

# VISTAMONTE AT SAN LUIS REY HOMEOWNERS ASSOCIATION

## ELECTION RULES AND MEETING TIMELINE

### INTRODUCTION

The Vistamonte at San Luis Rey Homeowners Association has adopted the following election rules as required by California law. These rules replace older election rules, and are intended to apply to voting on those matters referenced in Civil Code Sec. 5100(a)(1) and such other votes as the Board determines should be conducted by secret ballot. To the extent these rules conflict with provisions of the Bylaws and/or CC&Rs, because these Rules restate applicable law, they take precedence over contrary provisions in the Bylaws and/or CC&Rs despite Civil Code Sec. 4205.

These Rules have been designed for annual use by simply inserting dates as indicated to help with the election time-line. Insertions of dates are not substantive changes and should not be construed as a “rule change” requiring notice pursuant to Civil Code Sec. 4360.

### ELECTION RULES AND TIMELINE

#### 1. 20 \_\_\_\_ ANNUAL MEETING

The 20\_\_ annual meeting date for tabulating ballots, and the voting deadline, is currently scheduled for \_\_\_\_\_. This scheduled date is preliminary and may be subject to change. If there are changes, notice will be provided. Furthermore, since all dates are generally contingent on this annual meeting date, all dates herein are approximate and subject to change.

#### 2. NOMINATION PROCEDURES; NOTICE AND CANDIDATE QUALIFICATION

##### 2.1 Nomination Procedures and Deadline

The Bylaws authorize the following nomination procedures: a nominating committee and from the floor [Bylaws, Sec. 5.4]. In addition, nominations may be submitted in writing to the management agent. Nominations must be received by \_\_\_\_\_ [75 days before annual meeting date] in order to be included on the candidate registration list and ballot.

##### 2.2 Notice of Nomination Procedures

At least 30 days before nominations are due [105 days before annual meeting date], the Association will give General Notice of the procedure and deadline for submitting a nomination.

Individual Notice will be given to owners who have requested it. A completed copy of these Rules may be used as notice [Civil Code §5115(a)].

### 2.3 Candidate Qualifications

As required under Civil Code Sec. 5105, the Association shall disqualify a person from a nomination as a candidate for not being a member of the Association at the time of the nomination. If title to a separate interest parcel is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a member for purposes of this Rule.

As allowed under Civil Code Sec. 5105, and notwithstanding provisions to the contrary in the Bylaws or CC&Rs, the Association may also disqualify a person from nomination as a candidate pursuant to any of the following:

(1) A nominee for a Board seat, and a director during their Board tenure, must be current in the payment of regular and special assessments. The Association may disqualify a person from nomination for nonpayment of regular and special assessments, but may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true:

- (i) The person has paid the regular or special assessment under protest pursuant to Civil Code Sec. 5658.
- (ii) The person has entered into a payment plan pursuant to Civil Code Sec. 5665.

(2) A person is disqualified if the person, if elected, would be serving on the Board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.

(3) A person is disqualified if he/she/it has been a member of the Association for less than one year.

(4) A person is disqualified 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 Sec. 5806 or terminate the Association's existing fidelity bond coverage.

The Association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Civil Code Sec. 5900 et seq.

### **3. INSPECTOR OF ELECTIONS**

On \_\_\_\_\_ [75 days before voting deadline], the Association will appoint an inspector(s) of election, either 1 or 3 [Civil Code §5110].

Persons who qualify as inspector(s): (a) a volunteer poll worker with the County registrar of voters, (b) a licensee of the California Board of Accountancy, (c) a notary public, or (d) a member of the Association, provided such member is not a director, candidate, or related to a director or candidate.

Persons who do not qualify as inspector(s): any person or company already employed by or under contract with the Association for compensable services is disqualified from serving as an inspector(s) of elections. A person or company not otherwise already employed by or under contract with the Association is not disqualified as serving as an inspector(s) of elections merely by virtue of being compensated for such inspector service.

The inspector or inspectors may 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 meeting the qualifications for inspector(s).

Inspector(s) shall have the duties listed in Civil Code §5110(c). The inspector(s) may delegate inconsequential non-substantive duties, such as receiving ballots, to third parties who do not qualify to serve as inspector(s) of election.

### **4. ASSOCIATION ELECTION NOTICE**

On \_\_\_\_\_ [35 days before ballot mailing], the Association shall provide General Notice to the membership of the following:

(1) The date, time and physical address where ballots are to be returned, whether by mail or hand delivery.

(2) The date, time, and location of the ballot counting meeting.

(3) A list of all candidates' names that will appear on the ballot as known by the Association at the time notice is provided.

If Individual Delivery is requested by a member, the Association shall give the above information by Individual Delivery [Civil Code §5115(b)].

### **5. CANDIDATE REGISTRATION LIST; VOTER LIST; OWNER VERIFICATION PERIOD**

As part of the Association Election Materials, the Association shall create and maintain (a) a candidate registration list, and (b) a voter list.

The voter list shall include the voter name, his/her/its voting power, the physical address and/or the parcel number, and the ballot mailing address, if different from the physical address or if only the parcel number is used on the voter list.

On or before \_\_\_\_\_ [at least 30 days before ballot mailing], the Association shall permit members to verify the accuracy of their individual information on both lists. The Association or member shall report any errors or omissions on either list to the inspector(s) of election not less than five days prior to ballot mailing; \_\_\_\_\_. The accuracy of the individual information on both lists will be conclusively presumed in the absence of a report of any errors or omissions by the deadline date. Upon receipt of a report of an error or omission, the inspector(s) shall make the corrections within two business days [Civil Code §5105(a)(7)].

## **6. ASSOCIATION MAILING**

On \_\_\_\_\_ [at least 30 days before annual meeting], the Association shall mail, or cause to be mailed, an election voting packet, consisting of ballots, two pre-addressed envelopes and ballot return instructions to every member [Civil Code §5115(c)]. This mailing can be coordinated with the Election Inspector(s) mailing in Rule 7.

As required under Civil Code Sec. 5105(g), and notwithstanding any provision in the CC&Rs or Bylaws, the Association may not deny a ballot to any member for any reason other than not being a member at the time when ballots are distributed. Further, the Association may not deny a ballot to a person with a general power of attorney for a member, and must count any ballot received from the person with a general power of attorney if received in a timely manner.

## **7. ELECTION INSPECTOR(S) MAILING**

On \_\_\_\_\_ [at least 30 days before annual meeting], the inspector(s) of election shall mail, or cause to be mailed, by individual delivery, the ballot or ballots and the election operating rules. The election operating rules can be posted on an internet website [Civil Code §5105(g)(4)]. The ballot mailing can be coordinated with the Association's mailing in Rule 6.

## **8. ACCESS TO ASSOCIATION MEDIA**

If any candidate or member advocating a point of view is provided access to Association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election. The Association shall not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the Association, is responsible for that content [Civil Code §5105(a)(1)].

**9. ACCESS TO COMMON AREA MEETING SPACE**

If there are any common area meeting spaces, such space(s) may be used by (a) each candidate during a campaign, at no cost, including those who are not incumbents, and (b) all members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the election. Such use shall be by reservation communicated in writing to the Association, on a first-come-first-served basis [Civil Code §5105(a)(2)].

**10. VOTING POWER, PROXIES AND VOTING PERIOD**

Each owner shall have one vote on each matter submitted for voting. Each vacancy shall count as a separate “vote.” For example, if there are three vacancies for election to the board, each owner shall have three votes. Cumulative voting, where more than one vote may be cast for any candidate, is allowed [Bylaws, Sec. 4.10]. However, in the event the bylaws are amended to withdraw cumulative voting rights, cumulative voting will not be allowed. Proxies, allowed by the bylaws, must comply with California law [Bylaws, Sec. 4.11]. The voting period shall be as outlined in these Rules [Civil Code §5105(a)(4)].

**11. CUSTODY OF ELECTION MATERIAL**

The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the inspector(s) of elections or at a location designated by the inspect(s) until after the tabulation of the vote, and until the time allowed by Civil Code Sec. 5145 for challenging the election has expired, at which time custody shall be transferred to the Association [Civil Code §5125].

**12. CHALLENGE OR RECOUNT**

If there is a recount or other challenge to the election process, the inspector(s) 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 [Civil Code §5125].

**THE ABOVE ELECTION RULES** have been adopted by the Vistamonte at San Luis Rey Homeowners Association effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after not less than 28 days notice to the Association membership.

\_\_\_\_\_

**VISTAMONTE AT SAN LUIS REY HOMEOWNERS ASSOCIATION**

**20\_\_\_\_\_ ELECTION TIMELINE**

**Summary**

\_\_\_\_\_

Annual Meeting Election Date

Time: \_\_\_\_\_

Location: \_\_\_\_\_

\_\_\_\_\_

Association Notice of Nomination Procedure & Deadline  
[105 days before annual meeting – General Notice\*] – Rule 2.2

\_\_\_\_\_

Nomination Receipt Deadline  
[75 days before annual meeting] – Rule 2.1

\_\_\_\_\_

Appointment of Inspector(s) of Election  
[75 days before annual meeting] – Rule 3

\_\_\_\_\_

Association Notice of Ballot Return, Annual Meeting Information  
and Candidate Names Information  
[65 days before annual meeting – General Notice\*] – Rule 4

\_\_\_\_\_

Open Verification Period for Voter and Candidate Lists  
[60 days before annual meeting] – Rule 5

\_\_\_\_\_

Verification Error & Omission Report Deadline  
[35 days before annual meeting] – Rule 5

\_\_\_\_\_

Association Mailing of Election Voting Packet  
[30 days before annual meeting - Mail] – Rule 6

\_\_\_\_\_

Election Inspector(s) Election Ballot and Rules Mailing  
[30 days before annual meeting – Individual Delivery] – Rule 7

\* *General Notice (e.g. posting), but Individual Delivery to those owners who request.*