

# EMERALD FOREST HOMEOWNERS ASSOCIATION

## ELECTION RULES

Under California law, most homeowner association elections must be conducted by secret ballot according to protocols and procedures established by the legislature in Sections 5100, *et seq.* of the Civil Code. The following Election Rules are adopted as required by Section 5105(a) of the Civil Code in order to describe the manner in which each such election must be conducted.

### 1. **Elections Subject to these Rules**

There must be adherence to these Election Rules in any election described in Section 5100(a) of the Civil Code, including elections (a) regarding assessments which require a vote of the Owners, (b) to select directors to serve on the Board, (c) to remove directors from the Board, (d) to amend or restate the Governing Documents, or (e) to grant exclusive use of all or a portion of the common areas as described in Section 4600 of the Civil Code. All other elections, if any, shall either follow these rules or the requirements of the California Nonprofit Corporations Code at the direction of the Board.

### 2. **Manner of Casting Votes**

Except for the meeting to count votes which is described in Section 9 below, any vote of the Members conducted by the Association may be done entirely by mail, except for elections to select directors which shall be done at the Annual Meeting or other meeting of the Members. All voting under these Rules shall be conducted by secret ballot only. There shall be no proxies allowed in any election nor shall any write-in candidates or nominations from the floor be permitted in any election to select directors, unless required in the Bylaws or Declaration.

### 3. **Secret Ballot and Voting Procedures**

- (a) The Association shall create and maintain a "Voter List" which must contain the name, voting power, physical address or parcel number (or both), and the mailing address of each Member. Members have a right to verify their information on the Voter List at least 30 days before ballots are distributed. Any misinformation on the list shall be reported by the Member and corrected within two (2) business days.
- (b) General notice as defined in Section 4045 of the Civil Code, must be given to each member at least 60 days before the date of the election, and 30 days before ballots are distributed, of the following:
  - (i) The date, time and physical address for the Owner to return his or her ballot; and
  - (ii) The date, time and location of the meeting to count ballots.
- (c) At least 30 days prior to the election, the Inspector of Elections shall deliver to each Member by individual delivery as defined in Section 4040 of the Civil Code

the ballot, voting instructions and a copy of these Election Rules. In lieu of distributing the Election Rules, they may be posted on an internet website instead when wording is written into the ballot which advises the Owners of this fact and the internet address to access the Election Rules is provided.

- (d) In any election subject to these Rules, two pre-addressed envelopes, with instructions on how to complete and return the ballots, must be sent by first class mail or delivered as otherwise permitted in Section 4040 of the Civil Code, to each Member, not less than thirty (30) days prior to the deadline for voting.
- (e) Ballots circulated to each Member shall identify the proposed action and provide an opportunity to specify approval or disapproval. If the voting is conducted through the mail, it must specify the date upon which the ballot must be returned to the inspector of elections. The voting instructions accompanying the ballots shall reflect a date by which the ballots must be delivered to the location designated.
- (f) The Board may extend the balloting period if by the original deadline fewer than 75% of the Owners have voted. Notice of the new due date shall be given in writing to all Members by General Notice as provided in Section 4045 of the Civil Code.
- (g) The Association may not deny a ballot to a Member for any reason and must give a ballot to a person who holds a general power of attorney for an Owner.
- (h) Once a ballot has been returned by an Owner, he or she may not retrieve the ballot and/or change his or her vote. If a ballot is lost, Owners may contact the Inspector of Elections and upon certifying in writing that his or her ballot has not been returned and cannot be found, he or she will be provided with a replacement ballot. Only one replacement ballot will be provided under any circumstances.
- (i) If, upon reviewing a ballot timely submitted, the Inspector of Elections cannot clearly ascertain from the face of the ballot how the Member intended to vote, the Inspector may contact the Member, if he or she is identifiable, to seek clarification or correction of the ballot; provided, however, if any one Member is contacted for this purpose then all Members whose ballots were not counted for this reason must be contacted.
- (j) The sealed ballots, signed voter envelopes, Voter List, and Candidate Registration List (as defined in Section 4(b) below) must be kept and remain in the custody of the inspector of elections or at secure designated location that he or she designates until after the votes are counted. These materials will be treated as "association records" under Section 5200(a) of the Civil Code that are subject to inspection and copying by an Owner.

#### 4. **Special Rules for Electing Directors**

In addition to the secret ballot and voting procedures described in Section 3 above, the following additional rules will apply in elections to choose directors.

- (a) Elections must be held at the end of each director's expiring term. A director will continue to serve until his or her successor is elected.
- (b) Management shall create and maintain as a permanent record of the Association a Candidate Registration List consisting of the name and address of those Owners who are qualified to run for the Board under Section 5 below and whose names were submitted in nomination in compliance with Section 6 below.
- (c) Members have a right to verify their information on the Candidate Registration List at least 60 days before the election and 30 days before ballots are distributed. Any misinformation on the list shall be reported by the Member and corrected within two (2) business days.
- (d) General notice (or individual notice if requested), as defined in Section 4045 of the Civil Code, must be given to each Member identifying the date that nominations are due and describing the procedure for submitting a nomination. The Association shall send this written notice to the Members at least 95 days before the election date, soliciting nominations and giving qualified Members 30 days to respond so that nominations are received at least 65 days before the election.
- (e) If, by the deadline specified for nominations to be submitted, the election is uncontested in that the number of qualified, declared candidates does not exceed the number of positions to be filled, all such candidates will be deemed elected by acclamation, the Members will be so notified, and it will be unnecessary to conduct the actual election. It shall be noted in the minutes of the Annual Meeting that the candidates were elected by acclamation.
- (f) General notice (or individual notice if requested), as defined in Section 4045 of the Civil Code, must be given to each member at least 60 days before the election and 30 days before ballots are distributed of the following:
  - (i) The date, time and physical address for the Owner to return his or her ballot;
  - (ii) The date, time and location of the meeting to count ballots; and
  - (iii) A list of candidates' names that will appear on the ballot.
- (g) The Association must, on request of any candidate for election to the Board and the payment by that person of postage and other reasonable costs, if any, mail materials prepared by the candidate to all Members (in a single mailing only). The materials must be reasonably related to the candidate's election and mailed within ten (10) days after the request has been made and payment of the mailing costs has been received. Alternatively, the Association may, within five (5) business days after receipt of a request, permit the candidate to inspect and copy the Voter List so the candidate may do his or her own mailing.

5. **Qualifications For Directors**

- (a) Only persons who are Members at the time of nomination shall be permitted to run for or serve on the Board.
- (b) No Member may be a candidate for election to the Board if, at the time of his or her nomination and on the date of the election (i) he or she is not current in the payment of all Regular and Special Assessments owed to the Association (provided, however, if the Assessments have been paid under protest, paid pursuant to an agreed-payment plan, or the person has not been provided the opportunity to engage in internal dispute resolution with the Association, the person may run for the Board), (ii) a Co-Owner of his or her Unit would be serving on the Board at the same time, (iii) the nominee has a past criminal conviction that would, if elected, prevent the association from purchasing a required fidelity bond or would result in termination of an existing bond, or (iv) he or she has been a Member for less than one year on the date nominations are due.
- (c) Owners that are entities rather than individuals may appoint a natural person for nomination or service as a director.

6. **Nomination of Candidates.** Only Members of the Association may run for or serve on the Board. Any Member wishing to be a candidate must submit his or her name, or have another Member do so on his or her behalf, along with a brief optional candidate statement not longer than one (1) page in length, so they are received by the Association at least 65 days before the date of the election (“Nominations Deadline”). Any person whose nomination is not received by the Nominations Deadline for any reason will not be a candidate in that election. If there are an insufficient number of qualified, declared candidates by the deadline, the new Board, after the election, will fill the vacancies by appointment.

7. **Voting Rights and Record Date**

Each Member shall have those voting rights that are specified in the Bylaws and Declaration. The “record date” for Members entitled to receive notice of any Association meeting where a vote will be conducted shall be the date the ballots are mailed to the Members.

8. **Inspector(s) of Election**

The Board shall appoint one or three Inspector(s) of Elections who shall be independent, impartial third parties. The appointment shall be made at an open meeting of the Board. The inspector(s) may appoint and oversee independent third parties to verify signatures and to count and tabulate votes. No inspector shall be someone who is employed by or under a contract with the Association for any compensable services. The inspector(s) of election shall perform those duties prescribed in Section 5110(c) of the Civil Code, including:

- (a) Receive Ballots
- (b) Count and tabulate the votes
- (c) Determine the number of Members entitled to vote and the voting power of each
- (d) Determine the authenticity, validity, and effect of ballots
- (e) Hear and determine all challenges and questions arising out of the right to vote
- (f) Determine when the polls close consistent with the Governing Documents
- (g) Determine the tabulated results of the election
- (h) Perform any other acts in order to conduct the election with fairness and in a manner consistent with California law and the Governing Documents

9. **Counting Votes and Reporting Election Results**

- (a) All votes shall be counted by the Inspector(s) of Elections or by independent third parties appointed and supervised by the inspector(s), in public at a properly noticed open meeting of the Board or Members. Any Member, including the candidates, may witness the counting and tabulation of the votes. No person, including the inspector, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.
- (b) The tabulated results of any election shall be promptly reported to the Board of directors and shall be recorded in the minutes of the next open Board meeting. Within fifteen (15) days of the election, the Board shall publicize the tabulated results of the election in a communication directed to all Members.

10. **Retention of Election Records**

The ballots, envelopes, Voter List, and Candidate Registration List shall at all times be in the custody of the inspector(s) or at a location designated by the inspector(s) until after tabulation of the vote and until the time allowed by Section 5145 of the Civil Code for challenging the election has expired, at which point the records shall be transferred by the inspector(s) to the Association. If there is a recount or other challenge to the election, the inspector(s) shall, upon written request, make the ballots available for inspection and review by an Association member or that member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

11. **Equal Access to Association Media**

If any candidate or Member advocating a point of view is provided access to Association media, newsletters, or internet website during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all Members and candidates advocating a point of view, for purposes reasonably related to the election. The Association shall not edit or redact any content from these communications but may include a statement specifying the candidate or Member, and not the Association, is responsible for that content.

12. **Access to Meeting Space And Use of Association Funds.**

- (a) The Association shall ensure access to common area meeting space, at no cost, to all candidates and to all persons advocating a position for purposes reasonably related to an election.
- (b) Association funds shall not be used for campaign purposes in connection with any Association election, except to the extent necessary to comply with the duties of the Association imposed by law or the Governing Documents. The foregoing is not intended to prevent the Association from providing relevant background information or a fair and balanced summary of election measures to provide context.

13. **Amendment of Election Rules**

These Election Rules may be amended from time to time in the manner prescribed in Section 4340, et seq. of the Civil Code, but they may not be amended within 90 days of any election.

14. **Definitions**

All terms used in these Bylaws shall be defined as set forth in this document, or if no definition is provided, as stated in Article 1 of the Declaration. If a term is not defined in these Election Rules or in the Declaration, then it shall be defined as set for in Sections 4075, et seq. of the Civil Code.