

*File 388
Docs*

January 19, 2021

**VIA EMAIL AND U.S. MAIL
ATTORNEY-CLIENT PRIVILEGED**

Board of Directors
F. R. Homeowners Association
c/o PJ Chandler, CCAM, CMCA
Professional HOA Consultants, Inc.
8181 Mission Gorge Road, Suite E
San Diego, CA 92120-1600

Re: Election Rules; Procedure for Adoption of Election Rules; Election Timeline

Dear Members of the Board of Directors:

Pursuant to your request, enclosed are the proposed new Election Rules for use by your Association. These rules must be adopted 90 days prior to your next annual meeting. To adopt the Election Rules, you must follow the rule change procedures set forth in Civil Code Section 4360, as explained below.

1. Notice of the proposed Election Rules must be provided to the membership at least twenty-eight (28) days before they are adopted by the Board.

2. Once the twenty-eight (28) days have expired, the Board can adopt the proposed Election Rules, during an open session Board meeting and after consideration of any comments made by Association Members. Please note that the Members do not have the right to approve or disapprove the Election Rules at this stage.

3. Within fifteen (15) days of adopting the Election Rules, the Board must provide notice that the Election Rules were adopted to the Members. Enclosed are more detailed instructions on this process if needed.

Once this process is complete, the Election Rules are officially adopted and are enforceable.

In addition to the proposed new election rules, we have also enclosed the following instructions, information, and sample notices:

1. Instructions for Adoption of Elections Rules (to assist you with preparation of the notices for adoption of the rules)
2. Summary of New SB323 Requirements (including description of new election timeline)
3. Sample Timeline for Director Election
4. Sample Membership Notices for Nomination Procedure and Notice of Candidate List (these notices are to be mailed to the membership in the months leading up to the election)

Lastly, please note that Civil Code §5105(h) now provides that election rules cannot be amended within 90 days prior to an election. In order to comply with this requirement, if your Association has an upcoming election, it may need to be rescheduled. Please contact our firm for a recommendation as to whether any upcoming election should be rescheduled to a new date.

If you have any questions or comments, please contact our office at your convenience.

Sincerely yours,

KRIGER LAW FIRM, APC

A handwritten signature in black ink, appearing to read "Niki Tran", followed by a horizontal line.

Niki Tran, Esq.

Enclosures

F. R. HOMEOWNERS ASSOCIATION

Rules for Elections and Voting

1.0 Applicability of Rules.

1.1 Specified Elections – In accordance with California Civil Code §5100 et seq., these rules shall apply to elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600.

2.0 Access to Association Media.

2.1 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.

2.2 Equal Access to Association Media - All candidates and members will be granted equal access to the Association’s media for purposes reasonably related to the election.

2.3 No Alteration of Candidate Communications - The Association shall not edit or change the content of any candidate’s message but may include a statement disclaiming responsibility for the content.

3.0 Access to Common Area Meeting Space.

3.1 Equal Access to Common Area Meeting Space - All candidates and members shall be granted equal access to the common area meeting space, if any, at no cost, for purposes reasonably related to the election.

4.0 Number of Directors; Candidate Qualifications.

4.1 Number of Directors – The affairs of this Association shall be governed by a Board of Directors composed of three (3) directors, all of whom must be Members of the Association.

4.2 Causes for Disqualification from Nomination – A person shall be disqualified from nomination as a candidate for election to the Board of Directors for any of the following causes:

4.2.1 Nonmember – The Association shall disqualify a person from nomination as a candidate for not being a Member of the Association at the time of the nomination. 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.

4.2.2 Nonpayment of Assessments – The Association shall 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 the payment of regular and special assessments if either of the following circumstances is true:

a. The nominee has paid the regular or special assessment under protest pursuant to Civil Code Section 5658.

b. The nominee has entered into a payment plan pursuant to Civil Code Section 5665.

4.2.3 Criminal Conviction Affecting Fidelity Bond Coverage – The Association shall 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 fidelity bond coverage required by Civil Code §5806 or terminate the Association’s existing fidelity bond coverage.

4.2.4 Joint Ownership – The Association shall 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 and the other person is either properly nominated for the current election or an incumbent director.

4.3 Opportunity for Internal Dispute Resolution Prior to Disqualification – The Association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution (“IDR”) pursuant to Civil Code §5900 et seq.

5.0 Nomination Procedures.

5.1 Nomination – Nomination for election to the Board of Directors shall be made by a Nominating Committee. Notice to the Members of the Association of the meeting shall include the names of all those who are nominees at the time the notice is sent. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman, who shall be a director, and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Association, to serve until the close of such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All

candidate shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

- 5.2 Candidate Nomination Form (“Form”)** - Candidates may be nominated for election to the Board by a Nomination Form. A Candidate Nomination Form will be mailed to each owner at least 30 days before any deadline for submitting a nomination. Owners interested in serving as a director must complete and return a Form. Directors who want to serve again must complete and return a Form. Owners 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 voting materials.
- 5.3 Notice of Nomination Procedure and Deadline** – The Association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Civil Code Section 4040 if individual notice is requested by a member.

6.0 Election Timeline – Notices and Deadlines.

- 6.1 At Least 30 Days Before Nomination Deadline** – The Association shall provide general notice of the procedure and deadline for submitting a nomination. Individual notice shall be delivered to any member who has requested individual notice.
- 6.2 At Least 30 Days Before Ballots are Distributed** – The Association shall provide general notice of the following:
1. 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.
 2. The date, time, and location of the meeting at which ballots will be counted.
 3. The list of all candidates’ names that will appear on the ballot.
 4. Individual notice of the above paragraphs shall be delivered to any member who has requested individual notice.
- 6.2.1 Verification and Correction of Candidate List and Voter List** – At least 30 days before ballots are distributed, the Association shall permit Members to verify the accuracy of their individual information on the candidate list (if the Member is a candidate) and on a voter list maintained by the Association, which shall include the 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 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.

6.3 At Least 30 Days Before Deadline for Voting – The inspector or inspectors of election shall mail by first-class mail or deliver to every Member, or cause to be mailed by first-class mail or delivered to every Member, ballots and two pre-addressed envelopes with instructions on how to return ballots. 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 vote by mail ballots, including all of the following:

1. 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 shall sign the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.
2. The second envelope is 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.

6.3.1 Delivery of these Election Rules – At least 30 days before an election, the inspector or inspectors of election shall deliver, or cause to be delivered, a copy of these Election Rules. Delivery of these Election Rules shall be accomplished by either of the following methods:

- a. Posting the Election 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:".
- b. Individual delivery.

6.4 Within 15 Days After Election – The tabulated 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 give general notice of the tabulated results of the election to all Members.

7.0 Inspectors of Election.

7.1 Selection – Before the deadline for nomination of candidates, the Board of Directors shall appoint one or three independent third parties as inspector or inspectors of election.

7.2 Individuals Who Can Act as Inspectors of Election – Independent third parties who can act as the inspector(s) of election include, but are not limited to, the following:

1. a volunteer poll worker with the county registrar of voters;
2. a licensee of the California Board of Accountancy;
3. a notary public; and/or
4. a Member of the Association who is not a director or a candidate for director or related to a director or to a candidate for director;

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.

7.3 Duties of Inspectors of Election

1. Determine the number of memberships entitled to vote and the voting power of each.
2. Make corrections to the candidate list or voter list within two (2) business days after receiving a report from the Association or a Member of any errors or omissions to either list prior to the distribution of ballots.
3. Determine the authenticity, validity, and effect of proxies, if any.
4. Deliver, or cause to be delivered, to each Member of the Association, at least 30 days before an election, ballots and a copy of these Election Rules as described in Sections 6.3 and 6.3.1 above.
5. Receive ballots.
6. Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
7. Count and tabulate all votes.
8. Determine when the polls shall close, consistent with the governing documents.
9. Determine the tabulated results of the election and promptly report the tabulated results of the election to the Board.
10. Perform any acts as may be proper to conduct the election with fairness to all members in accordance with California law and the Association's governing documents, including these Election Rules.

7.4 Good Faith of Inspector(s) of Election – An inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association. If there are three inspectors of elections, 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 or inspectors of elections is prima facie evidence of the facts stated in the report.

7.5 Appointment Power of Inspectors of Election – The inspector or inspectors of election shall have the power 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.

7.6 Removal of Inspectors of Election – The Board of Directors may remove and replace any inspector of election 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.

8.0 Voting.

8.1 Voting Power – Each Member of the Association has the right to cast one vote per separate interest owned for each matter submitted to owners for voting. Note that each director vacancy counts as one matter. The vote of the owners of each separate interest shall be exercised as the owners among themselves determine, but in no event shall more than one vote be cast on behalf of any separate interest with respect to any matter.

8.2 Cumulative Voting – The Association’s Bylaws allow cumulative voting for election to the Board of Directors. Section 4.04 of the Association’s Bylaws, in part, provides as follows: “Cumulative voting shall be utilized during all elections in which two (2) or more positions on the Board are to be filled.” If the Association’s Bylaws are amended to remove cumulative voting, the Bylaws take priority over these Rules in the event of a conflict.

8.3 Proxy Voting – Owners may assign their rights to vote to another Member by a proxy. To ensure secret voting, all proxies must have detachable voting directions which are to be kept by the person voting (the proxyholder). A proxy is not a ballot and shall not be construed or used in lieu of a ballot. The proxyholder must vote by a secret ballot. Proxies must comply with California law in order to be valid and may be revoked by the owner any time prior to the receipt of the ballot by the inspector of elections.

If the Association’s Bylaws are amended to remove proxy voting, the Bylaws take priority over these Rules in the event of a conflict.

8.3.1 Definition of Proxy – “Proxy” means a written authorization signed by a Member or the authorized representative of the Member that gives another Member the power to vote on behalf of that Member.

8.3.2 Definition of Signed – “Signed” means the placing of the Member's name on the proxy (whether by manual signature, typewriting, telegraphic

transmission, or otherwise) by the Member or authorized representative of the Member.

- 8.3.3 Distribution of Proxies** – Proxies are not required to be sent out with any general mailings that include ballots. Proxies may be made available upon request by a Member, but the Association shall not be required to prepare or distribute proxies.
- 8.4 No Denial of Ballots** – A ballot shall not be denied to a Member for any reason other than not being a Member at the time when ballots are distributed. If a person becomes a Member after the ballots were distributed, said Member may request a ballot if the previous owner of that separate interest did not return a ballot in that election. A ballot shall not be denied to 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.
- 8.5 Loss of Ballot** – If an owner loses his/her ballot prior to an election, they may request another ballot, along with the appropriate envelopes from the inspector(s) of election. The inspector(s) of election shall maintain a record of each request and, if it is determined that the owner voted twice, even by mistake, only one ballot will be counted.
- 8.6 Non-revocable Ballots** - Written ballots may not be revoked once they are submitted to the Inspector(s) of Election. Once written ballots are deposited in the U.S. mail to the Inspector(s) of Election, they are considered non-revocable.
- 8.7 Secrecy of Ballots** - An owner who signs or otherwise marks his/her ballot with an identifying mark, waives his/her right to secrecy. The Association is not responsible for removing or redacting personal information that is added to the ballots by the owner.
- 8.8 Voting Period** – The polls will open when the ballots are sent to the Members and will close after commencement of the annual meeting, or any adjournment thereof, or upon final collection of ballots for counting, whichever occurs first.
- 8.9 Counting and Tabulation of Ballots** – All votes must 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 votes. 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.
- 8.10 Custody and Retention 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 or inspectors of elections or at a location designated by

the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Civil Code §5145 for challenging the election has expired, at which time custody shall be transferred to the Association.

9.0 Recount or Challenge; Inspection of Association Election Materials.

9.1 Recount or Challenge – If there is a recount or other challenge to the election process, the inspector or inspectors of elections shall, upon written request, make the ballots available for inspection and review by an association member or the member’s authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

9.2 Inspection of Election Materials – The Association shall be required to retain as Association election materials the returned ballots, signed voter envelopes, any proxies, the voter list, and the candidate registration list. Such election materials are subject to inspection and copying in accordance with Civil Code §5200, except that the signed voter envelopes may only be inspected and may not be copied.

10.0 Use of Association Funds for Campaign Purposes.

10.1 Association Funds Shall Not Be Used for Campaign Purposes – The Association funds shall not be used for campaign purposes in connection with any Association election of directors. 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 – “Campaign Purposes” include, but are not limited to, the following:

1. Expressly advocating the election or defeat of any candidate that is on the Association election ballot.
2. Including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot and ballot materials, within 30 days of an election.

11.0 Amendment of Election Rules.

11.1. Amendment – The Election Rules may be amended in accordance with the procedures set forth at Civil Code §4360; provided, however, that the Election Rules shall not be amended less than 90 days prior to an election.

You may review an exact version of Civil Code Sections 5100-5145 as published by the State of California on <http://leginfo.legislature.ca.gov>

**INSTRUCTIONS FOR ADOPTION OF ELECTION RULES AND SAMPLE
LANGUAGE FOR NOTICES TO MEMBERSHIP**

***INSTRUCTIONS TO CLIENT:** Before the Board adopts any new rules or amends existing rules, it is required to send a notice of the proposed changes to the membership at least 28 days prior to the open meeting of the Board at which the rule change will be adopted. The notice must enclose or include the text of the proposed rule change and must include a description of the purpose and effect of the proposed rule change. A template for this notice is set forth below.*

NOTICE OF PROPOSED RULE CHANGE

The Board of Directors is currently considering adopting new Election Rules. Civil Code Section 4360 requires that members be provided a notice at least twenty-eight (28) days before the new Election Rules are adopted. Provided with this notice is the text of the proposed Election Rules. The purpose and effect of the proposed Election Rules will be to establish policies relating to elections.

The Board of Directors will vote on whether or not adopt the proposed Election Rules at the Board meeting scheduled to take place on [INSERT MEETING DATE] at [INSERT MEETING TIME AND LOCATION]. The Board will consider all comments by the membership before making a final decision. You may submit your comments regarding the proposed Election Rules to the Board in writing, or you may appear at the meeting where you will be given an opportunity to comment in person.

***INSTRUCTIONS TO CLIENT:** If, after the 28-day notice period, the Board adopts the Election Rules as an agenda item at a noticed open meeting of the Board, then notice of the adopted Election Rules must be made to all members within 15 days after the date of the Board meeting at which the Election Rules are adopted. A template for this notice is set forth below.*

NOTICE OF RULE CHANGE

At the Board meeting held on [INSERT MEETING DATE], the Board of Directors adopted the enclosed Election Rules. These Election Rules will take effect immediately.

SUMMARY OF NEW REQUIREMENTS PURSUANT TO SB323

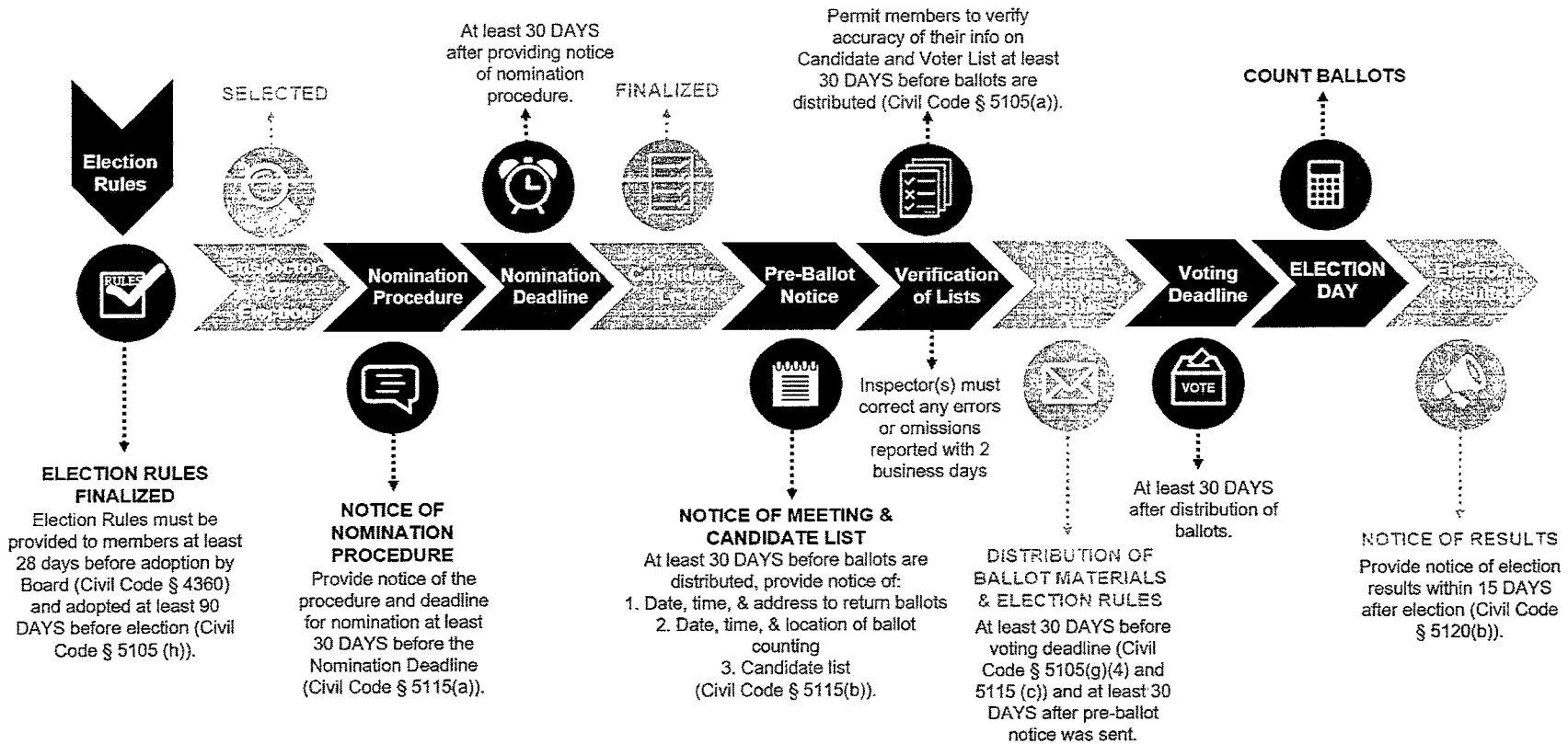
Effective January 1, 2020, associations must now adhere to a strict timeline for director elections and each deadline is based on the next act in the election procedure; thus, the Association should expect the entire election process to take about 120 days. The following is a summary of the new requirements and pertinent changes affecting the election timeline:

1. Association must provide notice of nomination procedures and deadline **at least 30 days before the deadline for nominations.**
2. Association must provide notice of the following **at least 30 days before ballots are distributed:**
 - a. Date, time, and address where the ballots are to be returned to the inspector(s)
 - b. Date, time, and location where ballots will be counted
 - c. List of candidates that will appear on the ballots
3. It's recommended that the Association select a mailing date about 5-10 days after the nomination deadline to allow time for the Association to receive the mailed nominations and update the ballot.
4. Association must permit members to verify the accuracy of their information on the Candidate and Voter Lists **at least 30 days before the ballots are distributed.** The inspector(s) of election must change and correct the lists **within 2 business days** of any error or omission being reported.
5. Inspector(s) of elections must deliver, or cause to be delivered, ballot materials and election operating rules **at least 30 days after the pre-ballot** notice was sent and **at least 30 days before the voting deadline.** It's recommended that the Association re-check the voting deadline to make sure there is enough time and, if not, adjust the voting deadline to allow more time.
6. Voting deadline must be **at least 30 days after the distribution of ballots.**
7. Association must provide notice of election results **within 15 days after the election.**

It is recommended that the Association select a voting deadline date that is at least 110 days after the anticipated mailing date of the nomination procedures.



SAMPLE TIMELINE FOR DIRECTOR ELECTION



***** HOMEOWNERS ASSOCIATION**

REQUEST FOR NOMINATIONS

There will be _____ open positions on the Board of Directors for the upcoming annual meeting to be held on [INSERT DATE AND TIME] at [INSERT LOCATION]. The members will be electing _____ Directors for _____-year terms.

If you are an owner who is interested in being nominated to serve on the Board of Directors or who wishes to nominate someone else, please complete this form. If you nominate someone else, please make sure that they are willing to serve.

Attached below is a candidate nomination form for you to complete and return by the date listed in the nomination form. If you are interested in running for a Board position, you may submit a candidate statement briefly describing your qualifications, reasons for wanting to serve on the Board and any other pertinent information that will introduce yourself to the other homeowners. Any candidate statement must be limited to a single page (on one side) with not less than 11-point font. The Association will not edit or redact any content from your form but may include a statement specifying that the candidate or member, and not the Association, is responsible for that content.

***** HOMEOWNERS ASSOCIATION**

CANDIDATE NOMINATION FORM

CANDIDATE NAME: _____ PHONE: _____

ADDRESS WITHIN ASSOCIATION: _____

If you are the nominating yourself, you may attach a one-page candidate statement as described in the Request for Nominations. Further, if you are nominating yourself, by submitting this Candidate Nomination Form, you are certifying that you meet all candidate qualifications specified in the Association's Rules for Elections and Voting (i.e., that you are a Member of the Association, that you are current in the payment of regular and special assessments, that you do not have a past criminal conviction that would prevent the Association from obtaining or maintaining fidelity bond coverage, and that you are not a joint owner of property owned by another candidate or director).

If nominating someone other than yourself, provide your name here: _____

If you nominate someone other than yourself, the Association will forward that individual a separate form to confirm his or her willingness and eligibility to be nominated as a candidate.

This form must be received by the Association by mail or personal delivery by 5:00 p.m. on _____, 20____, at the following address: _____

***** HOMEOWNERS ASSOCIATION**

NOTICE OF ANNUAL MEETING AND CANDIDATE LIST

The _____ Annual Meeting of the Members of _____ Homeowners Association will be held on _____, 20__ at _____ p.m. at _____ [INSERT LOCATION] _____. The purpose of the meeting is to elect ___#___ Board of Directors to serve a ___#___-year term, and to conduct such other business as may come before the meeting.

Issues to be discussed include:

_____.

There will be a vote of the membership on the following issues: _____

_____.

Voting will take place by secret ballot. The inspector(s) of election will tabulate member votes at the annual meeting. Ballots may be delivered to the inspector(s) of election at the annual meeting or mailed to the inspector(s) of election at _____ [INSERT ADDRESS] _____, provided that mailed ballots must be actually received by no later than _____ [INSERT DATE AND TIME] _____. The Board of Directors reserves the right to extend the close of balloting upon Board approval for such periods of time as the Board believes appropriate and reasonable.

Your ballot and instructions for voting will be provided at least 30 days after the mailing of this notice and at least 30 days before the deadline date for voting.

The names of the candidates received by the Association at this time are:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

You have a right to verify the accuracy of your individual information on the voter list for this election, which includes your name, voting power, physical address, and mailing address. Please contact _____ if you wish to verify your information and report any errors or omissions on the voter list or on the candidate list above to the inspector(s) of election.