

# ELECTION RULES

In accordance with requirements of the California Civil Code, the Board of Directors of the Homeowner's Association of Highland Palms Senior Estates & Country Club has adopted these Election Rules.

## 1. Effective Date:

These rules were adopted at a properly noticed open Board meeting held on Dec. 5, 2019 and were properly posted on and took effect as of that date. These election rules shall not be amended less than 90 days before any election.

## 2. Secret Ballot for Specified Matters

- A. Notwithstanding any other law or provision of the governing documents, the following matters require a vote by secret ballot in accordance with the procedures set forth herein:
- I. Any assessment legally requiring a vote;
  - II. Election and removal of Members of the Association's Board of Directors;
  - III. Amendments to the CC&Rs and Bylaws'
  - IV. The grant of exclusive use of common area property;
  - V. Any other matters requiring Membership approval under the CC&Rs and/or Bylaws.
- B. A quorum shall be required only if so stated in the governing documents of the Association or other provisions of law. If a quorum is required by the governing documents, each ballot received by the Inspector of Elections shall be treated as a Member present at a meeting for purposes of establishing a quorum. A quorum is 50 percent of the total number of lots in the development, which is equal to 267.5 and is rounded up to 268. The number will be noted on the voting instructions provided with each ballot.

## 3. Fairness in Elections

- A. The Association shall ensure that if any candidate or Member advocating a point of view is provided access to Association media, newsletters, or Internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and Members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election. The Association shall 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.
- B. The Association shall ensure access to the common area meeting spaces 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. Such use shall be subject to availability, as determined by the published monthly calendar and shall be limited to no more than two events per day, each of which may not exceed 2-hours in duration.
- C. Association funds shall not be used for campaign purposes in connection with any Association Board election. Association funds shall not be used for campaign purposes in connection with any other Association election, except to the extent necessary to comply with duties of the Association imposed by law. For the

purpose of this section, the term “campaign purposes” includes but is not limited to:

- i. Expressly advocating the election or defeat of any candidate that is on the Association election ballot
- ii. Including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot and ballot materials, within 30 days of an election, provided that this is not a campaign purpose if the communication is one which requires that equal access be provided to another candidate or advocate.

#### 4. Inspector of Elections

A. Ninety days prior to the date of the Annual Meeting, the Board shall, at an open meeting of the Board, select either one (1) or three (3) independent third party(ies) as Inspectors of Elections to:

- i. Ensure that the Association mails out the ballots and a copy of the election rules at least 30 days prior to the Annual Meeting;
- ii. Oversee all ballot measures and elections, including the election of Directors;
- iii. Hear and determine all challenges and questions regarding any aspect of the election;
- iv. Receive and maintain custody of all returned ballots;
- v. Determine when the polls shall close, consistent with the governing documents;
- vi. Conduct and Supervise the opening and counting of ballots;
- vii. Determine the tabulated results of the election results; and
- viii. Do such other acts as may be proper to conduct the election with fairness to all Members in accordance with the Davis-Stirling Act, the Corporations Code, and all applicable rules of the Association regarding the conduct of the election that are not in conflict with the Davis-Stirling Act.

B. For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a Member of the Association, but may not be a Member of, a candidate for, or a relative of a Member or candidate for, the Board of Directors. In addition, an independent third party may not be a person, business, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services other than serving as an inspector of elections.

C. The Inspector of Elections may appoint up to two deputies to assist in fulfilling the duties of the office. Said assistants are subject to the same restrictions as the Inspector, as outlined in paragraph B above.

D. At any time during the voting period, the Board of Directors may require from the Inspector of Elections a count of the number of the Members who have submitted ballot envelopes.

E. At any time during the voting period, the Board of Directors may require from the Inspector of Elections a list of the lot numbers of Members who have submitted ballot envelopes.

F. In the case of an election in which ballot counting is conducted at a Board meeting, the Board may, by majority vote, adjourn the meeting between 5 and 30

days. The Inspector of Elections may extend the voting period for the same period of time.

- G. The Inspector of Elections shall perform these duties impartially, in good faith, to the best of the Inspector's ability, as expeditiously as practical, and in a manner that protects the interest of all members of the Association. If there are three inspectors of elections, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors of elections is prima facie evidence of the facts stated in the report.

#### 5. Qualifications for Candidates

- A. The Association shall disqualify a person from nomination as candidate for not being a member at the time of nomination. If title to a separate interest parcel 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 these election rules.
- B. All candidates for the Association's Board of Directors must meet the qualifications defined in Article 5 of the Association's Bylaws, which include but are not limited to:
  - i. Having a recorded ownership interest in a lot in the development;
  - ii. Must not have a recorded co-ownership interest in a lot with another person who is a Member of the Board;
  - iii. Must not be delinquent by more than 30 days in the payment of any Assessment.
  - iv. Must not have been convicted of a crime which would prevent the association from obtaining a fidelity bond.
- C. Notwithstanding paragraph (iii) above, 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 person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:
  - i. The person has paid the regular or special assessment under protest pursuant to Civil Code Section 5658; or
  - ii. The person has entered into a payment plan pursuant to Civil Code section 5665.
- D. Before the Association disqualifies a person from nomination pursuant to this section, the Association must afford the person the opportunity to engage in Internal Dispute Resolution pursuant to Civil Code § 5900 et seq.

#### 6. Qualifications for voters

- A. In all matters submitted for a Membership vote, Members shall be entitled to one (1) ballot per Lot (regardless of the number of Members having an interest in the Lot).
- B. The Association shall not deny a ballot to a member for any reason other than not being a member at the time the ballots are distributed. For purposes of this paragraph, a member includes a person with general power of attorney for a member. A ballot cast by person with general power of attorney for a member must be counted if returned in a timely manner.
  - i. Where there is more than one owner of a property subject to the Association's CC&Rs, all such co-owners shall be Members and may attend any meeting of the Association, but only one co-owner shall be

entitled to exercise the vote to which the property is entitled. Fractional votes shall not be allowed.

- ii. Unless the Inspector of Election receives a written objection prior to the close of balloting from a co-owner, it shall be conclusively presumed that the voting Member is acting with the consent of his or her co-owners.

## 7. Nominations

- A. Each year at the last general Membership meeting before the deadline for submitting nominations, the Board shall solicit nominations of candidates for election to the Board of Directors. The solicitation also shall be published in Association media, newsletters, or Internet websites and posted on the public bulletin Board in the development.
- B. The notice shall include the qualifications for election to the Board of Directors.
- C. All nominations must be received no later than 30 days before the deadline for the membership to be given a list of the candidates and to be advised of the time and date of the Annual Meeting/vote.
- D. Nominations may be made in writing or from the floor during a Membership meeting. Qualified candidates may nominate themselves, provided they do so prior to the close of nominations.
- E. Write-in candidates are not permitted.

## 8. Balloting Procedures

- A. At least ninety (90) days prior to the Annual Meeting and at least 30 days before any deadline for submitting a nomination, the Association shall give notice of the election procedure & the deadline for submitting nominations and where to submit nominations. Members may request individual delivery of the nomination notice pursuant to Civil Code section 4040. Except for the meeting to count the votes required in section 9, an election may be conducted entirely by mail.
- B. At least 30 days before the ballots are distributed, the Board shall prepare a voter list and a candidate registration list. The voter list shall include each voter's name, voting power, lot number, and mailing address.
- C. At least 30 days before the ballots are distributed, the Association shall notify members of the right to verify the accuracy of their individual information on the voter list and the candidate registration list. The Association or member who discovers an error or omission on either of these lists must report the error or omission to the inspector of election who must make the correction within two business days.
- D. At least 30 days before the ballots are distributed, the Association shall give notice of:
  - i. The date, time, and address to return ballots;
  - ii. The date, time, and location of the meeting where ballots will be counted; and
  - iii. The list of candidates.
- E. At least 30 days before an election, the Inspector of Elections must mail, or cause to be mailed both of the following:
  - i. The ballot or ballots; and
  - ii. A copy of these election rules.
    - i. Delivery of these election operating rules may be accomplished by either of the following methods:
      - 1. 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:"; or

2. (ii) Individual delivery with the ballot package.

- F. Proxies and Cumulative voting are not permitted.
- G. A quorum is not required for election of Members of the Board of Directors.
- H. Ballots and two (2) preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered to every Member not less than thirty (30) days prior to the deadline for voting. In order to preserve voter confidentiality, a voter may not be identified by name, address, or Lot or parcel on the ballot.
  - i. The ballot itself 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 sealed. In the upper left-hand corner of the second envelope, the voter prints and signs his or her name and indicates the address or separate interest identifier that entitles him or her to vote.
  - ii. The second envelope is addressed to the Inspector of Election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector of Election. The Member may request a receipt for delivery.
  - iii. No ballots may be returned to any employee, officer or Board Member of the Association. An exception is made for ballots returned by mail to the Association office provided they are turned over unopened to the Inspector of Elections in a timely manner.
- D. The Ballot itself shall:
  - i. Set forth the proposed action;
  - ii. Provide an opportunity to approve or disapprove each item submitted for a vote;
  - iii. Set forth the number of ballots needed to satisfy the quorum requirement;
  - iv. Specify the percentage of votes required to pass the proposal; and
  - v. State a deadline by which the ballot must be returned in order to be counted.

## 9. Determining the Voting Outcome

- A. All votes shall be counted and tabulated by the Inspector of Election in public at a properly noticed open meeting of the Board of Directors or of the General Membership. A quorum of Members need not personally attend such a meeting. Any candidate or other Member of the Association may witness the counting and tabulation of the votes. No person, including a Member of the Association or a Member of the Board of Directors shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. However, the Inspector of Election, or his or her designee, may verify the Member's information and signature on the outer envelope prior to the meeting at which the ballots are tabulated.
- B. The tabulated 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 next meeting of the Board of Directors and shall be available for review by Members of the Association.
- C. In the event of a tie in an election for the Board, a runoff shall be held unless both candidates agree to allow the Inspector of Elections to determine the winner by a coin flip or by the drawing of names.

- D. Within 15 days of the election, the Board shall publicize the tabulated results of the election in a communication directed to all Members.

#### 10. Recounts

- A. Any Member of the Association may demand a recount provided:
  - i. it is made in writing to the Inspector of Elections within five days after the election results have been announced;
  - ii. the Member pays in advance for the cost of the recount. Monies advanced by the Member shall be refunded by the Association if the outcome of the election is changed by the recount; and
  - iii. The recount is conducted in a manner that preserves the confidentiality of the vote.
- B. The recount must commence not more than seven days following the request for the recount must be supervised by the Inspector of Elections. The recount may be observed by Members of the Association.
- C. No election materials may be touched or handled by any person without the express consent of the Inspector of Elections and under the supervision of the Inspector.

The results of the recount must be reported to the Board of directors and the Membership and must be recorded in the minutes of the next Board meeting.

#### 11. Custody of Election Materials

- A. The sealed ballots, signed voter envelopes, voter list, and candidate registration list shall at all times shall be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors 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.
- B. In the event of a recount or other challenge to the election process, the inspector (s) shall, upon 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.
- C. After the transfer of the ballots to the Association, the ballots shall be stored by the Association in a secure place for no less than one year after the date of the election.

#### 12. Conflict

In the event of a conflict between these rules and any provision of any other governing documents, the other governing documents (e.g. Articles, CC&Rs, Bylaws) shall control as provided for in Civil Code §4205, provided that the conflicting governing document provisions are consistent with the law.