



## **Rancho Santa Fe Association**

### **Board of Directors Meeting**

#### **Staff Report – Request for Board Action**

**Date:** January 3, 2020  
**By:** Christy Whalen, Manager  
**Item:** Changes to Election Rules

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#### **Executive Summary:**

An extensive overhaul of homeowners association election procedures took effect on January 1, 2020, after passage of Senate Bill 323 signed by Governor Newsom on September 14, 2019. SB 323 is legislation pushed by the Center for California Homeowner Association Law, and is intended to increase homeowners' participation in association elections. However, SB 323 is controversial for several reasons, including, but not limited to the following: (1) increased election burdens on associations; (2) potential loss of privacy to voting members; and (3) loss of rights by associations to set reasonable standards for directors.

#### **Background / Discussion:**

SB323 caused numerous changes to the Civil Code. The sections that affect Rancho Santa Fe Association are listed below.

The new Civil Code § 5105 does the following:

- Paragraph (c) allows associations to disqualify only candidates who (i) have been owners for less than a year, (ii) would be on the board with a joint owner, (iii) have been convicted of a felony that jeopardizes the association's fidelity bond insurance, or (iv) are delinquent in the payment of their assessments.
- Paragraph (e) requires that a candidate must be offered Internal Dispute Resolution (Civil § 5900) before he or she can be disqualified.
- Paragraph (g) (1) prohibits associations from suspending an owner's right to vote.

- Paragraph (g) (4) requires inspectors of elections to deliver, or cause to be delivered, a copy of the association's election rules at least thirty (30) days before an election. Delivery of these rules may be accomplished by either of the following methods: (1) posting them to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font, "The rules governing this election may be found here:" or (2) individual delivery.
- Paragraph (h) requires that associations amend and adopt their new election operating rules not less than 90 days prior to an election.

### Election Cycle Lengthened

- Civil Code § 5110 has long required ballots to be sent at least 30 days before counting of ballots. The new § 5115 (b) requires HOAs to announce the upcoming election and nominees at least 30 days before the ballots are distributed, and § 5115 (a) requires that a call for nominations must have a deadline of at least 30 days. This means that even if everything is done on the shortest time frame, elections will take at least 90 days.

### Ballots and Signed Voter Envelopes

- Civil Code § 5125 will require that the inspector keep not only ballots but also signed voter envelopes, voter list, proxies and the candidate registration list.

### Email Addresses and Other Privacy Issues

- Membership rosters normally include only names and mailing addresses. Under Civil Code § 5200 (a) (9), those rosters will now include email addresses. Members may choose under Civil Code § 5220 to opt out of these lists.
- Civil Code § 5200 (c) allows owners to review the signatures of all other owners on the outside ballot mailing envelopes, and to copy voter lists, including parcel numbers. Signed voter envelopes may be inspected but may not be copied. As a condition of casting a ballot, homeowners must give up their right to keep their signatures private.

### **Current Status**

With direction and input from Epsten Law Firm (formerly Epsten Grinnell & Howell), the RSF Association Election Rules and Schedule have been modified to comply with SB 323. Please see attached documents.

**Recommendation:**

Staff recommends approving for posting for a 28-day member comment period the new draft Election Rules to comply with Civil Code § 5105 (h) requiring that associations amend and adopt their new election operating rules not less than 90 days prior to an election.

**Attachments:**

**Attachment 1 – Election Schedule for 2020**

**Attachment 2 – Draft Election Rules for 2020 (Redline)**

**Attachment 3 – Draft Election Rules for 2020 (Clean)**

# **ATTACHMENT 1**



**Rancho Santa Fe Association  
Board of Directors Election Schedule for 2020**

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|-------------------|--|
| January 9, 2020   | First Board meeting of the year; Board approves the 2020 Election Schedule and appoint Inspector of Elections.   |
| February 6, 2020  | Board to adopt amended Election Rules.   |
| February 14, 2020 | Association deadline to post requirements for running for the Board and nominating procedures. Association begins accepting Nomination Forms and Statements of Economic Interests.   |
| March 16, 2020    | Candidate Nomination Deadline. Candidates must submit their Nomination Forms and Statements of Economic Interests to the Association Manager by 5:00 pm.<br><br>Record date for determination of Members who are entitled to vote. Members must be Members of Record by 5:00 pm and have submitted Voter Verification Forms or had previously been registered to vote in order for vote to be counted. |
| April 14, 2020    | Association deadline to post list of candidates, deadline for returning ballots, and time/place of Annual Meeting.   |
| April 14, 2020    | Target date to mail Notice of Annual Meeting and candidate election materials.   |
| April 17, 2020    | Deadline for candidates to submit their campaign materials to the Association Manager by 5:00 pm.  |
| April 24, 2020    | Last day for candidates to withdraw names from the ballot.   |
| May 14, 2020      | Annual Meeting & Candidate Forum. Ballots mailed to Members on same day as Annual Meeting.   |
| June 17, 2020     | Board Meeting to obtain results; ballots are counted by the Inspector of Elections.  |
| July 1, 2020      | Deadline for posting results. The newly elected directors shall take office on July 1 <sup>st</sup> and shall serve for the term specified.  |

## **ATTACHMENT 2**



## RANCHO SANTA FE ASSOCIATION ELECTION RULES

### **GENERAL**

These rules, policies and procedures shall apply to all items legally requiring a vote of the membership of the Rancho Santa Fe Association and identified in Section 5100(a) of the Davis-Stirling Common Interest Development Act (the “Davis-Stirling Act”), or successor statute, and any amendments thereto, including but not limited to, elections of directors, votes to remove one or more directors, votes on assessments that legally require a vote, amendments of the governing documents, grants of exclusive use of common areas, and such other votes as the Board of Directors determines should be conducted by secret ballot.

If there is a conflict between any provisions in the Articles of Incorporation, Bylaws, or Protective Covenant of the Rancho Santa Fe Association and the Election Rules the provisions of such documents shall prevail.

The Board may adopt such policies and procedures as necessary to ensure that the ownership of each Building Site (as defined in Article VI(a) of the Amended and Restated Articles of Incorporation) for purposes of membership and voting is properly identified.

### **WHO CAN VOTE? RIGHT TO VOTE**

~~Members entitled to notice and entitled to vote at an annual meeting, at a special meeting or by written ballot, on any issue or election relative to said meeting or written ballot, are those Members of record (in good standing) as shown on the books of the Association as of the close of business sixty (60) days prior to said meeting date or the date the first written ballot is mailed or solicited. The Board may fix another time as the record date for the determination of the Members entitled to notice and entitled to vote, but any record date so fixed shall not be more than sixty (60) nor less than ten (10) days before the date of the meeting or the date the first written ballot is mailed or solicited.~~

As described in these Rules, votes may be cast by Members either in person or by mail-in ballot. There shall be no voting by proxy. The Association may not deny a ballot to any person who is a Member of the Association at the time the ballots are distributed.

The Association may not deny a ballot to any person who has the general power of attorney for a Member of the Association. Any person with a general power of attorney for a Member must notify the Association and provide a copy of a valid general power of attorney to verify the person’s right to vote on behalf of the Member. If a ballot from a person with a valid general power of attorney which has been provided to the Association returns a ballot within the timelines established for the return of all ballots, the ballot shall be counted. (Civil Code § 5105(g))

The Association shall retain a voter list which shall include the name, voting power, and the physical address of the voter's Lot and parcel number ("Voter List"). The mailing address for the ballot(s) shall be listed on the Voter List if it differs from the physical address of the voter's Lot or if only the parcel number is used. The Association shall permit Members to verify the accuracy of their individual information on the Voter List at least thirty (30) days before the ballots are distributed. The Association or Member shall report any errors or omissions on the Voter List to the inspectors of election who shall make the corrections within two (2) business days. (Civil Code § 5105(a)(7))

## **VOTING POWER OF MEMBERS**

The voting power of the Members is as stated in Article VI(c) of the Amended and Restated Articles of Incorporation.

## **VOTING**

Members may vote in one of two ways: either (i) in person by written ballot at an annual meeting or special meeting or (ii) without a meeting by written ballot distributed to all Members entitled to cast votes. There shall be no voting by proxy. With respect to written ballots distributed to Members for a vote to be taken entirely by mail, the Board shall fix a date and time by which ballots are to be returned to be counted. Whenever written ballots are distributed to Members, there shall be provided a reasonable time within which to return the ballots to the Association but not less than thirty (30) days nor more than forty-five (45) days after the ballots are first distributed.

## **QUALIFICATIONS AND NOMINATION OF DIRECTORS**

~~Each candidate~~Only persons who are Members of the Association may be a nominee for a Director position~~election. If title to a Lot is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have a twenty-five percent (25%)~~the power to appoint a natural person to be a Member for purposes of being a nominee for election to the Board.

No Member may be a nominee if the Member, if elected, would be serving on the Board at the same time as another Member who holds a joint ownership interest ~~(directly in the same Lot and the other Member is either properly nominated for the current election or indirectly through an entity incumbent director.~~

No one who has been a Member of the Association for less than one (1) year may be a nominee.

No Member may be a nominee if that Member discloses, or trust) in a Building Site and shall be at least eighteen (18) years old. ~~Each candidate~~if the Association is aware or becomes aware of, a past criminal conviction that would, if the Member were elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code section 5806 or terminate the Association's existing fidelity bond coverage. The Association shall have been a resident at a



~~Building Site for at least three (3) years, whether or not continuously, immediately prior~~no obligation to investigate the nomination background or possible criminal history of such any candidate.

~~A Member who is more than thirty (30) days delinquent in the payment of regular and the Member owning of record the Building Site at which the candidate resides shall be in good standing immediately prior to such nomination. For the purpose of this paragraph, a "resident at a Building Site" is an individual who actually resides (other than as a lessee) at a Building Site or Sites for a period of special assessments (not less than nine (9) months in any calendar year, but without regard to temporary absence due to vacation or to conditions at the residence making it unsuitable for occupancy, including, without limitation, remodeling nonpayment of fines, fines renamed as assessments, collection charges, late charges, or remediation of environmental costs levied by a third party) is not qualified to be a nominee. A Member shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:~~

- ~~• The Member has paid the regular or health hazards. For the purpose of this paragraph, the Association may rely upon the designation of an individual with respect to the place of such individual's residence.~~special assessment under protest pursuant to Civil Code section 5658.
- ~~• The Member has entered into a payment plan pursuant to Civil Code section 5665.~~

~~Prior to disqualifying any Member from being a nominee, the Association must offer the Member an opportunity to engage in internal dispute resolution pursuant to Civil Code section 5900 et seq.~~

Directors shall be eligible for reelection without limitation on the number of terms they may serve.

~~The Association shall provide general notice of the procedure and deadline for submitting a nomination at least thirty (30) days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Civil Code section 4040 if individual notice is requested by a Member.~~

Nominations of individuals qualified to be Directors shall be made in writing on a form provided by the Association by any Member in good standing, including a nomination made by the candidate of himself or herself, accompanied by a statement of economic interests filed at the principal office of the Association not later than sixty (60) days prior to the annual meeting, which written nomination and statement of economic interests shall promptly be delivered to the Manager. Such nominations shall be immediately posted on the Association's bulletin board and website by the Secretary. A candidate may withdraw by giving written notice to the Secretary not less than twenty (20) days prior to the annual meeting or the date the first written ballot is mailed or distributed.

~~The Association shall retain a candidate registration list and shall permit Members to verify the accuracy of their individual information on the candidate registration list at least thirty (30) days before the ballots are distributed. The Association or Member shall report any errors or omissions on the candidate registration list to the inspectors of election who shall make the corrections within two (2) business days. (Civil Code § 5105(a)(7))~~

Nominations for election to the Board of Directors may not be made from the floor during a meeting of Members and write-in candidates are prohibited.

## **INSPECTORS OF ELECTIONS**

In advance of any meeting of Members at which an action may be taken, or in advance of any action to be taken without a meeting by written ballot, the Board of Directors shall appoint inspectors of elections. If any individual so appointed fails to appear or refuses to act, the chairman of the meeting of Members, or the President, if no meeting, shall appoint an individual or individuals to replace those who so fail or refuse to act. The number of inspectors shall be one (1) or three (3) and shall satisfy the qualifications required by the Davis-Stirling Act, or successor statute.

The inspectors of elections shall deliver, or cause to be delivered, a copy of these Rules at least thirty (30) days before an election. Delivery of these Rules may be accomplished by either of the following methods: (1) posting them to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font, "The rules governing this election may be found here:" or (2) individual delivery. The inspectors of elections shall determine, with respect only to the action for which the inspectors were appointed and with reference solely to the records of the Association, the number of Members entitled to vote, the number of votes represented, the existence of a quorum and the authenticity, validity, and effect of ballots, hear and determine all challenges and questions in any way arising in connection with the right to vote count and tabulate all votes, determine when the polls shall close, if the action shall be at a meeting, determine the results and do such acts as may be proper to conduct the election or vote with fairness to all Members.

An inspector of elections may not be Board ~~member~~Member or a candidate for election or related to or reside with a Board ~~member~~Member or a candidate for election. An inspector of elections may not be an employee of the Association or may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for compensable services other than serving as an inspector of elections. Unless an outside consultant is engaged to serve as an inspector, each inspector of elections shall be a Member. If not a Member, an inspector of elections may be compensated for their services. Members shall not be compensated for serving as an inspector of elections.

The inspectors of elections may appoint additional persons to assist in performing any of the above duties. Any such persons shall meet the qualifications for appointment as an inspector of elections.

The Board shall have the authority to remove and/or replace an inspector of elections at any time if an inspector resigns or whenever the Board determines that an inspector of elections will not be able to perform duties impartially and in good faith or if the inspector ceases to meet the qualifications to serve as described in above.

The inspectors of elections shall have the authority to consult with the Association's legal counsel in the event of uncertainties in the interpretation or application of Davis-Stirling Act, these Rules, the Association's governing documents, or as might otherwise be necessary to ensure a fair election or vote that complies with the law and the governing documents. All such consultations shall be protected by the Association's attorney-client privilege and shall be kept confidential from all persons other than ~~members~~Members of the Board of Directors. Note, however, that neither the inspectors of elections nor the attorney shall disclose to others, including ~~members~~Members of the Board, how a particular ballot is or has been voted.

## **VOTING BY SECRET BALLOT**

The Association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

1. The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector or Inspectors of Elections.
2. The date, time, and location of the meeting at which ballots will be counted.
3. The list of all candidates' names that will appear on the ballot.

Individual notice of (1) through (3) above shall be delivered pursuant to Civil Code section 4040 if individual notice is requested by a member. (Civil Code § 5115(b))

Ballots shall be returned to the inspectors of elections by mail sent to P.O. Box 1212, Rancho Santa Fe, CA 92067, or by deposit in a locked box at the office of the Association at 17022 Avenida de Acacias, Rancho Santa Fe, CA, unless otherwise specified by the inspectors of elections and so noted in the balloting materials.

The inspectors of elections shall have the right to review the number of ballots collected prior to the deadline for voting and inform the Board of Directors of the number of ballots received. Voting envelopes shall not be opened as part of this review - only a review of unopened envelopes is allowed to determine the total number of votes cast and to verify the Member's information and signature on the outer envelope.

Once cast, secret ballots cannot be revoked or changed, even if the Member attends the meeting and seeks to change or withdraw their vote before the polls close.

## **COUNTING THE BALLOTS**

Secret ballots can only be opened and counted at a meeting of the Members or Board of Directors at which a quorum of Members or Directors, as applicable, has been established.

## **MEDIA OPPORTUNITIES**

Except as provided below, no candidate or Member advocating a point of view shall be provided access to the Association's media, newsletters or website during a campaign and no material shall be mailed by the Association.

All candidates may announce their candidacy in an Association mailing, which shall include a one-page (8½" x 11") advertisement prepared and paid for by the candidate.

The access to the Association's membership list shall be provided as permitted by Section 8330 of the California Corporations Code, or successor statute, and any amendments thereto.

A biography prepared by the candidate (not to exceed 150 words) shall be included with the election ballot.

Candidates shall be given an opportunity to speak at the Association's annual meeting.

## **USE OF COMMON AREA FACILITIES FOR CAMPAIGN PURPOSES**

All candidates for election and other Members may use the common areas designated to conduct campaign activities or advocate a point of view on an election or voting issue pending before the membership. All candidates and Members will be provided an equal opportunity to use the designated common areas for these purposes. No fees shall be charged to any candidate or Member for use of any common area conducting campaign activities or advocating a point of view on an election or voting issue pending before the membership.

## **RECALL ELECTIONS**

To initiate the recall of one or more directors or the entire Board, the Board must receive a recall petition for a special meeting for the recall election signed by at least five percent (5%) of the Association's Members calling for a special meeting for the recall election. The recall petition signed by at least five percent (5%) of the Association's Members must also include the Members' printed names and the addresses of their Lot for verification purpose. Pursuant to Corporations Code 7510(e), a vote for a recall may also be initiated by the Board.

Upon receipt of a valid recall petition, the Board will promptly appoint an Inspector(s) of Elections.

Within twenty (20) days of the Board's receipt of a valid recall petition, the Board will notice the Members of and will set the time, date, and location of the special meeting to hold the recall election.

The special meeting must be held between thirty-five (35) and ninety (90) days of the Board's receipt of the petition.

In an effort to avoid recalled directors remaining on the Board until replacement directors are elected, the election for replacement directors will be held at the same time as the recall vote. As such, the Members will vote on two issues: (i) the recall of directors, and (ii) the replacement of directors. The inspectors of elections will tabulate the votes on the replacement of directors immediately following the recall vote, if the recall is successful.

Generally, when there is a recall election, it is desirable and often necessary to include an election of replacement directors on the same ballot as the recall vote. If the recall election is successful in whole or in part, the Association cannot be left without a functioning Board until a later election can be conducted. Given the statutory notice requirements for an election as outlined in these Rules, if the election to fill any vacancies created by a removal vote is not conducted at the same time as the recall vote, the Association could be left without a Board to conduct the necessary and essential business of the Association potentially causing great harm to the Association.

While Corporations Code section 7511(c) requires the Association to fix the date of the recall election not less than thirty-five (35) days, but not more than ninety (90) days after the Association's receipt of the request, the various notification requirements of Civil Code sections 5105(g)(4) and 5115(a)-(b) for the election of any replacement Directors make it difficult, if not impossible, for the Association to schedule the recall election meeting before the ninety (90) day deadline of Corporations Code section 7511(c). In an effort to meet the ninety (90) day deadline of Corporations Code section 7511(c), the Association may shorten the deadline to submit the Candidate Nomination Forms as needed to comply with the requirements of Corporations Code section 7511(c) for the recall election.

In order to curb a potential superfluous use of Association funds, a recall election may not be initiated against a Board Member(s) if the targeted Board Member(s)'s term expires within one-hundred (100) days from the date the Board received the recall petition unless the recall petition is petitioning to recall the entire Board.

The Association may facilitate the production of and pay for the cost of all recall election materials and the mailing of the same. If, however, a valid recall petition is received by the Board within twelve (12) months from the date of a prior recall election, whether the prior recall election was successful or not, the Association may facilitate the production of all recall election materials and the mailing of same, but the cost of the recall election will be borne by the petitioning party.

## **ELECTION CHALLENGES AND BALLOT RECOUNTS**

The inspectors of elections shall, upon written request, make the Association election materials (returned ballots, signed voter envelopes, Voter List, and the candidate registration list) available for inspection and review by an Association Member or the Member's authorized representative should a Member challenge the election or demand a ballot recount. Signed voter envelopes may be inspected but may not be copied pursuant to Civil Code section 5200(c).

Any recount will be conducted in a manner that preserves the confidentiality of the vote. To preserve the confidentiality of the vote, Members will not be entitled to inspect the inspectors of elections tabulation documents or notes submitted to the Association.

Should professional inspectors of elections act as the Association's inspectors of elections, the Member or Members challenging the election or demanding a recount of the ballot will bear the costs charged by the professional inspectors of election as a result of the election challenge and/or ballot recount. Professional inspectors of elections is defined as inspectors of elections who may be compensated for their services.

## **ATTACHMENT 3**



## **RANCHO SANTA FE ASSOCIATION ELECTION RULES**

### **GENERAL**

These rules, policies and procedures shall apply to all items legally requiring a vote of the membership of the Rancho Santa Fe Association and identified in Section 5100(a) of the Davis-Stirling Common Interest Development Act (the “Davis-Stirling Act”), or successor statute, and any amendments thereto, including but not limited to, elections of directors, votes to remove one or more directors, votes on assessments that legally require a vote, amendments of the governing documents, grants of exclusive use of common areas, and such other votes as the Board of Directors determines should be conducted by secret ballot.

If there is a conflict between any provisions in the Articles of Incorporation, Bylaws, or Protective Covenant of the Rancho Santa Fe Association and the Election Rules the provisions of such documents shall prevail.

The Board may adopt such policies and procedures as necessary to ensure that the ownership of each Building Site (as defined in Article VI(a) of the Amended and Restated Articles of Incorporation) for purposes of membership and voting is properly identified.

### **RIGHT TO VOTE**

As described in these Rules, votes may be cast by Members either in person or by mail-in ballot. There shall be no voting by proxy. The Association may not deny a ballot to any person who is a Member of the Association at the time the ballots are distributed.

The Association may not deny a ballot to any person who has the general power of attorney for a Member of the Association. Any person with a general power of attorney for a Member must notify the Association and provide a copy of a valid general power of attorney to verify the person’s right to vote on behalf of the Member. If a ballot from a person with a valid general power of attorney which has been provided to the Association returns a ballot within the timelines established for the return of all ballots, the ballot shall be counted. (Civil Code § 5105(g))

The Association shall retain a voter list which shall include the name, voting power, and the physical address of the voter’s Lot and parcel number (“Voter List”). The mailing address for the ballot(s) shall be listed on the Voter List if it differs from the physical address of the voter’s Lot or if only the parcel number is used. The Association shall permit Members to verify the accuracy of their individual information on the Voter List at least thirty (30) days before the ballots are distributed. The Association or Member shall report any errors or omissions on the

Voter List to the inspectors of election who shall make the corrections within two (2) business days. (Civil Code § 5105(a)(7))

## **VOTING POWER OF MEMBERS**

The voting power of the Members is as stated in Article VI(c) of the Amended and Restated Articles of Incorporation.

## **VOTING**

Members may vote in one of two ways: either (i) in person by written ballot at an annual meeting or special meeting or (ii) without a meeting by written ballot distributed to all Members entitled to cast votes. There shall be no voting by proxy. With respect to written ballots distributed to Members for a vote to be taken entirely by mail, the Board shall fix a date and time by which ballots are to be returned to be counted. Whenever written ballots are distributed to Members, there shall be provided a reasonable time within which to return the ballots to the Association but not less than thirty (30) days nor more than forty-five (45) days after the ballots are first distributed.

## **QUALIFICATIONS AND NOMINATION OF DIRECTORS**

Only persons who are Members of the Association may be a nominee for election. If title to a Lot is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a Member for purposes of being a nominee for election to the Board.

No Member may be a nominee if the Member, if elected, would be serving on the Board at the same time as another Member who holds a joint ownership interest in the same Lot and the other Member is either properly nominated for the current election or an incumbent director.

No one who has been a Member of the Association for less than one (1) year may be a nominee.

No Member may be a nominee if that Member discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would, if the Member were elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code section 5806 or terminate the Association's existing fidelity bond coverage. The Association shall have no obligation to investigate the background or possible criminal history of any candidate.

A Member who is more than thirty (30) days delinquent in the payment of regular and special assessments (not including nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party) is not qualified to be a nominee. A Member shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:



- The Member has paid the regular or special assessment under protest pursuant to Civil Code section 5658.
- The Member has entered into a payment plan pursuant to Civil Code section 5665.

Prior to disqualifying any Member from being a nominee, the Association must offer the Member an opportunity to engage in internal dispute resolution pursuant to Civil Code section 5900 et seq.

Directors shall be eligible for reelection without limitation on the number of terms they may serve.

The Association shall provide general notice of the procedure and deadline for submitting a nomination at least thirty (30) days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Civil Code section 4040 if individual notice is requested by a Member.

Nominations of individuals qualified to be Directors shall be made in writing on a form provided by the Association by any Member in good standing, including a nomination made by the candidate of himself or herself, accompanied by a statement of economic interests filed at the principal office of the Association not later than sixty (60) days prior to the annual meeting, which written nomination and statement of economic interests shall promptly be delivered to the Manager. Such nominations shall be immediately posted on the Association's bulletin board and website by the Secretary. A candidate may withdraw by giving written notice to the Secretary not less than twenty (20) days prior to the annual meeting or the date the first written ballot is mailed or distributed.

The Association shall retain a candidate registration list and shall permit Members to verify the accuracy of their individual information on the candidate registration list at least thirty (30) days before the ballots are distributed. The Association or Member shall report any errors or omissions on the candidate registration list to the inspectors of election who shall make the corrections within two (2) business days. (Civil Code § 5105(a)(7))

Nominations for election to the Board of Directors may not be made from the floor during a meeting of Members and write-in candidates are prohibited.

## **INSPECTORS OF ELECTIONS**

In advance of any meeting of Members at which an action may be taken, or in advance of any action to be taken without a meeting by written ballot, the Board of Directors shall appoint inspectors of elections. If any individual so appointed fails to appear or refuses to act, the chairman of the meeting of Members, or the President, if no meeting, shall appoint an individual or individuals to replace those who so fail or refuse to act. The number of inspectors shall be one (1) or three (3) and shall satisfy the qualifications required by the Davis-Stirling Act, or successor statute.

The inspectors of elections shall deliver, or cause to be delivered, a copy of these Rules at least thirty (30) days before an election. Delivery of these Rules may be accomplished by either of the following methods: (1) posting them to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font, "The

rules governing this election may be found here:” or (2) individual delivery. The inspectors of elections shall determine, with respect only to the action for which the inspectors were appointed and with reference solely to the records of the Association, the number of Members entitled to vote, the number of votes represented, the existence of a quorum and the authenticity, validity, and effect of ballots, hear and determine all challenges and questions in any way arising in connection with the right to vote count and tabulate all votes, determine when the polls shall close, if the action shall be at a meeting, determine the results and do such acts as may be proper to conduct the election or vote with fairness to all Members.

An inspector of elections may not be Board Member or a candidate for election or related to or reside with a Board Member or a candidate for election. An inspector of elections may not be an employee of the Association or may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for compensable services other than serving as an inspector of elections. Unless an outside consultant is engaged to serve as an inspector, each inspector of elections shall be a Member. If not a Member, an inspector of elections may be compensated for their services. Members shall not be compensated for serving as an inspector of elections.

The inspectors of elections may appoint additional persons to assist in performing any of the above duties. Any such persons shall meet the qualifications for appointment as an inspector of elections.

The Board shall have the authority to remove and/or replace an inspector of elections at any time if an inspector resigns or whenever the Board determines that an inspector of elections will not be able to perform duties impartially and in good faith or if the inspector ceases to meet the qualifications to serve as described in above.

The inspectors of elections shall have the authority to consult with the Association’s legal counsel in the event of uncertainties in the interpretation or application of Davis-Stirling Act, these Rules, the Association’s governing documents, or as might otherwise be necessary to ensure a fair election or vote that complies with the law and the governing documents. All such consultations shall be protected by the Association’s attorney-client privilege and shall be kept confidential from all persons other than Members of the Board of Directors. Note, however, that neither the inspectors of elections nor the attorney shall disclose to others, including Members of the Board, how a particular ballot is or has been voted.

## **VOTING BY SECRET BALLOT**

The Association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

1. The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector or Inspectors of Elections.
2. The date, time, and location of the meeting at which ballots will be counted.
3. The list of all candidates’ names that will appear on the ballot.

Individual notice of (1) through (3) above shall be delivered pursuant to Civil Code section 4040 if individual notice is requested by a member. (Civil Code § 5115(b))

Ballots shall be returned to the inspectors of elections by mail sent to P.O. Box 1212, Rancho Santa Fe, CA 92067, or by deposit in a locked box at the office of the Association at 17022 Avenida de Acacias, Rancho Santa Fe, CA, unless otherwise specified by the inspectors of elections and so noted in the balloting materials.

The inspectors of elections shall have the right to review the number of ballots collected prior to the deadline for voting and inform the Board of Directors of the number of ballots received. Voting envelopes shall not be opened as part of this review - only a review of unopened envelopes is allowed to determine the total number of votes cast and to verify the Member's information and signature on the outer envelope.

Once cast, secret ballots cannot be revoked or changed, even if the Member attends the meeting and seeks to change or withdraw their vote before the polls close.

### **COUNTING THE BALLOTS**

Secret ballots can only be opened and counted at a meeting of the Members or Board of Directors at which a quorum of Members or Directors, as applicable, has been established.

### **MEDIA OPPORTUNITIES**

Except as provided below, no candidate or Member advocating a point of view shall be provided access to the Association's media, newsletters or website during a campaign and no material shall be mailed by the Association.

All candidates may announce their candidacy in an Association mailing, which shall include a one-page (8½" x 11") advertisement prepared and paid for by the candidate.

The access to the Association's membership list shall be provided as permitted by Section 8330 of the California Corporations Code, or successor statute, and any amendments thereto.

A biography prepared by the candidate (not to exceed 150 words) shall be included with the election ballot.

Candidates shall be given an opportunity to speak at the Association's annual meeting.

### **USE OF COMMON AREA FACILITIES FOR CAMPAIGN PURPOSES**

All candidates for election and other Members may use the common areas designated to conduct campaign activities or advocate a point of view on an election or voting issue pending before the membership. All candidates and Members will be provided an equal opportunity to use the designated common areas for these purposes. No fees shall be charged to any candidate or Member for use of any common area conducting campaign activities or advocating a point of view on an election or voting issue pending before the membership.

## **RECALL ELECTIONS**

To initiate the recall of one or more directors or the entire Board, the Board must receive a recall petition for a special meeting for the recall election signed by at least five percent (5%) of the Association's Members calling for a special meeting for the recall election. The recall petition signed by at least five percent (5%) of the Association's Members must also include the Members' printed names and the addresses of their Lot for verification purpose. Pursuant to Corporations Code 7510(e), a vote for a recall may also be initiated by the Board.

Upon receipt of a valid recall petition, the Board will promptly appoint an Inspector(s) of Elections.

Within twenty (20) days of the Board's receipt of a valid recall petition, the Board will notice the Members of and will set the time, date, and location of the special meeting to hold the recall election.

The special meeting must be held between thirty-five (35) and ninety (90) days of the Board's receipt of the petition.

In an effort to avoid recalled directors remaining on the Board until replacement directors are elected, the election for replacement directors will be held at the same time as the recall vote. As such, the Members will vote on two issues: (i) the recall of directors, and (ii) the replacement of directors. The inspectors of elections will tabulate the votes on the replacement of directors immediately following the recall vote, if the recall is successful.

Generally, when there is a recall election, it is desirable and often necessary to include an election of replacement directors on the same ballot as the recall vote. If the recall election is successful in whole or in part, the Association cannot be left without a functioning Board until a later election can be conducted. Given the statutory notice requirements for an election as outlined in these Rules, if the election to fill any vacancies created by a removal vote is not conducted at the same time as the recall vote, the Association could be left without a Board to conduct the necessary and essential business of the Association potentially causing great harm to the Association.

While Corporations Code section 7511(c) requires the Association to fix the date of the recall election not less than thirty-five (35) days, but not more than ninety (90) days after the Association's receipt of the request, the various notification requirements of Civil Code sections 5105(g)(4) and 5115(a)-(b) for the election of any replacement Directors make it difficult, if not impossible, for the Association to schedule the recall election meeting before the ninety (90) day deadline of Corporations Code section 7511(c). In an effort to meet the ninety (90) day deadline of Corporations Code section 7511(c), the Association may shorten the deadline to submit the Candidate Nomination Forms as needed to comply with the requirements of Corporations Code section 7511(c) for the recall election.

In order to curb a potential superfluous use of Association funds, a recall election may not be initiated against a Board Member(s) if the targeted Board Member(s)'s term expires within one-hundred (100) days from the date the Board received the recall petition unless the recall petition is petitioning to recall the entire Board.

The Association may facilitate the production of and pay for the cost of all recall election materials and the mailing of the same. If, however, a valid recall petition is received by the Board within twelve (12) months from the date of a prior recall election, whether the prior recall election was successful or not, the Association may facilitate the production of all recall election materials and the mailing of same, but the cost of the recall election will be borne by the petitioning party.

### **ELECTION CHALLENGES AND BALLOT RECOUNTS**

The inspectors of elections shall, upon written request, make the Association election materials (returned ballots, signed voter envelopes, Voter List, and the candidate registration list) available for inspection and review by an Association Member or the Member's authorized representative should a Member challenge the election or demand a ballot recount. Signed voter envelopes may be inspected but may not be copied pursuant to Civil Code section 5200(c).

Any recount will be conducted in a manner that preserves the confidentiality of the vote. To preserve the confidentiality of the vote, Members will not be entitled to inspect the inspectors of elections tabulation documents or notes submitted to the Association.

Should professional inspectors of elections act as the Association's inspectors of elections, the Member or Members challenging the election or demanding a recount of the ballot will bear the costs charged by the professional inspectors of election as a result of the election challenge and/or ballot recount. Professional inspectors of elections is defined as inspectors of elections who may be compensated for their services.