

**RESOLUTION ADOPTING THE TANGLEWOOD WEST HOMEOWNERS  
ASSOCIATION**

**ELECTION PROCEDURES**

WHEREAS, Civil Code §§5100–5130 regulates the conduct of elections of the board of directors of common interest owner associations, as well as other specified member votes, and mandates the use of a secret ballot voting process, as described in the Election Procedures that are attached hereto as Exhibit A; and

WHEREAS, Civil Code §§5100–5130’s election procedures control to the extent that the election procedures in any other TANGLEWOOD WEST HOMEOWNERS ASSOCIATION governing documents or rules are in conflict with those statutory procedures; and

WHEREAS, S.B. No. 323 was signed by the Governor in September, 2019 which recently made significant changes to the Election Rule requirements for HOAs;

WHEREAS, the board of directors has determined that it is extremely important for elections of the TANGLEWOOD WEST HOMEOWNERS ASSOCIATION to be conducted lawfully and in a manner and in accordance with procedures that are not only fair and impartial but also perceived as such by the Association’s members;

NOW, THEREFORE, BE IT RESOLVED, that this Association establish and implement the election and secret ballot voting procedures that are attached to this Resolution as Exhibit A and incorporated herein by this reference; and

FURTHER RESOLVED, that the President and Secretary of the Association be, and they hereby are, authorized, empowered, and directed to take such further actions as they deem necessary and appropriate to implement the purposes and effect of these resolutions

Date:

TANGLEWOOD WEST  
HOMEOWNERS ASSOCIATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

### **TANGLEWOOD WEST HOMEOWNERS ASSOCIATION ELECTION RULES**

California's Davis-Stirling Common Interest Development Act (specifically, Civil Code §§5100–5130) requires that common interest development property owner associations, such as the TANGLEWOOD WEST HOMEOWNERS ASSOCIATION (“Association”), adopt rules regarding the conduct of elections of directors (as well as other specified votes conducted by an owners' association). Those election rules must comply with a number of specific requirements that are set forth in the statute. The code sections regarding election procedures were amended in 2019 and these Election Rules adopt the new regulations concerning those procedures.

The procedures that follow were drafted to reflect the new statutory requirements, and it is these procedures that will be used by the Association in the 2022 election of directors and in subsequent elections, unless certain provisions of these procedures must be modified or amended to reflect subsequently enacted legislation:

#### **EQUAL ACCESS TO ASSOCIATION MEDIA**

- (1) The Association shall ensure that 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.
- (2) The Association shall ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

#### **CANDIDATE REGISTRATION LIST, VOTER LIST, AND ELECTION MATERIALS**

The Association shall prepare and retain, as “Association Election Materials” the following documents: Returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies turned in by Members, and the candidate registration list. Signed voter envelopes may be inspected but may not be copied. 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. *The association shall permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The association or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.*

## **MINIMUM QUALIFICATIONS FOR CANDIDACY**

To be eligible to be a candidate for election to the board of directors, the candidate must be a Member of the Association. The following circumstances also disqualify a person from nomination as a candidate:

(1) If a nominee 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.

(2) Failure to be current in the payment of regular and special assessments. The association shall not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The association shall not disqualify a nominee for failure to be current in payment of regular and special assessments if any of the following circumstances are true:

(a) The nominee has paid the regular assessment or special assessment under protest pursuant to Section 5658.

(b) The nominee has entered into a payment plan pursuant to Section 5665.

(c) The nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.

(3) 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.

(4) If that person has been a member of the association for less than one year.

## **NOMINATIONS FOR ELECTION TO THE BOARD OF DIRECTORS**

By state law, the Association must permit any member to "self-nominate" himself or herself for election to the board of directors. Any member desiring to nominate himself or herself as a candidate for election to the board must (a) satisfy the good standing requirements for candidacy applicable to other candidates at the time the person's candidacy is proposed and thereafter, and (b) present written notice to the board of directors of the person's desire to self-nominate on or before the deadline for the submission of nominations. Candidates' names shall be listed on the ballot alphabetically by last name.

## **VOTING ELIGIBILITY**

Each member of the Association in good standing is entitled to cast one vote for each Unit that the member owns. Where a Unit is owned by more than one person, they must all agree to designate one person who has the power to vote for that Unit. To be eligible to vote, the member must be in good standing, with all assessment obligations current, and the member cannot be

subject to any other suspension of voting rights privileges as a result of disciplinary action duly imposed by the Association.

## **PROXY VOTING**

The secret ballot voting requirements of Civil Code §5100(a) do not prohibit the use of proxy voting. Any Member may turn in valid signed proxies to the Inspector of Elections prior to the opening of any ballots, and shall be provided with one Secret Ballot for each proxy turned in as long as the Inspector of Elections has determined that the proxy is valid.

## **TIMING OF THE VOTING PROCESS**

Because of the new requirements of the law beginning January 1, 2020, the Association should adopt the following timeline to conduct its elections.

### **APPROXIMATELY 105 DAYS PRIOR TO ELECTION**

Association shall provide by general notice (individual notice if requested by a Member) the nomination procedures and deadlines to all Members.

- 1.) An association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

### **APPROXIMATELY 75 DAYS PRIOR TO ELECTION**

The Association to receive all nominations on a date which is not less than 30 days after providing notice of the deadline. The Board of Directors shall select either one or three Inspectors of Election who must be “an independent third party”. For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member, but may not be a director or a candidate for director or be related to a director or to a candidate for director. *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. (This is new)* The Inspectors of Election may but need not be chosen from among Members.

### **APPROXIMATELY 40 DAYS PRIOR TO DISTRIBUTING BALLOTS**

The association shall provide general notice (individual notice if requested) of all of the following at least 40 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.

- (c) The list of all candidates' names that will appear on the ballot.
- (d) The voter list of names, parcel numbers, and voters to whom ballots are to be sent, and the candidate registration list.
- (e) A copy of the Election Rules.
- (f) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

***Either the Association or any Member may report errors or omissions in either the Candidate Registration List or the Voter Name list. The Association must then change or correct these lists within two (2) business days of any error or omission being reported. (This requirement is new)***

### **AT LEAST 30 DAYS PRIOR TO MEETING TO COUNT VOTES**

The secret ballot voting procedures of Civil Code §5115(a) specify that ballots for the election of the board of directors must be sent to all eligible members by mail or personal delivery not less than 30 days before the deadline that is established for the tender of ballots. Because state law requires that the Association utilize a double-envelope ballot system in the election of directors and that the sealed ballots be mailed or delivered by hand to a location specified by the inspector of elections, any ballots that are sent to the inspector of elections by facsimile transmission or e-mail will not be counted.

*Use of Secret Ballots and Ballot Completion Requirements.* In accordance with Civil Code §5100(a), ballots used in the election of directors must be secret ballots that do not identify the voter by name, address, or lot number. The secret ballots, together with two pre-addressed envelopes with instructions on how to return ballots, must be mailed by first-class mail or delivered by the Association to every member of the Association not less than 30 days before the deadline for voting. The unsigned ballot must be inserted into an envelope ("Ballot Envelope") that is sealed, and this sealed Ballot Envelope must then be inserted into a second envelope ("Address Envelope") that is sealed. In the upper left-hand corner of the Address Envelope, a space or lines must be presented in the upper left hand corner where the voter can print and sign his or her name, address, and lot number. The Address Envelope must be addressed to the inspector of elections who will tally the votes. The Address Envelope (containing the ballot and the Ballot Envelope) may be mailed or delivered by hand to the location specified by the inspector of elections for the return of ballots, and the member may request a receipt for delivery of the ballot.

*Determination of Election Results; Succession to Office.* The candidates receiving the highest number of votes, up to the number of vacancies to be filled in the election, shall be elected as directors and shall take office immediately following their election. In the event there is a tie vote between those candidates who receive the lowest number of votes necessary to qualify the candidate for election, the tie shall be broken by random drawing.

*Supervision of Election Process; Appointment of Inspector(s) of Elections.* To ensure secrecy of ballots and fairness in the conduct of director elections, the board of directors must select an

independent third party or parties to serve as the inspector(s) of elections. Civil Code §5110 specifies that the number of inspectors of elections shall be one or three. ***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. (This requirement is new)*** An inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, as expeditiously as is practical, and in a manner that protects the interest of all members of the association. Any report made by the inspector of elections is prima facie evidence of the facts stated in the report.

### **AT THE MEETING TO TABULATE VOTES**

Prior to opening any sealed Ballots, the Inspector of Elections shall determine whether a quorum exists and the meeting shall be called to Order. If a quorum does not exist, the Members may either in person or by proxy, adjourn the meeting to a time not less than five (5) days, nor more than thirty (30) days from the time the original meeting was called. If a quorum exists, announce the identity of the Inspector of Elections and determine when the polls will close.

The inspector or inspectors of elections shall do all of the following:

- (1) Determine the number of memberships entitled to vote and the voting power of each.
- (2) Determine the authenticity, validity, and effect of proxies, if any.
- (3) Receive ballots.
- (4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
- (5) Count and tabulate all votes.
- (6) Determine when the polls shall close, consistent with the governing documents.
- (7) Determine the tabulated results of the election.
- (8) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

*Requirements for Counting and Tabulation of Ballots.* The designated inspector of elections must count and tabulate the votes in public at a properly noticed open meeting of the board of directors or the members. Any candidate or other member of the Association may witness the counting and tabulation of the votes. No person, including a member of the Association or an employee of the Association's management company, if any, shall open or otherwise review any ballot before the time and place at which the ballots are counted and tabulated. In the event that tabulation of the ballots cannot be concluded before the designated time for adjournment of the annual membership meeting, the meeting shall be continued for such time as is required to

complete the tabulation of ballots, and members shall be entitled to remain in attendance at the continued meeting to observe the tabulation.

*Announcement of Results of Election.* The results of the election shall be promptly reported to the board of directors of the Association, shall be recorded in the minutes of the next meeting of the board, and shall be available for review by members of the Association. Within 15 days of the election, the board shall give general notice (as specified in CC §4045) to the members of the tabulated results of the election.

*Retention of Ballots.* The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 5145 for challenging the election has expired, (One year after the election) at which time custody shall be transferred to the association. If there is a recount or other challenge to the election process, the inspector or inspectors 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.

If a provision of these Rules require "general delivery" or "**general notice**," the document shall be provided by one or more of the following methods:

- (1) Any method provided for delivery of an individual notice pursuant to Civil Code Section 4040.
- (2) Inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in this section.
- (3) Posting the printed document in a prominent location that is accessible to all members, if the location has been designated for the posting of general notices by the association in the annual policy statement, prepared pursuant to Section 5310.
- (4) If the association broadcasts television programming for the purpose of distributing information on association business to its members, by inclusion in the programming.

Civil Code Section 4040 provides:

(a) If a provision of this act requires that an association deliver a document by "individual delivery" or "individual notice," the document shall be delivered by one of the following methods:

- (1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier. The document shall be addressed to the recipient at the address last shown on the books of the association.
- (2) Email, facsimile, or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. The consent may be revoked, in writing or by email, by the recipient.