

## **ELECTION LAW REVISION 2020**

### **ASSOCIATION # 10**

The Davis-Stirling Common Interest Development Act governs the creation and management of common interest developments. The act requires a homeowner's association to adopt rules that, among other things, specify the qualifications for candidates for the board of directors of the association and any other elected position, qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents. The act requires the sealed ballots to be at all times in the custody of the inspector or inspectors of elections or at a designated location until after the tabulation of the vote. This supercedes all previous statements regarding Voting Laws and Regulations

#### **Membership**

Each member of the Association, in accepting or, as applicable, continuing to hold title to a condominium agrees to abide by all applicable laws, statutes, ordinances and governmental regulations in the use of such member(s) condominium and to use same and the common areas in a manner that is consistent with the uses permitted in the Declaration, these By-Laws and all rules and regulations promulgated by the Association's Board from time to time.

#### **Board of Directors**

All powers of the Association shall be exercised by or under the authority of, and affairs of the Association shall be conducted by, the Directors (referred to as the "Board"), and the business a Board which shall be vested with all corporate powers permitted by law to be exercised by a nonprofit mutual benefit corporation.

#### **Powers and Duties.**

The powers of the Board shall include, but not be limited to the following:

1. Declare such rules and regulations pertaining to use and occupancy of the common areas and the individual condominiums on the Property;
2. Fixing the amount of homeowners' dues, transfer fees and assessments to be paid by the members and levying and enforcing penalties as more fully set forth in the Declaration; and
3. Supervising and directing the officers of the Association in the performance of their duties.

#### **Regular Meetings of Board.**

Regular meetings of the Board shall be held without call monthly or at any other intervals of frequency as determined by the Board, but not less than quarterly. The time and place of the regular meetings may be determined and changed as needed by the Board. Should a regular meeting fall on a legal holiday, the meeting shall be held instead at the same time on another day agreed upon by a majority of the Board members, provided it is held within one (1) week of the holiday. Prior notice of all regular Board meetings shall be posted.

#### **Place of Meetings.**

Meetings of the membership shall be held at a designated place in Friendly Valley or at such other suitable place, convenient to the membership at large, as may be designated by the Board of Directors from time to time.

### **Special Meetings of Board.**

Special meetings of the Board may be called by the President, Vice-President, or any two (2) directors. Special meetings of the Board may be held on notice of no less than three (3) days, delivered by first Class mail, postage prepaid, or given personally or by telephone to each director. A notice of a special meeting of the Board shall state the time and place of the meeting but need not specify the purpose for which the meeting is called.

### **Quorum.**

At all meetings of the Board, a majority of the directors present shall constitute a quorum for the transaction of business and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called, may be transacted without further notice. Members present at any members meeting of voting shall constitute a quorum for the transaction of business.

### **Actions Without Meeting.**

Any action by the Board may be taken without a meeting if all members of the Board individually or collectively consent in writing, via e-mail and by telephone conference to such action. Documentation of such consent or consents shall be filed with the minutes of the proceedings of the Board and shall have the same force and effect as a unanimous vote of such directors.

### **Annual Meetings.**

There shall be a general meeting of the membership of the Association held annually in November of each year.

### **Special Meetings of Members.**

Special meetings of the members may be called by the Board of Directors of the Association or its President or Vice-President. In addition, special meetings of the members for any lawful purpose may be called by any two (2) or more of the members. The right of any person, other than the Board of Directors, entitled to call a special meeting of the members shall be enforceable as provided in Section 7511 subsection C of the California Corporations Code.

### **Notice of Meetings.**

Whenever members are required or permitted to take any action at a meeting, the Secretary shall cause a written notice of the meeting to be given to each member entitled to vote at the meeting at least ten (10) days before the date of the meeting. The notice shall be given by first-class mail, postage prepaid, addressed to the member at the address for him or her appearing on the books of the Association or given by the member to the Association for purposes of notice. The notice may also be given by personal delivery of a copy of the notice to a member. The notice shall state the place, date and time of the meeting and, in the case of a special meeting, the general nature of the business to be transacted at the meeting. In the case of a regular meeting, the notice shall

state those matters which the Board of Directors, at the time the notice is given, intends to present for action by the members of the meeting. The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is given to members.

### **Voting.**

At the annual or specially called open meeting of this Association, each unit owner present, shall have the right to cast one vote per unit on each motion, e.g. when there are two or more owners in attendance, only one vote will be counted for each unit.

The majority of votes cast shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of the Association's Articles of Incorporation, the Declaration or of these By-Laws, a different vote is required, in which case such express provision shall govern and control.

No member shall be entitled to vote who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in payments due to the Association as homeowners fees. Cumulative Voting is not permitted.

### **Number and Qualification to be a candidate.**

The Board shall be composed of a minimum of three (3) to a maximum of up to five (5) persons, unless and until this number is changed in a manner authorized by applicable California law.

1. A person must be a resident member or appointed by the legal entity/member for the purpose of election to the Board.
2. Member must be in Good Standing to be eligible for nomination and/or to serve on the Board. The member must not be delinquent by more than sixty (60) days in the payment or any regular or special Assessment (following proper notice, hearing, and a finding by the Board), except:
  - A. A person may not be disqualified from nomination for nonpayment of fines: fines characterized as assessments, collection charges, late charges or costs levied by a third party.
  - B. A person may not be disqualified from nomination because the person has paid the regular or special assessment under protest.
  - C. A person may not be disqualified from nomination due to delinquent assessments if the person has entered in to a payment plan with the Association pursuant to Civil Code §5665 and is fulfilling the terms of the payment plan.
3. Only one of each units owners may be eligible for nomination and/or to serve on the Board at one time. Where two or more co-owners concurrently seek election to the Board, only the first nomination will be effective.
4. Criminal Conviction. A person who has disclosed, or concerning whom the Board has knowledge of a past criminal conviction that would, if the person is elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code §5806, or any successor statute, or which conviction would cause such coverage

to be terminated, is ineligible for nomination to the Board. Each nominee, at the time of nomination, shall disclose the existence of any past criminal conviction and the details thereof, with sufficient details in order to allow the Association to determine whether the criminal conviction will prevent the Association from purchasing the required fidelity bond coverage.

5. Internal Dispute Resolution. Before any candidate for nomination or serving Director may be disqualified, the person or impersonal entity must be provided the opportunity to engage in internal dispute resolution as provided in the Davis-Stirling Act.

### **Nomination of Directors; Inspector of Elections.**

The Association shall, until changed by vote, use Friendly Valley Community Council (FVCC)-Inspector of Election for ALL election requirements as stated in California Civil Code §5100-5999.

An Inspector of Election shall perform his/her duties impartially, in good faith, to the best of his/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.

***Association funds may not be used for campaign purposes.***

### **Elections.**

Timeline- The election timeline for delivering all of the statutory required documents to members is approximately one hundred five (105) days.

Nomination Procedures. At least thirty (30) days before the end of the nomination period, the Association shall, by general notice, deliver to all Members the Election Rules and Procedures, and the deadline for submission of the nomination form.

Candidate Nomination Forms. A candidate nomination form must be delivered to all owners, providing a reasonable deadline for response. The Association will have this form included with the Nomination Procedures stated above.

Mailing Prior to Secret Ballot Distribution. At least sixty (60) days before the election, the Association shall provide general notice to the Members of all the following in accordance with the requirements of Civil Code §5115(b) which includes:

- The list of candidates;
- The deadline for returning ballots; and
- The time and place of the annual meeting.

### **Nominations.**

1. Candidates and Board Members must be Members of the Association or an authorized agent of an entity owned Unit. Unless authorized by law, the only other qualifications for nomination are:
  - A. No candidate, if elected, may serve on the Board with a Co-Owner of a Unit;

- B. No candidate may run for or serve on the Board if he/she has been convicted of a felony that jeopardizes the Association's fidelity bond insurance coverage; and
  - C. Candidates and sitting directors must be current in the payment of regular or special assessments, which are consumer debts subject to validation.
2. The Association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The Association shall not disqualify a nominee for failure to be current in payment of regular and special assessment if any of the following is true:
- A. The nominee has paid the regular assessment or special assessment under protest pursuant to California Civil Code §5658.
  - B. The nominee has entered into a payment plan pursuant to California Civil Code §5665.
  - C. The nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to California Civil Code §5900.
3. Owners may nominate themselves or another person.
4. Any candidate nominated by another person will be contacted to confirm that such candidate consents to having his/her name placed in nomination for election to the Board of Directors.
5. All candidates who meet the qualifications to serve on the Board and, if appropriate, have confirmed his/her willingness to run for election to the Board, shall be listed on the Secret Ballot.
6. The Board shall be comprised of three (3) to five (5) persons each of whom must be Members of the Association and who shall hold office until his/her successor has been elected or appointed, or until his/her death, resignation or judicial adjudication of mental incompetence.

### **Inspector of Elections .**

The FVCC Inspector of Elections and/or Members of the Election Board under the leadership of the Inspector of the Elections, shall conduct all Election process including but not limited to the following:

- 1. Prior to the secret ballots being mailed to the Owners, the Inspector of Elections shall meet to determine to whom the ballots shall be returned, which may be the Friendly Valley Recreation Board Business Office.
- 2. Determine the number of memberships entitled to vote and the voting power of each.
- 3. No Member's right to vote may be suspended by the Association;
- 4. Receive ballots;
- 5. Hear and determine all challenges and questions in any way arising out of the validity of a ballot;
- 6. Count and tabulate all votes;
- 7. Determine when the polls shall close;

8. Determine the result of the election; and
9. Perform any acts as may be proper to conduct the election with fairness to all Members.
10. Any report made by the Inspector of Elections is prima facie evidence of the facts stated in the report.

### **Secret Ballot Procedure.**

The Inspector of Elections shall cause the Association to deliver to each member not less than thirty (30) days proper to the election: (a) ballots and two (2) preaddressed envelopes with instructions on how to return ballots; and , (b) a copy of the association's election rules. Delivery of the election operating rules may be accomplished by either of the following methods: posting the election operating rules 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: (insert)" or by individual delivery. If an association does not already have a website, depending upon the size of the association, it may be more cost efficient to establish one rather than distribute a hard-copy of the election rules each year to all of the owners.

1. Ballots must ensure the confidentiality of the voters.
  - A. A voter may not be identified by name, address, parcel, or unit number on the ballot;
  - B. The ballot is not signed by the voter but is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is also sealed.
  - C. The second envelope is addressed to the Inspector of Elections, who will tally the votes.
  - D. In the upper left hand corner of the second envelope, the voter prints (a mailing label may be used) and signs his or her name, address, and lot, or parcel, or unit number that entitles him/her to vote.
2. Returning Ballots. Owners may return their secret ballot by mail in the provided envelope or hand deliver it to a location specified by the Inspector of Elections. Only the ballots that are returned in accordance with the instructions of the Inspector of Elections shall be counted.
3. The Member may request a receipt for delivery of his/her ballot.
4. Unless otherwise required by law, the record date for purposes of voting shall not be less than ten (10) days nor more than sixty (60) days prior to the date of the meeting as determined by the Board.

### **Handling of Returned Ballots.**

As secret ballots are returned to the Inspector of Elections, the Inspector shall check off on a sign-in sheet that a ballot has been received for such Unit. The first secret ballot received for any Unit

shall be the only ballot which is counted. Once received, ballots are irrevocable. Any subsequent ballots for the same Unit which are received shall be deemed invalid.

The sealed ballots shall, at all times, be in the custody of the Inspector of Elections or at a location designated by the Inspector until delivered to the Inspector at the meeting for the opening of the ballots and the tabulation of the vote. No person, including a Member of the Association shall open the outer or inner envelope or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

After tabulation, election ballots and all other Association Election Materials shall be stored by the Inspector of Elections in a secure place for no less than one (1) year after the date of the election.

In the event of a recount or other challenge to the election process, the Inspector of Elections shall, upon written request, make the ballots available for inspection and review by Members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

#### **Annual or Special Meeting When Secret Ballots Are Tabulated.**

The Inspector of Elections shall count and tabulate the ballots for the election in public at a properly noticed open meeting of the Members or, at a special meeting of the Board of Directors, duly noticed for the same date, time and place as the Members meeting called for the purpose of counting ballots.

The Board of Directors shall determine the date, time and place of the Members' meeting and the concurrent special meeting of the Board in accordance with California law and the Association's Bylaws. A quorum shall only be required for elections and recalls of directors if so stated in the governing documents of the Association or if required by law.

Secret Ballots received by the Inspector of Elections shall be treated as Members present for purposes of a quorum.

#### **Vote Tabulation.**

All votes shall be counted and tabulated by the Inspector of Elections in public at a properly noticed open meeting of the Members or of the Board.

Any candidate or other Member of the Association may witness the counting and tabulation of the votes. In order to avoid interference with the Inspector's duties, all observers must stand or be seated at least ten (10) feet from any Inspector, or his/her assistant, when they are counting votes. If needed, the Inspector may have the removal of any and all persons causing a disruption.

#### **Results.**

The results of the election shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the meeting in which the votes are tabulated and shall be available for review by Members of the Association.

Upon certification of the election results by the Inspector of Elections, the newly elected Board Members shall be deemed to have taken office. Within fifteen (15) days of the election, the Board shall publicize the results of the election in a communication directed to all Members.

### **Other Voting Issues.**

Voting rights of a Member may not be suspended.

The Association cannot deny a ballot to a person with general power of attorney for a member.

### **Revision of Election Rules.**

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

### **Election Results.**

Breaking a Tie: In the event of a tie leaving the outcome of the election unresolved, the following will apply:

1. The Inspector of Elections, and any designees, will immediately conduct a recount of the ballots. Members may observe the recount under the same conditions as the original ballot counting.

2. Following the immediate recount, if the tie remains, all other newly elected Directors will immediately begin serving their terms. An incumbent Director whose seat was tied will continue in office until a runoff election determines the winner for his/her seat. Only candidates who tied for the seat will be in the runoff.

3. In lieu of a runoff, tied candidates may mutually agree who shall be declared the winner, including to agree that the winner may be decided by a coin toss or the drawing of names by the Inspector of Elections. If the candidates involved are unable to agree who shall serve within one (1) day of the election concerned, the Association shall hold a run-off election.

### **Election Recount**

Election recounts, other than the automatic recount following a tie leaving the outcome of an election unresolved, will be conducted as follows:

1. Any Member of the Association may demand a recount of the ballots provided

- A. Request is made in writing to the Inspector of Elections within five (5) days after the election results have been announced, and

- B. The Member pays in advance for the estimated cost of the recount, which estimate will be provided by the Inspector of Election. Monies advanced by the Member must be refunded if the outcome of the election is changed by the recount.

2. The recount must be commenced within seven (7) days of the request for the recount and must be done by or under the supervision of the Inspector of Elections. If any Inspector of Election declines to perform the recount, the Board may appoint a replacement Inspector of Election, using the criteria specified in these rules and the replacement Inspector will assume custody of ballots.

3. Any recount may be observed by Members of the Association. No election materials may be touched or handled by any person without the express consent of the Inspector and under the



supervision of the Inspector. The recount must be reported to the Board of Directors and must be recorded in the minutes of the next Board meeting and reported to the membership.

4. Any Director or any person who had the right to vote in the election may challenge the election within one (1) year of the date of the election.

#### **Election Materials after the Election.**

The sealed ballots, signed voter envelopes, voter list, and registration list shall at all times be in the custody of the Inspector of Elections or at a location designated by the Inspector until after the tabulation of the vote, and until the time allowed by Civil Code §5145 for challenging the election has expired, at which time custody shall be transferred to the Association. If there is a recount or other challenge to the election process, the Inspector of Elections shall, upon written request, make the ballots available for inspection and review by an Association Member or the Member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

Members shall be permitted to inspect the signatures of all voting Owners which have been placed on the outside of the ballot mailing envelope. Copies and/or photographs of such signatures are not permitted; and

Members may inspect and obtain copies of the following election materials:

Voter List;

Ballots;

Signed Voter Envelopes (inspection permitted but copies are not allowed)

An action to challenge an election may be brought in the Superior Court or Small Claims Court where the Court may order injunctive relief and may levy penalties of up to five hundred dollars (\$500.00) per violation.

#### **Terms of Office of Directors.**

The Directors serve on a two-year staggered terms so as to create stability and continuity on the board, these terms also apply to appointed directors. At each annual meeting, two (2) Directors will finish their first year of a two year term. The terms end for all other Directors. At the annual meeting the two (2) nominees receiving the highest amount of votes will each serve a two (2) year term. The nominee receiving the third highest amount will serve a one (1) year term.

#### **Vacancies.**

1. A vacancy on the Board shall exist in the case of the resignation, removal or death of any director; or if the authorized number of directors is increased or if the members fail, in any election for director or directors to elect the full authorized number of directors to be voted for in such election.

2. Vacancies on the Board, except for a vacancy created by the removal of a director, may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, and each director so elected shall hold office until his successor is elected at an annual or a special meeting of the members. A vacancy on the Board created by the removal of a director may be filled only by approval of the members.

3. The members may elect a director or directors at any time to fill any vacancy or vacancies not filled by the directors.

4. Any director may resign, effective upon giving written notice to the Board, the President or the Secretary, unless the notice specifies a later time for the effectiveness of such resignation. If the Board receives the resignation of a director tendered to take effect at a future time, the Board members shall have the power to elect a successor to take office when the resignation is to become effective.

5. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of a director's term of office.

#### **Removal Of Directors.**

At any regular or special meeting of the membership duly called, any director may be removed, with or without cause, by the affirmative vote of the membership. However, unless the entire Board is removed, no director may be removed where the votes cast against removal would be sufficient to elect such director if voted at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the director's most recent election were then being elected. After removal of any director, a successor may then and there be elected to fill the vacancy created. The Board may declare vacant the office of any director who has been found of unsound mind by a final Order of Court, or convicted of a felony. Any director, whose removal has been proposed by the members or by a member of the Board, shall be given an opportunity to be heard at the meeting called to consider such removal.

#### **Compensation.**

Remuneration may be paid to a director for services performed by such director for the Association in any other capacity (other than performing the normal and usual services of a director), including that of a project manager or coordinator following a natural disaster, only if a resolution authorizing such remuneration is unanimously adopted by the Board before the services are rendered.

#### **Organizational Meetings of Board.**

Within ten (10) days following the election of Directors at each Annual Meeting, the newly-elected Directors shall meet and, in addition to such other business as may lawfully come before the Board, it shall appoint Officers of the Association. Retiring Directors shall have no authority from and after the election at the Annual Meeting.

#### **Indemnification of Agents of the Association; Purchase of Liability Insurance.**

The Association may subject to the provisions of applicable statutes, indemnify any of its directors, officers, employees or agents who was or is a party, or is threatened to be made a party, to any proceeding (other than an action by or in the right of the Association) by reason of the fact that such person is or was a director, officer, employee or agent of the Association, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding where the Board determines that such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interest of the Association or that the person had reasonable cause to believe that the person's conduct was unlawful. The term "proceeding" is used herein to mean any threatened, pending or completed action, whether Civil, Criminal, administrative or investigative. The term "expenses" include, without limitation, attorney's fees, costs of suit and any other costs related to a proceeding referred to herein. To effectuate the purposes of this Section, the Board may at the Association's expense, obtain liability insurance covering the Association, its directors, officers, employees and agents for errors and omissions occurring in the course of their duties.