

# Election Rules for Directors by Secret Ballot

Adopted at a Noticed Open Board Meeting on \_\_\_\_\_.

Association: Mountain Valley HOA

With regard to the election of directors, the following rules and procedures apply:

## Meeting at Which Secret Ballots Are Tabulated

- The inspectors of election or their designee(s) 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 purpose of counting ballots. The board of directors shall determine the date, time, and place of the annual meeting of the owners and/or the special meeting of the board of directors in accordance with the association's bylaws, election rules, and California law.
- According to the association's bylaws, California law, or the association rules, the qualification(s) to serve on the association's board of directors are as follows: He or she (1) may not be delinquent in paying assessments, (2) May not have a past criminal conviction that would cause the termination of a fidelity bond or prevent the association from purchasing one, (3) must have been an owner for at least 12 months prior to the scheduled election date, (4) may not be a joint owner with another candidate or board member.
- The voting period for elections shall be at **least thirty (30) days**. The polls shall open and close as stated on the secret ballot or election fact sheet distributed for each election.

## Nomination of Candidates.

- **At least 105 days** prior to the date of the meeting, at which the ballots for the election of directors are to be counted, the association shall mail to each owner nomination procedures, the deadline for returning any nominations, and the deadline for voting. Owners shall be given at least **30 days** to submit nominations.
- **At least 30 days** before the ballots are distributed, a general notice shall (pre-ballot notice) be sent to the owners which shall include (1) the date, time, and physical address to mail or hand deliver ballots to the inspector, (2) the date, time, and location of the ballot counting meeting, and (3) the list of candidates to appear on the ballot (candidate list).
- **Review For Accuracy by Members**  
At least **30 days** before the ballots are distributed, members are permitted to verify the accuracy of their information on the candidate list and voter list. At an undefined time thereafter, the association or member must report errors or

omissions. The **inspector** must then change and correct the list within **two (2) business days** of any error or omission being reported. (Civil Code Section 5105(a)(7).)

- After the close of nominations, the association shall schedule and sponsor one gathering of candidates. The association shall select a date at least 30 days prior to the meeting scheduled to count votes and shall invite all properly nominated candidates to attend. The board shall select a moderator to host the candidate forum. The moderator will ask each candidate to give an introductory statement of no more than 5 minutes relating to his or her qualifications. Once all of the candidates make their introductory statements, members will be invited to ask questions of the candidates.
- In addition to the qualifications set forth above. All nominees are requested to sign the “Pledge by Nominee for Election to Board of Directors” made a part of these rules and identified as Exhibit A.
- Owners may nominate themselves or another person; provided that all candidates must meet the qualifications set forth in these rules.
- Candidates who meet the qualifications to serve on the board of directors and who have confirmed their willingness to run for election to the board of directors shall be listed on the secret ballot if their candidate nomination form is received by the date established by the board. Thereafter, candidates may be nominated from the floor at the meeting of members if a quorum is present.
- Candidates nominated by another person will be contacted to confirm that the candidate consents to having his or her name placed in nomination for election to the board.
- Candidate Nomination Forms must be returned to the address provided on, and by the deadline established by the board, which deadline must be at least thirty **(30) days** after the mailing date.

#### **Inspector(s) of Election.**

- The board of directors shall appoint one (1) or three (3) independent third parties as inspector(s) of election after the close of candidate nominations, but before the secret ballots are mailed to all of the owners. An independent third party includes, but is not limited to:
  - An independent professional inspector who has no contractual relationship with the association, or
  - Three members of the association provided such members are not members of the board of directors or candidates for the board of

directors or related to a member of the board of directors or a candidate for the board of directors. Such persons may not be

- employed or under contract to the association for any compensable services.
  
- The inspector(s) of election shall do all the following:
  - Determine the number of memberships entitled to vote and the voting power of each;
  - Determine the authenticity, validity, and effect of proxies, if any;
  - Receive ballots;
  - Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
  - Count and tabulate all votes;
  - Determine when the polls will close;
  - Determine the results of the election; and
  - Perform any acts as may be proper to conduct the election with fairness to all members, the Davis-Stirling Act, the California Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with California law.
  
- An inspector of elections shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. The decision of the majority shall be effective in all respects as the decision or act of all inspectors of election.
  
- Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.
  
- The board of directors may remove and replace any inspector of election prior to the tabulation of ballots if an inspector of election resigns or if the board of directors reasonably determines that an inspector of election will not be able to perform his or her duties impartially and in good faith.
  
- The inspector(s) of election may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector(s) of election deem appropriate, provided that the additional persons are independent third parties.

## **Secret Ballot Procedure: Record Date**

- Ballots and two (2) preaddressed envelopes with instructions on how to return the ballots shall be mailed by first-class mail or delivered by the association to every member **not less than thirty five, (35) days prior** to the deadline for voting.
- Ballots must ensure the confidentiality of the voters.
- Voters may not be identified by name or otherwise on the ballot.
- Ballots shall not require the signature of the voter.
- 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 shall sign his or her name, indicate his or her name, and indicate the address to the inspector(s) of election, who will be counting the votes.
- Owners may return their secret ballot by mail or hands deliver them to the meeting. However, only those ballots that are delivered to the inspector(s) of election prior to the polls closing shall be counted.
- The record date for purposes of voting shall be the date the ballots are mailed to all of the owners.
- Candidates or members advocating a point of view during a campaign including those not endorsed by the board of directors, shall be provided equal access to association media, newsletters, or website (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 candidates or members, and not in association, are responsible for any content distributed.
- Candidates, including those who are not incumbents, and all members advocating a point of view, including those not endorsed by the board of directors, 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.

## **Handling of Ballots.**

- As secret ballots are returned to the Ballot Collector, the Ballot Collector shall check off on a sign-in sheet that a ballot has been received for such unit/lot. The inspector(s) of election or their designee(s) may verify the member's information and signature on the outside envelope prior to the meeting at which ballots are counted. Once a secret ballot is received by the inspector(s) of election, it shall be irrevocable. Any subsequent ballots received for the same unit/lot shall be deemed invalid and shall be discarded.
- Sealed ballots shall at all times be in the custody of the inspector(s) of election or at a location designated by the inspectors until delivered to the inspectors at the meeting for the opening of the ballots and the tabulation of the vote.

- 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.
- After the tabulation of the vote and for nine (9) months after the election or removal, election ballots shall be kept in the custody of the inspector(s) of election. After such time, the custody shall be transferred to the association and the ballots shall be stored by the association in a secure place for no less than one (1) year after the date of the election. If there is a recount or other challenge to the election process, the inspector(s) of election shall upon written request, make the ballots available for inspection and review by an association member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the voters.

### **Tabulation of Votes: Quorum Requirement.**

#### **Quorum.**

The presence at the meeting of Members and/or proxies entitled to cast fifty percent (50%) of the votes shall constitute a quorum for any action except as otherwise provided in the Declaration and these Bylaws. If, however, such quorum shall not be present or represented at any meeting, a majority of the Members present, in person or by proxy, shall have the power to adjourn the meeting, without notice other than announcement at the meeting, to another time, such time to be a date not less than forty-eight (48) hours nor more than thirty (30) days from the date of the original meeting. The quorum for any such adjourned meeting shall be twenty-five percent (25%) of the Members' votes.

- All votes shall be counted and tabulated by the inspector(s) of election or their designee (s) in public at a properly noticed open meeting of the members of the board of directors. A quorum of members or a quorum of board members, as the case may be, must be present as required by the association's governing documents. Each ballot received by the inspectors of election shall be treated as a member present at the meeting for purposes of establishing a quorum. 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. If a quorum of ballots is not received, the ballots will not be counted.
- Any candidate or other member of the association may witness the counting and tabulation of the votes.

#### **Announcement of Results.**

- The results of the election shall be promptly reported to the board of directors and shall be recorded in the minutes of the meeting and shall be available for review by members of the association.

- Upon certification of the election results by the inspector(s) of election, the newly elected board member shall be deemed to have taken office.
- Within fifteen (15) days of the election, the board of directors must provide the results of the election in a written communication to all owners.

### **Other Voting/Campaign Issues.**

- Owners whose voting rights have been suspended in accordance with the association's governing documents after notice and a hearing shall not be entitled to vote.
- Cumulative voting is permitted if allowed by the association's bylaws.
- 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 California law.

### **Recall Elections**

- These election rules also apply to recall elections.

## **Pledge by Nominee for Election to Board of Directors**

As a nominee for election to the Board of Directors, I have read our Homeowner Association's Bylaws, CC&Rs and Rules.

If elected to the Board of Directors, I pledge to do all of the following:

Comply with the Association's Bylaws, CC&Rs and Rules as they exist unless superseded by law;

- Obtain the advice of experts, if and when appropriate, including attorneys, accountants, construction experts and others;
- Read the Davis - Stirling Act at least once each year when the yearly amendments become available and to comply with the law;
- Read the management agreement in effect between our Association and management company so that I am aware of the management company's contractual responsibilities and those areas where it has no contractual responsibility;
- Pay my assessments before they become delinquent and strictly comply with the governing documents of our Association;
- Attend all board meetings and homeowner meetings unless it is absolutely not possible to attend;
- Accept no compensation from the Association, members of the Association, or vendors and contractors providing goods and/or services to the Association;
- Comply with the Open Meeting Act as set forth in the Davis - Stirling Act;
- Make certain that agendas are posted and/or distributed to all members in advance of Association meetings and that minutes are taken and maintained of all meetings as required by law;
- Hold annual elections for the board members according to the Association's Rules, Bylaws and California law;
- Obtain a reserve study from an expert in the field every three years, and to review and adjust it annually between reserve studies as required by law;

Avoid conflicts of interest with the Association if possible and to recuse myself from voting on any matter where a conflict or the appearance of a conflict exists

- Adopt realistic annual budgets each year in order to avoid the hardship and liability associated with special assessments;
- Honor my fiduciary duty to the Association at all times by placing the Association's interests above my own personal interests;
- Read all written contracts with contractors and vendors so that I am aware of their obligations as well as the Association's obligations; and
- Treat other board members, homeowners, vendors, contractors and management company representatives with professional courtesy and respect at all times.

I have carefully read and understand this pledge and promise that if elected to the Board of Directors of our Association, I will honor it.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name