

**LA JOLLA MESA ESTATES OWNERS' ASSOCIATION, INC.**  
**RULES FOR ELECTIONS AND VOTING**

The following election procedures for La Jolla Mesa Estates Owners' Association, Inc. ("Association") are updated pursuant to California Civil Code Sections 5100, 5105, 5110, 5115, 5125, 5145 and 5200.

Pursuant to California Civil Code Section 5105(h), these election operating rules shall not be amended less than ninety (90) days prior to an election.

**I. EQUAL ACCESS**

- 1.1 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.
- 1.2 Equal Access to Association Media.** All candidates will be granted equal access to Association Media for purposes reasonably related to the election.
- 1.3 No Alteration of Candidate Communications.** The Association may not edit or change the content of any candidate's message, but may include a statement disclaiming responsibility for the content.

**II. QUALIFICATIONS AND NOMINATION OF DIRECTORS**

**2.1 Qualifications of Directors**

- 2.1.1 Mandatory Membership.** A Member of the Association is eligible to be nominated or nominate himself or herself for a position on the Board if he/she is a Member of the Association at the time of nomination and is not disqualified under Section 2.1.2 below. Non-Members of the Association are not eligible to be nominated or to serve on the Board.

- (a) If title to a property 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 candidate nomination.

- 2.1.2 Disqualification.** A Member is not eligible to be nominated or to nominate himself or herself for a position on the Board if he or she:

- (a) Is not current in the payment of his/her regular or special assessments. However, a Member shall not be disqualified for failure to be current in payment of regular and special assessments if either: (1) the Member has paid the regular or special assessment under protest pursuant to Civil Code Section 5658; (2) the Member has entered into a payment plan pursuant to Civil Code Section 5665; or (3) the Member has requested or is participating in internal

dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10 of the Civil Code. All Directors must also be current in the payment of regular and special assessments during their Board tenure.

- (b) 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 unit and the other person is either properly nominated for the current election or an incumbent director.
- (c) Has been a Member of the Association for less than one (1) year.
- (d) Has a past criminal conviction that would, if the Member was elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code Section 5806 or terminate the Association's existing fidelity bond coverage.

## **2.2 Notice and Nomination Procedures**

**2.2.1 Notice of Procedure and Nomination Deadline.** The Association shall provide general notice of the procedure and deadline for submitting a nomination at least thirty (30) days before the deadline for submitting nominations.

**2.2.2 Notice Before Ballot Distribution.** The Association shall post notice of all of the following at least thirty (30) days before the ballots are distributed:

- (a) 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;
- (b) The date, time, and location of the meeting at which ballots will be counted; and
- (c) The list of all candidates' names that will appear on the ballot.

**2.2.3 Qualifications for Nomination.** In order to be nominated to the Board of Directors, all nominees must meet the qualifications as set forth in Section 2.1.1 of these Rules and not be disqualified under Section 2.1.2.

**2.2.4 Self-Nomination.** Any Member may nominate himself or herself for election to the Board of Directors, as long as he or she is qualified under Section 2.1 and not disqualified under Section 2.1.2.

**2.2.5 Candidate Nomination Form ("Form").** A Candidate Nomination Form will be mailed to each Member at least ninety (90) days before the annual meeting. Members interested in serving as a Director must complete and return a Form to management. Directors who want to serve again must complete and return a Form to management. Members 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 ballot. The above candidate form submittal process shall be subject to change by the Board.

### **III. VOTING**

**3.1 Voting.** Each Member is entitled to a vote if he/she/it is a Member at the time that ballots are distributed. Each Member has the right to cast one vote per separate interest owned on each matter submitted to Members for voting. Note that each director vacancy counts as one matter. Votes may be cast by members in person, by proxy subject to the terms in 3.1.1, or in specific instances designated by the Board of Directors, in a ballot-by-mail.

**3.1.1 Voting by Proxy.** The Association's Restated Bylaws, Article 3, Section 3.8 provides that voting by proxy is not permitted.

**3.1.2 Voting Rights.** The Association is prohibited from denying a ballot to:

- (a) A Member for any reason other than not being a Member at the time when ballots are distributed; and
- (b) 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.

**3.2 Cumulative Voting.** The Association's Restated Bylaws, Article 3, Section 3.7, and Article 5, Section 5.5, provides that a Member may cumulate his/her/its votes in any election for the Board of Directors. A Member shall be entitled to cumulate his/her/its votes for one or more candidates for the Board of Directors. A Member may give one candidate a number of votes equal to the number of such members to be elected multiplied by the number of votes to which such Member is otherwise entitled or distribute such votes on the same principle among more than one candidate. The candidates receiving the highest number of votes, up to the number of members of the Board of Directors to be elected, shall be deemed elected.

**3.3 Non-Revocable Ballots.** Written ballots may not be revoked once they are submitted to the Inspector(s) of Elections. Once written ballots are deposited in the U.S. mail to the Inspector(s) of Elections, they are considered non-revocable.

**3.4 Loss of Ballot.** If a Member loses his/her ballot prior to the annual meeting, they may request another ballot, along with the appropriate envelopes from the Inspector(s) of Elections but they must sign a statement that the original ballot was lost, destroyed or never received. The Inspector(s) of Elections shall maintain a record of each request and, if it is determined that the Member voted twice, even by mistake, neither ballot will be counted. Additional ballots cannot be obtained from a member of the Board. Only the Inspector of Elections will provide additional ballots.

- 3.5 Secrecy of Ballots.** A Member who signs or otherwise marks his/her ballot with an identifying mark, waives his/her right to secrecy. The Association is not responsible for redacting personal information that is added to the ballots by a Member.
- 3.6 Voting Period.** The polls will open when the ballots are sent to the members and will close within at the commencement of the annual meeting, or any adjournment thereof, or the final collection of ballots for counting, whichever occurs first.

#### **IV. INSPECTORS OF ELECTION**

- 4.1 Inspectors of Elections.** The number of Inspectors of Elections shall be one (1) or three (3). The Association shall select an independent third party or parties as an Inspector of Elections. 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. The Association's current management, attorney(s) and any other person or entity under contract with the Association for compensation are hereby prohibited from serving as an Inspector of Elections.

**4.1.1 Duties of Inspector(s) of Elections.** The Inspector(s) shall be responsible to:

- (a) Determine the number of Members entitled to vote and voting power of each said Member;
- (b) Determine the authenticity, validity, and effect of proxies, if any;
- (c) Receive ballots;
- (d) Hear and determine the outcome of all challenges and questions regarding a Member of the Association's right to vote in the election;
- (e) Count and tabulate all votes submitted;
- (f) Determine the hours of operation of any polling facilities;
- (g) Determine and announce the result of the election based on the ballots received and votes tabulated; and
- (h) Perform any acts as may be proper to conduct the election with fairness to all Members of the Association in accordance with these election procedures and all applicable rules of the Association regarding the conduct of the election that are not in conflict with these procedures; and
- (i) Deliver, or cause to be delivered, at least thirty (30) days before an election, to each Member: the ballot(s) and a copy of the election rules. Delivery of the election operating rules may be accomplished by either of the following methods: (1) posting the election operating 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."; or (2) individual delivery.

- 4.1.2 Good Faith of Inspector(s) of Elections.** Every Inspector of Elections shall perform his or her duties impartially, in good faith, to the best of his or her ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association.
- 4.1.3 Decision.** The decision or act of a majority of the Inspectors of Elections shall be effective in all respects as the decision or act of all.
- 4.1.4 Report.** Any report made or issued by the Inspector(s) of Elections is prima facie evidence of the facts stated in the report.
- 4.2 Removal of Inspectors of Elections.** The Board of Directors may remove and replace any Inspector of Elections 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.

## **APPENDIX TO ELECTION RULES**

### **SUMMARY OF CIVIL CODE SECTIONS APPLICABLE TO ELECTIONS**

#### **V. APPLICABILITY**

- 5.1 Applicability of Rules [Civil Code §5100(a)(1)].** Notwithstanding any other law or provision of the governing documents, an election within a common interest development shall be held by secret ballot in accordance with the procedures set forth in this section regarding any of the following: (1) election of directors, (2) changes to the Governing Documents, (3) Member votes on assessments, and (4) Member votes on granting exclusive use rights to portions of the general common areas.
- 5.2 Secret Ballots [Civil Code §5100(a)(1)].** Member voting on the items listed in 5.1 above will be by secret ballot.

#### **VI. ELECTIONS**

- 6.1 Election Frequency.** An election for a seat on the Board of Directors shall be held at the expiration of the corresponding Director's term, and at least once every four (4) years.
- 6.2 Election Materials.** As defined by California Civil Code Section 5200, "Association Election Materials" means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list. Signed voter envelopes may be inspected but may not be copied. The Association is required to retain, as Association Election Materials, both a candidate registration list and a voter list. CC §5105(a)(7).
- 6.2.1 Voter List.** The voter list shall include 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.

**6.2.2 Verification.** A Member may request to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The Association and/or Inspector(s) of Elections will make any requested corrections within two business days of receiving notice of any errors or omissions to either list.

**6.2.3 Privacy.** Membership Lists are considered an "Association record" as defined in California Civil Code Section 5200, including name, property address, mailing address, and email address, but shall not include information for members who have opted out pursuant to Civil Code Section 5220.

## **VII. VOTING BY BALLOTS**

**7.1 Voting by Ballots [Civil Code §5115(a)].** Members may vote by absentee ballot. The Association will mail two pre-addressed envelopes with instructions on how to return ballots to all members at least thirty (30) days before the annual meeting. The law requires the following procedures with regard to absentee ballots:

**7.1.1 Envelopes.** Ballots and two pre-addressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the Association to every member.

**7.1.2 Confidentiality.** In order to preserve confidentiality, a voter may not be identified by name, address, lot, parcel, or unit number on the ballot.

**7.1.3 Model Procedures.** The Association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots.

**7.1.4 Absentee Ballot Procedure.** 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 prints and signs his or her name, address, and lot, or parcel, or unit number that entitles him or her to vote.

**7.1.5 Delivery of Ballot.** The second envelope will be 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.

## **VIII. BALLOTS GENERALLY**

**8.1 Counting Ballots [Civil Code §5120(a)].** All votes shall 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.

- 8.2 Announcing Results of Vote [Civil Code §5120(b)].** After counting the votes, the Inspector(s) will promptly report to the board of directors and shall record the results in the minutes of the next meeting of the board of directors. The results shall be available for review by members of the Association. Within fifteen (15) days of the election, the board shall publicize the results of the election in a communication directed to all members.
- 8.3 Custody of Ballots [Civil Code §5125].** The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list at all times shall be in the custody of the Inspector(s) of Elections or at a location designated by the Inspector(s) until after the tabulation of the vote and expiration of the time allowed by California Civil Code Section 5145 for challenging the election, after which time the custody and control of the ballots shall be turned over to the Association.

## **IX. CONTESTING THE RESULTS OF AN ELECTION & RIGHT OF ENFORCEMENT**

- 9.1 Statute of Limitations [Civil Code §5145].** A Member may bring a civil action for declaratory or equitable relief for a violation of Article 5 of the Civil Code by the Association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date that the Inspector or Inspectors of Elections notifies the Board and Membership of the election results or the cause of action accrues, whichever is later.
- 9.2 Recount or Challenge [Civil Code §5125].** In the event of a recount or other challenge to the election process, the Association shall, upon written request, make the ballots available for inspection and review by Association members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.
- 9.3 Civil Action [Civil Code §5145].** If a Member establishes, by a preponderance of the evidence, that the election procedures were not followed, a court must void any results of the election unless the Association establishes, by a preponderance of the evidence, that the Association's noncompliance with the Civil Code or these election rules did not affect the results of the election. The findings of the court shall be stated in writing as part of the record.
- 9.3.1** A cause of action under California Civil Code Section 5145(a) may be brought in either the superior court or, if the amount of the demand does not exceed the jurisdictional amount of the small claims court, in small claims court.
- 9.3.2** A member who prevails in a civil action to enforce the member's rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall

be subject to only one penalty if the violation affects each member of the association equally. The Association, should it prevail, shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. If a member prevails in a civil action brought in small claims court, the member shall be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action.

## **X. USE OF ASSOCIATION FUNDS FOR CAMPAIGN PURPOSES**

**10.1 Association Funds Shall Not Be Used for Campaign Purposes [Civil Code §5135(a)].** Association funds shall not be used for campaign purposes in connection with any Association board election. 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 [Civil Code §5135(b)].** "Campaign Purposes" include, but are not limited to, the following:

- (a) Expressly advocating the election or defeat of any candidate that is on the Association election ballot.
- (b) Including the photograph or prominently featuring the name of any candidate on a communication from the Association or its board, excepting the ballot and ballot materials, within thirty (30) days of an election, provided that this is not a campaign purpose if the communication is one for which subdivision (a) of Civil Code Section 5110 requires that equal access be provided to another candidate or advocate.