

**THE ESTATES AT MONARCH BEACH HOMEOWNERS ASSOCIATION
ELECTION RULES & PROCEDURES**

Effective June 3, 2020

The following rules have been adopted by the Board of Directors in compliance with California *Civil Code* Section 5100 *et al.* These rules supersede those provisions currently in the Association's Bylaws which may conflict with these rules.

Campaigning

If any candidate or Member advocating a point of view is provided access to Association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, all candidates and Members advocating a point of view will be provided equal access. Any views, comments or opinions set forth in any communication from a candidate or Member are those solely of the candidate or Member, and the Association is not responsible or liable for such content. The candidate or Member, and not the Association, is solely responsible for the content of all materials and/or communications presented by the candidate or Member.

Access to the Common Area meeting space will be provided during a campaign, at no cost, to all candidates and to all Members advocating a point of view for purposes reasonably related to the election.

Association funds will 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. For the purposes of this section "campaign purposes" include, but are not limited to, the following:

- (1) Expressly advocating the election or defeat of any candidate that is on the Association election ballot.
- (2) Including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot and ballot materials, within thirty (30) days of election, provided that this is not a campaign purpose if the communication is one for which the law requires that equal access be provided to another candidate or advocate.

Board Member Qualifications

The Association shall hold an election for a seat on the Board of Directors in accordance with the procedures set forth in these Election Rules and applicable California law at the expiration of the corresponding Director's term, and at least once every four (4) years.

Every person who is an Owner within Estates at Monarch Beach Homeowners Association is a Member of the Association. A Director must be a Member of the Association (Owner of a Lot

within the Association), or the duly designated representative of a Corporation Member, and all candidates must meet that qualification at the time of nomination. Pursuant to *Civil Code* §5105, the Association shall disqualify a person from a nomination as a candidate for not being a Member of the Association at the time of the nomination. If title to a separate interest parcel is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a Member for voting purposes.

A nominee for a Board seat will be disqualified from nomination as a candidate if that person discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would either prevent the Association from purchasing required fidelity bond coverage should the person be elected, or terminate the Association's existing fidelity bond coverage as to that person should the person be elected.

The Association requires all nominees, and all persons acting as Directors during their Board tenure, to be current in the payment of regular and special assessments. A nominee for a Board seat will be disqualified from nomination as a candidate for failure to be current in the payment of regular and special assessments, unless any of the following are accurate: (1) the nominee has paid such assessment(s) under protest; (2) the nominee is subject to an approved payment plan; or (3) the nominee has not been provided an opportunity to participate in internal dispute resolution pursuant to the *Civil Code*. The Association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party.

A nominee for a Board seat will be disqualified from nomination as 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 separate interest parcel as the person, and the other person is either properly nominated for a current election or an incumbent Director.

A nominee for a Board seat will be disqualified from nomination as a candidate if that person has been a Member of the Association for less than one (1) year.

Voting Qualifications

Each Member of record is entitled to vote. Voting shall be by secret written ballot. Members shall be entitled to cast one (1) ballot for each Lot owned. Cumulative voting is required for all elections in which two (2) or more positions are to be filled; provided, however, that in order for cumulative voting to be used, such candidate's or candidates' name(s) must have been placed into nomination prior to the voting, and a Member must have given notice at the meeting, prior to the voting, of said Member's intention to cumulate votes. When cumulative voting is used, each Member entitled to vote shall have the right to accumulate his/her votes and give one candidate, or divide among any number of candidates, a number of votes equal to the number of Directors to be elected. If a record date for voting is not fixed by the Board of Directors, those who are Members on the day of the meeting are entitled to vote at the meeting of the Association.

Nomination Procedures

The Association will cause general notice of the procedure and deadline for submitting a nomination to be provided to the Members at least thirty (30) days before any deadline for submitting a nomination.

Nominations for election to the Board of Directors shall be made by the Nominating Committee. Nominations may also be made from the floor at the Annual Meeting and self-nominations are permitted at any time. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each Annual Meeting until the close of the next Annual Meeting and such appointment shall be announced at each Annual Meeting.

The Nominating Committee shall make as many nominations for election to the Board of Directors as it may determine, but not less than the number of vacancies that are to be filled. Nominations may only be made by Members.

Voting Procedures

The By-laws for the Estates at Monarch Beach Homeowners Association authorize the use of secret ballots and proxies. Secret ballots will be provided to all Members for their use.

Elections will be conducted in accordance with the following procedures:

1. Ballots and two pre-addressed envelopes (with instructions) shall be delivered or mailed by first-class mail to every Member not less than thirty (30) days prior to the deadline for voting;
2. Ballots are *not* to be signed by the voter and a Member that places any identifying marks or signature on his or her ballot will waive his or her right to secrecy;
3. Completed ballots must be placed into an inner envelope that has no identifying information on it (*e.g.*, no Member name, no property address, no signature, etc.), and the inner envelope is then sealed by the Member;
4. The inner envelope is then inserted into the outer envelope that is preaddressed to the Inspector(s) of Election and then sealed by the Member;
5. In the upper left hand corner of the outer envelope, the Member *must* indicate his or her name and the address of the property in the Estates at Monarch Beach Homeowners Association, and then the Member *must* sign his or her name in the upper left hand corner of the outer envelope;

6. The envelope may be mailed or delivered by hand to the management office, unless another place is designated by the Inspector(s). The Member may request a receipt for delivery;
7. Once a ballot is received by the Association, in the place designated by the Inspector(s), it is deemed irrevocable, even if it is unopened;
8. The sealed ballots shall be in the custody of the Inspector(s) of Election or in the place designated by the Inspector(s) at all times;
9. No person may open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated; and
10. The voting period for Member meetings shall commence when the first ballot is mailed or delivered to a Member of the Association, and shall end at such time as the Inspector(s) of Election determine the polls close.

Balloting materials not completed in accordance with the forgoing instructions or those instructions which may accompany the balloting materials may result in the voter's ballot being declared invalid at the discretion of the designated Inspector(s) of Election.

Use of Proxies

Pursuant to the Association's Bylaws, votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time for each meeting. Every proxy shall be revocable. No proxy shall be valid after the expiration of eleven (11) months from the date of the proxy, unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three (3) years from the date of execution.. A proxy must (A) identify a proxyholder (who must physically attend the meeting for which the proxy is being exercised), (B) contain voting instructions, and (C) be signed by the Member giving the proxy. A proxy that does not satisfy these requirements may not be counted. Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote must be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder must cast the Member's vote by secret ballot.

Inspectors of Election

Inspector(s) of Election will be appointed by the Board of Directors at a Board meeting held prior to the election and will serve as Inspectors until such time that their successors are appointed by the Board of Directors. There shall be one (1) or three (3) inspectors of election for the Association. If there are three (3) Inspectors of Election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Inspector(s) may be a Member of the Association, but may not be a Member of the Board, a candidate for the Board, or related to a Member of the Board or candidate for the Board. The appointed Inspector(s) of Election must be an independent third party, but may not be a person or entity employed by and receiving compensation from the Association other than serving as an Inspector(s) of Election.

Role of Inspectors of Elections

At least thirty (30) days before an election, the Inspector(s) of Election will deliver, or cause to be delivered, to each Member (1) a ballot or ballots and (2) a copy of the Association's Election Rules. Delivery of the Election Rules to the Members may be accomplished by either posting the Election Rules to the Association's website, or via individual delivery to all Members pursuant to the *Civil Code*.

Inspector(s) will determine the number of Memberships entitled to vote and the voting power of each in accordance with the governing documents. Inspector(s) will determine the authenticity, validity, and effect of proxies, if any. Inspector(s) will hear and determine all challenges and questions in any way arising out of or in connection with the right to vote. Ballots will be returned to the Association's managing office, unless another location is designated by the Inspectors. Inspector(s) will determine when the polls shall close. Inspector(s) will determine and announce the results of the election.

Inspector(s) may also perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Inspector(s) of Election rules and all applicable rules of the Association regarding the conduct of the election that are not in conflict with the Inspector(s) of Election rules. Inspector(s) must perform all duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical.

Ballots

At least thirty (30) days before ballots are distributed to the Members, the Association will provide general notice to the Members of (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 will be counted, and (3) the list of all candidates' names that will appear on the ballot.

These Election Rules specifically prohibit the denial of a ballot to a Member for any reason other than not being a Member of the Association at the time when ballots are distributed, and prohibit the denial of a ballot to a person with general power of attorney for a Member. These Election Rules also require the ballot of a person with general power of attorney for a Member to be counted if the ballot is returned in a timely manner.

Tabulation of Votes

Inspector(s) count and tabulate all votes. All votes shall be counted and tabulated by the Inspector(s) at a duly noticed meeting of the Board of Directors or Members. Any candidate or other Member of the Association may witness the counting and tabulation of the votes. Members who are not inspectors or being overseen by an inspector must remain at least five (5) feet away from the counting area. Members who are not inspectors may not participate in the counting or tabulation process or any discussions that may arise among the Inspectors or their designated assistants.

Every Inspector(s) of Election must sign the ballot tally sheet for the Association's corporate records. After the final tabulation of the votes, custody of all election materials will be transferred to the custody of the Association. After tabulation, the Association shall store ballots in a secure place for no less than one (1) year after the date of the election.

Recording and Announcing Election Results

Inspector(s) must report the results of the election promptly to the Board of Directors and the results will be recorded in the next regular session board meeting Minutes. In addition to recording the election results in the next regular session Board meeting Minutes, the Association shall keep Annual Meeting Minutes that reflect the results of the election.

The Board of Directors will publicize the results of the election in a communication directed to all Members within fifteen (15) days of a successful (quorum achieved) election.

Records Retention

In accordance with California law, the Association shall retain, as Association election materials, a candidate registration list and a voter list. The voter list will include 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 voter list if it differs from the physical address of the voter's separate interest or only if the parcel number is used. The Association will permit Members to verify the accuracy of their individual information on both lists at least thirty (30) days before ballots are distributed. The Association or Member must report any errors or omissions to either list to the Inspector(s) of Election, who shall make the corrections within two (2) business days. Association election materials that shall be retained by the Association for required records-keeping include 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. Association election materials are generally subject to inspection and copying by Members pursuant to the *Civil Code*; however, signed voter envelopes may be inspected but not copied.

The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspector(s) of Election or at a location designated by the Inspector(s) until after the tabulation of the vote, and until the time allowed by the *Civil Code* for challenging the election has expired, at which time custody shall be transferred to the Association.

These Election Rules are intended to be compliant with California statutory law. To the extent that any of these Election Rules is determined to conflict with such law, the statutory law shall control.