on the voter list. The association should <u>not</u> provide the entire voter list to any member or the entire membership, but only allow individual members to confirm and/or correct their own information. Any errors or omissions in either list must be reported to the inspector(s) of elections. The inspector(s) must then change and correct the lists within <b>2 business days</b> of any error or omission being reported.</p>	<p><b>Beginning 65 days before voting deadline</b></p> <p><b>2 business days of error reported</b></p>
<p>6. <u>Distribute Ballot Materials:</u> At least <b>30 days</b> before the deadline for voting and at least <b>30 days</b> after the pre-ballot notice was sent for Director or recall elections, the inspector(s) of elections or the association must mail (or cause to be mailed) by first-class mail or otherwise deliver:</p> <ul style="list-style-type: none"> <li>• The ballot</li> <li>• Two preaddressed envelopes with instructions on how to return ballots to each member of the association.</li> </ul> <p>Finalize and maintain a copy of the voter list as of the date ballots were first distributed (the record date unless otherwise provided in the Bylaws).</p>	<p><b>30-35 days before voting deadline</b></p>

ACTION	RECOMMENDED TIMELINE
<p>7. <i>Deliver Election Rules</i>: At least <b>30 days</b> before the deadline for voting the inspector(s) of elections must deliver (or cause to be delivered) the election operating rules. Such rules may be delivered:</p> <ul style="list-style-type: none"> <li>• By posting the rules on an internet website and including the website address (URL) on the ballot with the phrase, in at least 12-point font: “The rules governing this election may be found here:” or</li> <li>• By individual delivery (mail)</li> </ul> <p><u>Note</u>: Ballot envelopes received by the inspector(s) must remain sealed until counting begins, but they may be logged in.</p> <p>Because Civil Code §5105(g)(1) requires the association to provide a ballot to anyone who is a member “at the time when ballots are distributed,” a completely accurate voter list cannot be determined before the date ballots are distributed. Therefore, at this stage, remember to finalize and maintain a copy of the voter list as of the date ballots were distributed.</p>	<p style="text-align: center;"><b>30-35 days before voting deadline</b></p>
<p>8. <i>Ballot Counting Meeting</i>:</p> <ul style="list-style-type: none"> <li>• Meeting called to order.</li> <li>• Establish quorum (not necessary if bylaws eliminate quorum requirement).</li> <li>• If insufficient quorum, or additional voting is desired, adjourn meeting to new date.</li> <li>• Call for any additional casting of ballots if voting period is still open and then close polls.</li> <li>• Inspector(s) and designated assistants may open and count ballots.</li> <li>• Results announced, recorded in the next Board meeting minutes, and provide by <b>general notice</b> (e.g., posted) within <b>15 days</b>.</li> </ul>	<p style="text-align: center;"><b>Within 15 days of the meeting at which ballots were opened.</b></p>

ACTION	RECOMMENDED TIMELINE
<p>9. <i>After the Election</i>: The sealed ballots, signed voter envelopes, voter list, and proxies, shall at all times be in the custody of the inspector(s) of elections or at a location designated by the inspector(s) until after the tabulation of the vote, 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.</p> <p><u>Note</u>: 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.</p>	

## **GUIDELINES FOR INSPECTOR(S) OF ELECTION**

1. By signing this form, the undersigned certify their qualification to act as an independent Inspector(s) of Election in one of the following capacities (check one):

- A Member of the Association who is not: (i) a member of the Board, (ii) candidate for the Board, (iii) person related to a member of the Board, or (iv) person related to a candidate for the Board;
  - A volunteer poll worker with the County Registrar of Voters;
  - A licensee of the California Board of Accountancy. I am not a licensee under contract to the Association for services other than serving as an Inspector of Elections;
  - A notary public commissioned by the California Secretary of State.
  - An independent election company under contract with the Association solely to serve as Inspector of Elections.
  - A law firm under contract with the Association solely to serve as Inspector of Elections.
  - A community management company under contract with the Association solely to serve as Inspector of Elections.
  - Other independent inspector – Describe. \_\_\_\_\_
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2. The undersigned further certify that they are not a person, business entity, or subdivision of a business entity currently employed or under contract with the Association for services other than serving as the Inspector of Elections.

3. The undersigned understand and acknowledge their duties as Inspector(s) of Elections include the following:

- a. Determine the number of memberships entitled to vote and the voting power of each.

- b. Determine the authenticity, validity and effect of proxies, if any.
- c. Deliver, or cause to be delivered to the Members the ballot(s) and Election Rules in the time required by California law.
- d. Receive all ballots. Once received by an Inspector of Elections, ballots are irrevocable.
- e. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
- f. Count and tabulate all votes. All votes shall be counted and tabulated by the Inspector(s) of Elections, or the designee of the Inspector(s) of Elections, in public at a properly noticed open meeting of the Board or Members. Any candidate or other Member of the Association may witness 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. The Inspector(s) may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector(s) deem appropriate, provided that the persons are independent third parties.
- g. Determine when the polls close, consistent with the governing documents.
- h. Determine the tabulated results of the election. Upon tabulation of the ballots, promptly notify the board of directors of the results of the election and the results will be recorded in the minutes of the next meeting of the board of directors.
- i. Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Civil Code, the Corporations Code, the Association's governing documents, and all applicable rules of the Association regarding the conduct of the election that are not in conflict with the Civil Code.
- j. Perform all duties impartially, in good faith, to the best of the ability of the Inspector(s) of Elections, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association. Any report made by the Inspector(s) of Elections is prima facie evidence of the facts stated in the report.
- k. Change and correct the candidate registration list and the voter list within 2 business days of any error or omission being reported by a member.
- l. Retain custody of ballots and voting materials (e.g., signed voter envelopes, voter list, proxies, and candidate registration list) after the tabulation of the ballots 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.

m. If there is a recount or other challenge to the election process, the Inspector(s) of Elections 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.

4. As Inspector(s) of Elections, I/we delegate the following duties (as checked below) to the Association’s community management company:

- The preparation of secret ballots, envelopes and voting instruction to members. (The ballots may also be prepared by the Association’s legal counsel if desired.)
- The mailing/delivery of secret ballots to all Association members.
- The delivery of the Association’s Election Rules to all members by:
  - Posting the rules on an internet website and including the website address (URL) on the ballot with the phrase, in at least 12-point font: “The rules governing this election may be found here:” or
  - By individual delivery (mail)
- I designate the community manager’s office as the location for the return of ballots.
- I reserve the right to appoint additional independent third parties to assist in counting and tabulating votes.

I/we have read the above Guidelines for Inspector(s) of Election. I/we agree to act in accordance with my/our obligations as described above.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_