

DRAFT

FOUNTAIN CREST HOMEOWNERS ASSOCIATION ELECTION RULES & PROCEDURES

Campaigning

If any candidate or Member advocating a point of view is provided access to Association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, all candidates and Members advocating a point of view will be provided equal access. Any views, comments or opinions set forth in any communication from a candidate or Member are those solely of the candidate or Member, and the Association is not responsible or liable for such content. The candidate or Member, and not the Association, is solely responsible for the content of all materials and/or communications presented by the candidate or Member.

Access to the Common Area meeting space will be provided during a campaign, at no cost, to all candidates and to all Members advocating a point of view for purposes reasonably related to the election.

Association funds will 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. For the purposes of this section "campaign purposes" include, but are not limited to, the following:

- (1) Expressly advocating the election or defeat of any candidate that is on the Association election ballot.
- (2) Including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot and ballot materials, within thirty (30) days of election, provided that this is not a campaign purpose if the communication is one for which the law requires that equal access be provided to another candidate or advocate.

Board Member Qualifications

The Association shall hold an election for a seat on the Board of Directors in accordance with the procedures set forth in these Election Rules and applicable California law at least once every four (4) years or as otherwise provided in the Association's governing documents.

Every person who is an Owner within the Fountain Crest Homeowners Association is a Member of the Association. A Director must be a Member of the Association (Owner of a Condominium within the Association), or the duly designated representative of a Corporation Member, and all candidates must meet that qualification at the time of nomination. Pursuant to *Civil Code* §5105, the Association shall disqualify a person from a nomination as a candidate for not being a Member of the Association at the time of the 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 voting purposes.

A nominee for a Board seat will be disqualified from nomination as a candidate 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 required fidelity bond coverage should the person be elected, or terminate the Association's existing fidelity bond coverage as to that person should the person be elected.

The Association requires all nominees, and all persons acting as Directors during their Board tenure, to be current in the payment of regular and special assessments. A nominee for a Board seat will be disqualified from nomination as a candidate for failure to be current in the payment of regular and special assessments, unless any of the following are accurate: (1) the nominee has paid such assessment(s) under protest; (2) the nominee is subject to an approved payment plan; or (3) the nominee has not been provided an opportunity to participate in internal dispute resolution pursuant to the *Civil Code*. 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 for a Board seat will 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 parcel as the person, and the other person is either properly nominated for a current election or an incumbent Director.

A nominee for a Board seat will be disqualified from nomination as a candidate if that person has been a Member of the Association for less than one (1) year.

Nomination Procedures

The Association will cause general notice of the procedure and deadline for submitting a nomination to be provided to the Members at least thirty (30) days before any deadline for submitting a nomination.

All individuals eligible to serve on the Board of Directors may declare their candidacy for the Board by issuing a statement from the floor of a Board or Membership meeting which is recorded into the official Minutes of any meeting of the Board or by submitting a written statement to the offices of Regent Association Services prior to the mailing of the election materials. Any written declaration of candidacy received after the printing of the Notice of the Annual Meeting will be announced by the Chair at the Annual Meeting. Candidate's names not shown on the official printed notice, proxy or Secret Absentee Ballot, may be added to the Secret Absentee Ballot by the Member wishing to vote for the candidate as a write in candidate.

Nomination for election to the Board of Directors will also be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each Annual Meeting of the Members to serve from the close of such Annual Meeting until the close of the next Annual Meeting, and such appointment shall be announced at each meeting. The Nominating Committee shall make as

many nominations for election to the Board as it shall, at its discretion, determine, but not less than the number of vacancies that are to be filled. Nominations may be made only from among Members. Nominations may also be made from the floor at the Annual Meeting.

Voting Qualifications

Voting shall be by secret written ballot. Each Member shall be entitled to cast one (1) ballot for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

If a record date for voting is not fixed by the Board of Directors, Members of the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting of the Association.

Voting Procedures

In any election of the Board in which two (2) or more positions on the Board are to be filled, every Member entitled to vote shall have the right to accumulate his/her votes and give one candidate, or divide among any number of candidates, a number of votes equal to the number of Directors to be elected provided that no Member shall be entitled to cumulate votes for a candidate or candidates unless the candidate's name or candidates' names have been placed in nomination prior to the voting and the Member has given notice at the meeting prior to the voting of the Member's intention to cumulate votes. If any one Member has given this notice, all Members may cumulate their votes for candidates in nomination and give one (1) candidate, or divide among any number of candidates, a number of votes equal to the total number of votes to which said Member is entitled to vote multiplied by the number of Directors to be elected.

The By-laws for your community authorize the use of secret ballots and proxies. Secret ballots will be provided to all Members for their use.

Elections will be conducted in accordance with the following procedures:

1. Ballots and two pre-addressed envelopes (with instructions) shall be delivered or mailed by first-class mail to every Member not less than thirty (30) days prior to the deadline for voting, along with Instructions for Members;
2. Ballots are *not* to be signed by the voter and a Member that places any identifying marks or signature on his or her ballot will waive his or her right to secrecy;
3. Completed ballots must be placed into an inner envelope that has no identifying information on it (*e.g.*, no Member name, no property address, no signature, etc.), and the inner envelope is then sealed by the Member;
4. The inner envelope is then inserted into the outer envelope that is pre-addressed to the Inspector(s) of Election and then sealed by the Member;

5. In the upper left-hand corner of the outer envelope, the Member *must* indicate his or her name and the address of the property, and then the Member *must* sign his or her name in the upper left hand corner of the outer envelope;
6. The envelope may be mailed or delivered by hand to the management office, unless another place is designated by the Inspector(s). The Member may request a receipt for delivery;
7. Once a ballot is received by the Association, in the place designated by the Inspector(s), it is deemed irrevocable, even if it is unopened;
8. The sealed ballots shall be in the custody of the Inspector(s) of Election or in the place designated by the Inspector(s) at all times;
9. No person may open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated; and
10. The voting period for Member meetings shall commence when the first ballot is mailed or delivered to a Member of the Association and shall end at such time as the Inspector(s) of Election determine the polls close.

Use of Proxies

The By-laws for Fountain Crest Homeowners Association authorize the use of proxies. Proxies must be filed with the Secretary of the Association before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) conveyance by the Owner his or her Condominium, (b) the date of automatic termination, if any, specified in the proxy but not to exceed three (3) years from the date of issuance of the proxy, (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy.

A proxy must (A) identify a proxyholder (who must physically attend the meeting for which the proxy is being exercised), (B) contain voting instructions, and (C) be signed by the Member giving the proxy. Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote must be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder must cast the Member's vote by secret ballot. A proxy that does not satisfy these requirements may not be counted.

Inspectors of Election

Inspector(s) of Election will be appointed by the Board of Directors at a Board meeting held prior to the election and will serve as Inspectors until such time that their successors are appointed by the Board of Directors. There shall be one (1) or three (3) Inspector(s) of Election for the Association. If there are three (3) Inspectors of Election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Inspector(s) may be a Member of the Association, but may not be a Member of the Board, a candidate for the Board, or related to a Member of the Board or candidate for the Board. The appointed Inspector(s) of Election must

be an independent third party but may not be a person or entity employed by and receiving compensation from the Association other than serving as an Inspector(s) of Election.

Role of Inspectors of Elections

At least thirty (30) days before an election, the Inspectors of Election will deliver, or cause to be delivered, to each Member a (1) ballot and (2) a copy of the Association's Election Rules. Delivery of the Election Rules to the Members may be accomplished by either posting the Election Rules to the Association's website, or via individual delivery to all Members pursuant to the *Civil Code*.

Inspector(s) will determine the number of Memberships entitled to vote and the voting power of each in accordance with the governing documents. Inspector(s) will determine the authenticity, validity, and effect of proxies, if any. Inspector(s) will hear and determine all challenges and questions in any way arising out of or in connection with the right to vote. Inspectors will oversee the registering of Owners attending the meeting and determining when quorum is achieved. Ballots will be returned to the Association's managing office, unless another location is designated by the Inspector(s). Inspector(s) will determine when the polls shall close. Inspector(s) will determine and announce the results of the election.

Inspector(s) may also perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Inspector(s) of Election rules and all applicable rules of the Association regarding the conduct of the election that are not in conflict with the Inspector(s) of Election rules. Inspector(s) must perform all duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical.

Tabulation of Votes

Inspector(s) count and tabulate all votes. All votes shall be counted and tabulated by the Inspector(s) at a duly noticed meeting of the Board of Directors or Members. Any candidate or other Member of the Association may witness the counting and tabulation of the votes. Members who are not Inspectors or being overseen by an Inspector must remain at least five (5) feet away from the counting area. Members who are not Inspectors may not participate in the counting or tabulation process or any discussions that may arise among the Inspectors or their designated assistants.

Every Inspector of Election must sign the Election Report and Oath for the Association's corporate records. After the final tabulation of the votes, custody of all election materials will be transferred to the custody of the Association. After tabulation, the Association shall store ballots in a secure place for no less than one (1) year after the date of the election.

Tie Votes

In the event of a tie vote among any number of the candidates, another run-off election of only the candidates involved in the tie shall be held immediately following the announcement of the results. In this case, all Members voting in person and proxyholders in attendance shall re-register and upon which issued a new ballot marked with the word "RUN-OFF" and showing only the names of the candidates involved in the tie vote. Those voting in person and those holding proxies will then cast

their ballots. All Election and Voting Rules shall apply in the run-off election and shall be enforced to the same degree as in any other election. The person receiving the highest number of votes will be elected.

Recording and Announcing Election Results

Inspector(s) must report the results of the election promptly to the Board of Directors and the results will be recorded in the next regular session Board meeting Minutes. In addition to recording the election results in the next regular session Board meeting Minutes, the Association shall keep Annual Meeting Minutes that reflect the results of the election.

The Board of Directors will publicize the results of the election in a communication directed to all Members within fifteen (15) days of a successful (quorum achieved) election.

Records Retention

In accordance with California law, the Association shall retain, as Association election materials, a candidate registration list and a voter list. The voter list will include the 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 only if the parcel number is used. The Association will permit Members to verify the accuracy of their individual information on both lists at least thirty (30) days before ballots are distributed. The Association or Member must report any errors or omissions to either list to the Inspectors of Election, who shall make the corrections within two (2) business days. Association election materials that shall be retained by the Association for required records-keeping include 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. Association election materials are generally subject to inspection and copying by Members pursuant to the *Civil Code*; however, signed voter envelopes may be inspected but not copied.

The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspectors of Election or at a location designated by the Inspectors until after the tabulation of the vote, and until the time allowed by the *Civil Code* for challenging the election has expired, at which time custody shall be transferred to the Association.

These Election Rules are intended to be compliant with California statutory law. To the extent that any of these Election Rules is determined to conflict with such law, the statutory law shall control.