



Rancho Santa Fe Association

Board of Directors Meeting

Staff Report – Request for Board Action

Date: January 13, 2022

By: Brooke Nichols, Covenant & Project Administrator

Item: Proposed Rule – Electronic Transmission for Association Communications

Proposed Rule Regarding Electronic Transmission for Communications by the Association

Existing law specifies the methods that the Association may provide a document for “general delivery” or “general notice” including mailing the document and/or posting the printed document in the designated posting place for general notices listed in the annual policy statement. New requirements of SB 392 require that by January 1, 2023, the Association shall deliver a document in accordance with the member’s preferred specified method of delivery, either by mail or by electronic transmission (i.e. email). Association staff recommends offering the option of emailing notices to members if they prefer. It also saves postage and printing costs and allows for faster and easier distribution. For example, approximate costs for the annual budget and disclosure package are \$4.00 per member and requires hours of coordination and correspondence with an outside printing company.

Members who would like to receive notices or information through electronic transmission must review, complete and return a signed Consent to Electronic Communications by Association Form (attached). The Association must also send a test email from the email provided by the member to be used by the Association. Note, if two or more email addresses will be used to send electronic communications, a test email must be sent to all addresses. The Association must receive a reply email(s) to the test email(s) from the member. If this is not done, the member’s consent is not effective.

Members email addresses will not be shared and will be maintained in a “bcc” line of any electronic communications to maintain privacy.

General notices and information that the Association may send to members via electronic communications includes: Annual Budget, Annual Disclosures, Meeting Minutes, General Notices to Members, Notices of Meetings, Copies of Governing Documents and Policies, Event Information, Election Results, Other General Information, etc.

Ballots for election matters will continue to be sent hard-copy via mail in accordance with Civil Code Section 5115.

A comprehensive list is included in the attached proposed Rule Regarding Electronic Transmission for Communications by the Association.

Staff Recommendation:

Staff recommends the Board of Directors approve to post the proposed rule for a 28-day member comment period.

RANCHO SANTA FE ASSOCIATION

RULE REGARDING

ELECTRONIC TRANSMISSION FOR COMMUNICATIONS BY THE ASSOCIATION

(Corporations Code § 20; Civil Code §§ 4040, 4045, 4050 and 4055)

This Rule Regarding Electronic Transmission for Communications by the Association (“Rule”) outlines the policies and procedures of the Association relating to member notices and other information the Association is required to provide or make available through electronic transmission (*i.e.*, e-mail). This Rule complies with the laws governing electronic communications by a corporation to its directors, officers and/or members. While a member has the right to receive certain documents and notices by mail or personal delivery, many documents can easily be sent to a member via e-mail and/or posted and retrieved from the Association’s website.

1. Before sending a member notice or information through electronic transmission:
 - a. The member must review, complete and return to the Association his or her signed Consent to Electronic Communications by Association form (“Consent Form”) attached hereto and incorporated herein by reference as Addendum “A”;
 - b. The Association must send the consenting member a test e-mail from the e-mail address to be used by the Association to send notices and other information. If two (or more) e-mail addresses will be used to send electronic communications to a member, a test e-mail must be sent from all addresses;
 - c. The Association must receive a reply e-mail(s) to the test e-mail(s) from the member. **A member’s consent is not effective until the Association receives a reply e-mail from the member to the test e-mail.** Verbal or other confirmation that the member received the test e-mail is insufficient to effectuate the member’s consent. If the Association sends a test e-mail from more than one e-mail address, a member’s consent is only effective as to the e-mail address he or she replies to. Thus, if a test e-mail is not replied to, electronic communications cannot be sent from that e-mail (unless and until a reply is received).
2. Except as otherwise required by law, by signing and returning the Consent Form, a member waives his or her right to receive information and notices required to be provided or made available to the member through the means designated in the Association’s Governing Documents and/or the statutory law in favor of receiving such information and notices through electronic communication.
3. The Association may elect to send documents and information via any reasonable, permissible means, in the Board’s discretion.

4. The Association will send electronic transmissions for communications to members in a method that is capable of being retained, retrieved, reviewed and rendered into hard-copy form. Specifically, documents will be delivered via e-mail with the attachment of an Adobe Acrobat® (.pdf) file. By signing the Consent Form, the Consenting member acknowledges and agrees that he or she has access to, and can open, Adobe Acrobat® (.pdf) files.
5. Electronic transmissions will be sent to directors, officers and/or members in their capacity as a director, officer and/or member.
6. To prevent the distribution of members' e-mail addresses to others, in any electronic communication that is sent to more than one member in the same e-mail, all recipients of the communication must be included in the "bcc:" line, and not the "To:" or "cc:" line. The e-mail address of a designated management representative or member of the Board will be included in the "To:" line.
7. If a member notifies the Association, in writing, of a change in his or her e-mail address, the Association will update its records to reflect the change.
8. The Association is not responsible for the member not receiving an e-mail that is sent to a consenting member's spam, junk or deleted e-mail box. It is the member's duty to add the Association's e-mail address(es) to their contacts list, or otherwise change the security or other settings on their e-mail account, to ensure the Association's e-mails are deposited in their Inbox and not their spam, junk or deleted e-mail folder(s).
9. An auto-reply, out-of-office, or similar automatically generated response e-mail from the member's e-mail account does not invalidate an otherwise properly sent e-mail from the Association.
10. If a member consents to receive electronic communications from the Association, that member is expected to check his or her e-mail account on a regular (or otherwise periodic) basis. An intentional or inadvertent failure to check, open, or review e-mails from the Association does not invalidate otherwise proper notice by the Association.
11. The record date and time that the Association sent an electronic transmission (according to the time and date recorded in the sender's Sent/Outbox) is the record date and time that the communication was sent.
12. Any notice, information or document sent by the Association shall be deemed delivered on the date it was sent (according to the time and date electronically recorded on the sender's transmission record). (Civ. Code § 4050.) A member's intentional or inadvertent failure to check, open or review an electronic communication shall not affect the timing of any applicable notice requirements.
13. By signing the Consent Form, a member understands and agrees that, despite the Association's or its representative's reasonable exercise of care, a shared e-mail address/account or computer may compromise and waive his or her right to privacy in electronic communications sent to that shared e-mail address, and/or that the confidentiality of information may be compromised.

14. To update a member's e-mail address, the member may complete the Consent Form or otherwise inform the secretary of the board or Association manager in writing of the new information.
15. If a Separate Interest is owned by more than one member, the member signing the Consent Form must acknowledge and declare they have authority to receive communications on behalf of the other members, and all other members must consent to the named member being the dedicated recipient to communications from Association.
16. The Association may send the following list of general notices and information to members by electronic transmission:

E.g.: Annual Budget, Annual Disclosures, Meeting Minutes, General Notices to Members, Notices of Meetings, Copies of Governing Documents and Policies, Event Information, Election Results, Other General Information, etc.
17. Except as noted above, confidential or otherwise sensitive information, including, but not limited to, information relating to litigation, collections and notices of violations, **shall not** be sent by electronic communication.
18. Ballots and two envelopes for all election issues will continue to be sent in hard-copy via the mail in accordance with Civil Code section 5115.
19. If a property is owned by multiple owners, all owners must sign the Consent Form. If fewer than ALL owners of a property sign the Consent Form, the Consent is ineffective and the Association may continue to send documents in accordance with its Governing Documents to the address on record with the Association.
20. For all elections conducted pursuant to Civil Code sections 5100(a) and 5115, ballots and two envelopes will be mailed to the members. Option: For any vote on restated Bylaws or CC&Rs, the proposed restated documents will be sent electronically if you sign this consent form but you will have the right to request a paper copy at no additional cost to you.

*Every member has the right, upon the member's request, to have the Association provide the member with a copy of the information or notice on paper or in non-electronic form. The request must be in writing and mailed or delivered to Association management. Copies will be provided to the member at the cost incurred by the Association to produce them.

*A member's consent to use electronic transmission for communications is valid until the member revokes or withdraws such consent as set forth below.

*Every member has the right to withdraw or revoke his or her consent at any time. All withdrawals or revocations must be in writing and submitted to the secretary of the board or the Association manager to ensure the member's request is honored. A member

may use the Consent Form, or otherwise advise the secretary of the board or Association manager **in writing** of the new information.

This Rule was duly approved and adopted at a meeting of the Board of Directors of _____ Association on _____.

RANCHO SANTA FE ASSOCIATION

President

Secretary

California Corporations Code - § 20. Electronic Transmission by the Corporation

"Electronic transmission by the corporation" means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to this code, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission under this code by a corporation to an individual shareholder or member of the corporation who is a natural person, and if an officer or director of the corporation, only if communicated to the recipient in that person's capacity as a shareholder or member, is not authorized unless, in addition to satisfying the requirements of this section, the consent to the transmission has been preceded by or includes a clear written statement to the recipient as to (a) any right of the recipient to have the record provided or made available on paper or in non-electronic form, (b) whether the consent applies only to that transmission, to specified categories of communications, or to all communications from the corporation, and (c) the procedures the recipient must use to withdraw consent.

California Civil Code - § 4040. Individual Document Delivery

(a) If a provision of this act requires that an association deliver a document by "individual delivery" or "individual notice," the document shall be delivered by one of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.

(2) E-mail, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery. The consent may be revoked, in writing, by the recipient.

(b) Upon receipt of a request by a member, pursuant to section 5260, identifying a secondary address for delivery of notices of the following types, the association shall deliver an additional copy of those notices to the secondary address identified in the request:

(1) The documents to be delivered to the member pursuant to Article 7 (commencing with section 5300) of Chapter 6.

(2) The documents to be delivered to the member pursuant to Article 2 (commencing with section 5650) of Chapter 8, and section 5710.

(c) For the purposes of this section, an unrecorded provision of the Governing Documents providing for a particular method of delivery does not constitute agreement by a member to that method of delivery.

California Civil Code - § 4045. General Document Delivery

(a) If a provision of this act requires “general delivery” or “general notice,” the document shall be provided by one or more of the following methods:

(1) Any method provided for delivery of an individual notice pursuant to section 4040.

(2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.

(3) Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to section 5310.

(4) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

(b) Notwithstanding subdivision (a), if a member requests to receive general notices by individual delivery, all general notices to that member, given under this section, shall be delivered pursuant to section 4040. The option provided in this subdivision shall be described in the annual policy statement, prepared pursuant to section 5310.

California Civil Code - § 4050. Completion of Document Delivery

(a) This section governs the delivery of a document pursuant to this act.

(b) If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail.

(c) If a document is delivered by electronic means, delivery is complete at the time of transmission.

California Civil Code - § 4055. Electronic Delivery

If the association or a member has consented to receive information by electronic delivery, and a provision of this act requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

Addendum "A"

**RANCHO SANTA FE ASSOCIATION
ELECTRONIC COMMUNICATION CONSENT/CHANGE FORM
("Consent Form")**

While every member has the right to receive certain notices, documents and information (collectively "Electronic Communications") by mail or personal delivery, many of the documents that the Association mails out can be sent to you via e-mail and/or posted and retrieved from the Association's web site – If using this language, edit this Short Consent/Change Form, the Consent Form and Rule as necessary.

Please read the RULE REGARDING ELECTRONIC TRANSMISSION FOR COMMUNICATIONS BY THE ASSOCIATION ("Rule") attached hereto and incorporated herein by reference. The Rule lists the specified documents the Association will send to the consenting members via e-mail.

By signing and returning this Consent Form, I wish to:

Please check the applicable box(es) below (you may check more than 1 box):

- Consent to receiving Electronic Communications from the Association via e-mail at the following e-mail address: _____.
- Withhold my e-mail address from distribution in the Association's Membership List. I wish to opt-out of sharing such information pursuant to Civil Code Section 5220.

I already have a signed Consent Form that is on record with the Association, now I wish to:

- Change my e-mail address on record with the Association to: _____.
 - I understand this change will become **effective only after I reply** to an e-mail sent to me at the above e-mail address by the Association **and the Association receives my reply email**.
 - I understand the Association will no longer send Electronic Communications to the previous e-mail address.
 - I must add the Association's e-mail address(es) to my contacts list for this new e-mail address.
 - All terms in the Rule apply to this new e-mail address.
- Withdraw my Consent on record with the Association.
 - I do **NOT** want to receive **ANY** Electronic Communications from the Association via e-mail. All Electronic Communications will be sent to me via personal delivery or first-class mail, or otherwise in accordance with the Governing Documents and law.
 - I understand my withdrawal of my previous Consent to receive Electronic Communications from the Association via e-mail will become **effective only after I reply to a confirmation of withdrawal** e-mail sent by the Association.
 - All other owners, if any, that own my property are informed of this withdrawal of Consent and authorize me to withdraw any previous Consent on file with the Association.

By signing this Consent Form, I acknowledge and agree that I have read and understand the terms in this Consent Form and the attached Policy. *

Signature

Date

Printed Name

Association Address

Mailing Address (if different)

Multiple Owners: Check if applicable:

The Association property address listed above is owned by more than one owner. I declare that I have the authority to bind all owners/members by signing this Consent Form and that I am authorized to receive correspondence on behalf of the other owner(s)', and that I will advise and forward to the other owners all correspondence I receive from the Association pursuant to this Consent. All owners/members must Consent to the undersigned being the sole recipient of Electronic Communications on their behalf. The Association is not responsible for members other than the designated recipient not receiving Electronic Communications sent by the Association to the e-mail address on record with the Association.

Initial: _____

Signature of Other Owners(s), if any:

I/We agree to the terms in this Consent Form and consent and agree to _____ (above listed name) being the sole recipient on my/our behalf(ves) of all Electronic Communications sent by the Association in relation to my/our ownership of the above Separate Interest in the Association. If fewer than **ALL** owners sign this Consent Form, the Consent is ineffective and the Association may communicate with the members via first-class mail, or other authorized non-electronic means.

Signature of Owner 2

Signature of Owner 3

Signature of Owner 4

Printed Name

Printed Name

Printed Name

* Please return this signed Consent Form to the Association's community manager.