

**ELECTION RULES**  
**for**  
**High Sierra Property Owners Association, Inc.**  
**(Adopted 11/30/2009)**  
**(Revised 3/10/2020)**  
**(Civil Code §5100 et seq.)**

Pursuant to Civil Code §5100 et seq., the Board of Directors (hereafter, the “Board”) of High Sierra Property Owners Association, Inc. (hereafter, the “Association”) hereby adopts the following rules governing elections at the Association:

**Access to Association Media**

Any candidate or member may have access to Association media for the purpose of stating their point of view for purposes related to any election, even if the Board's point of view is different. Currently, no media is available to the Members of the Association: In the event the Association allows candidates to submit or disburse written materials in connection with one’s candidacy for the Board, the Association will not edit any written materials submitted by a candidate or member but may state that the candidate or member, and not the Association, is responsible for the content [Civil Code §5105(a)(1)].

**Access to Common-Area Facilities**

Any candidate or member may have access to the Association common-area meeting space for the purpose of stating a point of view reasonably related to any election, at no cost, including candidates who are not incumbents. Currently, the Association has no common area meeting space. Access to common-area meeting space shall be subject to any and all rules that may be adopted by the Board from time to time. [Civil Code §5105(a)(2)].

**Qualifications for Candidates and Directors**

As of January 1, 2020, except as otherwise provided in Civil Code §§5105(b)(1) (“developer” exception) and (b)(2) (“legal entity owner” exception), anyone not a member at the time of nomination shall be disqualified from nomination as a candidate for a director position.

The current qualifications for board positions are set forth in the Association Bylaws, Article IV, Section 3. That said., after January 1, 2020, if the then current bylaws or election operating rules expressly provide, the Association may disqualify a person from nomination as a candidate for a director position, after giving the person the opportunity to engage in internal dispute resolution, ONLY as follows:

- (1) The Association may require a nominee for a board seat, and a director during their board tenure, to be current in the payment of regular and special assessments, which are consumer debts subject to validation (but not for nonpayment of fines, fines renamed as assessments,

collection charges, late charges, or costs levied by a third party), except if he person has paid the regular or special assessment under protest pursuant to Section 5658 or the person has entered into a payment plan pursuant to Section 5665. If the Association requires a nominee to be current in the payment of regular and special assessments, it shall also require a director to be current in the payment of regular and special assessments.

(2) The Association may disqualify a person from nomination as a candidate if the 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 separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.

(3) The Association may disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the Association from purchasing the fidelity bond coverage required by Section 5806 or terminate the association's existing fidelity bond coverage.

(4) 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 Article 2 (commencing with Section 5900) of Chapter 10.

### **Nomination Procedures**

The Board shall adopt reasonable procedures for nominating candidates to the Board; provided, however, any member of the Association can nominate himself or herself for election to the Board. [Civil Code §5105(a)(3)].

### **Uncontested Election**

Except as otherwise provided in Civil Code §§5100(a)(2), if, at the conclusion of the nominating process, the number of candidates is less than or equal to the number of open seats, the candidates nominated may be elected by acclamation and no balloting shall be required, provided that the Association has complied with all statutory notice and procedural requirements prior to the date when ballots must be sent out.

## **Inspector(s) of Elections: Selection and Duties**

There shall be one or three inspector(s) of elections appointed by the Board [Civil Code §§5110 (a). The inspector(s) of elections shall be appointed not less than ninety (90) days prior to the date of the election.

The inspector(s) of elections shall be an independent party or parties, not a Board Member and not a candidate. Inspector(s) of elections may include, but are not required to include, a notary public, a Certified Public Accountant, or a registered poll worker. The inspector(s) of elections may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract with the Association for any compensable services other than serving as an inspector of elections. The inspector(s) of elections shall do all of the following:

- Deliver, or cause to be delivered (i.e., the Association’s Board may authorize someone other than the inspector(s) to make delivery required herein), at least 30 days before an election, to each member both of the following documents [Civil Code 5105(g)(4)]:
  - The ballot or ballots
  - A copy of the election operating 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:”
    - Individual delivery
- Determine the number of memberships entitled to vote and the voting power of each;
- Determine the authenticity, validity, and effect of any proxies, if any;
- Receive ballots;
- Hear and determine all challenges and questions with regard to the right to vote;
- Count and tabulate the votes;
- Determine when the polls close, consistent with the governing documents;
- Determine the tabulated results of the election; and
- Perform any other acts that are necessary to the election, with fairness to all, and in accordance with Civil Code §§5100 et seq., the Corporations Code and all applicable rules of the Association regarding the conduct of the election that are not in conflict with Civil Code §§5100 et seq..

## **Notice, Voting and Ballots**

Pursuant to Civil Code §5115(a), the Association shall provide general notice (or individual notice if requested) to members at least 30 days before the nomination deadline for submitting a nomination form. Individual notice, if requested by a member, shall be delivered pursuant to Civil Code §4040.

Pursuant to Civil Code §5115(b), the Association shall provide general notice (or individual notice pursuant to Civil Code §4040, if requested) of all of the following at least 30 days before the ballots are distributed:

- (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.
- (2) The date, time, and location of the meeting at which ballots will be counted.
- (3) The list of all candidates' names that will appear on the ballot.
- (4) Notice to the members of the availability of a voter list for verification by members of the accuracy of the information thereon. Upon receipt of a report of an error in the candidate list or voter list (before the mailing of ballots), the Association or member shall report any errors or omissions to the candidate list or voter list to the inspector(s) of election at least 10 days before the ballots are to be distributed, who shall be required to make the corrections within two business days. [Civil Code 5015(a)(7)]

Ballots shall be mailed to all owners of record not less than thirty (30) days prior to the election. The polls shall be open from the time of the mailing of the ballots until they are closed by the inspector(s) of elections at the meeting called to count the ballots. If the Board establishes a record date for balloting purposes, then only the owners of record or their authorized representative, as of the date upon which the Association decided who can vote (The Record Date), shall be entitled to a ballot. Anyone who owns a separate interest, as of that date and is in good standing, is entitled to vote. If there is no record date, then owners of record or their authorized representative, as of the date of mailing, shall be entitled to a ballot. In the same time frame, the Association or the inspector(s) of election must deliver or cause to be delivered the election rules. Such rules may be delivered (1) by individual delivery (Civ. Code §4040) or (2) by posting the rules on an internet website and including the website address (URL) on the ballot with the phrase, in at least 12-point font: "The rules governing this election may be found here:" Ballot envelopes received by the inspector(s) must remain sealed until counting begins, but they may be logged in.

Ballots and two preaddressed envelopes with instructions on how to return the ballots shall be mailed to members as provided above. The ballots may be voted by owners of record or persons with a general power of attorney for the owners in the following manner [Civil Code §5115(a):

- The ballot will not have information on it that identifies the person voting the ballot;
- The ballot will be inserted into the first envelope;
- The first envelope will be inserted into the second envelope, which will be addressed to the inspector(s) of elections to be mailed or delivered to the address of the inspector(s) of elections. The second envelope shall be signed by the owner or other authorized person entitled to vote, together with an address and/or Lot number identifying the right to vote;
- If an owner grants another person the general power of attorney to vote, a copy of the written power of attorney signed by the owner shall be provided to the inspector(s) with the ballot Civil Code 5105(g)(2);
- If any person voting marks a ballot in a way that identifies the owner, the owner waives any right of privacy of the ballot;
- Any person voting may request a receipt for his or her ballot;
- The inspector(s) of elections shall designate the place for custody and storage of the ballots until delivered to the inspector(s) of elections at the meeting for opening and tabulation;
- Once a ballot is cast, it shall be irrevocable; and
- The inspector(s) of elections will be designated the "Ballot Collector" and ballots will be addressed to the inspector(s) of elections, c/o the Ballot Collector.

### **Proxies**

Voting by proxy shall be allowed; however, the Association will not mail proxies to owners. Any proxy that directs the manner in which a vote is to be cast, shall set forth the instruction on a detachable page that states how the proxy is to be cast and the proxyholder shall vote the proxy by secret ballot [Civil Code §5100 et. seq.].

Proxies shall not be used in lieu of a ballot at a meeting. If any proxies are submitted, they will be registered after the secret ballots have been registered to ensure no irrevocable ballot has also been received from the same member submitting the proxy. Proxies submitted by envelope are not permitted.

No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three (3) years from the date of execution. Every proxy continues in full force and effect until revoked by the person executing it prior to the vote pursuant thereto, except as otherwise provided in this section. Such revocation may be effected by a writing delivered to the Association stating that the proxy is revoked or by a subsequent proxy executed by the person executing the prior proxy and presented to the meeting, or as to any meeting by attendance at such meeting and voting in person by the person executing the proxy. A member's proxy shall be revoked upon conveyance of his or her Lot.

## **Counting Ballots**

The ballots shall be counted by the inspector(s) of elections at an open meeting called for that purpose and properly noticed. No members shall be denied a ballot and/or the right to vote for any reason. [Civil Code 5105(g)(1)] Candidates and members may watch the count [Civil Code §5120(a)]; however, they may not interfere with the count and must stand or sit at a distance that is not less than five (5) feet from the counting area.

No person, including a member of the Association shall open or review the ballots before they are counted by the inspector(s) of elections.

The results of the election shall be communicated to all members not later than fifteen (15) days after the election. The results shall be recorded in the minutes of the next meeting of the Board and shall be available for inspection upon request of any member [Civil Code §5120(b)].

## **After the Election**

The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times 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. If there is a recount or other challenge to the election process, the inspector or inspectors 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. [Civil Code §5125]

## **Applicability of Rules**

These rules shall apply to: Elections of the Board; amendments to the governing documents; assessment elections; votes to allow exclusive use of common area; and any other elections as specified in Civil Code §5100 et seq. as may be amended or replaced. These election rules may not be amended less than ninety (90) days prior to the election. [Civil Code §5105(h)].