

**VICTORY HOMEOWNERS ASSOCIATION**  
**ELECTION RULES**

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### **ATTACHMENT 1 - TIMELINE**

# **VICTORY HOMEOWNERS ASSOCIATION**

## **ELECTION RULES**

The California Davis-Stirling Common Interest Development Act (specifically, Civil Code §§5100–5145) requires that common interest development owner associations, such as the **VICTORY HOMEOWNERS ASSOCIATION** (“Association”), conduct elections by secret-ballots regarding: (1) assessments legally requiring a vote; (2) election and removal of directors; (3) amendments to the governing documents; or (4) the grant of exclusive use of common area. The procedures that follow were drafted to comply with the statutory requirements of the Davis-Stirling Common Interest Development Act; therefore, the Association’s election procedures shall conform to any amended or superceding statute.

### **I. Required Elections**

Each member of the Board of Directors shall serve for a 2-year term unless a different term is established in the Association’s Bylaws. Civil Code §5100(a)(2) requires the Association to hold an election for a seat on the Board of Directors at the expiration of the corresponding Director’s term and at least once every four years. However, if the number of qualified candidates for election to the Board is not more than the number of directors to be elected, then the qualified candidates shall be declared elected and shall take office at the first Board meeting following the deadline for nominations.

### **II. Limitations on Amending Election Rules**

The Association’s Election Operating Rules shall not be amended less than 90 days prior to an election.

### **III. Campaigning**

#### **A. Election Communication**

The Association will ensure that if any candidate or Member advocating a point of view is provided access to Association media, newsletters or internet websites (“Association Media”) for purposes that are reasonably related to that election, equal access shall be provided to all Members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election (hereinafter referred to as an “Election Statement”). Access shall be provided during the entire campaign period commencing with the notice of the deadline for nominations or an election has been noticed, whichever is earlier.

Each candidate or Member advocating a point of view may prepare and deliver an Election Statement to the person and in the format identified by the Association. The Association shall not edit or redact any content from campaign communications. The candidate or Member who issues the communication shall be solely responsible for its content.

## **B. Campaign Meetings**

The Association will ensure access to any common area meeting space during a campaign, at no cost, to all candidates and to all Members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election. Access shall be provided during the entire campaign period beginning after an election has been noticed.

Requests for access to the common area meeting space during a campaign shall be delivered to the person specified by the Association and shall include an explanation of how the purpose of the meeting is reasonably related to the election.

## **C. Campaign Funds**

No Association funds shall be used for Campaign Purposes, except to the extent necessary for the Association to comply with the duties imposed on it by law. "Campaign Purposes" includes, but is not limited to, 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 any candidate on a communication from the Association or its Board, excepting the ballot, ballot materials or a communication that is legally required.

## **IV. Board of Director Candidates**

### **A. Qualifications**

The qualifications for candidates for the Board of Directors, are as follows:

1. A candidate must be a Member of the Association at the time of the nomination unless the nonmember is nominated by the Declarant (consistent with the Declarant's voting power set forth in the Association's Declaration of Covenants, Conditions and Restrictions ("CC&Rs") and Bylaws.)
2. If title to a Unit 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 purposes of being nominated as a candidate.
3. A person shall be disqualified from nomination as a candidate if the person has delinquent regular and special assessments subject to the following:
  - a) All serving Directors must also be required to be current in the payment of regular and special assessments.
  - b) This disqualification may not be based on nonpayment of fines, fines renamed as assessments, collection charges, late charges or costs levied by a third party.
  - c) This disqualification may not apply to a nominee who has paid the regular and special assessments under protest.

- d) This disqualification may not apply to a nominee who has entered into a payment plan.
4. A person shall 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 Unit as the person and the other person is either properly nominated for the current election or an incumbent director.
5. A person shall be disqualified from nomination as a candidate if the person discloses, or the Association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the Association from purchasing fidelity bond coverage or terminate the Association's existing fidelity bond coverage.

#### **B. Internal Dispute Resolution Requirement**

To be disqualified as a candidate, a person must be provided the opportunity to engage in the Association's Internal Dispute Resolution procedure provided in the Association's annual disclosures.

#### **C. Nomination Procedure for the Board of Directors**

1. Any Member may nominate themselves or another Member for election to the Board without the requirement of nomination by any Nomination Committee or petitioning other Members.
2. Nomination may be made by any Member from the floor of a Membership Meeting or Special Meeting called for the purpose of submitting nominations or by submitting a nomination in writing to the Association.
3. At least 30 days before the deadline for submitting a nomination (the "Nomination Deadline"), the Association shall provide to all Members by First-class mail and by email (if the Member has elected to receive Association notices by email) notice of the Nomination Deadline and the procedure for submitting a nomination.

#### **V. Voter Eligibility and Verification**

- A. The Association shall not deny a ballot to a Member for any reason other than not being a Member at the time when ballots are distributed.
- B. Each Member of the Association is entitled to cast one vote for each Unit that the Member owns. When more than one person holds an interest in any Unit, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Unit.

- C. If any Member casts a vote representing a certain Unit, it will thereafter be conclusively presumed for all purposes that they were acting with the authority and consent of all other Owners of that Unit.
- D. If Declarant holds Class B voting Membership (as defined in Section 5.4 of the CC&Rs), Declarant shall have three votes for each Unit it owns. If Declarant's Class B Membership has converted to Class A Membership, Declarant shall have one vote for each Unit it owns.
- E. Cumulative voting shall be used for electing Directors to the Board so that each Member shall be entitled to cast the number of votes for which they are entitled by reason of their ownership of a Unit(s) times the number of Directors to be elected. Each person may allocate their votes among several candidates or cumulate their votes for any one candidate.
- F. The Association shall not deny a ballot to a person with general power of attorney for a Member, and the ballot of that person shall be counted if returned in a timely manner.
- G. If title to a Unit is held by a legal entity that is not a natural person, such as a corporation, the governing authority of that legal entity shall have the power to appoint a natural person to be a Member for the purpose of voting.
- H. The Association shall maintain a "Voter List" that includes the name of the voter, voting power, and the physical address of the voter's property within the Association and the mailing address for the ballot if it differs from the physical address.
- I. Members may verify the accuracy of their individual information on the Voter List at least 30 days before ballots are distributed for an Election. The Association or Member shall report any errors or omissions on the Voter List to the Inspector of Elections, and the Inspector shall make the requested corrections within two business days.

## **VI. Proxies**

### **A. Voting by Proxy in Secret-ballot elections**

1. Members may vote by proxy as long as the Association's Bylaws so allow. "Proxy" means a written authorization signed by a Member that gives another member the power to vote on behalf of that Member.
2. Proxies shall not be construed or used in lieu of a ballot. The proxyholder shall cast the member's vote by secret ballot.
3. Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain.

4. The proxy shall be given to the Inspector of Elections prior to the close of the polls.

**B. Authenticity, Validity and Effect of Proxies**

1. The Inspector of Elections shall determine the authenticity, validity and the effect of proxies for purposes of elections.
2. The proxy may be revoked by the Member prior to the receipt of the ballot by the Inspector of Elections.
3. Any proxy given with respect to any matters subject to a vote by secret-ballot shall be valid only if the proxy form sets forth a general description of the nature of the matter to be voted on.

**VII. Appointment of Inspector of Elections; Supervision of Election Process**

- A. The Board of Directors shall appoint an independent third party to serve as the Inspector of Elections.
- B. 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 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.
- C. The Inspector may appoint and oversee additional parties to verify signatures and to count and tabulate votes as the inspector deems appropriate, provided that the persons are independent third parties. (Civil Code §5105(6).)
- D. The Inspector shall do all of the following:
  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 from the Association or Members any corrections to the Voter List or Candidate List and make the requested corrections within two business days of receipt; (Civil Code §5105(a)(7).)
  4. Receive and maintain custody of sealed ballots;
  5. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
  6. Count and tabulate all votes;
  7. Determine when the polls close, consistent with the governing documents;

8. Determine the tabulated results of the election;
  9. After an election, maintain the ballots, signed voter envelopes, voter list, proxies, and candidate registration list in their custody or at a location designated by the Inspector until the time allowed for challenging the election has expired pursuant to Civil Code §5145, but not less than one year, at which time custody shall be transferred to the Association;
  10. Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with Civil Code §5100 - §5145, the Corporations Code, and all applicable rules of the Association regarding the conduct of the Election that are not in conflict with law;
- E. In addition, the Inspector is required to perform the acts set forth below in Section VIII(C) of these Rules.
- F. The Inspector shall perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical, in a manner that protects the interest of all members of the association.

## **VIII. Secret Ballot Election Process**

### **A. Election Notice and Candidate List**

At least 30 days before the secret ballots are distributed, and at least 60 days before the election, the Association shall provide to all Members the following by First-class mail and by email (if the Member has elected to receive Association notices by email):

1. The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector of Elections;
2. The date, time and location of the meeting at which ballots will be counted;
3. The list of all candidates' names that will appear on the ballot ("Candidate Registration List").

### **B. Candidate Verification**

Members may verify the accuracy of their individual information on the Candidate Registration List at least 30 days before the ballots are distributed. The Association or Member shall report any errors or omissions to the Candidate Registration List to the Inspector of Elections, and the Inspector shall make the requested corrections within two business days.

### **C. Distribution of Ballots and Election Rules**

The Inspector of Elections shall deliver, or cause to be delivered by First-class mail, at least 30 days before an election, to each member both of the following documents:

1. The ballot or ballots.
2. A copy of the election operating rules. Delivery of the election operating rules may be accomplished by either of the following methods:
  - (a) Posting the election operating rules to 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:”
  - (b) Individual Delivery.
3. The ballot or ballots shall also include two pre-addressed envelopes (the Ballot Envelope and the Address Envelope) with instructions on how to return ballots. The voter shall not be identified by name, address, lot, parcel or unit number on the ballot or the Ballot Envelope. The Ballot Envelope will be used to contain the ballot after it is marked by the voter, and will then be inserted into the Address Envelope and delivered to the Inspector of Elections.
4. In an election to approve an amendment to the governing documents, the text of the proposed amendment shall be delivered to the Members in the ballot.
5. If the Ballot includes a Class A Director Election, the Association shall mail or deliver a separate Ballot to all Class A Members to elect a Class A Director at the same time as the other Ballots are distributed to all Members.
6. A Member may request a substitute Ballot from the Inspector, if the Member signs an affidavit that the original Ballot was lost, destroyed or never received.

**D. Voting Period / Polls**

1. The voting period for an Election subject to these Rules shall be no less than 30 days after the ballots are distributed. The voting period can be extended by the Board.
2. Ballots may be mailed or delivered by hand to the location specified by the Inspector of Elections for the return of ballots, and the Member may request a receipt for delivery of the ballot.
3. For purposes of timely delivering ballots, the polls will close after the commencement of the meeting at which the ballots are counted.

**E. Requirements for Counting and Tabulation of Ballots**

The Inspector of Elections shall count and tabulate the votes in public at a properly noticed open meeting of the Board of Directors or Member Meeting. Any Member may witness the counting and tabulation of the votes. No person, including a Member or an employee of the

Association's management company, shall open or otherwise review any ballot before the time and place at which the ballots are counted and tabulated.

**IX. Announcement of Results of Election**

The results of the election shall be promptly reported to the board of directors of the Association, 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 to the members of the tabulated results of the election.

**X. Retention of Association Election Materials**

After the expiration of the time allowed for challenging the election has expired, the Inspector of Election shall transfer the custody of the election ballots, signed voter envelopes, voter list, proxies, and candidate registration list ("Association Election Materials") to the Association's property manager. Pursuant to Civil Code §5105(a)(7), the Association Election Materials shall be retained as part of the Association Records as that term is defined by Civil Code §5200(a) and (c).

In the event of a recount or other challenge to the election process, the Inspector of Elections shall, on written request, make the ballots available for inspection and review by an Association member or their authorized representative. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

**ATTACHMENT 1**

**DIRECTOR ELECTION TIMELINE ESTIMATE**

The following provides an estimated timeline for a Board of Director election

<b><u>Action</u></b>	<b><u>Required Deadlines</u></b>	<b><u>Estimated time before Elections</u></b>
<b>Notice of Nomination Procedure &amp; Deadline for Nominations</b> provided to Member	- At least 90 days before Election	110 days
Nomination Deadline	- At least 30 days after Notice of Nomination Procedure - At least 60 days before Election	80 days
<b>Election Notice &amp; Candidate List</b> provided to Members	- At least 30 days before Ballots are mailed - At least 60 days before Election	70 days
Members submit corrections to Lists to Inspector of Elections; voter lists are finalized		40 days
<b>Ballots mailed</b> - IOE provides ballot and Election Rules - Secret-ballot package mailed	- At least 30 days before election  - At least 30 days after Election Notice and Candidate List	30 days
<b>Election</b> Counting of ballots	- Board can continue Election if needed	
<b>Notice Election Results</b> provided to Members	- No more than 15 days after election	