

**MANDOLIN AT DEL SUR
HOMEOWNERS ASSOCIATION
VOTING POLICIES & PROCEDURES**

TABLE OF CONTENTS

I. INTRODUCTION	1
II. GENERAL	1
III. CANDIDATE QUALIFICATIONS	2
IV. NOTICE AND NOMINATION PROCEDURES	3
V. CAMPAIGN PROTOCOLS	5
VI. INSPECTOR(S) OF ELECTIONS	5
VII. VOTING.....	6
VIII. PROXIES	7
IX. BALLOTS	7
X. PENALTIES	9
XI. ELECTIONS.....	9
XII. CONTESTING THE RESULTS OF AN ELECTION & RIGHT OF ENFORCEMENT	10

I. INTRODUCTION

The following election procedures for Mandolin Homeowners 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 ninety (90) days prior to an election.

It is the intent of the Association to ensure the most comprehensive and balanced guidelines for our Members. In order to accomplish this we have made the required revisions with you the Homeowner in mind. We sincerely hope our efforts in compiling these policies and procedures has in some way made this process more easily understood and encourages your participation in the business of the Association.

These rules, policies, and procedures apply to all matters of the Association that are regulated or otherwise controlled by a Membership voting requirement for election of Directors, Removal of Directors, Amendments to the governing documents, grant of exclusive use of common areas, and assessments.

Please be advised that these guidelines do not contain all of the information that may apply to your rights and responsibilities in the matters of voting on issues and electing directors to conduct the affairs of the Association on your behalf. Additional provisions are contained in the Association’s Governing Documents, specifically the Bylaws and CC&R’s, and should be reviewed by all Members of the Association in order to guarantee a complete and thorough understanding in these matters.

II. GENERAL

2.1 Applicability of Rules [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: (1) election of directors, (2) changes to the Governing Documents, (3) Member votes on assessments, and (4) Member votes on granting exclusive use rights to portions of the general common areas.

2.1.1 Secret Ballots [Civil Code §5100(a)(1)]. Member voting on the items listed in 2.1 above will be by secret ballot.

2.2 In the announcement of any meeting at which an election will be held, or other balloting conducted, or in any announcement containing a proxy and/or ballot-by-mail, the Board of Directors shall announce the applicable voting period, including any deadline for submission of proxies and/or ballots-by-mail. Proxies and/or ballots-by-mail may be submitted at any time from the members’ receipt of such until the announced deadline or any extension thereof as set by the Board of Directors. The Inspectors of Election shall determine when ballots can be submitted and the time when the polls shall close at any meeting at which ballots are cast.

2.3 Request for Candidates. The Association will publish a Request for Candidates at least thirty (30) days prior to any deadline for submitting a nomination. All members desiring to run for a position on the Board of Directors must complete the Candidate’s Qualification Form and return the completed form to the designated person(s) on or before the deadline date noted on the form or

accompanying materials. Members failing to submit a Candidate's Qualification Form by the deadline date will not have their names placed on the ballot, but are eligible to be nominated from the floor at the annual meeting and may receive write-in votes.

2.4 Compliance. All voting and elections shall be conducted in accordance with all applicable requirements mandated by the governing documents and local, state, and federal statutes as may apply.

2.3 Association Funds Shall Not Be Used for Campaign Purposes. No Association funds shall be expended for the Campaign Purposes in connection with any vote or election other than those specifically required to distribute required correspondences, notices, or forms which may contain the names of candidates or descriptions of issues being voted upon. Specifically excluded is the expenditure of association funds for the purposes of expressly advocating approval, election, or defeat of any matter or candidate.

2.3.1 Definition of Campaign Purposes [Civil Code §5135(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 Section 5110 requires that equal access be provided to another candidate or advocate.

III. CANDIDATE QUALIFICATIONS

3.1 General Obligations and Ethics. Election to a Board position is voluntary in nature and requires fair and impartial servitude to the corporation/association as a whole. Those contemplating candidacies are urged to review the governing documents and applicable requirements of the California Corporations Code and the California Civil Code to ensure that you are prepared to accept the responsibilities and liability of your elected position in carrying out your fiduciary obligation to the corporation.

Director candidates upon election to the Board will execute the "*Board Member Code of Ethics*", if so provided by the Board, and are expected to perform their duties to the Association in all manners consistent with the duties and responsibilities outlined in the governing documents of the Association, industry / association standards, and all federal and state laws, codes and ordinances. Director candidates should always keep in mind that service to the Association while serving in the capacity as an elected / appointed Board Member mandates that decisions made are consistent with those practices which are in the best interest of the Association as a corporate entity and not for individual preference and/or gain.

3.2 Qualifications of Directors.

3.2.1 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 3.2.2 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.

3.2.2 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.

IV. NOTICE AND NOMINATION PROCEDURES

4.1 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.

4.2 Notice Before Ballot Distribution. The Association shall post notice of all of the following at least thirty (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.

4.3 Nominating Timeframe Nominations for Director shall be received no later than the deadline set by the Board prior to the meeting date in order to have their name placed on the ballot-by-mail.

4.4 Nominating Committee: The Board of Directors may appoint a Nominating Committee for the purpose of establishing the candidate roster for any Director election or mail out a "Request for Candidate" Form to the Members requesting volunteers.

4.4.1 The Nominating Committee if appointed, shall consist of a Chairman, who shall be a member of the Board of Directors who is not a candidate, and two (2) or more members of the Association.

4.4.2 The Nominating Committee shall be appointed no less than seventy-five, (75) days prior to the Annual Election.

4.4.3 Nominating Committee Members shall be members in Good Standing.

4.4.4 Nominating Committee Members may not be related to a Candidate and/or other Nominating Committee Member, reside with a Candidate or other Nominating Committee Member or be co-owners of any properties within the Association with a Candidate or other Nominating Committee Member. Committee members are expected to notify the Board of Directors if one of the noted conditions exists.

4.4.5 The Nominating Committee shall be charged with the review and consideration of all Director Candidate application submissions.

4.4.6 The Nominating Committee shall upon finalization of the candidate roster submit written report to the Board of Directors. Submission of a finalized roster shall be no later than the deadline set by the Board prior to the meeting date.

4.5 Nomination of Directors. To be eligible for nomination, all Director Candidates must be qualified under Section 3.2.1 and not be disqualified under Section 3.2.2. Director Candidates shall be nominated by the Nominating Committee, or in the absence of a committee, written submission of a distributed Candidate Nomination Form must be received prior to the close of the established nomination period. Director candidates may be nominated as write-ins on submitted ballots. Approval of write-in candidacy shall require candidate's acceptance of such nomination either in writing or in person either prior to, or at, the annual meeting.

4.5.1 Nomination from the floor. Director candidates may be nominated from the floor at the time of the convening of the annual meeting established for the purpose of selecting said Directors. Director candidates nominated from the floor at the time of the convening of the annual meeting will be included as write-in-candidates on the ballot.

4.5.2 Self-Nomination. Any Member may nominate himself or herself for election to the Board of Directors, as long as he or she is qualified under Section 3.2.1 and not disqualified under Section 3.2.2.

4.5.3 Candidate Nomination Form ("Form"). A Candidate Nomination Form will be mailed to each Member at a reasonable time before the annual meeting. Members interested in serving as a Director must complete and return a Form to management. Directors who want to serve again must complete and return a Form to management. Members can nominate themselves or another person. Completed Forms must be returned by the deadline listed on the Form. Any candidate nominated by another person will be contacted to confirm that he or she agrees to be a candidate. 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.

V. CAMPAIGN PROTOCOLS

- 5.1 Equal Access to Association Media.** During election periods all candidates shall have equal access to the Association's Medias including but not limited to newsletters, websites, and bulletin boards as directed by the Board of Directors.
- 5.2 No Alteration of Candidate Communications.** No submission for distribution shall be edited for content. The Association may not edit or change the content of any candidate's message, but may include a statement disclaiming responsibility for the content. Modifications to formatting may be made so as to allow for space and/or media restrictions. Any necessary formatting modifications shall be applied equally to all submissions and at no time shall any formatting be applied which may signify a preference or partiality.
- 5.3 Campaign Expenses.** Any expense that may be required for the distribution of submitted materials shall be borne solely by the submitting party. These expenses may include but are not limited to administrative services, reproduction costs, postage, and supplies. Any costs shall be approved and paid by the submitting party prior to distribution.

VI. INSPECTOR(S) OF ELECTIONS

- 6.1 Selection.** The Board of Directors shall appoint Inspectors of Election. The Board shall select an independent third party or parties as an inspector of elections. The Inspectors of Election as appointed, may include, but not be limited to, one or more of the following: Notary Public; accountant; or other independent third party. 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. Members appointed as Inspectors of Election will be members in good standing of the Association.

Inspectors of Election may not be current Board Members, related to a Candidate or other Inspector of Election; may not reside with a Candidate or other Inspector of Election; or may not be co-owners of property within the Association with a Candidate or other Inspector of Election; or present any other situation which could reasonably be viewed as a conflict of interest in carrying out the duties and responsibilities of the Inspector(s) of Elections. Inspector(s) are expected to notify the Board of Directors if one of the above noted conditions exist.

- 6.1.1 Payment.** The Board may authorize payment of Association funds to any third party appointed to serve as Inspector(s) of Election. No payment may be authorized for any Association Member appointed as Inspector(s) of Election.

- 6.2 Number.** Inspector(s) of Election shall be comprised of one, (1) or three (3) appointed inspectors. In no event may the panel be comprised of an even number of inspectors.
- 6.3 Duties.** The Inspector(s) of Election shall be responsible to perform the following tasks associated with any vote or election:
1. Determine the number of memberships entitled to vote and the voting power of each.
 2. Determine the authenticity, validity, and effect of submitted proxies, if any.

3. Receive ballots (set address for submission of ballots).
4. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
5. Count and tabulate all votes.
6. Determine when the polls shall close, consistent with the governing documents.
7. Determine the tabulated results of the election.
8. 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.
9. 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.

This list is not intended to be all-inclusive and additional tasks may be added as necessary to ensure the most comprehensive and accurate voting process.

6.3.1 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.

6.4 Decision. The decision or act of a majority of the Inspectors of Election shall be effective in all respects as the decision or act of all.

6.5 Report. Any report made or issued by the Inspector(s) of Elections is prima facie evidence of the facts stated in the report.

6.6 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.

VII. VOTING

7.1 Voting Classes: The Association's CC&R's Article III provides definitions for and the rights of each Membership Voting Class in the Association.

7.2 Voting by Members. In any voting matter of the Association each Member as defined in the Association's Governing Documents shall be entitled to a single vote for each separate interest owned and which regular assessments have commenced against such separate interest.

7.2.1 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.

7.3 Cumulative Voting. The Association's Bylaws, Article VII, Section 7.8 provides that no Member shall be entitled to cumulate his or her votes in any election.

7.5 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.

7.6 Format. All voting related to selection of Directors, amendments to the Associations' Governing Documents, regular assessment increases which exceed the authority of the Board of Directors, special assessments, and all other matters to be brought before the Association will be conducted by secret written ballot.

VIII. PROXIES

8.1 Voting by Proxy. The Association's Bylaws, Article VI, Section 6.12 provides that voting may be accomplished by proxy provided that all proxies shall be in writing and filed with the Secretary of the Association. The proxy holder must present to the Board of Directors a document executed by the Voting Member authorizing the proxy.

8.2 Distribution. Proxies may be distributed to all Members in accordance with established guidelines. In no case shall Proxies be distributed more than sixty, (60) or less than thirty, (30) days in advance of a properly noticed meeting date established for the purposes of voting.

8.3 Content. All Proxies shall be consistent in content with the established guidelines as set forth in the Associations' Governing Documents or as may be mandated by local, state, or federal standards, including but not limited to the California Corporations Code or Civil Code. Proxies shall be set-forth for the purpose of establishing a quorum or naming a proxy holder to vote on-behalf of the permitted voter, as the proxy hold deems appropriate. Proxy holders must be present at the election in order to cast votes on behalf of the member. If the proxy holder is not present at the election, then the proxy will be used for the establishment of quorum only.

8.4 Validity. In no case shall any Proxy be valid for a period exceeding eleven (11) months from the date of its execution.

8.5 Revocability. An executed proxy is revocable through attendance in person at the annual meeting or any reconvened meeting thereof.

IX. BALLOTS

9.1 Voting by Ballots [Civil Code §5115(a)]. Members may vote by absentee ballot. Ballots shall be distributed along with two (2) envelopes and instructions for submission. Distribution for ballots-by-mail shall be made no more than sixty, (60) days or less than thirty, (30) days in advance of the deadline for voting as established by the Inspectors of Election.

- 9.1.1 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.
- 9.1.2 Confidentiality.** In order to preserve confidentiality, a voter may not be identified by name, address, lot, parcel, or unit number on the ballot.
- 9.1.3 Model Procedures.** The Association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots.
- 9.1.4 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.
- 9.1.5 Delivery of Ballot.** The second envelope will be addressed to the Inspector or Inspectors of Election, 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 Election. The Member may request a receipt for delivery.
- 9.2 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 Election, they are considered non-revocable.
- 9.3 Content.** Ballots shall contain the names of all candidates having been nominated in accordance with the established guidelines, space for any write in candidates, and a description of any other matter being addressed in the voting. Ballots shall not contain any identification indicators related to the voter. Specifically excluded are names, addresses, and unit or lot numbers. Ballots shall not be signed.
- 9.3.1 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.
- 9.4 Submission.** Ballots submitted prior to the meeting date shall be enclosed in a sealed envelope and sent to the Inspectors of Election to be retained until the completion of the tabulating. Ballots submitted to the Inspectors of Election shall be held in their sealed envelopes until the date of the meeting at which time such ballot envelopes shall be opened. In no case shall any ballot be opened, viewed, or otherwise reviewed prior to the date and time that has been established for the tabulation of said ballots.
- 9.5 Loss of Ballots.** 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.

- 9.5 Tabulating.** The Inspectors of Election shall tabulate all ballot submissions in public view at a properly noticed meeting set for the purposes of voting on matters of the Association.
- 9.7 Notice of Results.** Within fifteen (15) days of the election, the board shall publicize the results of the election in a communication directed to all members.
- 9.8 Custody and Retention.** 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.

X. PENALTIES

California Civil Code Section 5145 provides the Members of the Association with certain legal rights. It is your obligation to know and understand these rights as they are set forth.

APPENDIX TO ELECTION RULES **SUMMARY OF CIVIL CODE SECTIONS APPLICABLE TO ELECTIONS**

XI. ELECTIONS

- 11.1 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.
- 11.2 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).
- 11.2.1 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.
- 11.2.2 Verification.** A Member may request to verify the accuracy of their individual information on both lists at least thirty (30) days before the ballots are distributed. The Association and/or Inspector(s) of Election will make any requested corrections within two business days of receiving notice of any errors or omissions to either list.
- 11.2.3 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.

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

- 12.1 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.
- 12.2 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.
- 12.3 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.
- 12.3.1** 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.
- 12.3.2** 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.