

612 JEFFERSON ELECTION RULES

ELECTION RULES

Election Procedures for 612 Jefferson Homeowners Association Pursuant to California Civil Code §4355, §4900 and §5105(a), et seq.

The following election procedures for the Association are being adopted in accordance with California Civil Code §4900 and §5105(a) which require owners associations to adopt rules regarding election procedures.

1. Equal Access.

(a) If, in the course of an election regarding assessments legally requiring a vote, election and removal of directors, amendments to the Governing Documents, or the grant of exclusive use of common area, any candidate or Member 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 Association, for a purpose that is reasonably related to that election, equal access shall be provided to all candidates and Members for the same purpose (Civ. Code §5105(a).)

(b) Equal Access, as described above in **Section 1(a)**, shall also apply to Members and candidates not endorsed by the current Board, and shall be for the purposes of advocating a point of view reasonably related to the election.

(c) The 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 Governing Documents or any Applicable Laws). The candidate or Member, and not the Association, is responsible for the content of such point of view.

(d) The Association shall give all candidates, including those candidates who are not incumbents, and to all Members advocating a point of view, including those not endorsed by the Board, Equal Access to the common area meeting area (i.e., time and space available for such candidate's use), if any exists, during a campaign, at no cost, to present a point of view reasonably related to the upcoming election.

(e) All members, including directors (at their own expense) have a right to campaign for or against any candidate or issue.

(f) For violations regarding equal access to association resources, owners may bring a small claims court action. (Civ. Code §5145(c).)

2. Qualifications and Procedures for Nomination and Recall of Directors.

(a) Nomination.

(i) A Member is eligible to be nominated or to nominate himself or herself for a position on the Board of Directors if: (a) the candidate for election is a member of the association at the time of the nomination. (Civ. Code §5105(b).); (b) the Member's subdivision interest is not subject to a Notice of Delinquent Assessment that, as of the date of nomination, has been of record for thirty (30) or more days; (c) the Member has paid the first month's assessments, as provided for in the Declaration, levied against such Member's Lot; (d) the escrow by which such Member acquired his or her Lot closed at least sixty (60) days prior to the date on which the first ballot is mailed to or solicited from Members for voting purposes; (e) the Member is at least eighteen (18) years old. If so required by the Bylaws, directors shall be Members or representatives of Declarant.

(ii) All Members eligible to vote in the forthcoming election are eligible to nominate another eligible Member or himself or herself as a candidate for the Board. If a name is placed into nomination by someone other than the candidate, the candidate should be contacted to verify their willingness to be on the ballot.

- (iii) Provided that a Member seeking candidacy for a position on the Board satisfies the eligibility requirements set forth in **Section 2(a)** above, such Member may be nominated or nominate himself or herself by the following procedures.
- (iv) Nominations for Board candidates must be submitted in writing and mailed to the secretary of the Association or the Property Management Company, whichever the Board decides, by the nomination deadline. Members shall not be prohibited from nominating themselves for any Board position and any attempt to prevent a Member's self-nomination shall be invalidated.
- (v) At least 60 days before the ballots are distributed, the association must prepare a list of the candidates and make it available to the candidates so they can verify the accuracy of their information on the list. The inspector of elections must then change and correct lists within two (2) business days of any error or omission being reported. (Civ. Code §5105(a)(7).)
- (vi) After collecting all properly submitted nominations, the current Board shall issue a list of the prospective candidates after: (1) confirmed that each nominated person is eligible under **Section 2(a)**; (2) verified the accuracy of each candidate's information; and (3) contacted each of the qualified Members on that list to confirm that individual's acceptance of the nomination.
- (vii) Not less than sixty (60) days prior to the mailing or distribution of ballots for the election of new directors, the Association or the Property Management will provide to Members notice of the following: (1) the date, time, and physical address to mail or hand-deliver ballots to the Inspector of Elections; (2) date, time and location of the ballot-counting meeting; (3) the voter list correction deadline; and (4) the list of all candidates' names that will appear on the ballot.
- (viii) Boards should not use small technical violations in the nomination process to exclude qualified candidates from running for the board. For example, associations should not exclude a qualified candidate for submitting a photocopy of a candidate's application rather than an original. Examples of substantive violations are missing the deadline for submitting their nomination, or failing to meet director qualifications.

(b) Recall.

- (i) Special meetings of Members for any lawful purpose, including the election for a recall of directors, may be called by 5 percent or more of the Members (Corp. Code §7510(e)). The petition must state exactly what issue or problem is to be addressed. The date of the special recall election is set by the board and may not be less than 10 days nor more than 90 days from receipt of the request (Corp. Code §7511(c).) The recall of directors must be conducted by secret ballot. The secret ballots and two pre-addressed envelopes with instructions on how to return the ballots shall be mailed by first-class mail or delivered by the association to every member not less than 30 days prior to the deadline for voting, as provided in **Section 3(a)**. If the association has fewer than 50 members, removal is approved by the affirmative vote of a majority of all members entitled to vote. (Corp. Code §7222(a).) Cumulative voting is not used in this step of the recall if the vote is to remove the ENTIRE board. It's a simple yes or no response for removal. If the vote is to remove individual directors, removal can be blocked by a minority of members if the governing documents allow cumulative voting.
- (ii) Not less than twenty (20) days prior to the mailing or distribution of ballots for the removal of new directors, the Association or the Property Management will provide to Members notice of the following: (1) the purpose of the meeting (Civ. Code §5000); (2) the date, time, and physical address to mail or hand-deliver ballots to

the Inspector of Elections; (3) date, time and location of the ballot-counting meeting; and (4) the list of all candidates' names that will appear on the ballot.

- (iii) With or without cause, the membership may recall the entire board or individual directors, subject to cumulative voting limitations. (Corp. Code §7222(a).) This applies to both membership elected and board appointed directors.
- (iv) Cumulative voting is not employed if the vote is to remove the ENTIRE board. In that case, the Inspector(s) of Election tallies the votes and announces the results. If the vote is to remove individual directors, removal can be blocked by a minority of members since the governing documents allow cumulative voting. The Corporations Code provides that no director may be removed when the votes cast against removal would be sufficient to elect the director if voted cumulatively at an election where all members entitled to vote were voted (Corp. Code §7222(b).)
- (v) Recall Entire Board or a Single Director. If the entire Board is being recalled, or just a single director, the result of a successful recall is known in advance. The recall election and election of replacement director(s) can take place in one election using a single ballot providing the correct number of candidates to be reelected. If the recall succeeds, the ballots are re-counted and replacement director(s) selected at the same meeting.
- (vi) Recall More Than One But Less Than All Directors. The director replacement election can be conducted at the same time following a 110-120 day timeline. As such, the recall can be completed before the director replacement ballots need to be delivered. If the recall fails, the ballots for the replacement election need not be sent. If the recall succeeds, the ballots will accurately state the number of open positions eliminating voter uncertainty and permitting cumulative voting. There could be a relatively brief period (usually 35-45 days) where recalled directors might need to continue serving if the recall leaves the board with less than a quorum.
- (vii) The only business that may be conducted at the special meeting is the recall of the directors and the election of new directors in the event the recall is successful (Corp. Code §7514(a).) Business at the meeting is limited to noticed items only; no other business may be transacted (Corp. Code §7514(a).)
- (viii) Once members remove a director, his/her replacement must be elected by the membership. (Corp. Code §7224(a).) Unless the articles or bylaws provide otherwise, if the entire board is recalled, directors remain in place until a new board is elected since a corporation cannot function without a board. SB 432 amended Corporations Code §7511 (effective January 1, 2022) to allow any member-initiated elections to take place as many as 150 days after the petition is received. If the recall is successful, a separate ballot is then sent to the membership for the election of replacement director(s). The term in office for new director(s) will be the same as the director(s) they replace.
- (ix) Until a board is replaced, it continues to carry out its duties as a board of directors. The meeting itself is chaired by the Board president. By statute, the only authority given to petitioners is to call a meeting, not name who runs the meeting. (Corp. Code §7510(e).) Accordingly, the president of the association chairs the meeting or someone other than the president as may be determined by the board.
- (x) Recalls may not be started against an officer if: (a) the officer has not held office during the current term for more than 90 days; (b) a recall election has been determined in the officer's favor within the last six months; (c) the officer's term ends within six months or less. (Elections Code §11007.)

- (xi) Designated directors (e.g., Habitat for Humanity Greater San Francisco ex-officio Board member) cannot be recalled from the board without the approval of the designator (Habitat for Humanity Greater San Francisco). A designated director is not one appointed by the board to fill an empty seat. A “designated director” is one designated in the articles of incorporation or bylaws (Corp. Code §5220(d).) Such directors serve until their term expires as provided for in the articles or bylaws or they resign, die, or become incompetent.
- (xii) Court appointed directors (Corp. Code §5220(e)) cannot be removed without court approval.
- (xiii) The membership cannot recall officers, such as the president, secretary, or treasurer, since officers are elected by the board not the membership. Officers serve at the pleasure of the board and may be removed at-will by the board.
- (xiv) The membership cannot remove or “fire” a manager, only the board can. Nor can they file a petition with the board to remove a manager.

(c) Pursuant to **Section 4.3** of the Bylaws, in addition to the directors elected by the Members, in any election of directors after the Class B membership has been terminated, Declarant may designate an “ex officio” Board member who shall be entitled to attend and participate in all Board meetings, but shall have no voting rights as a director. The nomination procedures set forth in this **Section 2** shall not apply to such ex officio director.

3. Secret Ballot.

(a) Pursuant to California Civil Code §5105(a), the following matters must be voted by secret ballot, regardless of any provision to the contrary in the association’s governing documents: Special assessments over 5% or regular assessments over 20% (Civ. Code §5605), election and removal of directors, amendments to the governing documents, and grant of exclusive use of common area property. Member surveys do not require a secret ballot. The secret ballot must satisfy the requirements set forth in the California Civil Code and this **Section 3**. The Association shall send to each eligible Member a secret ballot and two (2) pre-addressed envelopes not less than thirty (30) days prior to the voting deadline for the election.

(b) Ballots must not identify the voter’s name, address, or lot, parcel or residence number.

(c) The ballot itself must not be signed by the voter, but is inserted into an envelope that is sealed. (Civ. Code §5115(c)(1).) If the owner inadvertently signs the ballot, it does not invalidate the ballot. This envelope is inserted into a second envelope that is sealed. The upper left hand corner of the second envelope must contain the voter’s name and a separate interest identifier such as an address, lot, parcel or unit number that entitles him/her to vote. The envelope must also be signed by the voter. (Civ. Code §5115(c)(1).) A typed name by itself is not sufficient. Signatures should be in ink so they cannot be erased. The signature must be from the owner of the property, i.e., a member, not non-member spouses. Failing to sign the outer envelope voids the ballot. An illegible or invalid owner address also invalidates the ballot. The second envelope is addressed to the Inspector(s) of Election.

(d) The envelope containing the ballot shall then be hand delivered or mailed via first class mail to a location specified by the inspector or inspectors of the election. The Member may request a receipt for delivery.

4. Selection of Inspectors.

(a) The current Board shall select either one (1) or three (3) independent third parties (Civ. Code §5105(a)(5)) to serve as the inspector of inspectors of the election (“**Inspector(s)**”). A person or persons currently employed or under contract to the Association for any paid services may not be selected to be an Inspector.

(b) For the purposes of this Article, independent third parties include the following:

- (i) A volunteer poll worker working for the county registrar of voters;
- (ii) A licensee of the California Board of Accountancy;

- (iii) A Notary Public;
 - (iv) A Member that does not hold a position on the current Board, is not related to a member of the current Board, is not a candidate for the forthcoming election, for which such Member would serve as an Inspector; or
 - (v) An unpaid volunteer of Habitat for Humanity Greater San Francisco.
- (c) The Inspector(s) of the election shall have the following responsibilities:
- (i) Determine the number of Members entitled to vote as of the record date and voting power of each said Member;
 - (ii) Determine the authenticity, validity, and effect of proxies, if any;
 - (iii) Receive ballots;
 - (iv) Hear and determine the outcome of all challenges and questions regarding a Member's right to vote in the election;
 - (v) Count and tabulate all votes submitted;
 - (vi) Determine when and how ballots must be submitted to be counted, consistent with the Governing Documents;;
 - (vii) Determine and announce the result of the election based on the ballots received and votes tabulated; and
 - (viii) Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with this Section and all applicable Association Rules regarding the conduct of the election that are not in conflict with these procedures.
- (d) An Inspector shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as practical.
- (e) If there are three (3) Inspectors, the decision or act of a majority shall be effective in all respects as the decision or act of all Inspectors.
- (f) Any report made or issued by the Inspector(s) is prima facie evidence of the facts stated in such report.

5. Voting Periods.

- (a) Ballots and all related materials required for voting under these procedures shall be sent to eligible Members not less than thirty (30) days prior to the date on which the collection and tabulation of votes has been set to begin by the Inspector(s).
- (b) Ballots must be received no later than the designated time and date of the election. Ballots will be tabulated at a properly noticed open meeting of the Board.
- (c) No further ballots shall be accepted, by mail or otherwise, after the date of the election. Any ballots received after the date of the election shall be discarded and will not be counted in the Inspector's/(s)' tabulation of votes. The Member whose ballot has been discarded will not be entitled to notification of such action and shall not have the right to cast another vote in the present election. Such discarded ballots shall not be counted in any subsequent recount or challenge to the election procedures.

6. Eligibility and Vesting of Voting Rights.

(a) A Member is eligible to vote if: (a) the Member's voting rights have not been suspended pursuant to the Declaration or the Bylaws; (b) the Member has paid the first month's assessments, as provided for in the Declaration, levied against such Member's Lot; (c) the escrow by which the Member acquired his or her Lot closed at least sixty (60) days prior to the date on which the ballots are mailed to or solicited from Members for voting purposes; (d) the Member is at least eighteen (18) years old and owns his or her Lot.

(b) Except where cumulative voting is authorized, Class A Members may cast only one (1) vote per Lot. If more than one (1) party is record owner of a Lot, the vote for that Lot shall be decided by said parties between themselves, as so provided in the Declaration.

(c) Such voting rights attributed to any given Lot in the Community shall vest as provided in the Declaration.

7. Voting Procedures and Custody.

(a) All votes shall be counted and tabulated by the Inspector(s) of Election in public at a properly noticed open meeting of the Board and/or Members. Any candidate or Member may witness the counting and tabulation of the votes. No person, including, but not limited to, Members and employees of the Property 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.

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

(c) The sealed ballots 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, after which time the custody and control of the ballots shall be turned over to the Association.

(d) After the final tabulation of the votes has been completed by the Inspector(s) of Election shall retain custody and control over the ballots, candidate registration list, voter list, signed voter envelopes (may be inspected but not copied), and proxies in a secure location for not less than one (1) year from the date of final tabulation of votes. Then, custody and control of the ballots shall be transferred to the Association. (Civ. Code §5125.) The Inspector(s) of Elections must make the election materials available as-needed for inspection and review. .

8. Contesting the Results of an Election.

(a) In the event of a recount or other challenge to the election process, the Association shall, upon written request, make the ballots, signed voter envelopes (may be inspected but not copied), the voter list of names, parcel numbers, voters to whom ballots were to be sent, proxies, and the candidate registration list available for review by Members or authorized representatives. Any recount must be conducted in a way that preserves the confidentiality of all ballots recounted.

9. Election by Acclamation. Qualified candidates can be elected by acclamation if the following conditions are met:

(a) The Association has held a regular election for directors in the last 3 years.

(b) The Association has provided the following by individual notice (first-class mail, postage prepaid, registered or certified mail, express mail, overnight delivery by an express service carrier, or, if recipient has consented to electronic delivery, email, facsimile, or other electronic means) the following:

(i) Initial notice at least 90 days before nomination deadline informing Members of the number of Board seats open for election; the nomination deadline; the manner in which nominations may be submitted; and a statement that if the number of candidates is less than or equal to the number of Board seats open for election, qualified candidates will be elected by acclamation without balloting. (Civ. Code §5103(b)(1).)

- (ii) A reminder notice is sent between 7 and 30 days before nomination deadline (Civ. Code §5103(b)(2)) reminding Members of the number of Board seats open for election; the nomination deadline; the manner in which nominations may be submitted; a statement that if the number of candidates is less than or equal to the number of Board seats open for election, qualified candidates will be elected by acclamation without balloting; and informing Members of the qualified candidates that were nominated as of the date of the reminder notice.
- (c) .The number of qualified candidates is not more than the number of vacancies to be elected.
- (d) The association provides, within 7 business days of receiving a nomination, acknowledgement of the nomination (i) to the member who submitted the nomination and (ii) to the nominee that they either qualify or do not. If disqualified, the reason for disqualification must be included along with a right to appeal.
- (e) The vote by acclamation takes place at a duly noticed open board meeting with the name of each qualified candidate seated by acclamation on the agenda.

10. Restriction on Use of Association Funds.

(a) Association funds shall not be used for campaign purposes in connection with any Board election. Association funds shall not be used for campaign purposes in connection with any other Association election, except to the extent necessary to comply with the duties of the Association imposed by Applicable Laws.

(b) For the purposes of this Section, "Campaign Purposes" includes, but is not limited to, the following:

(i) Expressly advocating election of defeat of any candidate that is on the Association election ballot; or

(ii) Including a 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 the distribution or mailing of ballots to Members for voting purposes.

(c) Such action is not considered a "Campaign Purpose" (for which Association funds may not be used) if the communication is one that is required for Equal Access as described in **Section 1(a)** above.

11. Right of Enforcement.

Pursuant to California Civil Code §5145, Members shall have the following rights:

(a) Members may bring a civil action for declaratory or equitable relief (including, but not limited to, injunctive relief, restitution, or a combination thereof) for a violation of these procedures by the Association within one (1) year of the date the cause of action accrues. The cause of action may be brought in either the superior court or, if the amount of the demand does not exceed the jurisdictional amount of the small claims court, in small claims court.

(b) Upon finding that the Association violated the election procedures herein, a court of law may void any results of the election in question.

(c) Members who prevail in an action based on this Section shall be entitled to reasonable attorney's fees and court costs.

(d) The court may impose a civil penalty of up to Five Hundred Dollars (\$500.00) for each violation; however, a violation that affects each Member equally shall be subject to one (1) penalty only.

(e) If the Association prevails, it shall not be entitled to recover attorney's fees or court costs unless the court finds the action to have been frivolous, unreasonable or without foundation, all as defined by Applicable Laws.