

**Election and Voting Rules  
For  
Seacliff Beach Colony Homeowners Association**

These rules and procedures are designed to provide for a fair and reasonable process for the election of directors to the Board and other matters to be voted on by members of the Association, as required by Civil Code Sections 5100, et seq., and any successor statute. These rules are intended to comply with Civil Code Sections 5100, et seq., and any successor statute.

**1. Qualifications for the Director Nominees.**

A.) Owners. Nominees and candidates for a director position on the Board of Directors must be members of the Association, at the time the person is nominated. Non-members (non-owners) are disqualified as nominees or candidates for any director position on the Board. A member who is a corporation, LLC, or similar non-natural person, may appoint a natural person to act, vote and serve, which appointment should be filed with the Secretary of the Association.

B.) Criminal Convictions. The Association may disqualify a nominee or candidate for a director position if that nominee or candidate 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 Civil Code Section 5806, or terminate the Association's existing fidelity bond coverage.

C.) Delinquent Assessments. The Association may disqualify a nominee or candidate for a director position, if the nominee or candidate is more than 60 days delinquent in the payment of any regular and special assessment, at the time the person is nominated. The Association may not disqualify a nominee or candidate for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The Association shall not disqualify a nominee or candidate for failure to be current in payment of regular and special assessments if any of the following circumstances are true:

- i) The nominee or candidate has paid the regular assessment or special assessment under protest pursuant to Civil Code Section 5658.
- ii) The nominee or candidate has entered into a payment plan pursuant to Civil Code Section 5665.

D.) Co-Owners. If the nominee or candidate, if elected, would be serving as a director on the Board at the same time as another person who holds a joint ownership interest in the same lot as the nominee or candidate and the other person is either first properly nominated for the current election or an incumbent director, then the nominee or candidate may be disqualified by the Association as a nominee or candidate.

Additionally, the Association shall not disqualify a person from nomination as a nominee or candidate for a director position, if the person has not been provided the opportunity to engage in internal dispute resolution with the Association as provided in Civil Code Section 5900, et seq.

**2. Nomination Procedures.** Nominations for a director may be made by any member of the Association. A member may nominate himself or herself as a candidate for a directorship. All nominations shall be submitted, in writing, to the Board or nominating committee (appointed by the Board), if any, as stated in the notice to the members.

Additional nomination procedures are set forth in Section 7.5 of the Bylaws, which states: "The Board may [also] solicit candidates to run for the Board. If so, the Board shall notify them of (i) the date for the close of candidate applications; (ii) the date of the meeting at which the ballots will be counted or, in the alternative, the

date for the election of Directors by ballot without a meeting; (iii) the qualifications to serve on the Board; and (iv) whether write-in candidates or nominations from the floor at the annual Members' meeting will be accepted. Qualified candidates whose names are submitted prior to the close of candidate applications shall have their names printed on any ballots and/or proxies distributed to the membership after close of candidate applications."

**3. Notice of Nomination Procedures.** The Association shall provide general notice (first-class mail or other methods described in Civil Code Section 4045) of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice (first-class mail or other methods described in Civil Code Section 4040) shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

**4. Voting Power.** Only one ballot may be cast per lot. If more than one ballot per lot is cast, then all such ballots for the lot shall not be counted to determine the election, but one such ballot per lot may be counted for quorum purposes.

**5. Cumulative Voting.** Cumulative voting is not allowed pursuant to Section 4.14(a) of the Bylaws.

**6. Proxies.** A proxy means a written authorization signed by a member of the Association or the authorized representative of the member that gives another member or members the power to vote on behalf of that member. Proxies need not be distributed by the Association to the membership. All proxies for the election of any director must be presented to the Association no later than the time scheduled for the start of the election. When a dispute arises, the Inspector(s) of Elections shall determine the authenticity, validity, and effect of proxies and ballots. Instructions, if any, given in a proxy issued for an election that directs the manner in which the proxy-holder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy-holder to retain. The proxy-holder shall cast the member's vote by secret ballot, unless the proxy is revoked prior to receipt of the secret ballot by the Inspector(s) of Elections. Proxies will be checked in after secret ballots have been checked in to be assured that no irrevocable ballots have been checked in for the same member. A proxy may not be used as a ballot; instead, a proxyholder will be issued a ballot to vote. Proxies may not be used in the election of directors if there is no election meeting, as provided in Section 7.4 of the Bylaws.

**7. Voting Period.** Voting shall begin at the time ballots are mailed or distributed to the members, and the voting shall end as follows: 1) if voting is at a member's meeting, then the voting ends by motion from the members or Board to close the voting period, or 2) if the voting is by mail only, without voting at a members' meeting, then the voting ends as specified on the written ballot and/or notice to the members. The election of directors may be held at a meeting of the members of the Association, or without an election meeting (see Section 7.4 of the Bylaws). Members shall be provided a voting ballot at least 30 days prior to the election date or election deadline date. Except for the election of directors, the Board of Directors may extend the voting period to allow more time for members to vote. For an election of directors, where there is a lack of a quorum of members, the election date and voting end date may be continued as provided in Section 6.2(b) of the Bylaws (not less than 6 days nor more than 30 days from the original deadline).

**8. Appointment of Inspectors of Elections.** Either one or three Inspector(s) of Elections shall be appointed by the Board. If any Inspector(s) of Elections fails to appear at the election meeting or fails and/or declines to act as an Inspector, then replacement Inspector(s) of Elections may be appointed by the Board.

**9. Qualifications of Inspectors of Elections.** The Association shall select an independent third party or parties as an Inspector(s) of Elections. Inspector(s) of Elections shall not be candidates for the Board or related to any candidate for the Board. An independent third party may be a member of the Association; however, Inspector(s) of Elections shall not be any director of the Board or related to any director of the Board. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for any compensable services, other than serving as Inspector(s) of Elections. The manager or other persons currently employed or under contract to the Association for compensable services shall not be appointed as Inspector(s) of Elections.

**10. Duties of Inspectors of Elections.** The Inspector(s) of Elections shall do all the following:

- A.) Determine the number of memberships entitled to vote and the voting power of each.
- B.) Determine the authenticity, validity, and effect of proxies and ballots.
- C.) Receive ballots from the members.
- D.) Verify (or designate someone to verify) the member's information and signature on the outer ballot envelope prior to the meeting at which ballots are tabulated.
- E.) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
- F.) Count and tabulate all votes. All votes shall be counted and tabulated by the Inspector(s) of Elections in public at a properly noticed open meeting of the Board of Directors or members. Any candidate or other member of the Association may witness the counting and tabulation of the votes, but shall not interfere with the counting and tabulation of the votes.
- G.) Determine when the polls opened or closed to determine timely receipt of ballots.
- H.) Determine the result of the election.
- I.) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with Civil Code Sections 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 Sections 5100, et seq., or any successor statute.
- J.) An Inspector of Elections shall perform his or her duties impartially, in good faith, to the best of the Inspector of Elections' ability, and as expeditiously as is practical, and in a manner that protects the interest of all members of the Association.
- K.) If there are three Inspectors of Elections, then 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(s) of Elections is *prima facie* evidence of the facts stated in the report.
- L.) Appoint or oversee additional persons, if needed, to count and tabulate votes, provided that such additional persons are independent third parties.

**11. Before Distribution of Ballots.** The Association must provide general notice (first-class mail or other method provided by Civil Code Section 4045) of all of the following at least 30 days before the ballots are distributed:

- A.) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the Inspector(s) 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.
- D.) Individual notice (first-class mail or other methods described in Civil Code Section 4040) of the above paragraphs (A, B, and C) shall be delivered pursuant to Civil Code Section 4040, if individual notice is requested by a member.

**12. Retention of Election Materials.** The Association must keep both 1) a candidate registration list, and 2) a voter list.

The voter list shall include name, voting power, and either the physical address of the voter's lot, the parcel number, or both. The mailing address for the ballot 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 must allow 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 must report any errors or omissions on either list to the Inspector(s) of Elections who shall make the corrections within two business days.

**13. Secret Written Ballot.** The election of directors shall be held by secret written ballot in accordance with the procedures set forth in these rules. Once a secret ballot is received by an Inspector(s) of Elections, it is not revocable. Ballots shall be counted as "attendance" at the meeting for quorum purposes for the matter being voted upon. If so notified by the Board, for the election of directors, write-in candidates may be added by a member to the member's individual ballot provided the candidate is qualified as set forth in Section 1 above, and the write-in candidate was nominated from the floor at the election meeting.

**14. Denial Ballots.** Neither the Association nor the Inspector(s) of Elections shall deny a ballot to: A) a member for any reason other than not being a member at the time when ballots are distributed, or B) to a person with general power of attorney for a member and the general power of attorney has been provided to the Association. The ballot of a person with general power of attorney for a member must be counted if returned in a timely manner.

**15. Delivery of Ballots and Rules.** The Inspector(s) of Elections must deliver, or cause to be delivered, at least 30 days before an election, to each member both of the following documents:

A.) The ballot or ballots.

B.) A copy of the election operating rules. Delivery of the election operating rules may be accomplished by either of the following methods:

i) 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:".

ii) Individual delivery (first-class mail or other methods in Civil Code Section 4040).

**16. Confidentiality of Ballots.** Ballots and two pre-addressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the Association to every member not less than 30 days prior to the date of the election. Only ballots and envelopes issued by the Association are the "official" voting documents. Other ballots and envelopes shall not be used by any member. If these official voting documents are lost or misplaced, then official replacement voting documents may be obtained from the Association. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The Association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

A.) The ballot itself is not signed by the voter, but is inserted into an envelope that is then sealed. This first envelope does not identify the voter in any way. This first envelope is inserted into a second envelope, which is then sealed. In the upper left-hand corner of the second (outer) envelope, the voter signs the voter's name, prints the voter's name, and prints the address of the voter's lot in the development.

B.) The second envelope is addressed to the Inspector(s) of Elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector(s) or delivered to the Inspector(s) at the meeting where the election is held. The member may request a receipt for delivery.

C.) No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

**17. Replacement Voting Ballots and Envelopes.** In order to help reduce confusion and the risk of voter fraud, only ballots and envelopes issued by the Association are the “official” voting documents, which may be used for voting. Other ballots and envelopes shall not be used by any member. If these official voting documents are lost, stolen, or misplaced then a replacement official voting ballot and voting envelopes can be reissued by the Association. The Inspector(s) of Elections shall verify whether or not the Inspector(s) of Elections has already received a ballot from the member (or for the member’s lot). An official replacement ballot and voting envelopes can be issued, if the Inspector(s) of Elections determines that a ballot has not already been received for the member’s lot. For any election of directors, a member requesting an official replacement voting ballot and envelopes shall provide a signed written statement to the Association which states that the member requests an official replacement ballot and official voting envelopes. The signed written statement from the member must also state the reasons why a replacement ballot and envelopes are being requested (lost, stolen, misplaced, etc.) and state that the original ballot has not been cast or voted, and will not be cast or voted, and the member understands that ballots are not revocable, as provided in these election rules. If the election is for anything other than the election of directors, then, without any request from a member for an official replacement ballot, the Association may reissue ballots to any member who has not returned a ballot for the election.

**18. Return of Ballots to Inspectors.** All ballots must be returned, as addressed, to the Inspector(s) of Elections designated by the Board no later than the time scheduled for the election meeting to begin, or as otherwise set forth in Section 7 above. The Inspector(s) of Elections may review the returned unopened ballot envelopes to determine which members have returned ballots. This will help identify members still needing to return ballots and whether those members should be given another ballot to encourage voting.

**19. Counting Ballots.** All ballots must be counted and tabulated in public so that candidates or the members may, if they so choose, view, but not interfere with, the counting and tabulation. The ballots must be counted and tabulated at a noticed meeting of the Association. In order to maintain the confidentiality of the votes, the Inspector(s) of Elections may first open each outer envelope which has a member’s identifying information on the outside of the envelope, then the Inspector(s) of Elections may shuffle the inside blank envelopes containing the ballots, then open the blank envelopes, and count the ballots. The Inspector(s) of Elections may use an alternate method to open the envelopes and ballots so as to help preserve the confidentiality of the votes.

**20. Voting Results.** The results of the election shall be promptly reported to the Board and 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 publicize the tabulated results of the election in a communication directed to all members.

**21. Storage of Ballots.** The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) of Elections until after the tabulation of the vote, and until the time allowed by Civil Code Section 5145 for challenging the election has expired (at least one year), at which time custody shall be

transferred to the Association. The ballots may be sealed in an envelope or other container so as to preserve the ballots. The seal may be signed by the Inspector(s) of Elections.

**22. Recount.** If there is a recount or other challenge to the election process, the Inspector(s) of Elections shall, upon written request from a member, make the ballots available for inspection and review by an Association member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote. The recount shall be conducted in an open Board meeting that is open to the members and the Board to observe the recount. The recount shall be conducted by the Inspector(s) of Elections and others, at the request of the Inspector(s) of Elections. No one shall interfere, in any manner, with the recount by the Inspector(s) of Elections. Any member requesting a recount must do so, in writing, to the Inspector(s) of Elections. The request for the recount must state the name of the member, the member's address within the Association, and the request must be signed by the member. The request for the recount must be made within 30 days after the results of the election have been publicized to the members as provided in Section 20 above. Within 10 days of the request for a recount, the member requesting the recount shall pay the estimated costs of the recount (not to exceed \$300.00) to the Association. If the estimated costs of the recount are not paid, as required, then the request for the recount shall be void and of no effect. The date of the recount shall be within 30 days of the date of the payment to the Association of the estimated costs of the recount. The results of the recount shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board.

**23. Campaign 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 duties of the Association imposed by these election rules and by law. The Association may mail candidate statements received prior to mailing of the ballots to the members. "Campaign purposes" include, but are not limited to, the following:

A.) Expressly advocating the election or defeat of any candidate that is on the Association election ballot.

B.) Including the photograph or prominently featuring the name of any candidate on a communication from the Association or its Board, excepting the ballot and ballot materials, within 30 days of an election. However, it is not a campaign purpose if the communication is one for which Sections 24 and 25 below require that equal access be provided to another candidate or advocate.

**24. Access to Meeting Space.** The Association shall allow access to the common area meeting space, if any exists, 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.

**25. Access to Media.** The Board may prohibit the use of the Association's media, newsletters, or internet web sites, if any, for campaigns or to advocate a point of view related to an Association election. However, if any candidate or member advocating a point of view is provided access to the Association's media, newsletters, or internet web sites, if any, during a campaign, then all candidates or members advocating a point of view shall be provided access to the Association's media, newsletters, or internet web sites, if any, 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. The Association and its directors, officers, managers, employees, and agents shall not be liable for the content of those communications.