

PRADERA

RULES & REGULATIONS

ELECTION RULES

The following election procedures for Pradera Neighborhood Association ("Association") are updated pursuant to California Civil Code Sections 5100, 5105, 5110, 5115, 5125, 5145 and 5200.

Pursuant to California Civil Code Section 5105(h), these election operating rules shall not be amended less than 90 days prior to an election.

I. APPLICATION OF RULES

- 1.1 Applicability [Civil Code §5100(a)(1)].** Notwithstanding any other law or provision of the governing documents, an election within a common interest development shall be held by secret ballot in accordance with the procedures set forth in this section regarding any of the following:
- a) Approval of an assessment increase above the levels allowed to be made by the Board pursuant to Civil Code § 5605;
 - b) Elections of the Members of the Board;
 - c) Amendments to the Governing Documents (as defined in *Civil Code* § 4075); and
 - d) Grant of exclusive use of a portion of the common area pursuant to *Civil Code* § 4600.
- 1.2 Secret Ballots [Civil Code §5100(a)(1)].** Member voting on the items listed in 1.1 above will be by secret ballot.

II. VOTING

- 2.1 Qualifications for Membership Voting** Each Member is entitled to a vote if he/she/it is a Member at the time that ballots are distributed. Only Owners of record, as defined in the Association's CC&Rs, are qualified to be a Member of the Association. A Member shall be entitled to one (1) vote for each Unit owned on each matter submitted to Members for voting. Note that each director vacancy counts as one matter. When more than one person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as the Owners collectively determine, but in no event shall more than one (1) vote be cast with respect to any Unit. Votes may be cast by members in person, by proxy subject to the terms in 3.1.1, or in specific instances designated by the Board of Directors, in a ballot-by-mail.
- 2.1.1 Voting by Proxy.** The Association's Bylaws, Article III, Section 3.5 provides that voting may not be accomplished by proxy.
- 2.1.2 Voting Rights.** The Association is prohibited from denying a ballot to:
- (a) A Member for any reason other than not being a Member at the time when ballots are distributed; and
 - (b) A person with general power of attorney for a Member. The ballot of a person with general power of attorney for a Member shall be counted if returned in a timely manner.
- 2.2 Cumulative Voting.** The Association's Bylaws, Article V, Section 5.6 provides that cumulative voting is required for all elections in which two (2) or more Director positions are to be filled; provided that a Member shall be entitled to cumulate his/her/its votes for one or more

candidates for the Board of Directors if (a) the candidate's name has been placed in nomination prior to voting and (b) if the Member has given notice at the meeting prior to the voting of his or her intention to cumulate his/her/its votes. A Member may give one candidate a number of votes equal to the number of such members to be elected multiplied by the number of votes to which such Member is otherwise entitled, or distribute such votes on the same principle among more than one candidate. The candidates receiving the highest number of votes, up to the number of members of the Board of Directors to be elected, shall be deemed elected.

- 2.3 Non-Revocable Ballots.** Written ballots may not be revoked once they are submitted to the Inspector(s) of Elections. Once written ballots are deposited in the U.S. mail to the Inspector(s) of Elections, they are considered non-revocable.
- 2.4 Loss of Ballot.** If a Member loses his/her ballot prior to the annual meeting, they may request another ballot, along with the appropriate envelopes from the Inspector(s) of Elections but they must sign a statement that the original ballot was lost, destroyed or never received. The Inspector(s) of Elections shall maintain a record of each request and, if it is determined that the Member voted twice, even by mistake, neither ballot will be counted. Additional ballots cannot be obtained from a member of the Board. Only the Inspector of Elections will provide additional ballots.
- 2.5 Secrecy of Ballots.** A Member who signs or otherwise marks his/her ballot with an identifying mark, waives his/her right to secrecy. The Association is not responsible for redacting personal information that is added to the ballots by a Member.
- 2.6 Voting Period.** The polls will open when the ballots are sent to the members and will close within at the commencement of the annual meeting, or any adjournment thereof, or the final collection of ballots for counting, whichever occurs first.

III. QUALIFICATIONS AND NOMINATION OF DIRECTORS

3.1 Qualifications of Directors

3.1.1 Mandatory Membership. A Member of the Association is eligible to be nominated or nominate himself or herself for a position on the Board if he/she is a Member of the Association at the time of nomination and is not disqualified under Section 3.1.2 below. Non-Members of the Association are not eligible to be nominated or to serve on the Board.

- (a) If title to a property 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 candidate nomination.

3.1.2 Disqualification. A Member is not eligible to be nominated or to nominate himself or herself for a position on the Board if he or she:

- (a) Is not current in the payment of his/her regular or special assessments. However, a Member shall not be disqualified for failure to be current in payment of regular and special assessments if either: (1) the Member has paid the regular or special assessment under protest pursuant to Civil Code Section 5658; (2) the Member has entered into a payment plan pursuant to Civil Code Section 5665; or (3) the

Member has requested or is participating in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10 of the Civil Code. All Directors must also be current in the payment of regular and special assessments during their Board tenure.

- (b) 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 unit and the other person is either properly nominated for the current election or an incumbent director.
- (c) Has been a Member of the Association for less than one (1) year.
- (d) Has a past criminal conviction that would, if the Member 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.

3.2 Notice and Nomination Procedures

3.2.1 Notice of Procedure and Nomination Deadline. The Association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before the deadline for submitting nominations.

3.2.2 Notice Before Ballot Distribution. The Association shall post notice 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 or inspectors of elections;
- (b) The date, time, and location of the meeting at which ballots will be counted; and
- (c) The list of all candidates' names that will appear on the ballot.

3.2.3 Qualifications for Nomination. In order to be nominated to the Board of Directors, all nominees must meet the qualifications as set forth in Section 3.1.1 of these Rules and not be disqualified under Section 3.1.2.

3.2.4 Self-Nomination. Any qualified Candidate may nominate himself/herself to run for a director position, in accordance with the Governing Documents, the *Civil Code*, and *Corporations Code*. However, nominations from the floor are not permitted. Write-in candidates are not permitted and will not be counted.

3.2.5 Disqualified Votes and Tie. Votes will not be counted for any Candidate who is not qualified. Candidates will be notified in writing upon submittal for nomination if they are not qualified. In the event of a tie, the winner will be determined by a coin flip or drawing of straws.

3.2.6 Candidate Nomination Form ("Form"). A Candidate Nomination Form will be mailed to each Member at a reasonable time before the annual meeting. Prospective candidates desiring to run for a position on the Board must complete a Candidate's Qualification

Form and return the completed form to the designated person(s) on or before the nomination deadline noted on the form or accompanying materials in order to be placed on the ballot by the Association. Only those candidates who are qualified and have returned their Forms on time will be listed on the ballot. The above candidate form submittal process shall be subject to change by the Board.

IV. EQUAL ACCESS

- 4.1 Definition of Association Media.** "Association Media" means the Association's newsletters, internet websites and/or Association cable channel or any other form of global communication with the membership.
- 4.2 Equal Access for Candidates to Association Media.** If access is provided to any Candidate, all Candidates for election to the Board shall have one (1) no cost opportunity for access to Association media selected by the Board (e.g. the Association's newsletter, or the Association's web site) during a campaign, following reasonable notice to all Candidates of the availability, for a purpose(s) reasonably related to that election, provided the deadline for delivering the Candidate's statement to the Association established by the Board, as set forth in the reasonable notice to the Candidates, shall have been met by a Candidate for such publication prior to that election.
- (a) No Candidate's statement shall exceed 250 words for publication in Association media. For purposes of this rule, notice to the Candidates shall be sent to the Member's address on file with the Association.
 - (b) Any Candidate wishing to present any other campaign materials to the Members other than as provided in (a) above, and in other than Association media, may do so by any reasonable means, and at the Candidate's sole expense.
 - (c) The same rules provided in Section 4.2 and subsections 4.2(a)-(b) shall be applicable to any Member.
- 4.3 No Alteration of Candidate Communications.** The Association shall not edit or redact any content from Candidate or Member messages, but may include a statement specifying that the Candidate or Member, and not the Association, is responsible for the content of any published statement.
- 4.4 Limitation on Publication Space Made Available.** So long as each Candidate and/or Member is provided the same opportunities for publication, the Association may restrict the availability of any Association no cost publication by limiting the number of opportunities for print space made available and/or the number of words that will be included from each Candidate or Member in the Association's no cost publication. In the absence of more restrictive limitations adopted by the Board for any particular matter, each Candidate and/or Member shall be limited to no more than 250 words for any one Association publication. The Board may, in its sole discretion, present a candidacy questionnaire with questions for all interested Candidates and/or Members to complete. If such a questionnaire is provided, then the Association will only print the answers to such questions and may impose a limitation upon the number of words for the response to any question presented.
- 4.5 Availability of Meeting Space.** One time access to a common area space determined by the Board, on a date and at a time reasonably established by the Board, shall be provided at no cost,

following reasonable notice, to all Candidates and all Association Members, for the purpose of hearing any such Candidate or Member wishing to advocate a position, support or opposition to any Candidate or election matter, prior to the election by hosting a "Meet the Candidates Night", or other special gathering, so long as every Candidate and/or Member is provided with an equal opportunity to participate in the event. The Association shall not charge for the use of the common area space on the date and at the time so designated for this purpose.

V. Inspector(s) of Election

5.1 Number and Appointment. The Association shall appoint one (1) or three (3) Inspector(s) of Election. The Inspector(s) of Election appointed by the Board may not be (1) a Director; (2) a Candidate; (3) any of the Director's relations; or (4) any of a Candidate's relations. The appointed Inspector(s) of Elections must be an independent third party and may include, but not be limited to, a Member of the Association, a volunteer poll worker with the county registrar of voters, or a licensee of the California Board of Accountancy, or a notary public. 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 an Inspector of Elections. The Association's current management, attorney(s) and any other person or entity under contract with the Association for compensation are hereby prohibited from serving as an Inspector of Elections.

5.1.1 Duties of Inspector(s) of Elections. The Inspector(s) of Election shall use the Association's Governing Documents, including these rules, the Civil Code and the Corporations Code, shall consider the advice of the Association's corporate counsel, and shall attempt, in so far as possible, with fairness to all, to allow the vote of each Member, and be consistent, in the discharge of his/her responsibilities. The Inspector(s) shall be responsible to:

- (a) Determine the number of Members entitled to vote and voting power of each said Member;
- (b) Determine the authenticity, validity, and effect of proxies, if any;
- (c) Receive ballots;
- (d) Hear and determine the outcome of all challenges and questions regarding a Member of the Association's right to vote in the election;
- (e) Count and tabulate all votes submitted;
- (f) Determine the hours of operation of any polling facilities;
- (g) Determine and announce the result of the election based on the ballots received and votes tabulated; and
- (h) Perform any acts as may be proper to conduct the election with fairness to all Members of the Association in accordance with these election procedures and all applicable rules of the Association regarding the conduct of the election that are not in conflict with these procedures; and
- (i) Deliver, or cause to be delivered, at least thirty (30) days before an election, to each Member: the ballot(s) and a copy of the election rules. Delivery of the 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) individual delivery.

- 5.1.2 Good Faith of Inspector(s) of Elections.** Every Inspector of Elections shall perform his or her duties impartially, in good faith, to the best of his or her ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association.
 - 5.1.3 Decision.** The decision or act of a majority of the Inspectors of Elections shall be effective in all respects as the decision or act of all.
 - 5.1.4 Report.** Any report made or issued by the Inspector(s) of Elections is prima facie evidence of the facts stated in the report.
- 5.2 Removal of Inspectors of Elections.** The Board of Directors may remove and replace any Inspector of Elections prior to the tabulation of votes if an Inspector resigns or if the Board reasonably determines that an Inspector will not be able to perform his or her duties impartially and in good faith.

APPENDIX TO ELECTION RULES

SUMMARY OF CIVIL CODE SECTIONS APPLICABLE TO ELECTIONS

VI. ELECTIONS

- 6.1 Election Frequency.** An election for a seat on the Board of Directors shall be held at the expiration of the corresponding Director’s term, and at least once every four (4) years.
- 6.2 Election Materials.** As defined by California Civil Code Section 5200, “Association Election Materials” means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Signed voter envelopes may be inspected but may not be copied. The Association is required to retain, as Association Election Materials, both a candidate registration list and a voter list. CC §5105(a)(7).
 - 6.2.1 Voter List.** 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.
 - 6.2.2 Verification.** A Member may request to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The Association and/or Inspector(s) of Elections will make any requested corrections within two business days of receiving notice of any errors or omissions to either list.
 - 6.2.3 Privacy.** Membership Lists are considered an “Association record” as defined in California Civil Code Section 5200, including name, property address, mailing address, and email address, but shall not include information for members who have opted out pursuant to Civil Code Section 5220.

VII. VOTING BY BALLOTS

- 7.1 Voting by Ballots [Civil Code §5115(a)].** Members may vote by absentee ballot. The Association will mail two pre-addressed envelopes with instructions on how to return ballots to all members at least thirty (30) days before the annual meeting. The law requires the following procedures with regard to absentee ballots:
- 7.1.1 Envelopes.** 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.
 - 7.1.2 Confidentiality.** In order to preserve confidentiality, a voter may not be identified by name, address, lot, parcel, or unit number on the ballot.
 - 7.1.3 Model Procedures.** The Association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots.
 - 7.1.4 Absentee Ballot Procedure.** 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, address, and lot, or parcel, or unit number that entitles him or her to vote.
 - 7.1.5 Delivery of Ballot.** The second envelope will be addressed to the Inspector or Inspectors of Elections, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the Inspector or Inspectors of Elections. The Member may request a receipt for delivery.

VIII. BALLOTS GENERALLY

- 8.1 Counting Ballots [Civil Code §5120(a)].** 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 count or tabulation of ballots shall be done at an open meeting of the Board. Any Candidate or Member may observe the count, but shall stand at least ten (10) feet away from the Inspector(s) of Election.
- 8.1.1 Meeting Conduct.** Candidates and/or Members may not harass, cajole, distract, molest, communicate with, or otherwise interfere with the Inspector of Elections while the count is taking place. Prior to the completion of the count or tabulation, Members or persons not specifically authorized to do so by the Inspector of Elections may not touch any ballot or other election materials. Any person violating this Section may be asked by the Inspector of Elections to leave the meeting, the count and tabulation may be continued to a different time and/or place, or any other reasonable step(s) may be taken by the Inspector(s) to prevent further disruption.
- 8.2 Announcing Results of Vote [Civil Code §5120(b)].** After counting the votes, the Inspector(s) will promptly report to the board of directors and shall record the results in the minutes of the next meeting of the board of directors. The results shall be available for review by members of the Association. Within fifteen (15) days of the election, the board shall publicize the results of the election in a communication directed to all members.

- 8.3 Custody of Ballots [Civil Code §5125].** The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list at all times shall be in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) until after the tabulation of the vote and expiration of the time allowed by California Civil Code Section 5145 for challenging the election, after which time the custody and control of the ballots shall be turned over to the Association.

IX. CONTESTING THE RESULTS OF AN ELECTION & RIGHT OF ENFORCEMENT

- 9.1 Statute of Limitations [Civil Code §5145].** A Member may bring a civil action for declaratory or equitable relief for a violation of Article 5 of the Civil Code by the Association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date that the Inspector or Inspectors of Elections notifies the Board and Membership of the election results or the cause of action accrues, whichever is later.
- 9.2 Recount or Challenge [Civil Code §5125].** In the event of a recount or other challenge to the election process, the Association 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.
- 9.3 Civil Action [Civil Code §5145].** If a Member establishes, by a preponderance of the evidence, that the election procedures were not followed, a court must void any results of the election unless the Association establishes, by a preponderance of the evidence, that the Association's noncompliance with the Civil Code or these election rules did not affect the results of the election. The findings of the court shall be stated in writing as part of the record.
- 9.3.1** A cause of action under California Civil Code Section 5145(a) may be brought in either the superior court or, if the amount of the demand does not exceed the jurisdictional amount of the small claims court, in small claims court.
- 9.3.2** A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. The Association, should it prevail, shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. If a member prevails in a civil action brought in small claims court, the member shall be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action.

X. USE OF ASSOCIATION FUNDS FOR CAMPAIGN PURPOSES

- 10.1 Association Funds Shall Not Be Used for Campaign Purposes [Civil Code §5135(a)].** 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 law.
- 10.2 Definition of Campaign Purposes [Civil Code §5130(b)].** "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 thirty (30) days of an election, provided that this is not a campaign purpose if the communication is one for which subdivision (a) of Civil Code Section 5110 requires that equal access be provided to another candidate or advocate.