

**NEW HOMEOWNER ASSOCIATION ELECTION LAW REQUIREMENTS**

**Adoption of Rules**

Each association must adopt election and meeting rules that include the following:

1. Allow equal access to all board candidates and HOA members to association media during an election campaign for purposes reasonably related to that election, if access is given to anyone.
2. Association may not redact or edit any content from candidate/member media content.
3. Permit access to common area meeting space (if any exists), free of charge, to all candidates and all association members during campaign for purposes reasonably related to election.
4. Specify qualifications for candidates for any elected position.
5. Specify procedures for nomination of candidates, which must include procedure for any association member to nominate himself/herself.
6. Specify qualifications for voting, voting power of each membership, authenticity/validity/effect of proxies, and voting period for elections (including commencement and conclusion of voting periods).
7. Association must select one or three independent third parties as inspectors of election.
8. Association must specify method of selecting inspectors of election utilizing one of the following methods:
  - a. Appointment of inspectors by board of directors;
  - b. Election of inspectors by association members; or
  - c. Any other method.

### **Elections by Secret Ballot**

Regardless of contradictory provisions in the governing documents or California law, any association election regarding **(1) assessments, (2) election or removal of Directors, (3) amendments to the governing documents, or (4) the grant of exclusive use of common area property** (pursuant to Civil Code section 1363.07) must be conducted by secret ballot.

### **Inspectors of Election**

1. Inspectors of election must be "independent third parties."
2. The association must select one or three inspectors of election.
3. "Independent third party"
  - a. May be a member of the association;
  - b. May not be a member of the board of directors, a candidate for the board of directors, or related to a member or candidate of/for the board of directors.
  - c. May be a "person who is currently employed or under contract to the association for any compensable services" **if and only if** the association's adopted Election Rules expressly so authorize.
4. Inspectors of election shall perform all of the following functions:
  - a. Determine the number of memberships entitled to vote and voting power of each;
  - b. Determine the authenticity, validity and effect of proxies (if any);
  - c. Receive ballots, and determine the location where ballots should be mailed or hand-delivered;
  - d. Resolve all issues related to a member's right to vote;
  - e. Count/tabulate votes;
  - f. Determine the time and date by which ballots must be returned;
  - g. Determine and report the results of election;

h. Perform any acts necessary and appropriate to conduct a fair, impartial election consistent with the Civil Code and association's governing documents (to the extent that they do not conflict with the Civil Code).

5. Decisions of majority of inspectors control in the event of disagreement among inspectors.

### **Proxies**

1. Distribution of proxies not required by statute, but may be required by association's governing documents.

2. If association distributes proxies, any proxy instruction for an election that directs the manner in which the proxy holder must vote shall be identified on a separate page that can be detached from the first page of the proxy (the first page of which identifies proxy giver, proxy holder, date proxy was given, and signature of proxy giver--i.e., voting instructions cannot identify the persons giving the proxy rights).

3. Proxy holder shall cast proxy giver's vote by secret ballot.

### **Ballot Distribution and Return Procedure**

1. At least 30 days prior to deadline for voting, a ballot and two envelopes (one pre-addressed) and instructions on how to return ballots must be mailed by first-class mail or otherwise delivered to every association member entitled or qualified to vote.

2. Ballots themselves may not identify recipient or voter in any fashion.

3. Ballots need not be signed by voter.

4. Completed ballot shall be inserted by voter into sealed, plain envelope.

5. Unmarked, sealed envelope with ballot shall be inserted by voter into second sealed envelope that contains the voter's (a) name, (b) address, and (c) separate interest identification that entitles member to vote.

6. Outer envelope addressed to inspectors of election, must be mailed or delivered by hand to location specified by inspectors.

7. Member may request a receipt for delivery of ballot.

### **Counting and Tabulation of Ballots**

1. All votes shall be counted and tabulated by inspectors in public at properly noticed, open meeting of board of directors or of members.
2. All association members entitled to witness the counting and tabulation of votes.
3. No one other than inspectors of election may open or otherwise review any ballot prior to inspector's tabulation of ballots at designated time and place.
4. Sealed ballots shall remain in custody of inspectors, or at location designated by inspectors, until tabulation of votes.
5. In the event of recount or election challenge, association shall (upon written request) make ballots available for inspection and review by association members or their authorized representatives without identifying in any way the manner in which any specific association member voted.

### **Reporting Results of Election**

1. Results of election shall be promptly reported by inspectors to board of directors.
2. Results of election shall be recorded in the minutes of the next meeting of the board of directors and be made available for review by members of association.
3. Within 15 days of election, board of directors shall publicize the results of the election in a communication directed to all members.
4. Any report made by inspectors of election is prima facie evidence of facts stated in the written report.

### **Use of Association Funds for Campaign Purposes**

1. Association funds shall not be used for "campaign purposes" in connection with any association election.
2. "Campaign purposes" includes:
  - a. Expressly advocating the election or defeat of any board of directors candidate or ballot measure;

b. Including the photograph or prominently featuring the name of any candidate on a communication from the association or board of directors within 30 days of an election.

1. This restriction does not include listing the name of candidate on the ballot and ballot materials.

2. This restriction does not apply to the communication pertaining to use of media and/or access to common area meeting space for which equal access is provided to all candidates.

### **Enforcement of Election and Meeting Requirements**

1. Association member may bring civil action for declaratory or equitable relief for violation of election and meeting law by association within one year of date of alleged violation.

2. If court finds that election law requirements or association-adopted rules and procedures were not followed, court may void results of election being challenged.

3. A member who prevails in a civil action to enforce rights described above "shall be entitled to reasonable attorney's fees and court costs."

4. Court may impose a civil penalty of up to \$500 for each violation (though identical violations shall be subject to only one penalty if the violation affects each member of the association equally).

5. If association prevails in defending against member's challenge, association shall not recover any costs (or, presumably, attorneys' fees) unless court finds member's challenge "to be frivolous, unreasonable, or without foundation."

6. Member claim of violation of statutory election law may be brought in small claims court with respect to the following topics:

a. Access to association resources by a candidate or a member advocating a point of view;

b. Receipt of a ballot by a member;

c. The counting, tabulation or reporting of ballots;

d. Access to ballots for inspection and review after tabulation.

**Additional Recommended Issues for Inclusion in Election Rules**

1. Nominations from the floor at annual meetings.
2. Cumulative voting.
3. "Quorum" requirement to complete election.
4. Conduct of elections without member meeting requirement.
5. Indemnification/Payment of inspectors of election.
6. Revocation of previously-delivered ballot by member (ability to change vote).