

# **Part III**

# **ELECTION PROCEDURES**

**ELECTION RULES**

1. Election Notice Requirements. The Neighborhood Association shall provide general notice of the procedures and deadlines for submitting candidate nominations in compliance with California Civil Code Section 5115.

2. Equal Access.

2.1 If, in the course of an election campaign for a position on the Board, any candidate or Member of the Neighborhood Association advocating a point of view is provided access to a form of media (including, but not limited to, newsletters and Internet web sites) that is owned or entirely run by and for the Neighborhood Association, for a purpose that is reasonably related to that election, equal access shall be provided to all candidates and Members of the Neighborhood Association for the same purpose ("Equal Access").

2.2 Equal Access, as described above in Section 2.1, shall also apply to Members of the Neighborhood Association and candidates not endorsed by the current Board, and shall be for the purpose of advocating a point of view reasonably related to the election.

2.3 The Neighborhood Association shall not edit or redact any content from the presentation of the points of view described in this Section, to the extent that such content does not violate any provision in the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements, Bylaws of the Neighborhood Association or Rules promulgated by the Board, or any applicable state, federal or local laws, but may include a statement specifying that the candidate or Member of the Neighborhood Association, and not the Neighborhood Association, is responsible for the content of such point of view.

2.4 The Neighborhood Association shall give all candidates, including those candidates who are not incumbents, and those who are not endorsed by the Board, Equal Access to the common meeting area (i.e., time and space available for such candidate's use), if any, to present a point of view reasonably related to the upcoming election.

2.5 The Neighborhood Association shall not charge candidates a fee for access to the common meeting area for the purposes described in this Section.

3. Qualifications and Procedures for Nomination of Candidates.

3.1 A Member of the Neighborhood Association is eligible to be nominated or to nominate himself or herself for a position on the Board if all of the following conditions are satisfied by such Member:

3.1.1 as of the date of nomination, the Member is an owner of his or her Unit.

3.1.2 as of the date of nomination, the Member is at least 18 years old.

3.1.3 no other joint owners of a Unit held in common with the Member is serving on the Board and would serve on the Board concurrently with the Member.

3.1.4 the Neighborhood Association is not aware of any past criminal conviction that would, if the Member was elected, either prevent the Neighborhood Association from purchasing the fidelity bond coverage required by Section 5806 of the California Code of Civil Procedure or terminate the Neighborhood Association's existing fidelity bond coverage.

3.1.5 as of the date of nomination, the Member is current in the payment of all Assessments for the three (3) months immediately preceding such date of nomination; provided, however, that notwithstanding the foregoing, a Member nominated for a position on the Board shall not be disqualified to be nominated or elected to the Board for (x) the nonpayment of fines, fines renamed as "Assessments," collection charges, late charges, or costs levied by a third party, and (y) failure to pay Assessments if either of the following circumstances is true: (1) the Member has paid the Assessment under protest pursuant to California Civil Code Section 5658, or (2) the Member has entered into a payment plan pursuant to California Civil Code Section 5665.

Directors and candidates must be Members of the Neighborhood Association unless: (i) Declarant has made a nomination of a non-Member candidate consistent with the voting power of the Declarant as set forth in the regulations of the Department of Real Estate and the Neighborhood Association's governing documents, or (ii) the Owner of a Unit

is 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 this section.

3.2 All Members of the Neighborhood Association eligible to vote in the forthcoming election are eligible to nominate himself or herself as a candidate for the Board. In addition, representatives of Declarant, as provided in the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of the Neighborhood Association, may be nominated as a candidate for the Board.

3.3 Provided that a Member of the Neighborhood Association seeking candidacy for a position on the Board satisfies the eligibility requirements set forth in Section 3.1 above, such Member of the Neighborhood Association may be nominated or nominate himself or herself by the following procedures:

3.3.1 Nominations for candidates to the Board may be submitted in writing to the current Board, the secretary of the Neighborhood Association or the management company of the Neighborhood Association not less than 30 days prior to the date designated for mailing or distribution of ballots for the election of new Board members or such other date as established by the Board. Members of the Neighborhood Association shall not be prohibited from nominating themselves for any Board position and any attempt to prevent a Member of the Neighborhood Association's self-nomination shall be invalidated.

3.3.2 After collecting all properly-submitted nominations, the current Board shall: (1) confirm or cause to be confirmed each nominated person's eligibility under Section 3.1; (2) confirm or cause to be confirmed each individual's acceptance of nomination; (3) distribute or cause to be distributed to the Neighborhood Association's membership a list of the confirmed candidates, as detailed in Section 3.5 below; and (4) prepare or cause to be prepared a ballot for distribution to all Members of the Neighborhood Association for voting purposes. Each such ballot must satisfy the requirements set forth in Section 4 below.

3.4 The Neighborhood 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 pursuant to California Civil Code Section 4040 if individual notice is requested by a Member.

3.5 The Neighborhood Association shall provide general notice of all of the following at least 30 days before the ballots are distributed: (i) the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector(s) (as defined below); (ii) the date, time, and location of the meeting at which ballots will be counted; and (iii) the list of all candidates' names that will appear on the ballot. Individual notice of the foregoing shall be delivered pursuant to California Civil Code Section 4040 if individual notice is requested by a Member.

4. Secret Ballot.

4.1 Pursuant to California Civil Code Section 5100, elections and votes related to assessments, selection of members of the Board of the Neighborhood Association, amendments to the governing documents adopted by the Neighborhood Association, and the grant of certain exclusive use easements shall be by secret ballot. The secret ballot must satisfy the requirements set forth in the California Civil Code and this Section. The Neighborhood Association shall require the Inspector(s) (as defined below) to deliver, or cause to be delivered, at least 30 days prior to the voting deadline for the election, to each eligible Member of the Neighborhood Association the following documents:

4.1.1 a ballot or ballots and 2 pre-addressed envelopes; and

4.1.2 a copy of the election operating rules.

The delivery of the election operating rules under Section 4.1.2 may be accomplished by either of the following methods: (i) 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:"; or (ii) individual delivery.

4.2 Ballots may not identify the voter's name, address, or lot, parcel or Unit number.

4.3 The ballot itself may not be signed by the voter. It must be inserted into a sealed envelope. That sealed envelope must then be sealed within a second outer envelope. The outer envelope shall have, in the upper left-hand corner, space for the voter to print and sign his or her name, and print his or her address.

4.4 The outer envelope is pre-addressed to the Inspector(s), who will be counting the votes. The envelope containing the ballot shall then be hand delivered or mailed via first class mail to a location specified by the Inspector(s). The Member of the Neighborhood Association may request a receipt for delivery.

5. Selection of Inspectors.

5.1 The current Board of the Neighborhood Association shall select either 1 or 3 independent third parties to serve as the inspector or inspectors of the election ("Inspector(s)"). A person or persons currently employed or under contract to the Neighborhood Association for any paid services may not be selected to be an Inspector. No Member currently running for an elected position on a Board may serve as an Inspector.

5.2 The Inspector(s) shall have the responsibilities described in applicable law, including without limitation, California Civil Code Section 5110, and shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as practical.

5.3 If there are 3 Inspectors, the decision or act of a majority shall be effective in all respects as the decision or act of all Inspectors.

5.4 The Inspector(s) shall have the right to appoint and oversee such additional persons as the Inspector(s) deems appropriate to verify signatures and to count and tabulate votes, provided that the persons are independent third parties.

5.5 All election materials shall be in the custody of the Inspector or a location designated by the Inspector in compliance with California Civil Code Section 5125.

6. Voting.

6.1 Ballots and all related materials required for voting under these procedures shall be sent to eligible Members of the Neighborhood Association at least 30 days before the date set for tabulation of votes.

6.2 Members may cast their ballots by any 1 of the following methods:

6.2.1 Members may mail their ballots to the location designated by the Inspector(s) provided that any ballot so mailed is postmarked no later than the date that is 3 business days before the date set for tabulation of votes; or

6.2.2 Members may deliver their ballots (or have their ballots delivered) to the location designated by the Inspector(s) no later than 2 business days before the date set for tabulation of votes; or

6.2.3 Members may deposit their ballots with the Inspector(s) at the meeting in which votes are to be tabulated prior to the time set by the Inspector(s) for closing of the polls.

6.3 Once a ballot is received by the Inspector(s), it is irrevocable.

6.4 No ballots shall be accepted, by mail or otherwise, after the date and time set by the Inspector(s) for closing of the polls. Any ballots received after the polls have closed shall be disqualified and will not be counted by the Inspector(s). A Member of the Neighborhood Association whose ballot has been disqualified will not be entitled to notification of such action and shall not have the right to cast another vote in the present election. Such disqualified ballots shall not be counted in any subsequent recount or challenge to the election procedures.

7. Eligibility and Vesting of Voting Rights.

7.1 A Member of the Neighborhood Association is eligible to vote if the Member owns his or her Unit when ballots are distributed.

7.2 Except where cumulative voting is authorized, Class A Members may cast only 1 vote per Unit. If more than 1 party is record owner of a Unit, the vote for that Unit shall be cast as the owners among themselves determine or forfeited if the owners cannot agree, as provided in the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of the Neighborhood Association.

7.3 Such voting rights attributed to any given Unit in the Community shall vest as provided in the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of the Neighborhood Association.

8. Proxies.

8.1 Any eligible Member of the Neighborhood Association may authorize another person to act by proxy, pursuant to the Bylaws of the Neighborhood Association.

8.2 Any instruction given in a proxy that directs the manner in which the proxy is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the vote by secret ballot, in the manner prescribed in these procedures. The Inspector(s) shall determine the authenticity, validity and effect of proxies. Proxies shall be presumed valid if executed in accordance with California Corporations Code Section 7613 and the Bylaws of the Neighborhood Association.

9. Voting Procedures and Custody.

9.1 All votes shall be counted and tabulated by the Inspector(s) in public at a properly noticed open meeting of the Board of the Neighborhood Association and/or Members of the Neighborhood Association. Any candidate or Member of the Neighborhood Association may witness the counting and tabulation of the votes. No person, including, but not limited to, Members of the Neighborhood Association and employees of the management company, if one has been selected, shall open or otherwise review any ballot prior to the time the ballots are counted and tabulated by the Inspector.

9.2 The results of the election, as tabulated by the Inspector(s), shall be promptly reported to the current Board of the Neighborhood Association and shall be recorded in the minutes of the next meeting of the Board of the Neighborhood Association, and shall be made available for review of Members of the Neighborhood Association. The Board of the Neighborhood Association shall publicize the results of the election in a communication directed to all Members of the Neighborhood Association, within 15 days of the date the final tabulation of votes has occurred.

9.3 The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody and control of the Inspector(s), or at such location designated by the Inspector(s), until after the final tabulation of votes and expiration of the time allowed by California Civil Code Section 5145 for challenging the election, after which time the custody and control of the ballots shall be turned over to the Neighborhood Association.

9.4 After the final tabulation of the votes has been completed by the Inspector(s) and custody and control of the ballots has been turned over to the Neighborhood Association, the Neighborhood Association shall store the ballots or cause them to be stored, in a secure location for not less than 1 year from the date of final tabulation of votes.

10. Election by Acclamation. Notwithstanding the secret balloting requirement in California Civil Code Section 5100, or any contrary provision in the Neighborhood Association Documents, including without limitation these Election Rules, when, as of the deadline for submitting nominations for election to the Board, the number of qualified candidates is not more than the number of Board vacancies to be filled, as determined by the inspector of the elections, the Board may, but is not required to, declare the qualified candidates elected by acclamation if all of the conditions listed in California Civil Code Section 5103 have been met. The Board shall act by voting at a meeting for which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved.

11. Retention of Election Materials. The Neighborhood Association shall maintain election materials in compliance with California Civil Code Section 5105(a)(7).

12. Amendment. These Election Rules shall not be amended less than 90 days prior to an election.