

# DAVIS-STIRLING ACT

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## **Civil Code § 5105. Election Rules.**

(a) An association shall adopt operating rules in accordance with the procedures prescribed by Article 5 (commencing with [Section 4340](#)) of Chapter 3, that do all of the following:

(1) 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.

(2) Ensure 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.

(3) Specify the qualifications for candidates for the board and any other elected position, subject to subdivision (b), and procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member from nominating themselves for election to the board.

(4) Specify the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.

(5) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods:

(A) Appointment of the inspector or inspectors by the board.

(B) Election of the inspector or inspectors by the members of the association.

(C) Any other method for selecting the inspector or inspectors.

(6) Allow the inspector or inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties who meet the requirements in subdivision (b) of [Section 5110](#).

(7) Require retention of, as association election materials, both a candidate registration list and a voter

list. The candidate list shall include name and address of individuals nominated as a candidate for election to the board of directors. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, 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 separate interest or if only the parcel number is used. The association shall permit 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 shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.

(b) An association shall disqualify a person from a nomination as a candidate for not being a member of the association at the time of the nomination. An association shall disqualify a nominee if that person has served the maximum number of terms or sequential terms allowed by the association. A director who ceases to be a member shall be disqualified from continuing to serve as a director.

(1) This subdivision does not restrict a developer from making a nomination of a nonmember candidate consistent with the voting power of the developer as set forth in the regulations of the Department of Real Estate and the association's governing documents.

(2) 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 this article.

(c) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of Section 5105 only, an association may disqualify a person from nomination as a candidate pursuant to any of the following:

(1) Subject to paragraph (2) of subdivision (d), an 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. If an 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) An 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) An association may disqualify a nominee if that person has been a member of the association for less than one year.

(4) An 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 insurance required by [Section 5806](#) or terminate the association's existing insurance coverage required by [Section 5806](#) as to that person should the person be elected.

(d) An association may disqualify a person from nomination for nonpayment of regular and special assessments, but 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:

(1) The person has paid the regular or special assessment under protest pursuant to [Section 5658](#).

(2) The person has entered into and is in compliance with a payment plan pursuant to [Section 5665](#).

(e) An 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.

(f) If an association disqualifies a nominee pursuant to this section, an association in its election rules shall also require a director to comply with the same requirements.

(g) Notwithstanding any other law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots.

(h) Notwithstanding any other law, the rules adopted pursuant to this section shall do all of the following:

(1) Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.

(2) Prohibit the denial of a ballot to a person with general power of attorney for a member.

(3) Require the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner.

(4) Require the inspector or inspectors of elections to 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.

(iii) Election operating rules adopted pursuant to this section shall not be amended less than 90 days prior to an election.

*(Amended by Stats. 2023, Ch. 770, Sec. 4. (AB 1764) Effective January 1, 2024.)*



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