

WIND RIVERS CONDOMINIUM ASSOCIATION
Notice of Association's Proposed Revised Election Rules & Regulations
(Pursuant to California Civil Code §4360 "Rule-Making Procedures")

REVISED ELECTION RULES & REGULATIONS ADOPTED 04/06/22

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 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

Beginning January 1, 2020, a bill sponsored by the Center for California Homeowner Association Law mandates/allows the following homeowner association candidate qualifications:

- 1) Associations are required to disqualify anyone who is not a member of the association at the time of the nomination.

2) Criminal Conviction. An Association may disqualify a nominee if that person discloses, or if 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 the insurance required by Section 5806 or terminate the association's existing insurance coverage required by Section 5806 as to that person should the person be elected.

3) Delinquent. An Association may disqualify a person from nomination for nonpayment of regular and special assessments, but may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true: (1) The person has paid the regular or special assessment under protest pursuant to Section 5658. (2) The person has entered into and is in compliance with a payment plan pursuant to Section 5665. An association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution.

4) Joint Ownership. An Association may disqualify a person 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 the current election or an incumbent director.

5) Owner Less Than 1 Year. An Association may disqualify a nominee if that person has been a member of the Association for less than one year.

Voting Qualifications

Each Member of record whose voting rights have not been suspended by the Board of Directors is entitled to vote. Members shall be entitled to cast one (1) ballot for each Lot owned. In any election of the Board, every Member entitled to vote shall have the right to accumulate his/her votes and give to 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 who are otherwise eligible to vote are entitled to vote at the meeting of the Association.

The Association has the right to suspend the voting rights of an owner for any period during which any assessment against his/her lot remains unpaid. The owner must be called for a hearing before the Board of Directors held not less than forty-eight (48) hours nor more than fifteen (15) days after written notice thereof to said owner.

Nomination Procedures

Nomination for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who may not be a Member of the Board, and two (2) or more other Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each Annual Meeting of the Members to serve from the close of such Annual Meeting until the close of the next Annual Meeting. The Nominating Committee shall make as many nominations for election to the Board as it may in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations may be from Members only. The names of those nominees as proposed by the Nominating Committee will be distributed to each Member entitled to vote along with the Notice of the Annual Meeting.

Nominations may also be made from the floor at the Annual Meeting and self-nominations are permitted.

Election By Acclamation

Beginning January 1, 2022, a bill sponsored by the Center for California Homeowner Association Law mandates/allows the following Statutory Procedure for homeowner association election by acclamation:

90-day Initial Notice: At least 90 days before the deadline for submitting nominations, members must be provided by **Individual Notice** (not General Notice) a notice that contains the information set forth in Civil Code section 5103(b)(1) which includes: (1) the number of open board positions to be filled at the election; (2) the deadline for submitting nominations; (3) the procedure for submitting nominations including the manner in which nominations can be submitted; (4) the statement set forth in Civil Code section 5103(b)(1)(D) informing members of the possibility of an election by acclamation. **NOTE: Senate Bill 392** amends the way associations deliver documents to members when Individual Notice is required.

Reminder Notice: Between 7 and 30 days before the deadline for submitting nominations, members must be provided by **Individual Notice** (not General Notice) a notice that contains the information set forth in Civil Code section 5103(b)(2) which includes: (1) the same information in the 90-day Initial Notice; **and** (2) a list of names of all the qualified candidates to fill the board positions as of the date of the reminder notice. If at the time the reminder notice is sent the number of candidates exceeds the number of open seats, such that the election is contested, there is no need to include the statement in Civil Code section 5103(b)(1)(D) informing members of the possibility of election by acclamation.

Response to Nomination: Within seven business days of receiving a nomination, the Association must acknowledge receipt of the nomination in writing or by email. Also, within seven business days of receiving a nomination, the Association must advise the nominee in writing or email whether the nominee is a qualified candidate. If a nominee is disqualified, the response must state the basis for the disqualification and the Internal Dispute Resolution procedure by which the nominee may appeal the disqualification.

Determination by Inspector of Elections: As of the deadline for submitting nominations, the Association's Inspector of Elections ("IOE") must determine that the number of qualified candidates is not more than the number of vacancies on the board. (Civil Code section 5103.) This is yet another task for the IOE to add to the scope of their duties. (See, Civil Code sections 5105(a)(7), 5105(g)(4), 5110, 5120 and 5125 for IOE duties). The statute does not specify what information the IOE must receive in order to make their determination. For example, it is unclear if board minutes reflecting the number of qualified nominees received by the association's manager or board is sufficient, or if the IOE must be included as an original recipient of the nominations.

Board Meeting to Declare Election by Acclamation: At a duly noticed open board meeting, the board votes to consider the qualified candidates elected by acclamation. This vote must be included as an item on the agenda and must name each qualified candidate that will be seated by acclamation if the item is approved by the board during the meeting.

Three-year Limitation: An election by acclamation is allowed if the association has held a regular election in the previous three years. The three-year time period is calculated from the date **ballots were due** in the last full election to the **start of voting** for the proposed election.

Voting Procedures

The By-Laws for Wind Rivers Condominium 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 (2) 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 signatures 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 pre-addressed 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* print his/her name and the address of the property in Wind Rivers Condominium Association, and then the Member *must* sign his or her name in the upper left-hand corner of the outer envelope. RETURN ADDRESS LABELS SHOULD NOT BE USED. Ballots received in improperly completed envelopes (*e.g.*, not completed by hand, not signed) may *not* be counted;
- (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.
- (11) If voters are unable to return their ballot due to an illness or other physical disability, they may designate another person to return the ballot for them. ([Elections Code §3017.](#)) The statute specifically limits the acceptable group of eligible persons to family (spouse, child, parent, grandchild, brother, or sister,) or a person residing in that household.

Use of Proxies

If a Member chooses to use a proxy, the proxy must be filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease when the ownership interest or interests of such Member entitling him/her to Membership in the Association ceases.

A proxy must:

- (a) Identify a proxy-holder, 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.

Any instruction given in a proxy issued for an election that directs the manner in which the proxy-holder is to cast the vote must 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 must cast the Member's vote by secret ballot. A proxy that does not satisfy these requirements may not be counted.

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. An Inspector may **not** be a person who is currently employed or under contract to the Association for any compensable services.

Role of Inspectors of Election

Inspector(s) will determine the number of Memberships entitled to vote and the voting power of each in accordance with the Association's 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 Inspector(s). 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.

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 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.

Tie Votes

In the event of a tie vote among any number of the Candidates, the Association will notice a Special Membership or Board meeting and send our Secret Ballots to all Members for a vote to break the tie. Said vote shall be conducted in accordance with the procedures set forth herein, to the extent they are applicable to a run-off vote. No previously cast Secret Ballots will be used at the meeting to break the tie.

Recounts And Election Challenges

A recount may be requested by any unsuccessful Candidate, in writing which sets forth good cause for the request. A recount may be denied or granted in the sole discretion of the Inspector(s), and upon such terms and conditions (including assumption of costs by the requesting Candidate) as the Inspector(s) may reasonably impose. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote, and the requesting Candidate must incur the costs of having the Association attorney do the recount.

In the event of an election challenge and upon receipt of a written request from a Member, the Association will make the Secret Ballots available for inspection and review by Association Members or their authorized representatives. In order to protect the security of the Secret Ballots, one or more Association representatives must be present during such review.

Consultation With Association Legal Counsel

The Inspector(s) have the authority to confer with Association legal counsel in advance of, or at the meeting where Secret Ballots are to be counted. Legal counsel represents the Association and does not represent the Members, Inspector(s), Board Members, management or any other person. By the adoption of these Rules, the Association waives the attorney-client confidential communication privilege, and Association legal counsel has been authorized by the Board of Directors to provide advice to, as determined necessary or prudent by the attorney, for the limited purpose of informing and advising the Inspector regarding issues related to the Inspector performing its duties for the Association.