



## ELECTION RULES

WHEREAS, the California Legislature adopted *Civil Code* § 5105, which obligates the Association to adopt rules regarding membership voting on items specifically identified in *Civil Code* § 5105, and all subsequent amendments thereto, to be effective on January 1, 2014;

WHEREAS, the Association desires to comply with these newly enacted regulations by adopting the procedures outlined in the new laws;

NOW THEREFORE, the Association does hereby resolve:

1. Equal access to association newsletters, websites or mailers shall be provided to all board member candidates for purposes that are reasonably related to the election;
2. To the extent any members are provided with access to association newsletters, websites or mailers for the purpose of advocating a point of view which is reasonably related to the election, all members shall be provided with equal access;
3. If access is provided to candidates or members, the Association shall not edit or redact the content, but will include a disclaimer that the association is not responsible for the content;
4. Candidates and members advocating a point of view reasonably related to the election shall have equal access to any common area meeting space, which exists. This access shall be provided at no charge, save for any deposits or other procedures required to reserve common area meeting spaces;
5. Qualifications for candidates to the Board of Directors shall include:
  - a. Candidates must be members of the Association in good standing
  - b. Candidates must not be delinquent in the payment of any Association dues
  - c. Candidates must not be in violation of the Association's Governing Documents
  - d. Only one Owner per Lot or Unit is eligible to serve on the Board at any time.
6. Procedures for nomination of candidates to the Board of Directors shall include at least one of the following:
  - a. Nominating Committee established by the Board of Directors
  - b. Nomination by written request submitted to the Board or Nominating Committee
  - c. Self-nomination in writing

7. Qualifications for voting shall include, but not be limited to the following (as further described in the Association's Governing Documents):
  - a. Member's name must appear on the official records of the Association on the date of the annual meeting
  - b. Member must be in good standing
  - c. Member may not be the subject of violation proceedings, which have resulted in the suspension of such Member's rights to vote.
8. The voting power of each membership shall be as described in the Association's Bylaws and/or Declaration.
9. Proxies may be used for quorum purposes alone or any other purposes permitted under the Association's Bylaws and/or Declaration and California law.
10. The authenticity, validity and effect of proxies submitted by members shall be determined by the Inspectors of Election chosen pursuant to *Civil Code* § 1636.03(c), and any related or successor statute; new statute *Civil Code* § 5105.
11. The voting period for elections shall commence when the notice of the meeting and/or ballots have been mailed to all members and shall terminate as stated in the notice and/or ballot;
12. Inspectors of election (i.e. independent third parties) shall be appointed by the Board of Directors. All members, except for Board members, candidates, and persons related to board members or candidates, may serve as inspectors of election. The Association's CPA, Property Manager, Attorney or other professional hired by the Association may also serve as inspectors of election, or the Association may appoint another independent party. If an independent party serves as inspector of election (i.e. not an Association member), that party may be compensated for the services performed. Members of the community shall not be entitled to compensation. Inspectors may appoint and oversee additional independent third parties to count and tabulate votes.
13. Ballots and proxies submitted by Owners will be retained by the Association or its designated agent for a period of one (1) year following the election or voting deadline. At the conclusion of this one (1) year period the ballots may be destroyed.

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### Corporate Transparency Act Compliance

The Corporate Transparency Act and any other related companion statutes or regulations, including its state counterparts (collectively, "CTA"), is federal law intended to provide the U.S. Department of the Treasury with beneficial ownership information for the purpose of detecting suspicious financial activity, such as money laundering and tax fraud, along with funding for terrorism and other misconduct, such as drug trafficking, through business corporations registered with the Secretary of State. Businesses must file a Beneficial Ownership Information Report that identifies the individuals associated with the business who exercise substantial control over the business and financial assets. This CTA applies to

homeowners associations, as a "Reporting Company," and their directors known as "Beneficial Owners."

1. A Director must comply with the CTA, as applicable. Candidates are on notice that if they serve on the Board then the CTA may require submission of the Director's personal information including, but not limited to, birthdate and driver's license or passport information, along with their home address.

2. If a Director refuses to timely comply with the CTA, then the Director voluntarily consents (i) to the Association's removal of the Director for noncompliance and/or (ii) to be responsible for any governmental punishment imposed against the Association, including but not limited to any fines or criminal punishments due to the Director's noncompliance. The Association further reserves the right to pursue disciplinary enforcement and reimbursement for CTA noncompliance against the Director after a noticed hearing.

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### Secret Ballot Electronic Voting

The Association may utilize electronic Secret Ballots for any election allowed by law. When the Association holds an election with electronic Secret Ballot voting, the following requirements apply:

#### A. Basic Conditions and Requirements

1. Electronic Secret Ballots are not permitted for special assessment elections unless otherwise permitted by law.

2. Nominations from the floor are not permitted with electronic Secret Ballots unless otherwise permitted by law.

3. Electronic Secret Ballots received shall be counted towards quorum, but a substantive vote of the Members shall not be taken on any other issues than those identified in the electronic vote.

4. The electronic Secret Ballot and any written Secret Ballot shall contain the same list of items being voted on.

5. Members voting by electronic Secret Ballot may request a physical copy of the text of the proposed amendment without charge.

6. An election may be conducted entirely by mail, electronic Secret Ballot, or a combination of both notwithstanding contrary terms in the Governing Documents.

7. There shall be a tally sheet of votes cast by electronic Secret Ballot.

#### B. Member Opt-in and Opt-Out Selection

1. Unless a Member opts out of electronic Secret Ballot voting as described below, each Member consents to voting by electronic Secret Ballot if the Association has the Member's email address.

2. The Association must maintain a membership/voting list identifying Members' electronic Secret Ballot or written Secret Ballot voting method selections.

3. A Member may change from a written Secret Ballot to an electronic Secret Ballot, or an electronic Secret Ballot to written Secret Ballot, up until ninety (90) days before an election. At least one hundred twenty (120) days before an election, the Association shall provide Individual Notice of the membership list with the following:

a) The Member's current voting method selection;

b) The Member's email address used for electronic Secret Ballot voting, if applicable;

c) This statement or a statement substantially similar, "If you elect to vote by written Secret Ballot instead of electronic Secret Ballot voting, then you will be opted out of electronic Secret Ballot voting";

d) Instructions on how to opt out of electronic Secret Ballot voting; and

e) Electronic Secret Ballot voting opt-out deadline (which is up until ninety (90) days before an election).

4. If a Member opts out of receiving an electronic Secret Ballot or the Association does not have an email address for a Member, such Member shall receive a written Secret Ballot from the Association.

5. Any Member voting by electronic Secret Ballot must provide a valid email address and shall only receive an electronic Secret Ballot from the Association.

#### C. Additional Electronic Secret Ballot Requirements

The ballot shall also contain instructions on the following:

1. How to access the internet-based voting system; and
2. How to vote by electronic Secret Ballot.

#### D. Additional Inspector Procedures for Elections by Electronic Secret Ballot

1. The Inspector must ensure compliance with all of the following by providing the Member:

a) A method to authenticate the Member's identity to the internet-based voting system;

b) A method to transmit an electronic Secret Ballot to the internet-based voting system that ensures secrecy and integrity; and

c) A method to confirm, at least thirty (30) days before the voting deadline, that the Member's electronic device can successfully communicate with the internet-based voting system.

2. The Inspector must also ensure that any internet-based voting system utilized shall have the ability to accomplish the following:

a) Authentication of the Member's identity;

b) Authentication of the electronic Secret Ballot transmitted to ensure it was not altered during transmission;

c) A receipt of confirmation of the submitted electronic Secret Ballot;

d) Permanent separation of any voter authentication or identification information from the electronic Secret Ballot, rendering it impossible to connect the ballot to a specific Member; and

e) Storage and electronic Secret Ballots accessibility to elections officials or their authorized representatives for recount, inspection, and review purposes.

## Election by Acclamation

Notwithstanding any secret balloting requirements, or any contrary provision in the Governing Documents, when, as of the deadline for submitting nominations per Civil Code § 5115(a), the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the Inspector or Inspectors, the Association may, but is not required to, consider the qualified candidates elected by acclamation if all of the following conditions have been met:

A. The Association has held a regular election for the Directors in the last three years. The three-year time period shall be calculated from the date ballots were due in the last full election to the start of voting for the proposed election.

B. The Association provided individual notice of the election and the procedure for nominating candidates as follows:

(1) Initial notice at least ninety (90) days before the deadline for submitting nominations provided for in Civil Code § 5115(a). The initial notice shall include all of the following:

- a) The number of Board positions that will be filled at the election.
- b) The deadline for submitting nominations.
- c) The manner in which nominations can be submitted.

d) 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 may, after voting to do so, seat the qualified candidates by acclamation without balloting.

(2) A reminder notice between seven (7) and thirty (30) days before the deadline for submitting nominations provided for in Civil Code § 5115(a). The reminder notice shall include all of the following:

- a) The number of Board positions that will be filled at the election.
- b) The deadline for submitting nominations.
- c) The manner in which nominations can be submitted.

d) A list of the names of all of the qualified candidates to fill the Board positions as of the date of the reminder notice.

e) A statement reminding 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 may, after voting to do so, seat the qualified candidates by acclamation without balloting. This statement is not required if, at the time the reminder notice will be delivered, the number of qualified candidates already exceeds the number of Board positions to be filled.

C. The Association provides the following:

(1) Within seven (7) business days of receiving a nomination, a written or electronic communication acknowledging the nomination to the Member who submitted the nomination.

(2) Within seven (7) business days of receiving a nomination, a written or electronic communication to the nominee, indicating either of the following:

a) The nominee is a qualified candidate for the Board.

b) The nominee is not a qualified candidate for the Board, the basis for the disqualification, and the procedure, which shall comply with the Davis-Stirling Act and these Bylaws, by which the nominee may appeal the disqualification.

(3) The Association may combine the written or electronic communication described in paragraphs (1) and (2) into a single written or electronic communication if the nominee and the nominator are the same person.

D. The Association complies with the following:

(1) The Association permits all candidates to run if nominated, except for nominees disqualified for running as allowed or required pursuant to the Bylaws and the Election Rules.

(2) Notwithstanding the foregoing paragraph, the Association may disqualify a nominee if the person has served the maximum number of terms or sequential terms allowed by the Association, if any.

(3) If the Association disqualifies a nominee pursuant to the Davis-Stirling Act and the Bylaws, the Association requires a Director to comply with the same requirements.

E. The Board votes to consider the qualified candidates elected by acclamation at a Board meeting pursuant to which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved. The Board's vote for election by acclamation concludes the election process. Meeting minutes should also specify the date such elected candidates will be seated on the Board.