

## **ASSOCIATION ELECTION RULES**

(EFFECTIVE APRIL 1, 2022)

### **A. GENERAL**

1. Except for the meeting to count the votes, an election may be conducted entirely by mail unless otherwise specified in the governing documents.
2. A quorum shall be required only if so stated in the governing documents or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum.
3. This association shall allow for cumulative voting using the secret ballot procedures, if cumulative voting is provided for in the governing documents.
4. Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area shall be held by secret ballot. This also governs an election on any topic that is expressly identified in these election operating rules.

### **B. BOARD OF DIRECTORS**

1. This association shall 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.
2. Directors shall not be required to be elected if the governing documents provide that one member from each separate interest is a director.
3. Notwithstanding any other law, this association may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots.

### **C. CAMPAIGN RULES**

1. Any candidate or member advocating a point of view shall be provided access to association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election. Equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. This association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not this association, is responsible for that content.
2. All candidates, including those who are not incumbents, and all members advocating a point of view, including those not endorsed by the board, shall have access to the common area meeting space, if any exists, during a campaign, at no cost, for purposes reasonably related to the election.
3. This association shall specify all of the following:

- a. The qualifications for candidates for the board and any other elected position, and procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member from nominating themselves for election to the board.
  - b. The voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.
  - c. A method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods:
    - i. Appointment of the inspector or inspectors by the board.
    - ii. Election of the inspector or inspectors by the members of this association.
    - iii. Any other method for selecting the inspector or inspectors.
4. This association shall retain both a candidate registration list and a voter list. The voter list shall include 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 if only the parcel number is used. This association shall permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. This association or the member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.

#### **D. BALLOT REQUIREMENTS**

1. This association shall not deny a ballot to any of the following:
  - a. A member for any reason other than not being a member at the time when ballots are distributed.
  - b. A person with general power of attorney for a member. The ballot shall be counted if returned in a timely manner.
2. This association is required to have the inspector or inspectors of elections to deliver by first-class mail, or cause to be delivered, at least 30 days before an election, to each member both of the following documents:
  - a. The ballot or ballots.
  - b. Two preaddressed envelopes with instructions on how to return ballots.
  - c. A copy of these election operating rules.
3. Delivery of these 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.
- 4. In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.
  - 5. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. This association shall use as a model those procedures used by California counties for ensuring confidentiality of vote by mail ballots, including all of the following:
    - a. The ballot itself is not signed by the voter, but 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 the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.
    - b. The second envelope is addressed to the inspector or inspectors of elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of elections. The member may request a receipt for delivery.
  - 6. Write-in candidates are not allowed on the ballot nor are nominations from the floor of the meeting.

**E. DISQUALIFICATION OF NOMINEES**

- 1. This association shall permit all candidates to run if nominated, except as follows:
  - a. This association shall disqualify a person from nomination as a candidate if the person is not a member of this association at the time of the nomination. This does not restrict a developer from making a nomination of a nonmember candidate consistent with the voting power of the developer, as set forth in the regulations of the Department of Real Estate and this association's governing documents.
- 2. A person is to be disqualified from nomination as a candidate for any of the following reasons:
  - a. The nominee for a board seat, or a director during their board tenure, is not current in the payment of regular and special assessments, which are consumer debts subject to validation. If this association requires a nominee to be current in the payment of regular and special assessments, it shall also require a director to be current in the payment of regular and special assessments.
  - b. If the nominee, 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 the current election or an incumbent director.
  - c. If the nominee has been a member of this association for less than one year.
  - d. If the nominee discloses, or if this association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent this association from

purchasing fidelity bond coverage or terminate this association's existing fidelity bond coverage.

3. This association shall not disqualify a nominee for any of the following reasons:
  - a. The nominee's nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party.
  - b. The nominee's nonpayment of assessments where the nominee has not been provided the opportunity to engage in internal dispute resolution.
  - c. The nominee's failure to be current in payment of regular and special assessments where either of the following circumstances is true:
    - i. The nominee has paid the regular or special assessment under protest
    - ii. The nominee has entered into a payment plan.

**F. INSPECTOR OF ELECTIONS**

1. This association shall select an independent third party or parties as an inspector of elections. The number of inspectors of elections shall be one or three. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all.
2. For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. 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 to a 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 this association for any compensable services other than serving as an inspector of elections.
3. The inspector or inspectors of elections shall do all of 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. Receive ballots.
  - d. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
  - e. Count and tabulate all votes.
  - f. Determine when the polls shall close, consistent with the governing documents.
  - g. Determine the tabulated results of the election.
  - h. Perform any acts as may be proper to conduct the election with fairness to all members in accordance with these operating rules, the Corporations Code, and all applicable rules of this

association regarding the conduct of the election that are not in conflict with these election operating rules.

4. An inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, as expeditiously as is practical, and in a manner that protects the interest of all members of this association. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.
5. The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed for challenging the election has expired, at which time custody shall be transferred to this association. If there is a recount or other challenge to the election process, the inspector or inspectors 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.
6. An inspector is allowed to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties.

#### **G. NOTICE**

1. This association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered if individual notice is requested by a member.
2. This association shall provide general notice of all of the following at least 30 days before the ballots are distributed:
  - a. The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections.
  - b. The date, time, and location of the meeting at which ballots will be counted.
  - c. The list of all candidates' names that will appear on the ballot.
  - d. Individual notice of the above paragraphs shall be delivered if individual notice is requested by a member.

#### **H. CIVIL ACTIONS**

1. Members of an association may bring a civil action for declaratory or equitable relief for a violation by this association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date that the inspector or inspectors of elections notifies the board and membership of the election results or the cause of action accrues, whichever is later. If a member establishes, by a preponderance of the evidence, that the election procedures of this article, or the adoption of and adherence to rules were not followed, a court shall void any results of the election unless this association establishes, by a preponderance of the evidence, that this association's noncompliance with this article or the election operating rules did not affect the results of the election. The findings of the court shall be stated in writing as part of the record.

2. A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of this association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. If a member prevails in a civil action brought in small claims court, the member shall be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action.
3. A cause of action may be brought in either the superior court or, if the amount of the demand does not exceed the jurisdictional amount of the small claims court, in small claims court.
4. This association may not file a civil action regarding a dispute in which the member has requested dispute resolution unless this association has acted in good faith in the internal dispute resolution procedures after a member invokes those procedures.

#### **I. ELECTION BY ACCLAMATION**

1. This association may consider qualified candidates elected by acclamation if the following specified conditions are met:
  - a. The association must have held a regular election for the directors in the last three (3) years.
  - b. The association must mail (or email if consented to) notice to members at least 90 days before the deadline to submit nominations, which contains the following information:
    - i. The number of board positions that will be filled at the election.
    - ii. The deadline for submitting nominations.
    - iii. The manner in which nominations can be submitted.
    - iv. A statement informing members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are board positions to be filled, then the board of directors may, after voting to do so, seat the qualified candidate by acclamation without balloting.
  - c. The association must mail (or email if consented to) a reminder notice 7 to 30 days before the deadline to submit nominations that contains all the information in the notice above, plus a list of qualified candidates names existing as of the reminder mailing date.

- d. Within 7 business days (Mon-Fri excluding certain holidays) of receiving a nomination, the association must both:
    - i. Respond back to the member in writing or electronically acknowledging the nomination, and
    - ii. In writing or electronically, state to the nominee whether they are qualified or not. Candidates may be disqualified for delinquent assessments, joint ownership with a Board member serving at the same time, owned less than a year or a criminal conviction prevents fidelity bond coverage.
2. After completing these steps, the Board, at a properly noticed Board meeting, must vote as an agenda item the approval of the qualified candidates' election by acclamation. The agenda must state each candidate name.

**A NOMINEE FOR THE BOARD OF DIRECTORS:**

**MUST BE:**

A

MEMBER

OR

SOMEONE NOMINATED BY THE DEVELOPER, IF THE DEVELOPER HAS VOTING POWER

OR

A NATURAL PERSON APPOINTED BY AN ENTITY HOLDING A SEPARATE INTEREST

**MAY NOT BE:**

A NON-MEMBER, EXCEPT:

SOMEONE NOMINATED BY THE DEVELOPER (IF THE DEVELOPER HAS  
VOTING POWER),

OR

A NATURAL PERSON APPOINTED BY AN ENTITY HOLDING A SEPARATE INTEREST

**MAY NOT BE:**

A CONVICTED FELON IF:

THE CONVICTION WAS WITHIN THE LAST 20 YEARS

AND

THE CONVICTION INVOLVED BRIBERY, EMBEZZLEMENT, EXTORTION, THEFT OF  
MONEY, PERJURY, OR CONSPIRACY TO COMMIT ANY OF THOSE CRIMES

**MAY BE DISQUALIFIED THROUGH BY-LAWS OR ELECTION RULES IF:**

THE NOMINEE IS NOT CURRENT IN PAYING REGULAR

ASSESSMENTS AND

HAS BEEN GIVEN THE OPPORTUNITY TO ENGAGE IN INTERNAL

DISPUTE RESOLUTION AND

THE ASSOCIATION REQUIRES INCUMBENT DIRECTORS TO BE CURRENT ON THE  
PAYMENT OF REGULAR

ASSESSMENTS

OR

THE NOMINEE IS A JOINT OWNER OF AN INTEREST WITH SOMEONE WHO IS ALREADY  
ON THE BOARD

OR

THE NOMINEE HAS BEEN A MEMBER FOR LESS THAN A YEAR

OR

THE NOMINEE HAS BEEN CONVICTED OF A CRIME THAT WOULD PREVENT THE  
ASSOCIATION FROM OBTAINING FIDELITY BOND COVERAGE

**HOWEVER**

A NOMINEE ACCUSED OF NOT PAYING REGULAR ASSESSEMENTS **MAY NOT BE DISQUALIFIED:**

FOR NOT PAYING FINES, FINES RENAMED AS ASSESSMENTS, COLLECTION CHARGES, LATE CHARGES, OR COSTS LEVIED BY A THIRD PARTY (SUCH AS ATTORNEYS' FEES)

OR

IF THE NOMINEE HAS PAID THE REGULAR ASSESSMENT  
UNDER PROTEST

OR

IF THE NOMINEE HAS ENTERED INTO A  
PAYMENT PLAN

OR

IF THE NOMINEE HAS NOT BEEN OFFERED ON OPPORTUNITY TO ENGAGE IN  
INTERNAL DISPUTE RESOLUTION