

MUTUAL OPERATIONS**HOMEOWNERS MEETINGS****Annual Elections – Mutual Seventeen**

I. NEW LAW:

Elections (SB 323))

The new law requires associations to amend their election rules, but also states that the election rules cannot be amended less than 90 days prior to an election. Therefore, after its revised election rules are approved, an association must wait 90 days to hold its election.

Qualifications to be a Candidate. Many associations have adopted Bylaws or election rules which impose varying qualifications to be a candidate for election. This new law supersedes any existing qualifications and limits the scope of possible qualifications to the following finite list:

1. Beginning in January 2020, by law, all candidates must be owners. If title to a Unit 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 election to the Board.
2. An association may provide in its election rules that all candidates be owners for at least one year.
3. An association may provide in its election rules that each candidate must not be delinquent (as defined in the association's collection policy) in the payment of any regular or special assessment levied by the association (but not for nonpayment of monetary penalties, monetary penalties renamed as assessments, collection charges, late charges, or costs levied by third party). A candidate is not considered delinquent if the candidate has paid the assessments under protest or has entered into a payment plan with the association.
4. An association may provide in its election rules that a person may not be a candidate if the candidate discloses, or if the Association is aware of, or becomes aware of, a past criminal conviction that would either prevent the Association from purchasing the fidelity bond coverage required by Civil Code Section 5806 should the person be elected or terminate the Association's existing fidelity bond coverage as to that person should the person be elected.

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5. An association may provide in its election rules that a person may not be a candidate if such person, if elected, would be serving on the Board at the same time as another person who holds a joint ownership interest in the same Unit as the person, and the other person is either properly nominated for the current election or an incumbent director.

The Association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Civil Code Section 5900 et seq.

New Election Timeline and Mailings.

The election timeline for delivering all of the statutorily required documents to members is approximately 105 days (besides adoption of the rules themselves).

Nomination Procedures. At least 30 days before the deadline for the return of nominations, the Association shall, by general notice (unless an owner has asked for individual delivery), deliver to all members notice of the procedure and deadline for submitting a nomination.

Candidate Nomination Forms. A candidate nomination form must be delivered to all owners, providing a reasonable deadline for response. We recommend combining the delivery of the nomination procedures with the candidate nomination forms to minimize the number of mailings. This would require that owners be provided at least 30 days to return their candidate nomination form.

Mailing Prior to Secret Ballot Distribution. At least sixty (60) days before the election (i.e., at least thirty (30) days before the secret ballots are mailed to owners), the Association shall provide general notice to the members of all of the following: (a) 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; (b) the date, time, and location of the meeting at which ballots will be counted; (c) the list of all candidates' names that will appear on the ballot. Individual notice of the above shall be delivered if individual notice is requested by a member

Secret Ballot Procedure. The inspector(s) of election shall cause the association to deliver to each member not less than thirty (30) days prior 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:

<http://www.lwsbmutual17.com/policies/>

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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.

Other New Election Rules

- An association's property manager, attorney or other entity who is currently employed or under contract to the association for any compensable services (other than serving as an inspector of elections) cannot serve as an inspector of election.
- The inspectors of election shall not deny a ballot to a member for any reason other than not being a member at the time when ballots are distributed. Associations can no longer suspend an owner's rights.
- Associations must now maintain a candidate list and a voter list, which shall include the name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both, and the mailing address if different from the physical address. Associations must permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The association or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.
- An association cannot deny a ballot to a person with general power of attorney for a member.
- Associations must maintain (as election materials subject to inspection by a member) the sealed (or, after tabulation, returned) ballots, signed voter envelopes, voter list, proxies, and candidate registration list.

Right to Inspect Owner Email Addresses. As of January 1, 2020, a member will also be able to inspect and copy an owner's email address on file with the association unless the owner "opts-out" of sharing the his or her email address. Associations may want to consider sending an opt-out form to the owners in advance of the new law taking effect. An opt-out form is attached hereto for your use.

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A member may request that the Association provide him or her with a copy of the membership list, including the names, property address, mailing address and, as of January 1, 2020, the email address, of each member. The member's request must be in writing and must set forth the purpose for which the list is requested, which purpose must be reasonably related to the requester's interests as a member of the Association. The Association will be obligated to provide the member with a copy of such membership list unless it reasonably believes that the member will use the information for another purpose.

Pursuant to Civil Code Section 5220, a member can "opt out" of having his or her name and address(es) included on a membership list which must be distributed to members upon request. If you would like to "opt out" of having your name and/or addresses included on a membership list which may be distributed to another member upon request, please complete the following form and return it to the Association. Please note that your "opt-out" will remain in effect until further written notice from you

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To Whom It May Concern,

Please remove the following information related to me and my unit/lot from the Association's membership list in accordance with Civil Code Section 5220 until further written notice from me:

(Check all that are applicable)

- Name
- Property Address
- Mailing Address
- Email Address

Date: _____

Print Name: _____

Signature: _____

Unit/Lot Address: _____

Mutual Adoption

Amended

Seventeen: 02-06-07

05-06-14, 01-07-20