

SAMPLE FORM

Rules for Voting Regarding Assessments Legally Requiring a Vote, Amendments to Governing Documents and Granting of Exclusive Right to Use Common Area by Secret Ballot

Pursuant to new Civil Code Section 1363.03(e), when owners are to vote to approve assessments legally requiring a vote, amendments to governing documents and/or granting the exclusive use of common area to a member, the following must occur:

1. Meeting at Which Secret Ballots Shall Be Tabulated.

1.1 Unless the vote is being taken in connection with an annual meeting of the owners, the inspectors of election or their designee(s) shall tabulate the ballots for the vote to approve assessments legally requiring a vote, amendments to governing documents and/or granting the exclusive use of common area to a member at a duly noticed (regular or special) meeting of the Board of Directors, or at a special meeting of the members. The Board of Directors shall determine the date, time and place of said meeting.

1.2 The qualifications for voting and the voting power of each membership are as stated in the Association's governing documents and as shall be determined in accordance with Section 2.3.1 hereof.

1.3 The voting period for elections shall be at least thirty (30) days. The polls shall open and close as stated on the secret ballot distributed for each election.

2. Inspectors of Election.

2.1 The Board of Directors shall appoint three (3) independent third parties as inspectors of election before the secret ballots are mailed to all of the owners. An independent third party includes, but is not limited to:

2.1.1 a volunteer poll worker with the county registrar of voters;

2.1.2 a licensee of the California Board of Accountancy;

2.1.3 a notary public;

2.1.4 a member of the Association provided such member is not a member of the Board of Directors or a candidate for the Board of Directors or related to a member of the Board of Directors or a candidate for the Board of Directors; and,

2.1.5 a person who is currently employed or under contract to the Association for any compensable services.

2.2 Prior to the secret ballots being mailed to all of the owners, the inspectors of election shall meet to determine the location to whom the secret ballots shall be returned (the "Ballot Collector"), which may be the Association's property manager, if any.

2.3 The inspectors of election shall also do all of the following:

2.3.1 determine the number of memberships entitled to vote and the voting power of each;

2.3.2 determine the authenticity, validity, and effect of proxies, if any;

2.3.3 receive ballots;

2.3.4 hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;

2.3.5 count and tabulate all votes;

2.3.6 determine when the polls shall close;

2.3.7 determine the result of the vote; and,

2.3.8 perform any acts as may be proper to conduct the vote with fairness to all members in accordance with this section, the Corporations Code and all applicable rules of the Association regarding the conduct of the vote that are not in conflict with this section.

2.4 An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. The decision or act of a majority shall be effective in all respects as the decision or act of all.

2.5 Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

2.6 The Board of Directors may remove and replace any inspector of election prior to the tabulation of ballots if an inspector of election resigns or if the Board of Directors reasonably determines that an inspector of election will not be able to perform his or her duties impartially and in good faith.

2.7 The inspectors of election may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspectors of election deem appropriate,

provided that the additional persons are independent third parties as defined herein.

3. **Secret Ballot Procedure; Record Date.**

3.1 Ballots and two (2) pre-addressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the Association to every member not less than thirty (30) days prior to the deadline for voting.

3.2 Ballots must ensure the confidentiality of the voters.

3.2.1 A voter may not be identified by name or separate interest identifier on the ballot.

3.2.2 The ballot shall not require the signature of the voter.

3.2.3 The ballot itself is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall sign his or her name, indicate his or her name and indicate the address or separate interest identifier that entitles him or her to vote. The second envelope is addressed to the inspectors of election, who will be tallying the votes.

3.3 Owners may return their secret ballot by mail, hand deliver it to the meeting or complete the ballot at the meeting; provided, only those ballots which are delivered to the inspectors of election prior to the polls closing shall be counted.

3.4 A member may request a receipt for delivery of his or her ballot.

3.5 The record date for purposes of voting shall be the date the ballots are mailed to all of the owners.

4. **Campaigning.**

4.1 All members advocating a point of view during a campaign, including those not endorsed by the Board of Directors, shall be provided equal access to Association media, newsletters, or Internet Web sites (if any) for purposes that are reasonably related to the vote. The Association may not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the Association, is responsible for that content.

4.2 All members advocating a point of view, including those not endorsed by the Board of Directors, for purposes reasonably related to the vote, shall be provided equal access to any common area meeting space, if any exists, during a campaign at no cost.

5. Handling of Ballots.

5.1 As secret ballots are returned to the Ballot Collector, the Ballot Collector shall check off on a sign-in sheet that a ballot has been received for such unit/lot. The inspectors of election or their designee(s) may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspectors of election, it shall be irrevocable. Any subsequent ballots received for the same unit/lot shall be deemed invalid and shall be discarded.

5.2 The sealed ballots at all times shall be in the custody of the inspectors of election or at a location designated by the inspectors until delivered to the inspectors at the meeting for the opening of the ballots and the tabulation of the vote.

5.3 No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

5.4 After the tabulation of the vote and for nine (9) months after the election or removal, the ballots shall be kept in the custody of the inspectors of election. After such time, the custody shall be transferred to the Association and the ballots shall be stored by the Association in a secure place for no less than one (1) year after the date of the vote. If there is a recount or other challenge to the voting process, the inspectors of election shall, upon written request, make the ballots available for inspection and review by an Association member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

6. Tabulation of Votes; Quorum Requirement.

6.1 All votes shall be counted and tabulated by the inspectors of election or their designee(s) in public at a properly noticed open meeting of the members or of the Board of Directors. A quorum of members or a quorum of Board members, as the case may be, must be present if required by the Association's governing documents. Each ballot received by the inspectors of election shall be treated as a member present at a meeting for purposes of establishing a quorum.

6.2 The inspectors of election shall confirm that no more than one (1) ballot was returned for each unit/lot.

6.3 Owners who have not previously submitted a ballot may complete one at the meeting and return it to the inspectors of election prior to the polls closing.

6.4 Any member of the Association may witness the counting and tabulation

of the votes.

6.5 In order for the vote on the proposal to be valid, ballots must be returned by at least a quorum of the owners if a quorum is required by the Association's governing documents or applicable law and the requisite percentage of owners must vote to approve the proposal. If a quorum of ballots is not received, the ballots will not be counted.

7. **Announcement of Results.**

7.1 The results of the vote shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by members of the Association.

7.2 Within fifteen (15) days of the vote on the proposal, the Board of Directors shall publicize the results of the vote in a communication directed to all members.

8. **Other Voting Issues.**

8.1 There are _____ units/lots in the Association, but owners whose voting rights have been suspended in accordance with the Association's governing documents after notice and hearing shall not be entitled to vote.

[OPTIONAL LANGUAGE]

8.2 Proxies. Proxies may continue to be used. An owner may give a proxy to another person to vote on the secret ballot as his/her/its proxy. However, proxies shall not be construed or used in lieu of a secret ballot. In such a situation, the proxyholder will fill out the ballot and enclose it in the "secret ballot" envelope. This envelope will then be enclosed in the second envelope, as discussed above. In the upper left hand corner of the second envelope, the proxyholder will sign his or her name, indicate his or her name and indicate the address or separate interest identifier that entitles the owner to vote; however, as the "voter", the proxyholder will sign and print his/her name underneath the name and address of the owner. The proxy must be returned with the ballot, but NOT placed inside the "secret ballot" envelope. If any instruction is given in a proxy issued for an election (or other vote) that directs the manner in which the proxyholder is to cast the vote, such instruction shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. A proxy may be revoked by the owner prior to the receipt of the secret ballot by the inspectors of election.