

BALBOA TERRACE HOMES ASSOCIATION ELECTION RULES

On August 1, 2022 the Board adopted standards for election of directors by acclamation in uncontested elections in accordance with Assembly Bill 502 adopted by the California Legislature on October 2, 2021. The new provision was voted on and approved at the September 12, 2022 Board of Directors meeting.

Board of Directors Election by Acclamation

Assembly Bill 502 allows for election of directors by acclamation for uncontested elections where there are the same number of candidates running for election as there are open director seats. The following conditions contained in Civil Code Section 5103 must be satisfied for an election by acclamation:

1. The HOA must have held a regular election for directors in the last three years.
2. The HOA must provide individual notice to the members of the election and procedures for nominating candidates at least 90 days before the deadline for submitting nominations. The notice must include the following:
 - The number of board positions that will be filled at the election;
 - The deadline for submitting nominations;
 - The manner in which nominations can be submitted; and
 - A statement informing members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are board positions to be filled, then the board of directors may, after voting to do so, seat the qualified candidates by acclamation without balloting.
3. For a member who submits a nomination for a director position, the HOA must acknowledge receipt of the nomination within seven (7) business days. The HOA must also notify the nominee within seven (7) business days as to whether the nominee is qualified to be a candidate and, if not, the reason for the disqualification and the procedure to appeal the decision.
4. The HOA must then provide a reminder notice of the election and procedures between seven (7) and thirty (30) days before the deadline for submitting nominations. Such notice must contain the same information as the previous notice, and a list of the names of all of the qualified candidates to fill the board positions as of the date of the reminder notice.
5. After the above has all been completed as required, the HOA board must then vote to consider the qualified candidates elected by acclamation at a meeting for which the posted agenda item includes the name of each qualified candidate that will be seated by acclamation if the item is approved.

ARTICLE 1 GENERAL

- 1.1 Intent. These election rules (“Election Rules”) for Balboa Terrace Homes Association (“Association”) have been adopted with the intent to comply with California Civil Code (“Civil Code”) sections 5100 through 5145, including amendments to such sections and as adopted by the California Legislature as part of Senate Bill 323, effective January 1, 2020, and as part of AB-502 effective January 1, 2022, shall apply to voting by the record owners (the “Members” and each a “Member”) of Lots (hereafter defined) within

the Association regarding: (i) election or removal of members of the board of directors (collectively, "Board of Directors" and each a "Director") of the Association; (ii) annual and special assessments; (iii) amendments to the Association's governing documents; (iv) granting of exclusive use of common area property; and (v) at the discretion of the Board of Directors, any other matter that may be the subject of a vote of Members (any of the foregoing, an "Election"). In the event of any conflict between the Election Rules and Bylaws, the Bylaws shall govern, except as otherwise required by law. As used herein, the term "Lot" shall mean a "building site" as described in the Association's Articles of Incorporation ("Articles").

- 1.2 Effective Date. These Election Rules shall become effective upon the date of adoption by the Board of Directors.
- 1.3 Definitions. Unless separately defined within these rules, capitalized words have the same meaning as defined within the deed restrictions, sometimes known as the declaration of conditions, covenants, and restrictions ("Declaration") for the Association.
- 1.4 General Notice. Civil Code section 5115 requires the Association to provide general notice of Election matters. For the purposes of these Election Rules, "General Notice" shall mean notice provided by *one or more of the following methods*: (i) individual notice pursuant to Civil Code section 4040; (ii) inclusion with newsletters, billing statements, or other routine correspondence; *and/or* (iii) posting in a prominent location, presuming such location has been previously disclosed as the Association's annual policy statement.

ARTICLE 2 INSPECTOR OF ELECTIONS

- 2.1 Selection. Not less than ninety (90) days prior to the Election Date (as defined in section 5.4) for new Directors and not less than sixty (60) days prior to the Election Date for any other Election matter, the Board of Directors shall appoint one or three inspector(s) of Elections (each, an "Inspector of Elections" and collectively, the "Inspector(s) of Elections") who shall perform all of the functions required by Civil Code section 5105 and 5110, including:
 - (a) Voting Rolls. Determine the number of Members entitled to vote and the voting power of each;
 - (b) Ballot Custodian. Receive and be the custodian of ballots, and direct the location to which ballots shall be sent until tabulated by the Inspector(s) of Election;
 - (c) Correct Errors. Correct errors or omissions on the candidate registration list (if any) and/or voting list within two (2) business days of the errors or omissions being reported, with receipt of satisfactory documentary evidence;
 - (d) Review Challenges. Hear and determine all challenges and questions in any way arising out of or in connection with the right of Members to vote;
 - (e) Vote Tally. Count and tabulate all votes;
 - (f) Proxy Evaluation. Determine the authenticity, validity, and effect of proxies, if any;
 - (g) Poll Deadline. Determine when the polls shall close, with the discretion to extend the deadline for voting as necessary;

- (h) Results. Determine the results of the Election and report the results of the Election to the current Board of Directors.
- 2.2 Eligibility. Eligibility to serve as an Inspector of Elections:
 - (a) All Non-Candidate; Non-Serving Members. Any Members who are not current members of, or candidates for, the Board of Directors nor relatives of current members or candidates for the Board of Directors; and
 - (b) Independent Third-Party. An individual third party who is not currently employed or under contract with the Association for any compensable services other than serving as an Inspector of Elections.
- 2.3 Compensation. The Association may, at the discretion of the Board of Directors, provide reasonable compensation to the Inspector(s) of Elections.
- 2.4 Assistants. The Inspector(s) of Elections may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector(s) of Elections deem appropriate, provided that the appointed persons would themselves be eligible to serve as Inspector(s) of Elections.
- 2.5 Member Challenge. If a Member is selected to serve as the Inspector of Election, that appointment may be challenged by any Member by petition to the Board of Directors prior to the mailing of ballots. The effect of such a challenge shall be the requirement for the Board of Directors to secure a qualified non-Member for the position.
- 2.6 Indemnification. The Association shall indemnify, defend, and hold harmless any Inspector of Elections, and any agents or employees of an Inspector of Elections, and any volunteers assisting an Inspector of Elections regarding any Election, unless the claim is due to gross negligence or willful misconduct.
- 2.7 Use of Association Legal Counsel. Each Inspector of Elections shall have the right to directly consult with the Association's legal counsel regarding any matter related to an Election, Vote Tabulation Meeting, or vote by the Members.

ARTICLE 3 OBLIGATIONS OF THE INSPECTOR(S)

- 3.1 Pre-Election. Prior to the Election, the Inspector(s) of Elections shall do the following:
 - (a) Eligible Voter List. Review and verify an eligible voter list which identifies each Member eligible to vote, their mailing address, lot or unit identification, and the voting power of each Member. The list may be created by the Association.
 - (b) Eligible Candidate List. Review and verify a list of all eligible candidates for inclusion on the ballot.
 - (c) Ballot Inspection. Review and verify the ballot prior to mailing and ensure compliance with ballot contents described in Section 5.7, below.
- 3.2 During Voting Period.
 - (a) Receive Ballots. Inspector(s) of Elections shall monitor the receipt of submitted ballots in a manner that ensures they are not tampered with following their receipt. Inspector(s) of Elections may direct administrative staff to maintain a log of all

received ballots, noting whether the envelope was signed or not. An Inspector of Elections may contact Members and seek their signatures upon the envelope if missing.

- (b) Effect of Receipt. Regardless of signature, a ballot is irrevocable once received by the Inspector(s) of Elections.
- (c) Proxy Votes. If proxy voting is prohibited by the Bylaws, proxy voting shall not be permitted. If permitted based on the Election matter, and the Association issues proxy forms, it shall do so in a manner that allows the Inspector of Elections to validate the proxy and issue a separate secret ballot to the proxy holder.

3.3 Examination of the Ballots. At the appointed time, the Inspector(s) of Elections shall:

- (a) Open Meeting. The tabulation of the vote shall occur at a properly noticed open meeting.
- (b) Quorum. If a quorum is necessary for the matter being voted upon, each received ballot shall be treated as a Member present at the meeting.
- (c) Proxies. The Inspector(s) of Elections shall evaluate the proxy forms prior to issuance of a ballot to a proxy holder.
- (d) Signature Verification. The Inspector(s) of Elections, or their designees, may verify the signatures upon the outer envelope prior to the time of tabulation. At the time of tabulating the vote, the Inspector(s) of Election may announce and permit a Member to sign, any envelope they failed to sign at time of mailing.
- (e) Witnesses. Any Member may witness the counting and tabulation of the ballots, however, no Member may communicate with an Inspector of Elections during the process and must remain at least five (5) feet away from the ballots. The Inspector of Elections shall have the power to remove any observer who interferes with the tabulation process.
- (f) Announcement of Results. The Inspector of Elections shall announce to all present the results of the Election and deliver that information to the then-serving Board of Directors present at the open meeting for recordation in the minutes of the meeting.

3.4 Retention of Materials. The Inspector of Elections shall maintain all documentation, including signed outer envelopes and votes until one (1) year following the tabulation of votes. Unless requested by the Association, the Inspector of Elections may dispose of the materials at that time.

3.5 Effect of a Tie.

- (a) Election for a Director Position. A tie vote between two candidates for Director shall be resolved by the placing of both names into a bowl for selection at random by the then-serving president of the Board of Directors or her or his designee.
- (b) Election Involving Other Matters. A tie vote with respect to any matter other than Election of Directors results in such proposal not passing.

ARTICLE 4 CANDIDATE NOMINATIONS

- 4.1 Notice of Nomination Period. At least thirty (30) days prior to the Nomination Date (defined below), the Association shall provide General Notice of the procedure and deadline for nomination of candidates for the Board of Directors. “Nomination Date” shall mean the deadline on which candidate nominations are due, which date shall not be later than sixty (60) days prior to the Election Date.
- 4.2 Procedure for Nomination – Self-Nomination. On or before the Nomination Date, Members may nominate any Member, including themselves, as candidates for the Board of Directors or other open positions, as applicable, by notifying the Association’s managing agent or Board of Directors in writing. Each nominee must declare herself and himself free of any past criminal conviction that would prevent the Association from maintaining fidelity bond coverage required by Civil Code section 5806.
- 4.3 Procedure for Nomination – By Board of Directors. The Board of Directors may directly nominate candidates for the Board of Directors, subject to the same deadlines and disclosure obligations for self-nominated Members.
- 4.4 Disqualifying Facts. A candidate shall be disqualified for any of the following reasons:
- (a) Membership. A candidate must be a Member of the Association prior to the close of nomination;
 - (b) Current on Assessments. A candidate shall not have unpaid regular or special assessments, to the extent the bylaws require the same of Directors on the current Board of Directors;
 - (c) Criminal Conviction. The candidate may not have a criminal conviction that would prohibit the Association from maintaining fidelity bond coverage required by Civil Code section 5806.
 - (d) Joint Ownership. The Articles provide that Members having joint ownership of a single separate Lot shall collectively constitute one Member and be entitled to one vote for each Lot. Accordingly, a Member having joint ownership of a single separate Lot shall not be a candidate if, following his or her election, such candidate would serve on the Board of Directors at the same time as another person who holds a joint ownership interest in the same Lot as such candidate, and the other person is either properly nominated for the current Election, or is an incumbent Director.

ARTICLE 5 BALLOTS

- 5.1 Generally. With respect to any matter which is subject to the vote of Members as required by the Association’s governing documents or by law, the Association shall prepare and distribute a ballot to each Member as provided in these Election Rules.
- 5.2 All Candidates. The ballot for candidates for the Board of Directors shall include all candidates for the positions being voted on in the Election, listing each candidate by name, in alphabetical order based on last name.
- 5.3 Any Other Matter. The ballot for any Election matter other than Election of Directors shall contain such matter that is the subject of a Member vote.

- 5.4 Notice of Ballots. At least thirty (30) days prior to the distribution of ballots, the Association shall provide General Notice to the Members of:
- (a) The date and time by which ballots for any Election matter must be returned (“Election Date”);
 - (b) The location to which physical ballots must be returned;
 - (c) The name of the Inspector(s) of Elections.
 - (d) The list of all candidates names that will appear on the ballot.
- 5.5 Member Eligibility To Vote. Each Member shall be entitled to a single vote with regard to each matter subject to a vote on the ballot. Pursuant to the Articles, for the purposes of voting, all record owners of a single separate Lot shall collectively constitute one Member. A Member shall not be denied a ballot unless she or he was not a Member at the time the ballots were distributed. A party holding a general power of attorney may exercise the voting rights of the Member.
- 5.6 Verification of Member Information. A Member may verify or correct, through satisfactory documentation, any individual information on the Association’s voting list by presenting such documentation to the Inspector(s) of Elections.
- 5.7 Ballot Contents. The ballot shall include:
- (a) Two Sealable Envelopes. One envelope shall have no markings to identify the voter and shall be identified as the “Voting Envelope”. The other envelope shall be marked as the “Mailing Envelope” and shall be pre-addressed to the address determined by the Inspector(s) of Election. The Mailing Envelope shall identify the Member, address, and unit or lot number as appropriate. It shall include a space for the Member to sign her or his ballot;
 - (b) Instructions. Information to aid the Member in properly submitting her or his secret ballot pursuant to the double-envelope ballot procedure;
 - (c) Voting Quorum, Deadline, And Meeting. Notice of the initial date and time the ballot must be received, as well as notice for the date and time of the meeting at which the ballots will be opened and tabulated (“Vote Tabulation Meeting”), provided a quorum is established by the receipt of cast ballots. The notice shall also include the quorum requirements and a statement that the balloting period may be extended if sufficient ballots have not been received to establish a quorum;
 - (d) Election Rules. Either a copy of these Election Rules or posting to an internet website with notice to the Member, in at least 12-point font, “The rules governing this Election may be found here:”

ARTICLE 6 CANDIDATE STATEMENTS; ACCESS TO ASSOCIATION MEMBERS

- 6.1 Candidate Statements. All qualified candidates shall provide a “candidate statement” consisting of a brief summary of her or his qualifications, achievements and/or interest in serving on the Board, in one hundred (100) words or less, which shall be included with the ballot materials and other media.

- 6.2 Advocacy Blackout. No candidate, Member, or the Association or its Board of Directors, shall be allowed to access any form of Association media, including but not limited to communication materials such as newsletters, bulletin boards, websites, or social media pages to advocate for a point of view other than as contained in an existing candidate statement between the time the ballots are mailed and the polls close. The term “Association media” shall not include direct mail, personal delivery, or individual emails.
- 6.3 Not Advocacy. The following items shall not be deemed advocacy:
- (a) Get Out The Vote. Efforts to promote and encourage Members to cast their votes, “Get Out The Vote”.
 - (b) Descriptions of The Election Purpose. If a rule change is being proposed, a description of the purpose and effect of the rule change may be provided, however, the description may not advocate for passage of the change.
 - (c) Annotated Text of The Measure. A factual summary of the changes to the governing documents accompanying the text of the proposed amendments shall be permitted, however, the description must not advocate for passage of the amendment.
- 6.4 Equal Access. Each candidate, prior to the blackout period described in Section 6.2, above, shall be granted equal access to Association media (websites, newsletters, social media pages, etc.) to the extent the Association permits advocacy materials to be posted by any party. If the Association permits advocacy materials, the Association shall include candidate and Member advocacy statement requirements with the notice provided pursuant to Section 4.1 (for Election of Directors) or 5.4 (for all other Elections) to ensure all parties have equal access by adopting word limits applicable to each candidate.
- 6.5 Association Funds Prohibited. The Association may not expend Association funds towards advocacy efforts. The Association may expend funds on Get Out The Vote efforts.
- 6.6 Section 5105(a)(1) Compliance. The above sections specify the manner in which the Association shall comply with Civil Code section 5105(a)(1).

ARTICLE 7 ADDITIONAL PROCEDURES

- 7.1 Notification of Election Results. The current Board of Directors shall cause notice of the results of the Election be transmitted to all Members within fifteen (15) days of the Vote Tabulation Meeting.

- 7.2 Recount; Challenge. In the event of a recount or challenge to the determination, the Inspector of Elections, upon a written request, shall make available the Election materials to the Member challenging the Election or their representative. The mailing envelopes may be inspected but may not be copied. The Association shall be entitled to redact anyone's mailing address of any Member who has opted out of the Membership List and voter list. Any recount shall be conducted in a manner to retain the confidentiality of the vote.

ARTICLE 8 ELECTION COMMITTEE

- 8.1 Appointment of Election Committee; Qualification. Not less than ninety (90) days prior to the Election Date for new Directors and not less than sixty (60) days prior to the Election Date for any other Election matter, the Board of Directors shall appoint a committee ("Election Committee"), which shall be comprised of three (3) Members of the Association, who are not current members of, or candidates for, the Board of Directors, nor relatives of current members or candidates for the Board of Directors, nor residing in the same household as a current member or candidate for the Board of Directors, nor engaged in a business relationship with a current member or candidate for the Board of Directors, nor otherwise deemed to have a conflict of interest, including with respect to any current Director or candidate for Election to the Board of Directors.
- 8.2 Committee Responsibilities. The Election Committee shall solicit nominations for candidates for Election to the Board of Directors consistent with these rules and applicable law; promote and encourage Members to cast their votes in any Election (including "Get Out The Vote"); and assist the Inspector(s) of Elections and members of the Board of Directors in carrying out their duties as described above. The Election Committee shall report to the Inspector(s) of Elections.

**Exhibit “A”
Elections Checklist
and Timeline**

The dates shown below are the minimum necessary dates. The Association can choose to extend the time for each, but doing so may require earlier compliance with a deadline.

90 Days (at least) Before Election Day: This is the date by which the Association must notify Members of any deadlines for submitting a nomination for an open position on the Board of Directors. (If the Election does not involve candidates for the Board of Directors, see below.)

Tasks:

- ☐ The Board of Directors shall select an Inspector of Elections and Election Committee. If Election is for other than Election of candidates for Board of Directors, this may occur at Election Day -60.
- ☐ The Board of Directors shall determine the date upon which the Election of candidates for Board of Director will be held and the deadline for nomination for candidates for at a public meeting.
- ☐ Members must be notified of the Election date and procedures to self-nominate for open positions.
- ☐ The Board of Directors shall decide whether to permit candidate and Member advocacy statements and all applicable requirements if statements are permitted.

60 Days (at least) Before Election Day: This is the date Members shall be given General Notices about the Election. If the Election does not involve candidates for the Board of Directors, this may serve as the first Election-related deadline.

Tasks:

- ☐ Verify Candidate List.
- ☐ Verify Members eligible to vote along with associated information.
- ☐ Verify date, time, and location for Vote Tabulation Meeting.
- ☐ Verify date, time, and location for returning ballots.
- ☐ Ensure Association provides this information to its Members.

30 Days (at least) Before Election Day: This is the day the ballots must be sent to the Members.

Tasks:

- ☐ Verify the ballot packet
- ☐ Enclose Election Rules or provide website notice
- ☐ Provide voting instructions
- ☐ Date, time, & address for mailed return
- ☐ Date, time, & location for Vote Tabulation Meeting.

- ☐ Voting Envelope – Identified as where to place the ballot
- ☐ Mailing Envelope – Identified as such including spaces for:
 - ☐ Identification of voter
 - ☐ Place for signature
 - ☐ Mailing address of Inspector of Elections
- ☐ Ensure ballots are mailed on this date.

Election Day: This is the day the ballots will be retrieved, opened, and tabulated.

Tasks:

- ☐ Gather mailing envelopes.
- ☐ If an envelope is missing a signature, Inspector of Elections may announce the Member's name to allow him or her to sign the ballot. Because the ballot was irrevocable once received, the Member cannot substitute an in-person vote for the mailed ballot. If not signed, the ballot may be rejected and remain unopened.
- ☐ Identify whether sufficient ballots have been received to allow the Election to continue.
- ☐ Open each outer envelope and place the voting envelope in a separate pile.
- ☐ Mix the inner envelopes to ensure the secret ballot remains secret.
- ☐ Open each inner envelope and tabulate the result.
- ☐ Announce the final result before all assembled.
- ☐ Provide a written statement of the voting results to the Board of Directors members present.
- ☐ The results should be recorded in the minutes of the Vote Tabulation Meeting.

Within 15 Days of Election Day: The Board of Directors shall communicate the result of the Election to all Members within 15 days.

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