



UNDERSTANDING HOMEOWNER ASSOCIATION ELECTIONS

BAPS BOARD MEMBER SEMINAR

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Topics to be discussed

- ▶ Types of Elections Covered under Civil Code Section 5100
- ▶ Election Rules
- ▶ Inspector of Elections
- ▶ Voting Procedure
- ▶ Penalties for Violation

Secret Written Ballot Elections

1. Assessments requiring a membership vote
2. Election/removal of directors
3. Governing document amendments
4. Grant of exclusive use of common area
5. Any other topic set forth in the governing documents

Election Rules

- ▶ ***HOAS MUST HAVE SEPARATE ELECTION RULES***
- ▶ Election Rules must address:
 - ▶ Equal access to membership
 - ▶ Equal access to common area meeting space
 - ▶ Qualifications for candidates

Election Rules (cont.)

- ▶ Nomination procedure
- ▶ Qualifications for voting
- ▶ Use of Proxies
- ▶ Whether cumulative voting is allowed
- ▶ Method for selection of Inspector of Elections

Inspector of Elections

- ▶ **Requirement** – not a suggestion
- ▶ Must be an independent third party
 - ▶ Not currently employed by HOA
 - ▶ Cannot be under contract with HOA
 - ▶ *Exception: IF allowed in Election Rules*

Inspector of Elections

- ▶ Following individuals may NOT act as the Inspector of Elections
 - ▶ Members of the board of directors
 - ▶ Candidate for the board of directors
 - ▶ Individual related to a member of the board of directors

Duties of Election Inspector

- ▶ Determine who may vote
 - ▶ Member in Good Standing
 - ▶ Record Date
- ▶ Determine effect of proxies (if allowed)
- ▶ Hear all challenges related to who may vote

Duties of Election Inspector (cont.)

- ▶ Receive and handle all ballots
- ▶ Validate voter information
- ▶ Make decisions regarding the polls (when they close)

Duties of Election Inspector (cont.)

- ▶ Tabulate the ballots
 - ▶ Must be in public
 - ▶ May only be opened at a noticed meeting of the Board
 - ▶ Inspector may designate an individual to help
 - ▶ Results must be recorded in minutes and notice to membership within 15 days

Duties of Election Inspector (cont.)

- ▶ Must maintain custody of the ballots for 1 year
- ▶ "Perform any acts as may be proper to conduct the election with fairness to all members"

Election Packet

- ▶ Cover letter explaining measure
- ▶ Proposed language (if governing document amendment)
- ▶ Ballot
- ▶ Voting instructions
- ▶ Two Envelopes
 - ▶ Ballot envelope (small)
 - ▶ Mailing envelope (large)
- ▶ Mailed at least 30 days before voting deadline

Ballot

- ▶ Should be clear and succinct
- ▶ Must contain certain information required by Civil Code
- ▶ Should be prepared by legal counsel, not management
- ▶ Should not request member to identify themselves
- ▶ Should state voting deadline
- ▶ Should include voting instructions to ensure ballot is counted

Double Envelope System

- ▶ **Ballot** envelope

- ▶ No identifying information of member
- ▶ If member IDs themselves, then privacy is waived

- ▶ **Mailing** envelope

- ▶ Preaddressed (and stamped if possible) to Election Inspector
- ▶ Name
- ▶ Property address at development
- ▶ Signature

Quorum Requirement

- ▶ Quorum is only required *if* governing documents or Civil Code requires it
- ▶ If quorum *is* required, each ballot received by the Inspector of Elections is counted toward quorum

Member Challenge

- ▶ Most actions will be brought in small claims court
- ▶ Member can request declaratory, injunctive relief and/or restitution for violation in Superior Court
- ▶ Can bring action 1 year from date of violation
- ▶ If challenge is successful, Court may void the election results

Monetary Penalties for Violation

- ▶ If member is successful, they are entitled to
 - ▶ Their reasonable attorneys' fees
 - ▶ Court costs
 - ▶ Up to \$500 per violation (not identical violations)
- ▶ HOA cannot recover any costs unless Member's challenge is found to be frivolous

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