

# **PH&L COMMUNITY ASSOCIATION HOMEOWNERS ASSOCIATION**

## **ELECTION RULES**

(Effective July 29, 2021)

In accordance with the newly adopted amendments to the California Davis-Stirling Act, the following Election Rules shall apply where use of secret ballots is required:

### **1. Election Requirements.**

*Posting / Notice.*

- 1.1 At least thirty (30) days before the end of the nomination period, the Association shall provide each Member, by general notice, the Election Rules and procedures, and the deadline for submission of the nomination form.
- 1.2 At least thirty (30) days before the ballots are mailed to the Members, the Association must provide a Notice in accordance with the requirements of Civil Code §5115(b) which includes:
  - The list of candidates;
  - The deadline for returning ballots; and
  - The time and place of the annual meeting.

### **2. Nomination of Candidates.**

- 2.1 Candidates and Board Members must be Members of the Association or an authorized agent of an entity owned Unit. Unless authorized by law, the only other qualifications for nomination are:
  - 2.1.1 No candidate, if elected, may serve on the Board with a Co-Owner of a Unit.
  - 2.1.2 Candidates and sitting directors must be current in the payment of regular and special assessments, which are consumer debts subject to validation.

The Association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. An association shall not disqualify a nominee for failure to be current in payment of regular and special assessments if any of the following circumstances are true:

- (a) The nominee has paid the regular assessment or special assessment under protest pursuant to Section 5658.

- (b) The nominee has entered into a payment plan pursuant to Section 5665.
  - (c) The nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.
- 2.2 Owners may nominate themselves or another person.
- 2.3 Any candidate nominated by another person will be contacted to confirm that such candidate consents to having his or her name placed in nomination for election to the Board of Directors.
- 2.4 All candidates who meet the qualifications to serve on the Board and, if appropriate, have confirmed his/her willingness to run for election to the Board, shall be listed on the Secret Ballot.
- 2.5 The Board shall be comprised of five (5) persons. The Board has or may vote to decrease the size of the Board to three (3) persons. All Directors must be Members of the Association and who shall hold office until his or her successor has been elected or appointed, or until his or her death, resignation or judicial adjudication of mental incompetence. Directors shall each serve a two (2) year term.

### **3. Inspectors of Election.**

- 3.1 The Board shall appoint either one (1) or three (3) independent third parties as Inspectors of Election after the close of candidate nominations but before the Secret Ballots are mailed to the Owners. An independent third party may include, but is not limited to:
  - 3.1.1 A volunteer poll worker with the county registrar of voters;
  - 3.1.2 A licensee of the California Board of Accountancy;
  - 3.1.3 A notary public; or
  - 3.1.4 A Member of the Association provided such Member is not a member of the Board of Directors, a candidate for the Board of Directors, related to a member of the Board of Directors or related to a candidate for the Board of Directors.
- 3.2 Prior to the secret ballots being mailed to the Owners, the Inspector(s) of Election shall meet to determine to whom the ballots shall be returned.
- 3.3 *The Inspector(s) of Election shall also do all of the following:*
  - 3.3.1 No Member's right to vote may be suspended by the Association;

- 3.3.2 Receive ballots;
  - 3.3.3 Hear and determine all challenges and questions in any way arising out of the validity of a ballot;
  - 3.3.4 Count and tabulate all votes;
  - 3.3.5 Determine when the polls shall close;
  - 3.3.6 Determine the result of the election; and
  - 3.3.7 Perform any acts as may be proper to conduct the election with fairness to all Members.
- 3.4 An Inspector of Election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. The decision or act of a majority shall be effective in all respects as the decision or act of all.
  - 3.5 Any report made by the Inspector or Inspector(s) of Election is prima facie evidence of the facts stated in the report.
  - 3.6 The Board may remove and replace any Inspector of Election prior to the tabulation of ballots if an Inspector of Election resigns or if the Board reasonably determines that an Inspector of Election will not be able to perform his or her duties impartially and in good faith.
  - 3.7 The Inspector(s) of Election may appoint or oversee additional persons to collect ballots, to verify signatures, to count and tabulate votes as the Inspector(s) deems appropriate, provided that such person(s) are independent third parties.

#### **4. Secret Ballot Procedure: Record Date.**

- 4.1 Ballots and a pre-addressed envelope with instructions describing how to return the ballot shall be mailed by first-class mail or delivered by the Association to every Member not less than thirty (30) days prior to the deadline for voting and at least thirty (30) days after the Civil Code §5115(b) Notice has been provided to the Members.
- 4.2 *Ballots must ensure the confidentiality of the voters.*
  - 4.2.1 A voter may not be identified by name, address, parcel or unit number on the ballot;
  - 4.2.2 The ballot 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 also sealed. In the upper left hand corner of the second (larger) envelope, the voter prints (or may use a mailing label) and signs his or her name, address, and Lot, or parcel, or unit number that entitles him or her to vote. The second

envelope is addressed to the Inspector(s) of Election, who will tally the votes.

- 4.3 *Returning Ballots.* Owners may return their secret ballot by mail or hand deliver it to a location specified by the Inspector(s) of Election. Only the ballots that are returned in accordance with the instructions of the Inspector(s) of Election shall be counted.
- 4.4 A Member may request a receipt for delivery of his or her ballot.

## **5. Campaigning.**

- 5.1 All candidates or Members advocating a point of view during a campaign, including those not endorsed by the Board, shall be provided equal access to Association media, newsletters, or Internet Web sites (if any) for purposes that are reasonably related to the election. The Association may not edit or redact any content from these communications but may include a statement specifying that the candidate or Member, and not the Association, is responsible for the content.
- 5.2 All candidates, including those who are not incumbents, and all Members advocating a point of view, for purposes reasonably related to the election, shall be provided equal access to any common area meeting space, if any exists, during a campaign at no cost.
- 5.3 Association funds may not be used for campaign purposes in connection with any board election. The term campaign purpose is defined to include, without limitation, (1) expressly advocating the election or defeat of any candidate that is on the ballot; or (2) including the photograph or prominently featuring the name of a candidate on a communication from the Association.

## **6. Proxies.**

- 6.1 The use of proxies shall be allowed as specified in the Bylaws and California law.

## **7. Handling of Ballots.**

- 7.1 As secret ballots are returned to the Inspector or Interim Inspector if one had been appointed by the Inspectors, who shall check off on a sign-in sheet that a ballot has been received for such Unit. The first secret ballot received for any Unit shall be the only ballot which is counted. Any subsequent ballots for the same Unit which are received shall be deemed invalid.
- 7.2 The sealed ballots shall, at all times, be in the custody of the Inspector(s) of Election or at a location designated by the Inspectors until delivered to the Inspectors at the meeting for the opening of the ballots and the tabulation of the vote.

- 7.3 No person, including a Member of the Association or an employee of the management company, shall open the outer or inner envelope or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.
- 7.4 After tabulation, election ballots and all other Association Election Materials shall be stored by the Inspectors of Elections in a secure place for no less than one (1) year after the date of the election. In the event of a recount or other challenge to the election process, the Inspectors of Election shall, upon written request, make the ballots available for inspection and review by Members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

**8. Meeting at Which Secret Ballots Shall Be Tabulated.**

- 8.1 Except for the meeting to count the votes, an election may be conducted entirely by mail unless otherwise specified in the governing documents. The Inspector(s) of Election shall count and tabulate the ballots for the election in public at a properly noticed open meeting of the Members or, at a special meeting of the Board of Directors, duly noticed for the same date, time and place as the Members meeting called for the purpose of counting ballots. The Board of Directors shall determine the date, time and place of the Members' meeting and the concurrent special meeting of the Board in accordance with California law and the Association's Bylaws.
- 8.2 A quorum shall be required for elections of Directors.

**9. Tabulation of Votes.**

- 9.1 All votes shall be counted and tabulated by the Inspector(s) of Election in public at a properly noticed open meeting of the Members or of the Board.
- 9.2 The Inspectors of Election shall confirm that no more than one Ballot is returned for each Unit.
- 9.3 Any candidate or other Member of the Association may witness the counting and tabulation of the votes. In order to avoid interference with the Inspector's duties, all observers must stand or be seated at least ten (10) feet from any Inspector, or his or her assistant, when they are counting votes.
- 9.4 The Inspector(s) shall have the power to cause the removal of any person who disrupts the counting or tabulation of votes.
- 9.5 No person shall open or otherwise review any ballot prior to the time at which the balloting envelopes are opened and tabulated.

**10. Announcement of Results.**

- 10.1 The results of the election shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by Members of the Association.
- 10.2 Upon certification of the election results by the Inspector(s) of Election, the newly elected Board Members shall be deemed to have taken office.
- 10.3 Within fifteen (15) days of the election, the Board shall publicize the results of the election in a communication directed to all Members.

**11. Other Voting/Campaign Issues.**

- 11.1 Every Member is entitled to vote. Voting rights of a Member may not be suspended.
- 11.2 No person who holds a general power of attorney for a Member shall be denied a ballot.
- 11.3 Cumulative voting shall be allowed as described in the Bylaws at Article 2.3.2.

**12. Revision of Election Rules.**

The Election Rules may not be adopted or amended less than ninety (90) days prior to an election.

**13. Recount and Challenge to Election.**

- 13.1 Inspection of Election Materials.
  - 13.1.1 Members shall be permitted to inspect the signatures of all voting Owners which have been placed on the outside of the ballot mailing envelope. Copies and/or photographs of such signatures are not permitted; and
  - 13.1.2 Members may inspect and obtain copies of the following election materials:
    - 13.1.3 Voter List;
    - 13.1.4 Ballots;
    - 13.1.5 Signed Voter Envelopes (inspection permitted but copies are not allowed); and
    - 13.1.6 Proxies.
- 13.2 A recount may be requested by any Member, in writing, within five (5) days after the election results are announced and if the Member advances the cost of the

recount. Such costs are subject to reimbursement if the outcome of the election is changed due to the recount.

- 13.3 Any Director or any person who had the right to vote in the election may challenge the election within one (1) year of the date of the election.
- 13.4 An action to challenge an election may be brought in the Superior Court or Small Claims Court where the Court may order injunctive relief and may levy penalties of up to five hundred dollars (\$500.00) per violation.