

## ELECTION AND SECRET BALLOTING RULES

Effective January 1, 2020, SB 323 amended California's Davis-Stirling Common Interest Development Act (the "Act") to mandate certain procedures for Board of Director elections. The Act requires that associations adopt election rules conforming to the new requirements of SB 323.

Kingswood Estates Homeowners' Association, Inc. (the "Association") has prepared the following Election and Secret Ballot Rules (the "Election Rules") to comply with the Act and to guide the Association in the conduct of its future elections. These Election Rules shall entirely amend, replace, and supersede in their entirety any existing Association rules concerning elections. If not otherwise stated, all references to "Section" are to the Civil Code.

1. Board of Director Elections. As the Bylaws state that the Directors have a one-year term, the Association shall hold an election on the Board of Directors in accordance with the Act and these Election Rules each year. Elections shall occur at least once every four years.

2. Equal Access to Association Media. The following policies are hereby adopted regarding the use of Association media sources for Association director election purposes:

a. Campaign Signs. The posting of campaign signs for an Association election must be in compliance with the governing documents of the Association (as may be further amended), the Election Rules and applicable state law. In no event shall campaign signs be permitted to be erected or maintained within any portion of the common areas owned or managed by the Association.

b. Association Media. It is not the policy of the Association to provide other means of candidate access to Association media, newsletters or internet websites during a campaign. In the event that the statements or actions of an incumbent director who is also a candidate for re-election to the Board, are reported in any Association media solely in the context of that director's performance of his or her duties, those reports or statements shall not constitute provision by the Association of access to its media for campaign purposes.

Provided, however, that each candidate shall have the opportunity to submit one "Candidate Profile," which shall be limited to one 8.5 by 11-inch typewritten page with 1-inch margins and no less than 10-point font. The Association shall include any conforming Candidate Profile submitted by a candidate in the election materials sent to the Members.

Should this Association policy change in the future, equal access to any permitted media shall be provided to all nominees and members advocating a point of view (whether or not endorsed by the Board of Directors). The Association cannot edit or redact any content from any candidate communications, but the Association can include a statement specifying that the nominee or member authoring the communication, and not the

Association, is responsible for the content of the communication. No Association funds shall be used for campaign purposes, except to the extent necessary for the Association to comply with the duties imposed upon it by law. By submitting any statement or candidate communications, the author accepts full responsibility for the content thereof and agrees to indemnify the Association and its agents and representatives for any and all damage arising from or related to any such content.

3. Equal Access to Association Meeting Areas for Nominees and for Members Advocating a Particular Point of View. The Association shall provide equal access to any common area meeting facilities used by the Association 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. The Association retains its authority and responsibility to ensure that the common facilities are managed, operated, and accessed for the common benefit and enjoyment of all Association Members.

4. Minimum Qualifications for Candidacy. In order to be eligible to be a candidate for election to the Board of Directors, the candidate must be a Member of the Association at the time of nomination. If title to a separate interest 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 the Election Rules, including an owner or decision-maker for the legal entity (e.g., for a living trust, the trustee; and for an entity, a member, manager, director, officer, or employee). Any candidate for election to the Board must also be in good standing with the Association (meaning that the proposed candidate is not delinquent in the payment of Association regular or special assessment obligations), provided, however that the Association must also require that directors be current in the payment of regular and special assessments.

Notwithstanding the foregoing, the Association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. A nominee shall also not be disqualified as a candidate for failure to be current in the payment of regular and special circumstances if either: (a) the nominee has paid the regular or special assessment under protest pursuant to Section 5658; (b) the nominee has entered into a payment plan pursuant to Section 5665; or (c) the nominee has not been provided with the opportunity to engage in internal dispute resolution under Section 5900.

A person shall be disqualified from nomination as a candidate 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 (lot/unit) as the person and the other person is either properly nominated for the current election or an incumbent director. A person shall be disqualified if that person discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the Association from purchasing the fidelity bond coverage required by Section 5806 or terminate the Association's existing fidelity bond coverage.

5. Nominations for Election to the Board of Directors; Self Nomination. Nominations for election to the Board shall be by self-nomination. Any Member desiring to nominate himself or herself as a candidate for election to the Board must: (i) satisfy the requirements for candidacy applicable to other candidates at the time the person's candidacy is proposed and thereafter; and (ii) present written notice to the Board of Directors of the person's desire to self-nominate on or before the deadline for the presentation of its list of candidates to the Board of Directors. Candidates' names shall be listed on the ballot alphabetically by last name. There shall be no nomination of candidates from the floor or write-in candidates.

6. Voting Eligibility. Each Member of the Association is entitled to cast one vote for each lot that the Member owns. The Act now prohibits denial of a ballot to a Member for any reason other than not being a member at the time when ballots are distributed; therefore, despite contrary provisions of the governing documents, the Association cannot deny a ballot to a Member not in good standing.

7. Proxy Voting. These Election Rules prohibit the use of proxy voting for matters subject to secret ballot voting because a proxy is not needed when Members can instead complete and submit the secret ballot.

8. Voting and Election Procedures. The Act requires three separate pre-election procedures for elections of Directors as outlined below, each at least thirty days apart:

<b>Required Process</b>	<b>Timeline</b>
Nomination Deadline Notice (See Paragraph 8(a) below)	Completed Thirty (30) Days Prior to Pre-Ballot/Election Notice
Pre-Ballot/Election Notice (See Paragraph 8(b) below)	Completed Thirty (30) Days Prior to Circulation of Election Materials/Ballots
Circulation of Election Materials/Ballots (See Paragraph 8(c) below)	Completed Thirty (30) Days Prior to Election
Election at Open Meeting of Members or Board	Ballots Counted by Inspector of Elections and Candidates Elected

These required procedures will generally require the Association to start the process one hundred days or more prior to the date the ballots will be counted. To facilitate the processing of the below timeline, the "Record Date" for voting shall be forty-five (45) days prior to the date of the election/meeting unless the Board determines another record date for that election. "General notice" shall have the meaning set forth in Section 4045.

a. Nomination Deadline Notice: The 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. If the number of eligible candidates that are timely nominated exceed the number of open positions on the Board of Directors,

then the Association shall continue with the election procedures outlined in these Election Rules. If the number of eligible candidates that are timely nominated is less than or equal to the number of open positions on the Board of Directors, then the Board of Directors of the Association may declare those timely-nominated and eligible candidates as elected by acclamation without the necessity of continuing with the rest of the election procedures, such election procedures being an idle act given that the results of the election are inevitable.

b. Pre-Ballot/Election Notice: The Association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

- (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 at which ballots will be counted.
- (3) The list of all candidates' names that will appear on the ballot.
- (4) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 if individual notice is requested by a Member.

c. Circulation of Election Materials/Ballots: The secret ballot voting procedures of the Act (which are described in Paragraph 9, below) specify that ballots for the election of the Board of Directors must be mailed by first-class mail or delivered by the Association to all eligible Members not less than thirty (30) days prior to the deadline that is established for voting. In the context of all such elections, written ballots must be received by the Inspector of Elections on the day before the meeting at which the ballots will be counted. Due to the requirement that the Association utilize a double envelope ballot system in the election of directors, any ballots that are not sent directly to the Inspector of Elections (including those sent to the Inspector of Elections by facsimile transmission or email) cannot be counted. Delivery of the ballots shall be made without any opening or tampering of the ballots of any kind. The election will usually be scheduled to coincide with the Annual Members Meeting; however, if the meeting is not held or the directors are not elected at the Annual Members Meeting, the directors may be elected at any special members meeting held for that purpose using the procedures set forth herein.

9. Circulation of Secret Ballots and Ballot Completion Requirements. Ballots used in the election of directors shall be secret ballots which shall not identify the voter by name, address or lot/unit number. The secret ballots, together with 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 of the Association not less than thirty (30) days prior to the deadline for voting. The solicitation of secret ballots shall: (i) set forth the number of responses needed to meet the quorum requirement for valid action; (ii) the time by which the written ballot must be received by the Association in order to be counted; and (iii) the percentage of affirmative votes necessary to approve the measure, if any.

a. Ballot Envelope. The ballot, itself, shall not be signed by the voter. Instead, the unsigned ballot shall be inserted into an envelope (the "Ballot Envelope") that is sealed

and this sealed Ballot Envelope shall then be inserted into a second envelope (the “Address Envelope”) that is sealed.

b. Address Envelope. In the upper left-hand corner of the Address Envelope, a space or lines shall be presented where the voter can print and sign his or her name, address and lot/unit number. The Address Envelope shall be addressed to the Inspector of Elections who shall 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.

c. Copy of Election Rules. The ballot shall include a copy of these Election Rules, either in hard copy or by posting the Election Rules to an internet website and including the internet website address on the ballot together with the phrase, in at least 12-point font, “The rules governing the election may be found here:”

d. Prohibitions. The Association shall not do any of the following with respect to the circulation of ballots: (i) deny a ballot to a Member for any reason other than not being a Member at the time when ballots are distributed; (ii) deny a ballot to a person with general power of attorney for a Member; or (iii) refuse to count a ballot of a person with general power of attorney for a Member if the ballot is returned in a timely manner.

10. Determination of Election Results/Succession to Office. The quorum for election matters is fifty percent (50%) of the Members. Each ballot received shall be treated as a Member present at a meeting for the purposes of establishing a quorum. 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.

11. Supervision of Election Process; Appointment of Inspector of Elections. In order to ensure secrecy of ballots and fairness in the conduct of elections, the Board of Directors shall select one independent third-party to serve as the Inspector of Elections. An “independent third-party inspector of elections” includes, without limitation, a volunteer poll worker with the County registrar of voters, a licensee of the California Board of Accountancy, or a notary public. The Board may appoint a Member as the Inspector of Elections so long as all of the conditions set forth in this Paragraph 11 are satisfied, including the following: no person who is a (i) member of the Board of Directors, (ii) a candidate for election to the Board of Directors or (iii) related to a member of the Board of Directors or to a candidate for election to the Board of Directors may serve as the 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 Inspector of Elections may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector deems appropriate, provided that the persons are independent third parties.

The Association's duly appointed Inspector of Elections, shall have the full powers of an inspector of elections appointed by the Board pursuant to the Act and the Corporations Code, and shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is reasonably practical. Any report made by the Inspector of Elections is prima facie evidence of the facts stated in the report.

Without limiting the foregoing, the Inspector of Elections shall do all of the following:

(i) Determine the number of memberships entitled to vote and the voting power of each (in accordance with the Association's Bylaws).

(ii) Determine the authenticity, validity, and effect of proxies, if any.

(iii) Receive ballots. Sealed ballots shall at all times be in the custody of the inspector or inspectors of election 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 (which period is currently one year after the cause of action accrues), at which time custody of the ballots shall be transferred to the Association.

(iv) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(v) Count and tabulate all votes.

(vi) Determine when the polls close, consistent with the governing documents of the Association including these Election Rules.

(vii) Determine the tabulated results of the election.

(viii) Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with these Election Rules, the California Corporations Code, and all applicable rules of the Association regarding the conduct of an election that are not in conflict with these Election Rules.

(ix) Perform his or her duties impartially, in good faith, to the best of his or her ability, and 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.

12. Requirements for the Counting and Tabulation of Ballots. The designated Inspector of Elections, or their appointees, must count and tabulate the votes 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. In the event the Board of Directors reasonably determines that holding an in-person meeting is not safe or practical due to safety concerns (such as related to COVID-19), the Board may

hold the meeting by video conference (such as on Zoom or other platform) or record the portion of the meeting where the ballots are counted so that Members can observe 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 prior to the time and place at which the ballots are counted and tabulated. The Inspector of Elections, or his/her/their designee, may verify the Member's information and a signature on the outer envelope prior to the meeting at which the ballots are tabulated. In the event that tabulation of the ballots cannot be concluded prior to the designated time for adjournment of the 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. Once a ballot is received by the Inspector of Elections, it shall be irrevocable. Cumulative voting shall not be allowed.

13. Announcement of the Results of the Election. The results of the election shall be promptly reported to the Board of Directors of the Association by the Inspector of Elections, and the results shall also be recorded in the minutes of the next meeting of the Board and 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.

14. Preparation and Retention of Election Materials. The election materials, including the candidate registration list (which is the list of all candidates' names as they appeared on the ballot), voter list, signed envelopes, and ballots, shall at all times shall be in the custody of the Inspector of Elections or at a location designated by the inspector until after the tabulation of the vote and until the time allowed by Section 5145 for challenging the election has expired (at least one year after the results of the election notifies the Board of the election results), at which time custody shall be transferred to the Association. 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. The following rules apply to the election materials prepared for any election hereunder:

a. 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.

b. Verification: The Association shall permit Members to verify the accuracy of their individual information on both the candidate registration list (the list of candidates' names for election) and the voter list at least 30 days before the ballots are distributed.

c. Corrections: The Association or Member shall report any errors of omissions to either the candidate registration list or the voter list to the Inspector of Elections who shall cause such corrections to be made within two business days.

15. Other Secret Balloting Matters. The Election Rules forth herein shall also generally apply to the conduct of the following matters requiring a vote of the Members as set forth in (a)-(d), but excepting those portions of the Election Rules or the Act that apply specifically to the election of directors or that would reasonably apply only to the election of directors:

- a. Assessments: Elections regarding assessments legally requiring a Member vote (note – the quorum for such matters shall be 50% of the voting power of the Members);
- b. Removal: Removal of any directors on the Association’s Board of Directors;
- c. Amendments: Amendments to the Articles of Incorporation, CC&Rs or Bylaws (note – in an election to approve such amendment, the text of the proposed amendment shall be delivered to the members with the ballot); or
- d. Exclusive Use: The grant of exclusive use common area property pursuant to Section 4600.

16. Amendment. The Election Rules may not be amended less than ninety (90) days prior to an election. The Association intends to comply with the Act and its governing documents in all future elections. In the event the Election Rules are in conflict with the Act or the governing documents, the Association reserves the right to follow the Act if the Association determines, in its discretion, that the Act controls over the Election Rules or the governing documents. The Board of Directors retains the authority and discretion to interpret and implement these Election Rules and the Board’s interpretation shall be binding and final.