

**Part IV**

**ELECTION PROCEDURES**

**ELECTION PROCEDURES**

**Election Rules for Mission Circle Association**

These Election Rules for the Mission Circle Association (“Association”) are adopted by the Board of Directors of the Association (“Board”) pursuant to California Civil Code Sections 5100, 5105, 5110, 5115, 5120, 5125, 5130, 5135, and 5145 and shall govern all Association elections described in California Civil Code Section 5100(a) and 5115(a) - (c).

1. Equal Access to Association Media.

1.1 If, during a campaign, any candidate or Association member (“Member”) advocating a point of view is provided access to Association media, newsletters, Internet Web sites or other communication media owned or entirely run by and for the Association, for a purpose that is reasonably related to that election, all candidates and Members, including those not endorsed by the Board shall have equal access to such media, newsletters, Internet Web sites or other communication media for purposes that are reasonably related to the election. The Association shall not edit or redact any content from such communications (except to the extent such content violates any applicable state, federal or local laws) but may include a statement specifying that the candidate or Member, and not the Association, is responsible for the content of such communication.

1.2 All candidates (including those candidates who are not incumbents) and all Members advocating a point of view (including those not endorsed by the Board) shall have access to the common meeting area, if any, at no cost, for purposes reasonably related to the election.

2. Qualifications and Procedures for Nomination of Candidates.

2.1 A Member, or a Member that is a business entity rather than a natural person, a representative of such member that is a natural person (“Representative”), is eligible to be nominated or to nominate himself/herself/themselves for a position on the Board if: (i) the Member’s Residential Unit is not subject to a notice of delinquent assessment that, as of the date of nomination, has been of record for thirty (30) or more calendar days; (ii) the Member has paid the Association’s regular monthly assessment levied against such Member’s Residential Unit for the month following close of the escrow for the Member’s acquisition of its Condominium; (iii) the escrow by which such Member acquired its Residential Unit closed at least sixty (60) calendar days prior to the date on which the first ballot is mailed or solicited from Members for voting purposes; (iv) the Member or Representative is at least eighteen (18) years old.

2.2 All Members eligible to vote in the forthcoming election are eligible to nominate another eligible Member as a candidate for the Board or to nominate himself/herself/themselves or its Representative as a candidate for the Board.

2.3 Provided that a Member or its Representative seeking candidacy for a position on the Board satisfies the eligibility requirements set forth in Section 2.1 above, such Member or Representative may be nominated or nominate himself/herself/themselves or its Representative by the following procedures:

2.3.1 Nominations for Board candidates must be submitted in writing and mailed to the Association secretary or Association Manager (whichever the Board decides) not less than thirty (30) calendar days prior to the mailing or distribution of ballots for the election of new Board members. Members shall not be prohibited from nominating themselves for any Board position, and any attempt to prevent a Member’s self-nomination shall be invalid.

2.3.2 After collecting all properly submitted nominations, the current Board shall issue a list of the prospective candidates, having confirmed that each nominated person is eligible under Section 2.1, and contact each of the qualified candidates on that list to confirm the person’s acceptance of the nomination.

2.3.3 The Board shall issue a full list of confirmed candidates and shall cause a corresponding ballot to be prepared for distribution to all Association Members. Such ballots must satisfy the requirements set forth in Section 3 below.

3. Selection of Inspectors; Duties of Inspector.

3.1 The current Board shall select either one (1) or three (3) independent third parties to serve as the inspector(s) of the election (whether one or three, the "Inspector") not less than fifty (50) calendar days prior to the voting deadline. The Association's Manager is hereby authorized to serve as an Inspector; however, the Board is not required to select the Association's Manager.

3.2 As provided in California Civil Code Section 5110 "independent third parties" include the following: (i) a volunteer poll worker working for the county registrar of voters; (ii) a licensee of the California Board of Accountancy; (iii) a Notary Public; or (iv) an Association Member that does not hold a position on the current Board, is not related to a member of the current Board, and is not a candidate for the forthcoming election for which such Member would serve as an Inspector. 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 unless expressly authorized by these rules.

3.3 The Inspector shall have the responsibilities described in California Civil Code Section 5110.

3.4 The Inspector shall have the right to appoint and oversee such additional persons as the Inspector deems appropriate to verify signatures and to count and tabulate votes, provided that the persons are independent third parties.

4. Secret Ballot and Voting.

4.1 Not less than thirty (30) calendar days prior to the voting deadline for the election, the Association shall send (or cause to be sent) to each Member who is eligible to vote a ballot and two (2) pre-addressed envelopes. Ballots must not identify the voter's name, address or unit number.

4.2 The ballot itself must not be signed by the voter. It must be inserted into a sealed envelope. That sealed envelope must then be sealed within a second (2nd), outer envelope. The outer envelope shall have, in its upper left-hand corner, space for the voter to print and sign his/her/their name, and print his/her/their address.

4.3 The outer envelope must be pre-addressed to the Inspector (defined below). Members may cast their ballots by any one of the following methods:

4.3.1 Members may mail their ballots to the location designated by the Inspector; provided that any ballot so mailed is received prior to the time set by the Inspector for closing of the polls, in which case any Member may request a receipt for delivery; or

4.3.2 Members may deliver their ballots (or have their ballots delivered) to the location designated by the Inspector no later than two (2) business days before the date set for tabulation of votes; or

4.3.3 Members may deposit their ballots with the Inspector at the meeting in which votes are to be tabulated prior to the time set by the Inspector for closing of the polls.

4.4 Once received by the Inspector, a ballot is irrevocable.

4.5 No ballots shall be accepted, by mail or otherwise, after the date and time set by the Inspector for closing of the polls. Any ballots received after the polls have closed shall be discarded and will not be counted by the Inspector. A Member whose ballot has been discarded will not be entitled to notification of such action and shall not have the right to cast another vote in the present election. Such discarded ballots shall not be counted in any subsequent recount or challenge to the election procedures.

5. Eligibility and Vesting of Voting Rights.

5.1 A Member is eligible to vote if: (a) the Member's voting rights have not been suspended pursuant to the Declaration or the Governing Documents; (b) the Member has paid the assessments levied against such Member's Residential Unit for the month immediately following the month in which the Member acquired title to the Residential Unit; (c) the Member closed escrow on his, her or its Residential Unit on or before the "record date" for voting, being

not less than sixty (60) calendar days prior to the date on which the ballots are mailed to or solicited from Members for voting purposes; (d) the Member is at least eighteen (18) years old.

5.2 The number and vesting of voting rights attributable to any given Residential Unit shall be as provided in the Declaration

6. Proxies.

6.1 Any Member of the Association eligible to vote may authorize another person to act by proxy, pursuant to the Bylaws. The Association will not prepare or mail proxies to Members.

6.2 A proxy will be accepted for quorum purposes only pursuant to the Bylaws, and only if the proxy is determined by the Inspector to meet the requirements of the Bylaws, these procedures and applicable statutory law.

6.3 All proxies received by mail prior to the election shall be held by the Inspector and shall be brought to the meeting for validation and registration at the meeting. The Inspector shall determine the authenticity, validity and effect of proxies. If two proxies are received by the Inspector for the same Residential Unit and one is dated and one is undated, the dated proxy prevails. If two dated proxies are received by the Inspector for the same Residential Unit, the most currently dated proxy prevails. If a proxy and a ballot are received by the Inspector for the same Residential Unit, the proxy shall be deemed revoked and the ballot shall prevail.

6.4 Any instruction given in a proxy that directs the manner in which the proxy 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 vote by secret ballot, in the manner prescribed in these procedures.

7. Voting Procedures and Custody.

7.1 All votes shall be counted and tabulated by the Inspector in public at a properly noticed open meeting of the Board and/or Members. Any candidate or Member may witness the counting and tabulation of the votes. No person, including, but not limited to, Members and employees of the Association Manager, if one has been selected, shall open or otherwise review any ballot prior to the time the ballots are counted and tabulated by the Inspector.

7.2 The results of the election, as tabulated by the Inspector(s), shall be promptly reported to the current Board and shall be recorded in the minutes of the next meeting of the Board, and shall be made available for review of Members. The Board shall publicize the results of the election in a communication directed to all Members, within fifteen (15) days of the date the final tabulation of votes has occurred.

7.3 The sealed ballots shall at all times be in the custody and control of the Inspector, or at such location designated by the Inspector, until after the final tabulation of votes and expiration of the time allowed by California Corporations Code Section 7527 for challenging the election, after which time the custody and control of the ballots shall be turned over to the Association.

7.4 After the final tabulation of the votes has been completed by the Inspector and custody and control of the ballots has been turned over to the Association, the Association shall store the ballots or cause them to be stored, in a secure location for not less than two (2) years from the date of final tabulation of votes.

8. Contesting the Results of an Election.

8.1 California Corporations Code Section 7527 provides that an action challenging the validity of any election must be commenced within nine (9) months of the final tabulation of votes and report of the results to the Board at the open meeting for the election challenged.

8.2 In the event of a recount or other challenge to the election process, the Association shall, upon written request, make the ballots available for review by Members or authorized representatives. Any recount must be conducted in a way that preserves the confidentiality of all ballots recounted.

9. Restriction on Use of Association Funds. Pursuant to California Civil Code Section 5135, Association funds shall not be used for campaign purposes in connection with any Board election. Association funds shall not be used

for campaign purposes in connection with any other Association election, except to the extent necessary to comply with the duties of the Association imposed by applicable law.

9.1 For the purposes of this Section, "Campaign Purposes" includes, but are not limited to, the following:

9.1.1 Expressly advocating election of defeat of any candidate that is on the Association election ballot; or

9.1.2 Including a photograph or prominently featuring the name of any candidate on a communication from the Association or the Board of the Association, excepting the ballot and ballot materials, within thirty (30) days of the distribution or mailing of ballots to Members of the Association for voting purposes.

9.2 Such action is not considered a "Campaign Purpose" (for which Association funds may not be used) if the communication is one that is required for Equal Access as described in the section entitled "Equal Access" above.

10. Right of Enforcement. Pursuant to California Civil Code Sections 5145, 4605, and 4955, Members shall have the following rights:

10.1 Members may bring a civil action for declaratory or equitable relief (including, but not limited to, injunctive relief, restitution, or a combination thereof) for a violation of Article 2 of Chapter 3 of Title 6 of the California Civil Code by the Association within one (1) year of the date the cause of action accrues.

10.2 Upon finding that the Association violated the election procedures set forth in California Civil Code Section 5105, a court of law may void any results of the election in question.

10.3 Members who prevail in an action to enforce his/her/their rights under Article 2 of Chapter 3 of Title 6 of the California Civil Code are entitled to reasonable attorney's fees and court costs.

10.4 The court may impose a civil penalty of up to Five Hundred Dollars (\$500) for each violation; however, a violation that affects each Member equally shall be subject to one (1) penalty only.

10.5 If the Association prevails, it shall not be entitled to recover attorney's fees or court costs unless the court finds the action to have been frivolous, unreasonable or without foundation, all as defined by applicable laws.

10.6 A cause of action brought pursuant to the rights of a Member under California Civil Code Section 5105 with respect to Equal Access, as described in Section 1 of these Election Procedures, the receipt of a ballot by a Member, or the counting, tabulation, reporting of, or access to ballots for inspection and review after tabulation may be brought in small claims court, provided that the amount of the demand in such action does not exceed the jurisdiction of that court.