

## **ROLLING HILLS COMMUNITY ASSOCIATION**

### **ELECTION PROCEDURES**

California's Davis-Stirling Common Interest Development Act (specifically, Civil Code §§5100–5130) requires that common interest development property owner associations, such as the Rolling Hills Community Association ("Association"), adopt rules regarding the conduct of elections of directors (as well as other specified votes conducted by an owners' association). Those election rules must comply with a number of specific requirements that are set forth in the statute.

The operating rules that follow were drafted to reflect those statutory requirements effective January 2, 2020, and these procedures will go into effect as soon as they are adopted by the RHCA.

#### **1. Right to Vote.**

1.1 As described in these Rules, votes may be cast by Members either in person, by proxy or by mail-in ballot. The Association may not deny a ballot to any person who is a Member of the Association at the time the ballots are distributed.

1.2 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).

1.3 If title to a building site 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 voting. (Civil Code § 5105)

1.4 The Association shall maintain a voter list which shall include the name, voting power, and either the physical address of the voter's Lot, parcel number, or both ("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 Association or Inspector(s) of Election, who shall make the corrections within two (2) business days. (Civ. Code §5105(a)(7).)

## 2. Qualification of Nominees for the Board of Directors.

2.1 Only persons who are Members of the Association may be a nominee for election. If title to a home site 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.

2.2 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 home site and the other Member is either properly nominated for the current election or an incumbent director.

## 3. Nomination of Directors.

3.1 The Association or the Inspector of Elections 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.

3.2 The Association shall seek nominations for candidates for election through the Nominating Committee and by making available a "Candidate Nomination Form." All Members desiring to run or Members who wish to nominate other Members must complete the Candidate Nomination Form and return the completed Candidate Nomination Form within the time prescribed on the Candidate Nomination Form to be included on the ballot.

3.3 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 Inspector of Election, who shall make the corrections within two (2) business days. (Civ. Code § 5105(a)(7).)

3.4 The Candidate Nomination Forms or Candidate Statements from qualified candidates may be posted on the Association's website and made available from the RHCA office and mailed to members with the ballot at least thirty (30) days prior to the meeting. Candidate Nomination Forms and accompanying materials that are received after the deadline for submittal may not be enclosed with the ballot for election, nor will late Candidate Nomination Forms be posted on the Association's website. The Association will not edit the content of these Forms, but will publish a general statement of non-responsibility for the content of all published

Forms. Any candidate can request in writing that his/her Form not be published as provided herein, and the Association will honor any such request received prior to the date of publication of all Forms, if publication occurs.

3.5 RHCA requests that Candidates submit a 1-page information statement; all statements received will be mailed with the ballots.

3.6 Nothing in these Rules and Procedures is intended to disallow a Member from nominating his or herself as set forth in Paragraph 3.2 above.

3.7 Nominations for election to the Board of Directors may not be made from the floor during the meeting.

3.8 All candidates qualified to serve on the Board of Directors shall be listed on the ballot, provided that the Association receives notification of nominations on or before the deadline set in the Annual Meeting notification.

#### 4. Campaign.

4.1 *Association Funds.* Association Funds shall not be used for campaign purposes in connection with any association Board election. Funds of the association shall not be used for campaign purposes in connection with any other association election except to the extent necessary to comply with the duties of the association imposed by law.

4.2 *Campaign Signs.* The posting of campaign signs must be in compliance with current Association rules and state law. In no event shall campaign signs be permitted to be erected or maintained within any portion of the RHCA trails or roads.

4.3 *Mailing Labels.* RHCA will provide labels for mailing at no cost to candidates. Should this Association policy change in the future, the Civil Code election rules provide that equal access to any permitted media shall be provided to all nominees and members advocating a point of view (whether or not endorsed by the board of directors). An Association cannot edit or redact any content from any candidate communications, but the Association may include a statement specifying that the nominee or member authoring the communication, and not the Association, is responsible for the content of the communication.

5. Equal Access to Association Meeting Areas for Nominees and for Members Advocating a Particular Point of View.

The Association shall provide equal access to the RHCA meeting facilities at 1 Portuguese Bend Road during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election. This requirement, which is imposed by statute, shall not be interpreted as obligating the Association to provide access to such meeting spaces at times when the space is normally and customarily utilized for other Association or community purposes. In other words, the Association retains its authority and responsibility to ensure that the RHCA meeting facilities are managed, operated, and accessed for the common benefit and enjoyment of all Association members.

6. Voting Eligibility.

Each member of the Association in good standing is entitled to cast one vote for each home site that the member owns to a maximum of ten and the member cannot be subject to any other suspension of voting rights privileges as a result of disciplinary action duly imposed by the Association.

7. Proxy Voting.

The secret ballot procedures in Civil Code §5115 and the proxy form and secret ballot requirements of Civil Code §5130 for voting by proxy can create potential issues at the time the proxy and ballot are submitted. The inspector of Elections must assure compliance for proxy voting by secret ballot for directors. Voting for directors by members rather than by proxy is encouraged. If a proxy and ballot are submitted, the Inspector of Elections will determine if the proxy and ballot complies with the applicable laws and may be cast as a secret ballot for election of directors; if not, the proxy may be used to establish a quorum: and the proxy holder may follow the directions in the proxy to vote on other business transacted at the meeting.

8. Duration of the Voting Process.

The secret ballot voting procedures of Civil Code §5115(a) specify that ballots for the election of the board of directors must be sent to all eligible members by mail or personal delivery not less than 30 days before the deadline that is established for the tender of ballots.

8.1 The Association or the Inspector of Elections shall provide general notice of all of the following at least thirty (30) days before the ballots are distributed:

8.1.1. 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.

8.1.2. The date, time, and location of the meeting at which ballots will be counted.

8.1.3. The list of all candidates' names that will appear on the ballot.

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

8.2 Ballots may be submitted at any time from the Members' receipt of the ballot until the announced deadline or any extension thereof as set by the Inspector of Elections. Ballots returned by mail are to be returned to the address specified by the Inspector(s) of Elections and so noted in the balloting materials.

8.2.1 The Inspector(s) of Elections shall have the right to verify the Member's information and signature on the outer envelope and 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. The Inspector of Elections shall have the right to extend the voting deadline if there is an insufficient or possibly an insufficient number of ballots received. Voting envelopes shall not be opened as part of this review - only a review of unopened envelopes is allowed to verify the Member's information and determine the total number of ballots returned.

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

8.2.3 The Board of Directors shall set a record date establishing those Members entitled to vote on any ballot. Should the Board fail to set a specific record date, the record date shall be the date the ballot was posted by the Inspector in the United States mail.

8.3 Ballots and two (2) pre-addressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered, or caused to be mailed or delivered by the Inspector of Elections to every Member at least thirty (30) days prior to the deadline for voting. For the election of directors,

ballots and voting envelopes will also be available at the annual membership meeting. The Association shall generally use as a model those procedures used by California counties for ensuring confidentiality of voter mail in ballots, including the following:

8.3.1 The ballot itself will not be signed by the voter, but will be inserted into an envelope that is to be sealed by the voter. This envelope is to be inserted into a second (outer) envelope that is sealed by the voter. In the upper left-hand corner of the second envelope, the voter must print and sign his or her name, address (either address within the community or mailing address), and Lot number that entitles him or her to vote. The lack of a signature on the second envelope will not invalidate that ballot if the Inspector(s) of Elections is able to determine the identity of the Member who submitted the ballot.

8.3.2 The second (outer) envelope is to be addressed to the Inspector of Elections, who will be tallying the votes. The envelopes are to be mailed or delivered by hand to the address specified by the Inspector of Elections.

8.3.3 Balloting materials not completed in accordance with the instructions on or accompanying the balloting materials may result in the ballot being declared invalid, as determined by the Inspector of Elections. The Inspector of Elections shall have the right to count ballots submitted by Members failing to complete all of the above requirements so long as all ballots with similar defects are treated equally and so long as the Inspector are able to verify that only one ballot per Home site has been submitted.

8.3.4 Only the official ballots distributed by the Association will be counted. Unofficial ballots will not be counted.

8.3.5 If a candidate whose name is on the ballot withdraws before the ballots are counted, the election will continue to go forward. However, the votes cast for a withdrawn candidate will not be counted.

8.4 Ballots shall be counted at a membership meeting or open Board meeting. Subject to reasonable restrictions established by the Inspector of Elections to prevent interference with or intimidation of the Inspector during the tabulation of the ballots, any candidate or other Member of the Association may witness the counting and tabulation of the votes. No person observing the tabulation of the ballots may communicate with, interfere with, or in any way attempt to intimidate, harass or abuse the Inspector or other person counting the ballots or assisting the

Inspector.

8.5 Except as provided above, no person, including a Member of the Association, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

8.6 The results of the election shall be promptly reported to the Board of Directors of the Association and shall be recorded in the minutes of the meeting and shall be available for review by Members of the Association. Within fifteen (15) days of the election, the Board shall publicize the results of the election in a communication directed to all Members or by posting it in the Common Area, unless otherwise noted, in the front window of the RHCA office.

8.7 The mailed secret ballots described in these Rules, once received by the Inspector of Elections, will serve to establish a quorum at any meeting of Members.

9. Determination of Election Results; Succession to Office.

The candidates receiving the highest number of votes, up to the number of vacancies to be filled in the election, shall be elected as directors and shall take office at the next meeting of the Board. In the event there is a tie vote between those candidates who receive the lowest number of votes necessary to qualify the candidate for election, the winner shall be determined by a coin toss.

10. Supervision of Election Process; Appointment of Inspector(s) of Elections.

To ensure secrecy of ballots and fairness in the conduct of director elections, the board of directors must select an independent third party or parties to serve as the Inspector(s) of elections. Civil Code §5110 specifies that the number of inspectors of elections shall be one or three.

The Board shall select a professional, bonded firm to serve as Inspector of Elections by the first Board meeting in October of each year. The professional Inspector of Elections shall have the full powers of an inspector of elections appointed by the board under Corporations Code §7614 and shall perform his or her duties impartially, in good faith, to the best of its ability, and as expeditiously as is practical. Any report made by the inspector of elections is prima facie evidence of the facts stated in the report. In other words, the determinations made by the inspector of elections are final unless challenged and proved to be in error.

Without limiting the foregoing, the inspector of elections shall do all of the following:

## 10.1 Inspector of Elections.

The Inspector of Elections shall do all of the following:

10.1.1 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 twelve (12) point font, "The rules governing this election may be found here:" or (2) individual delivery.

10.1.2 Determine the number of memberships entitled to vote and the voting power of each;

10.1.3 Determine the authenticity, validity and effect of proxies;

10.1.4 Receive the ballots and determine the location to which all ballots are to be returned;

10.1.5 Hear and determine all challenges and questions to the balloting or election;

10.1.6 Count and tabulate all ballots;

10.1.7 Determine when the polls shall close;

10.1.8 Determine the results of the election or balloting;

10.1.9 Report the tabulated results of the election or balloting promptly to the Board of Directors; and

10.1.10 Perform such other acts as may be necessary to conduct the election or balloting in fairness to all Members and in accordance with applicable law and all rules of the Association.

10.2 The Inspector 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.

10.3 The Board of Directors 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 will not be able to perform his or her duties impartially in good faith, to the best of the Inspector's ability, as expeditiously as is practical, and in a manner that protects the interests of all Members of the Association, or if the Inspector ceases to meet



the qualifications to serve as described above.

10.4 The Inspector 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 Civil Code section 5100 et seq., these Rules, the Association's Governing Documents or as might otherwise be necessary to ensure a fair election 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 the Board of Directors. Note, however, that neither the Inspector of Elections nor the Association's legal counsel shall disclose to others, including the Board, how a particular ballot was cast.

11. Announcement of Results of Election.

The results of the election shall be promptly reported to the board of directors of the Association, shall be recorded in the minutes of the next meeting of the board, and shall be available for review by members of the Association. Within 15 days of the election, the board shall give general notice (as specified in Civil Code §4045) to the members of the tabulated results of the election.

12. Retention of Ballots.

After tabulation, election ballots shall be stored by the Association in a secure place for no less than 1 year after the date of the election. In the event of a recount or other challenge to the election process, the Association shall, on written request, make the ballots available for inspection and review by Association members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

13. Miscellaneous.

Other than the time frames set forth in Civil Code section 5100 et seq., the time frames stated in these Rules are guidelines, generally setting forth fair and reasonable procedures for the conduct of voting and elections. However, the failure of the Board or Inspector(s) to strictly adhere to these time frames will not invalidate any election or vote so long as the procedures used allow all Members an equal opportunity to participate in the election or voting process and did not affect the results of the election.

Election Operating Rules may not be amended less than 90 days prior to

an election CC 5105 (h).