

# **ELECTION OPERATING RULES**

HIGH COUNTRY WEST POA March10, 2021

Pursuant to Civil Code 5100, along with the Bylaws and CC&Rs of the Association, these Election Operating Rules will apply to elections required to be conducted in compliance with Civil Code 5100

## **A. APPLICABLE ELECTIONS**

- a. Elections of the Members of the Board of Directors
- b. Recall elections (removal of a board director)
- c. Amendments to the Governing Documents
- d. Grant of exclusive use of a portion of the common area, to any member
- e. Approval of an assessment increase above the levels allowed to be made by the Board of Directors

## **B. QUALIFICATIONS FOR MEMBER VOTING**

- a. Only Owners of record, as defined in the CC&Rs and Bylaws are qualified to be a Member of the Association. This Association shall have one (1) class of voting membership. Members shall be all Owners, each of whom shall be entitled to one (1) vote for each Lot owned; provided, however, co-owners of a Lot shall not be entitled to divide their vote and not more than one (1) vote may be cast with respect to any Lot
- b. The date ballots are mailed to the owners is the official record date of an election; a Member is not eligible to vote if they were not a Member of the Association on the record date
- c. Persons with general power of attorney for a Member are entitled a ballot on behalf of the Member following the same Election Rules as Members
- d. Proxies: Every owner entitled to vote shall have the right to do so either in person or by a written proxy. The proxy must be signed by the member and filed with the secretary (manager) of the Association. The proxy shall include the authorized name of the member or members that are authorized to vote on the members behalf (civil code 5130)

## **C. QUALIFICATIONS FOR BOARD CANDIDATE AND BOARD DIRECTOR**

- a. Only Members of the Association may run as a candidate and hold a position on the Board of Directors
- b. The Association Manager will collect nominations and verify qualifications prior to placing candidates on the ballot
- c. Candidates will be disqualified for the following reasons:
  - 1) Candidate is disqualified if not a member of the Association at the time of the nomination deadline
  - 2) Candidate must be a natural person. An entity may be represented by the appointment of a natural person, designated in writing by the entity and filed with the secretary (manager) of the association
  - 3) A candidate may be disqualified if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would either prevent the association from purchasing the fidelity bond coverage required by Section 5806 should the person be elected or terminate the association's existing fidelity bond coverage as to that person should the person be elected (Civil Code 5100)
  - 4) Candidates' or Directors' regular and special assessments must be no greater than 60 days past due or you will be disqualified. Nominee may not be disqualified for nonpayment of fines, late charges, collection charges, and cost levied by third parties
  - 5) A candidate would be disqualified if another person holding a joint ownership interest in the same separate interest parcel as the candidate would be serving on the board at the same time

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- OR if the other person is either properly nominated for the current election or an incumbent director
- d. Candidate must certify on nomination form they are not disqualified for the reasons listed in these Election Operating Rules, the Bylaws, the CC&Rs or other governing documents that apply to elections of a board director
  - e. Write-in candidates are permitted on the ballot. In the event a write in candidate has sufficient votes and qualifies to secure a seat, the Member would be contacted to see if they would accept the nomination
  - f. Candidates must be able to meet the qualifications for a Board Member position (as defined below)
    - 1) The term of office for a director position is two (2) fiscal years, which run July through June
    - 2) A director may not miss more than three (3) consecutive regular board meetings in a row, nor may they miss more than five (5) regular meetings in a fiscal year
    - 3) Directors must be able to commit to a minimum of 5-7 hours per month to address and conduct board business. This includes attendance at monthly board meetings and special (extra) meetings that arise
  - g. Director must attend a “Board Workshop” or will be provided a written copy (by management) that will explain duties and responsibilities to be taken while filling a position on the board
  - h. The Association Bylaws specify powers and duties of a Director. The Bylaws, along with the CC&Rs, Civil Codes, and other governing documents should be reviewed in full by Directors to comply with current laws
  - i. Prior to disqualifying a member for nomination, the Association will offer the Member an opportunity to engage in internal dispute resolution

## D. NOMINATIONS OF A DIRECTOR

- a. The Association shall provide general notice of the procedure and deadline date for submitting a nomination at least thirty (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
- b. Any qualified Candidate may nominate himself/herself (self-nomination)
- c. Only a Member of the Association may nominate another Member as a candidate by submitting the nomination form with candidate’s contact information
  - 1) This nomination is valid only if the qualified candidate accepts the nomination and completes the Candidate Nomination form by the deadline
- d. All persons making a nomination must complete and submit the official Candidate Nomination Form and any accompanying materials to the association Manager per specified timeline noted on the form
- e. Forms are to be submitted to the HOA Manager to be placed on the official Registered Candidate List which will be placed on the ballot. This form is to be hand delivered to the Club Manager or emailed to [manager@highcountrywest.com](mailto:manager@highcountrywest.com). Candidate must secure a confirmed receipt of the submitted form from the Manager; this ensures all nomination forms are accounted for. The confirmed receipt will be sent by 6 PM the next business day, call the Manager immediately should you not have the receipt to locate your submitted candidate form
- f. Candidate Nomination forms will be available at the Club office or on the official High Country West POA website
- g. The Association shall maintain a candidate registration list of applicants and will permit these members to verify the accuracy of their individual information. This list will be available from the

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date the association asks for nominations and up to two (2) business Days after the nomination form due date. Discrepancies must be reported on the same day to the manager

## **E. MEMBER VOTER LIST**

- a. The Association Manager with the Election Inspector shall maintain a Member Voter List that will include owners' names, physical address of the unit, and the mailing address on file for the unit.
- b. The Association shall permit members to verify voter information for a 30-day period, which is done 60 days prior to ballot mailing
- c. Members shall report any errors or omissions on the voter list to the Club Manger in writing immediately, who shall make corrections within 2 business days of date reported
- d. The Inspector of Elections shall oversee the corrections and shall cause to be generated a final copy of the Voter List to be used in the mailing of ballots and verifying of ballot return envelopes

## **F. ACCESS TO ASSOCIATION MEDIA, MEETING SPACE**

- a. All candidates, including incumbents, and members with a point of view during an election have the same access to present campaign materials or viewpoints to the members and may do so by any reasonable means and at the candidate's / member's sole expense
- b. For all applicable elections, the Association's Board may choose to offer candidates and members with a point of view publication of a media article(s) such as in the newsletter or on the website at no cost and for purposes reasonably related to the election:
  - 1) Access to any media provided would be provided equally to all
    - i) The association will not edit articles or submissions, but may include a statement that the candidate or member is responsible for content and not the Association
- c. An option to hold one meeting (members attendance only) either in the meeting room or an outdoor area (determined by number of people) for campaigning related purposes
- d. An invitation may be made to the list of registered candidates to attend a "meet the candidates" session at the annual picnic if scheduling dates permit. A 3-minute time is given to speak to Members
- e. If, due to federal, state, or local guidelines any of the meeting methods described in F\_b and F\_c are not authorized, or any unforeseen circumstances, the Association Manager may choose to put in place alternative meeting methods (such as video conferencing) which conform to those guidelines

## **G. PROCEDURES FOR MEMBER ELECTIONS**

- a. All member elections of any type will be held at the Association property (Clubhouse). A location change or an electronic election held online would be posted by general notice and included in the election materials should an unforeseen location change need to occur
  - 1) The tabulation of ballots will be held at the Association Property unless so noticed in election material
- b. The election of director positions shall be held at the Annual Meeting of Members, held the 2<sup>nd</sup> Wednesday in July yearly
- c. Prior to an election for Board candidacy, the directors shall appoint a nominating committee composed of at least one (1) member of the Board and not less than two (2) Members who are not directors. This appointment shall be made yearly no later than the March Board of Directors meeting. The committee shall nominate (seek members to run) to be placed on the ballot at least as many candidates as director positions to be elected, write in candidates are permitted
- d. All elections are held following the procedures set forth in the Bylaws

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- 1) The presence in person or by proxy of thirty-three and one-third percent (33 1/3%) of the Members entitled to vote at a meeting of the Members shall constitute a quorum for the transaction of business except as otherwise stated in the By-laws
  - 2) All elections shall be by secret written ballot and held by mail
  - 3) The Members (or their proxies) may cast only one vote for each vacancy or item presented
  - 4) The persons / items receiving the highest number of votes shall be elected or passed
    - i) For director elections, ties will be broken by an agreement of a coin toss or high card draw
  - 5) Cumulative voting shall not be authorized
- e. The opening of the polls will begin at a properly noticed and convened meeting of the Board of Directors
  - f. Once a Member's ballot is received, it cannot be revoked, withdrawn, or changed, even if unopened
  - g. Notice of poll opening and closing times will be included on the ballot itself. Members will be able to present their ballot directly to the Inspector of Election up until the closing time of the polls. No late ballots will be accepted once polls close
  - h. The Inspector of Elections will collect all returned balloting envelopes and verify validity to the Members Voting List (envelopes remain sealed)
  - i. The Inspector of Elections will inform the board of the number of ballots collected prior to the deadline so action can be taken to encourage members to vote
  - j. If a candidate whose name is on the ballot withdraws (in writing to Manager) before ballots are counted, the election will go forward. However, the votes cast for a withdrawn candidate will not be counted or reported
  - k. The Inspector of Elections shall have the right to extend the voting deadline if there is an insufficient number of ballots received
  - l. Opening of ballots and the tabulation of ballots shall be done at an open meeting of the Member's at the Association Property (clubhouse) once quorum has been met
  - m. Any Candidate or Member may observe the count, but shall stand at least ten (10) feet away from the Inspector(s) of Elections area and they may not communicate with or interfere with the Inspector of Elections while the count is taking place. Any person violating this Section may be asked by the Inspector of Elections to leave the meeting, the count and tabulation may be continued to a different time and/or place or any other reasonable step(s) may be taken by the Inspector(s) to prevent further disruption
  - n. Directions on how to complete the ballot, how to return a ballot, and the date they are due are included within the ballot envelope mailed to each Member
  - o. The association shall provide the tabulated results of the election by general notice within 15 days from the counting of ballots and will include this in the minutes of the next board meeting
  - p. Other than time frames set forth in Civil Code 5100, the timelines stated in these rules are guidelines, setting forth fair and reasonable procedures to conduct an election by secret ballot voting. The failure of the board to strictly adhere to these timelines will not invalidate any election provided the procedures used allowed all members an equal opportunity to participate in the election or voting process and did not affect the results of the election

### **H. SELECTION OF INSPECTOR(S) OF ELECTIONS (IOE) AND DUTIES (Civil Code 5105, 5110)**

- a. The Board of Directors (with the Manager's assistance) shall appoint one (1) or three (3) Inspector(s) of Election for all voting that occurs by secret ballot before the general notice of an upcoming election is given or not less than 60 days prior to the mailing of ballots to owners

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- 1) The IOE will be independent third parties as specified in Civil Code 5110
- 2) The IOE will oversee and appoint additional independent third parties per Civil Code 5105(a)(6)
- b. The location to receive ballots shall be the Association business office address (clubhouse) unless otherwise changed by the Inspector of Elections
- c. The Inspector(s) of Election shall use this document, the Bylaws, the CC&Rs, the Civil Code, the Corporations Code, shall consider the advice of the Association's legal counsel, and shall attempt, in so far as possible, with fairness to all, to allow the vote of each Member, and be consistent, in the discharge of his/her responsibilities
- d. The Inspector(s) of Election shall perform or oversee all duties: the compiling of Association election materials, the distribution of voting material, the collection and processing of ballots, overseeing additional third party persons to assist with the counting related task, and the retaining of all elections materials as specified in civil code 5105 & 5110. The authenticity, validity and effect of proxies shall be determined by the Inspector of Election
- e. 30 days before distribution of ballots to owners, the Inspector of Elections will delegate to HCW Management the delivery by general notice (individual notice if requested per civil code 4040):
  - 1) The date and time by which, and the physical address where ballots are to be returned by mail or handed to the Inspector of Elections
  - 2) The date, time, and location of the meeting where ballots will be counted
  - 3) The list of all registered candidates' names that will appear on the ballot
    - i) If the election is for an election other than for a board director, the board shall include the detailed information that applies to the upcoming member election being held
- f. 30 days before an election, the Inspector of Elections shall oversee:
  - 1) The posting by HCW Management for member review a copy of the Election Operating Rules on the official High Country West POA website
  - 2) The HCW Management's delivery by first class mail the official election ballot(s) to owners which must include
    - i) The official ballot with a return envelope and the secret balloting envelope
    - ii) Voting instructions including how to complete and return the ballot
    - iii) The date, time, and location of the meeting where ballots will be counted
    - iv) A notice of the website address where the Election Operating Rules can be viewed (in 12-point font)
    - v) The manager will include Members Annual Meeting details if they apply during an election
  - 3) Ballots not completed in accordance with the instructions may be considered invalid. The Inspector of Elections will determine the validity of such ballots and will process all ballots with the similar defects equally
  - 4) The Inspector of Elections shall determine the location to retain the Candidate Registration List, the Voter List including corrections, copies of all general notice items, copies of submitted candidate documents, copy of the official ballot packet, all returned envelopes and ballots used in the tabulation of votes, and any other election material used in conjunction with the election. After one year these can be turned over to the association manager for retention

## I. RECALL ELECTIONS

- a. Membership may request a special meeting of the membership for the purposes to recall the full board or individual directors at a properly noticed and convened special meeting

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- 1) A petition with 5% or more of the membership, with one signature per voting lot counted toward the 5% requirement must be presented to or delivered to the manager by certified mail. The petition must include a detailed recall request, member's printed name, address of unit, and signature, this will be used for member verification purposes
  - 2) Within 20-days of receipt of a valid recall petition, the Board will promptly appoint an Inspector of Elections and give general notice to Members of the special election to be held with time, date, location, and ballot information
  - 3) The board must hold the recall election within 35-90 days from receipt of the petition
  - 4) The election to replace the recalled directors will be held at the same time as the recall election. The board could be left without the ability to conduct the necessary business to run the association potentially causing great harm. To meet the rule requirements for an election the board can shorten the number of days required to submit the nomination forms
    - i) The recall would be counted first, if the recall is successful the counting of ballots for the election of new board members would then proceed, if unsuccessful, the election ballots will not be counted
- b. Court appointed directors of the board are not subject to recall
  - c. Members may not begin a petition to recall a director until the director has been in office for greater than 60 days. No recall election will be initiated if the targeted board member(s) term expires 120 days from the date the board received the petition unless the petition is to recall the entire board. One recall petition is permitted per board director during their two-year term

### **J. ELECTION CHALLENGES AND BALLOT RECOUNTS**

- a. Upon written request to the manager and under the presence of the IOE and Manager, the Inspector of Elections will make available election ballots for inspection and review to a member or members authorized representative should the member challenge an election
- b. Any recount would be performed by the Inspector of Elections and the confidentiality of the vote must be maintained