

COCO PALMS ORANGE HOMEOWNERS ASSOCIATION
ELECTION RULES
(Proposed New Rules August 2020)

Article I. Elections.

The term “Election” means election and removal of directors, amendments to the governing documents, or the grant of exclusive use pursuant to Civil Code §4600, as well as elections regarding assessments requiring a vote of the members. Elections shall be held by secret ballot pursuant to California Civil Code §§5100-5145 and these rules.

Article II. Voting.

Section 1. Members’ Right To Vote.

A. Who Is A Member.

Every person or legal entity who is a record owner of a Condominium in the Association shall be a member of the Association. The term “record owner” means an individual or legal entity, which holds recorded title ownership to a Condominium in the Association. Additionally, the governing authority of a legal entity who is a member shall have the power to appoint a natural person to be a member for the purpose of these rules, and said natural person is included in the definition of member for the purpose of voting. (Civil Code §5105(b)(2).) Before casting a vote, the legal entity must advise the Association in writing, of the name and mailing address of the appointed natural person who is authorized to vote as a member on behalf of the entity.

B. Qualification To Vote.

Members whose record ownership of a Condominium in the Association is reflected in the Association’s records when the ballots are prepared and ready for distribution, will be sent a secret ballot at least 30-days before the election, and will not be denied a ballot. A member whose record ownership of a Condominium in the Association is not reflected in the Association’s records at the time ballots were distributed, will be given a ballot upon providing the Association and the Inspector(s) of Election proof of recorded title ownership to said Condominium. A person holding a general power of attorney issued by a member qualified to vote under these rules, shall be permitted to vote for the giver of the power of attorney and will not be denied a ballot. (Civil Code §5105(g)(2),(3).) Should there arise an issue of recorded title ownership, or an issue as to who is the designated member for a legal entity, the member may be asked to provide such proof to the Board of Directors or the Inspector(s) of Election. For the purpose of the election, the Inspector(s) of Election has the final and complete authority to ultimately resolve a dispute as to who is a record owner with the right to vote, and who is a designated member for a legal entity with the right to vote.

Section 2. Votes Per Condominium Owned.

There is to be one vote for each Condominium owned. A member’s right to vote may not be suspended. (Civil Code §5105(g)(1).) Where there are two or more record owners of a Condominium in the Association, any one of the record owners may exercise their right of membership to cast the vote for

the Condominium, in which case the Inspector(s) of Election may rely upon that vote as being on behalf of all the owners of said Condominium. Should two or more owners of a Condominium seek to cast more than one vote for that Condominium, then all such votes will be disqualified unless, prior to the Inspector(s) of Election counting the votes, either all but one owner of the Condominium withdraws their vote, or all owners of the Condominium advise the Inspector(s) of Election to accept one vote, or all owners of the Condominium sign a statement giving authority to one of their co-owners to cast the vote for the Condominium. During an election for the Board of Directors, the one vote per property is multiplied by the number of positions on the Board of Directors that are open for election, and the resulting number is the number of votes that may be cast on behalf of one Condominium. These votes may be cumulated as herein below provided. However, in no case shall there be more than one (1) ballot voted per any Condominium.

Section 3. Cumulative Voting.

Cumulative voting is required for all elections of the Board of Directors where there are two (2) or more vacancies on the Board. The one vote per Condominium is multiplied by the number of positions on the Board of Directors that are open for election, and the resulting number is the number of votes that may be cast on the ballot reflecting the member(s)' vote for their Condominium, and the votes may all be given to one candidate, or divided among any number of candidates, although no fraction of a vote (i.e. $\frac{1}{2}$, $\frac{1}{4}$) is permitted. In no case shall there be more than one (1) ballot voted per any Condominium.

Article III. Nominations for Candidates To the Board of Directors.

Section 1. Notice and Call For Candidates.

The Board of Directors, acting as the nominating committee authorizes management to provide a "Call for Candidates" to the membership, seeking qualified individuals for candidates to run for a seat on the Board of Directors of the Association. The Call for Candidates shall be given by general notice to members no later than 30-days before the deadline for submitting a nomination. (California Civil Code §5115 (a)),

The Call for Candidates shall provide the nominating procedures, qualifications for candidates, and set forth the deadline for receipt of nominations. (California Civil Code §5115 (a)).

Provided an individual is qualified to be a candidate, such individual may nominate his or herself by completing a Candidate Statement and timely returning it to management (or the Inspector(s) of Election if appointed by the Board) on or before the stated deadline. Timely receipt by management (or by the Inspector(s) of Election appointed by the Board) of a qualified candidate's Candidate Statement is deemed to be receipt by the nominating committee of a Declaration of Candidacy. Nominations of qualified candidates may be made from the floor of the meeting; and, no one may write-in on a ballot the name of a candidate who has not been nominated pursuant to these rules.

Article IV. Candidates.

Section 1. Qualification of Candidates.

Every person or legal entity who is an owner of a Condominium shall be a member of the Association. An individual is qualified to be a candidate to run for the Board of Directors, provided such individual is

a member of the Association, and meets the other qualifications as may be set forth herein. Non-members may not be candidates. For the purposes of these rules, the appointment by the governing authority of a legal entity who is a member, shall have the power to appoint a natural person to be a member for the purpose of these rules; the natural person may vote as a member as provided by these rules and may be a candidate for the Board of Directors. (California Civil Code §5105(b).) Additionally, a member must meet the following qualifications to be a candidate:

A. More Than One Member Per Unit.

A person may not be a candidate 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 Unit as the person, and the other person is either a qualified candidate for the current election or an incumbent director.

B. Assessments Current.

A candidate for a Board seat, and each Board member, must be current in the payment of regular and special assessments (not including fines, collection charges, late charges, or costs of collection); and, the person shall not be disqualified if either of the following circumstances is true: (a) the person has paid the regular or special assessment under protest pursuant to Civil Code §5658; or (b) the person has entered into a payment plan pursuant to Civil Code §5665. For only the purpose of these election rules, the phrase “current in the payment of regular and special assessments” means not being more than 90 days delinquent in the payment of regular and/or special assessments due he Association.

C. No Criminal Conviction.

Should a candidate disclose or if the Association is aware or becomes aware of a past criminal conviction of a candidate, that would, if the person as elected, either prevent the association from purchasing the fidelity bond coverage required by Civil Code §5806 or terminate the Association’s existing fidelity bond coverage, that person is not qualified to run for the Board of Directors, and shall not be placed on the ballot; or if elected, shall not be qualified to remain a Board member.

D. Timely Notice.

In order to be a candidate on the ballot distributed to members, a member must timely respond to the Call for Candidates with a Candidate Statement by the stated deadline.

Section 2. Association’s Offer to Participate In IDR.

With the exception of disqualification for failure to be a member of the Association, the Association shall not disqualify a person from being a candidate, without having provided the person the opportunity to participate in Internal Dispute Resolution under Article 2, Chapter 10 of the Civil Code commencing with §5900. (California Civil Code §5105 (e).)

Notice is hereby given that the Association hereby offers to participate in Internal Dispute Resolution under Article 2, Chapter 10 of the Civil Code commencing with §5900 (“IDR”) with an individual who

disputes he or she is not qualified to be a candidate under these rules. The individual must accept this offer in a timely manner so as to permit the IDR to be completed before the meeting at which the ballots are to be counted. Upon receipt of an individual's acceptance of this offer of IDR, the Association will set a date for the IDR at least 10 days but not more than 30 days from the date of said receipt; and, if said IDR is not held before the deadline for receipt of nominations, the individual's name will not appear in the list of candidates to be delivered to members pursuant to these rules; and, if said IDR is not held before the ballots are issued pursuant to these rules, then the individual's name will not appear on the ballot.

Article V. Campaigning.

Section 1. Equal Access To Media.

All candidates and members advocating a point of view are provided equal access to the following, if available: association media, newsletter, internet website. Access is to be provided during a campaign, for purposes that are reasonably related to that 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.

Section 2. Equal Access to Space.

If a common area meeting space is available during the campaign, then all candidates and members advocating a point of view, are permitted access to this space, for purposes reasonably related to the election.

Section 3. Campaign Funding.

Association funds shall not be used for campaign purposes in connection with any Association board election. Association funds may be used for campaign purposes in connection with any other Association election to the extent necessary to comply with duties of the Association imposed by law. "Campaign purposes" means: expressly advocating the election or defeat of any candidate that is on the Association election ballot; including the photograph or prominently featuring the name of the candidate on a communication from the Association or its board, excepting the ballot and balloting materials, within 30 days of the election, provided that 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.

Article VI. Election.

Section 1. Election Meetings of the Membership.

A. Date and Time.

The annual membership meeting for the election of directors shall be in the month of November each year, at 8:00 p.m.; however, the Board may fix a date another date for the meeting. Other membership meetings shall be held at a date, time and location determined by the Board.

For any membership meeting, if a quorum is required but not present, the meeting may be adjourned upon the vote of the members present in person or by proxy, to a time not less than forty-eight (48) hours but not more than thirty (30) days from the original date of the meeting without further notice, and each adjournment thereafter, may also be adjourned for not less than forty-eight (48) hours but not more than thirty (30) days from the date of the last adjourned meeting; and the quorum requirement as such adjourned meeting(s) shall be twenty-five percent (25%) of the voting power of the Association. If a time and place for the adjourned meeting is not fixed by those in attendance at the meeting or if for any reason a new date is fixed for the adjourned meeting after the adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular membership meetings. (Article XI, Section 4 of the Bylaws and Corporations Code §7511(d).)

If a quorum is required, and if at a adjourned meeting there is not a quorum of at least twenty-five percent (25%) of the voting power of the Association (the “reduced quorum”), the Board need not continue the meeting again in an effort to reach the reduced quorum, unless the Board believes there is a reasonable likelihood of obtaining the reduced quorum at the next adjourned meeting. If the Board, pursuant to this rule determines not to adjourn the meeting again in an attempt to reach the reduced quorum, thereafter the Board shall give notice to members of this decision; and, in the case of an election or removal of directors, the Board shall include in said notice that the directors, or as many as so choose, may remain directors, subject to a future election conducted pursuant to the Bylaws and these rules.

B. List of Candidates for Board of Directors Election, General Notice and Balloting Information.

At least 30-days before the ballots are distributed, the Association will give general notice or individual notice of following: (1) the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector(s) of Election; (2) the date, time and location of the meeting at which ballots are to be counted; and (3) the list of candidates names. (Civil Code §5115 (b).)

C. Notice.

Notice of the meeting shall be given to the membership, and shall accompany the Secret Ballots and shall be given by individual delivery no later than 30-days prior to the date of the meeting at which ballots are to be counted.

D. Delivery of Election Rules.

The election rules shall be delivered by general notice to members at least 30-days before the meeting at which members’ ballots will be counted. (Civil Code §5105(g)(4)B.)

E. Quorum.

The presence at a membership meeting in person or by proxy, of members entitled to cast 50% of the voting power of the Association shall constitute a quorum. (Article XI, Section 4 of the Bylaws.) If any meeting cannot be held because a quorum is not present, the meeting may be

adjourned as set forth above in paragraph A, and the quorum requirement at such adjourned meeting(s) shall be twenty-five percent (25%) of the total votes in the Association.

Each ballot received by the Inspector of Election(s) shall be treated as a member present at a membership meeting for the purposes of establishing a quorum. (Civil Code §5115(d).)

F. Deadline For Voting and the Polls.

The deadline for voting shall be at the time the polls are closed at the meeting at which ballots are to be counted. Polls shall be opened at the time of mailing the ballots, and the polls shall be closed when the Inspector(s) of Election determine that all ballots, as reasonably possible at the time, have been received. If the meeting is adjourned for lack of a quorum, then the polls shall remain open to the date of the adjourned meeting at which a quorum is present; and then the Inspector(s) of Election shall determine when to close the polls. If a quorum cannot be reach, as set forth in paragraph A hereinabove, the Board may terminate efforts to hold the meeting, the polls are then deemed closed and the Ballots of no effect, and thereafter, the Board shall give notice as set forth in said paragraph A.

G. Conduct Of Meeting.

A membership meeting shall be conducted in accordance with a recognized system of parliamentary procedure or any parliamentary procedure the Association may adopt. (Civil Code §5000.) All persons must conduct themselves with decorum. An individual's failure to conduct his or her self with decorum will result in the individual being asked to immediately leave the meeting.

H. Tie Vote – Runoff Election.

When the Inspector(s) of Election determine there is a tie vote between one or more candidates to any seat on the Board of Directors, if one or more of said candidate(s) do not voluntarily, or by flip of a coin, agree to withdraw from the election in order to break the tie, then there shall be a runoff election between said candidates. Secret Ballots for the runoff election shall be delivered by individual notice to members at least 30-days before the runoff election date and in accordance with Civil Code §5115. The Inspector(s) of Election shall have the authority and power to call for, and conduct the runoff election. (Civil Code §5110 (c)(8).)

Section 2. Inspector(s) of Election.

A. Appointment.

The Board of Directors shall select an independent third party or parties as an Inspector(s) of Election. (Civil Code §5105(a)(5).) There shall be one (1) or three (3) inspectors. The Inspector(s) of Election will be appointed by the Board before the meeting at which ballots are to be counted. The Inspector(s) of Election (and their designees) are to be independent and shall not be a Board member, a candidate or someone related to a Board member or a candidate, and 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. (Civil Code §5110(b).) If there are three (3) Inspectors, the decision

to act must be by a majority of the Inspectors and is effective, in all respects, as the decision of all.

If an Inspector is unwilling to, unable to, or does not, perform his/her duties as stated in these rules, or becomes ineligible to be an Inspector at any time after appointment under these rules, the Board may remove that Inspector without notice, and may appoint another Inspector in his/her place.

B. Duties of Inspectors.

The Inspector(s) of Election shall perform his/her/their duties impartially, in good faith, to the best of his/her/their ability, and as expeditiously as is practical, and in a manner that protects the interests of all members of the association. If there are three inspectors of election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the Inspector(s) of Election is prima facie evidence of the facts stated in the report. (Civil Code §5110(b).) The duties of the Inspector(s) of Election are as follows:

- 1) Determine the number of memberships entitled to vote and the voting power of each;
- 2) Determine the authenticity, validity, and effect of proxies, if any;
- 3) Receive ballots;
- 4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
- 5) Count and tabulate all votes;
- 6) Determine when the polls shall open and close;
- 7) Determine the results of the election;
- 8) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with the law and all applicable rules of the Association regarding the conduct of the election. (Civil Code §5110 (c).)

The Inspector(s) may appoint and designate additional independent personnel to assist them in their duties, including registration, counting and tabulating.

Prior to the mailing of the Ballots by the Association, the Inspector(s) of Election will determine the location where the sealed ballots will be mailed or delivered and where the Inspector(s) will maintain custody of the sealed ballots. In the case where the Inspector(s) of Election are members of the Association, or another non-paid volunteer, the preferred location for receipt and storage of ballots is the Association's management company. If the Inspector(s) of Election fail to determine the location for receipt and storage of ballots, so as to timely conduct the Election, it will be presumed that the location for receipt and storage will be the Association's management company.

Except when an independent person or company is retained and compensated by the Association to conduct the election, the management company for the Association will be authorized and directed to distribute ballots as set forth in these rules.

The Inspector(s) of Election have the authority to confer with the Association's legal counsel, and legal counsel is authorized by the Board of Directors to provide advice to the Inspector(s) of

Election, and the Board of Directors waives the attorney-client confidential communication privilege as determined by the Association's attorney to be necessary to inform and advise the Inspector(s) of Election related to their performance of their duties.

Section 3. Secret Ballots.

A Use and Issuance of Secret Ballots.

Voting is to be by secret ballot. The Association (or the Inspector(s) of Election appointed by the Board) will cause ballots to be sent by first class mail or delivered to all members at least 30 days prior to the initial deadline for voting. (Civil Code §5115.) Only ballots distributed by the Association (or by the Inspector(s) of Election appointed by the Board) shall be used for the election, for which they were distributed.

ONCE THE BALLOT IS RECEIVED BY THE INSPECTOR(S), THAT BALLOT CANNOT BE CHANGED, REVOKED OR WITHDRAWN.

B. Form.

A ballot and two pre-addressed envelopes with instructions on how to return the ballot shall be mailed by first-class mail or delivered to every member not less than 30 days prior to the initial deadline for voting.

C. Secret Balloting.

- 1) To insure confidentiality, the ballot is not signed, but is inserted into an envelope that is sealed, and this envelope is inserted into a second envelope that is sealed, addressed to the Inspector(s) of Election, and in the upper left hand corner the voter prints and signs his or her name and address which entitles him/her/them to vote. This outer envelope containing the inner envelope with the ballot may be hand delivered or mailed to the Inspector(s) of Election as herein set forth.
- 2) In order to be counted, ballots must be returned and received by the deadline set forth in the notice. Should the meeting at which ballots are to be counted is adjourned to a new date due to lack of quorum, then the envelopes containing ballots shall remain sealed and in the custody of the management company (or the Inspector(s) of Election appointed by the Board) until such time as quorum requirements are satisfied at an adjourned meeting of the members or when the Board determines such quorum cannot be reached and then the sealed ballot envelopes are to be retained pursuant to these rules.

D) Void Ballots.

In addition to any decision by the Inspector(s) of Election, failure by a voter to sign their name, indicate their name and separate interest address on the outer envelope addressed to the Inspector(s) of Election, will result in the ballot contained in the inner envelope, to be void and of no effect, and the ballot will not be counted. (Civil Code §5115.)

Section 4. Proxies.

The Association will not regularly distribute proxies, although it may distribute quorum only proxies used exclusively to obtain a quorum for a membership vote or meeting. For any other proxy, so as to comply with the requirements for a secret ballot process, any proxy prepared and or/used by anyone which directs the proxy holder how to vote, must include a separate detachable page for the direction, which can be detached and given to the proxy holder, and the proxy holder shall cast the member's vote by secret ballot. (Civil Code §5130.) Any proxy presented must comply with the law in form and substance. The Inspector(s) of Election shall authenticate, validate and determine the effect of any proxy presented.

Section 5. Tabulation of Votes.

All votes for election of directors are to be counted and tabulated by the Inspector(s) of Election in public at a properly noticed open meeting of the Board of Directors or a meeting of members.

Section 6. Election Results And Retention of Association Election Materials.

The results of the election, but not the actual ballots, shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by members; and, within 15 days of the election, the Inspector(s) of Election (or the Board on behalf of the Inspector(s) of Election) shall notify members of the results of the election.

After the tabulation of the vote, the ballots shall be placed in a sealed envelope or container by the Inspector(s) of Election, and with the Association election materials, shall at all times be in the custody of the Inspector(s) of Election or at a location designated by the Inspector(s) of Election, for one (1) year from the date the membership was informed of the election results, and thereafter, the ballots and election materials shall be transferred to the Association and maintained with the Associations records.

“Association election materials” means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list.