

BENTLEY-OHIO CONDOMINIUM OWNERS ASSOCIATION

MEMBERSHIP VOTING RULES

Adopted _____, 2022

Application of Membership Voting Rules

1. **Application.** These Membership Voting Rules apply to all membership votes on assessments, election or removal of directors, amendments to the Association's governing documents, and any grant of the exclusive use of common area property, all as defined in California Civil Code Section 4600.
 2. **Conflicts.** These Membership Voting Rules comply with all applicable provisions of California law and the Association's Bylaws. Any provision herein that conflicts with the Bylaws complies with California statute and therefore overrides the conflicting provision in the Bylaws.
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Miscellaneous

3. **Membership Voting Rights.** Each member's voting power is one vote per Unit owned. In any Board election, each Unit shall have one vote for each director to be elected.
4. **Proxies.** The authenticity, validity, and effect of proxies is as follows: Proxies are not allowed for membership votes taken by secret written ballot.
5. **Definitions.**
 - A. "Individual Delivery" means delivery by prepaid first-class mail, or by certified or registered mail, or by an overnight delivery service, or, if the member has consented in writing to that type of delivery, by email, fax, or other electronic means.
 - B. "General Delivery" means delivery by "Individual Delivery" or by posting the document in a prominent location that is accessible to all the members, if the location has been designated for the posting of general notices by the Association in its annual policy statement.
6. **Amendments.** These Membership Voting Rules may not be amended during the 90-day period before a vote is counted.

Candidates for Director Elections

7. **Candidate Qualifications.** The qualifications for candidates for the Board are as follows. Directors must meet these qualifications as well and are subject to the same procedures for removal as set out herein for candidates. As set out in California Civil Code Sections 5103(b) and 5105, this overrides anything to the contrary in the Bylaws.
- A. Any person is automatically disqualified from a nomination as a candidate if that person is not a member of the Association at the time of the nomination.
 - B. If title to a Unit 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 qualification to serve on the Board.
 - C. The Board may disqualify members from nomination as a candidate for the following reasons, but only if the member has first been provided the opportunity to engage in a “meet and confer” (internal dispute resolution) as defined in Civil Code Section 5900 *et seq.*
 - (1) The member is not current in the payment of regular and special assessments. However, a member cannot be disqualified (i) for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party, or (ii) for delinquent assessments if the person has entered into a payment plan pursuant to Civil Code Section 5665 and is in compliance with that plan.
 - (2) The member, if elected, would be serving on the Board at the same time as a co-owner of the same Unit, and the co-owner is either properly nominated for the current election or an incumbent director.
 - (3) The member discloses, or the Association is aware or becomes aware of, a past criminal conviction that would, if the member was elected, disqualify the Association from maintaining the fidelity insurance coverage required by Civil Code Section 5806.
 - (4) The member has been declared of unsound mind by a final order of court.
 - (5) The member has been convicted of a felony.

Campaigning - All Membership Votes

8. **Equal Access to Media.** 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.

9. **Equal Access to Meeting Space.** Access to the common area meeting space, if any exists, during a campaign, is granted 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.

10. **Use of Association Funds.**
 - A. Association funds shall not be used for campaign purposes in connection with any Board election. Association funds shall not be used for campaign purposes in connection with any other type of vote except to the extent necessary to comply with duties of the Association imposed by law.

 - B. "Campaign purposes" include, but are not limited to, expressly advocating the election or defeat of any candidate, or 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 30 days of an election. "Campaign purposes" do not include communications for which Subsection (B), above, requires equal access.

Pre-Voting Requirement - All Membership Votes

11. **Inspector of Election.** Before starting the nomination process (director elections) or voting process (all other membership votes), the Board shall appoint one or three independent third parties to serve as inspector(s) of election.
 - A. The inspector(s) may be Association members or non-members.

 - B. The inspector(s) may not be directors or candidates for election, family members of a director or candidate, the Association's manager, its accountant, its attorney, or any other person who is employed by the Association or otherwise under contract to provide services to the Association other than serving as the inspector of election.

- C. The inspector(s) may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector(s) deem appropriate, provided that the persons are independent third parties.
12. **Verification of Member Information.** Members may verify the accuracy of their individual information on the Association's voter list. The Association or member shall report any errors or omissions to the list at least 30 days before the ballots are distributed to the inspector of election, who shall make the corrections within two business days.

Voting Procedures - Recall Elections and Director Elections, Only

13. **Optional Procedures to Preserve Right to Election by Acclamation.**

- A. The procedures in this Rule 12 may be used, at the Board's discretion, if:
 - (1) The Board wishes to declare the election by acclamation if the number of candidates does not exceed the number of directors to be elected;
 - (2) The Association has held a regular election for the directors in the last three years. The three-year time period shall be calculated from the date ballots were due in the last full election to the start of voting for the proposed election; and
 - (3) The director election is not part of a vote to recall one or more directors and at the same time elect their replacement(s).

Otherwise the procedures described in this Rule do not need to be followed.

- B. **Initial Notice.** At least 60 days before sending out the call for nominations listed in Rule 13, the Association shall provide, by Individual Delivery, an initial notice of the election and the procedure for nominating candidates. The initial notice shall include all of the following:
 - (1) The number of Board positions that will be filled at the election.
 - (2) The deadline for submitting nominations.
 - (3) How members can submit nominations.
 - (4) A statement informing members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are Board positions to be filled, then the Board of Directors may, after voting to do so, seat the qualified candidates by acclamation without balloting.
- C. **Reminder Notice.** Between seven and 30 days before the deadline for submitting nominations, if the number of qualified candidates received by this date does not

exceed the number of Board positions to be filled, the Association shall send out by Individual Delivery a reminder notice. The reminder notice shall include all of the following:

- (1) The number of Board positions that will be filled at the election.
- (2) The deadline for submitting nominations.
- (3) How members can submit nominations.
- (4) A list of the names of all of the qualified candidates to fill the Board positions as of the date of the reminder notice.
- (5) A statement reminding members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are board positions to be filled, then the Board of Directors may, after voting to do so, seat the qualified candidates by acclamation without balloting.

D. Confirmation of Nominations.

- (1) **To Member Nominating a Candidate.** Within seven business days of receiving a nomination, the Association shall provide to the member who submitted the nomination a written or electronic acknowledgement of the nomination.
- (2) **To Candidate.** Within seven business days of receiving a nomination, the Association shall provide to the nominee a written or electronic communication indicating either of the following:
 - (a) The nominee is a qualified candidate for the board of directors, or
 - (b) The nominee is not a qualified candidate for the Board of Directors, the basis for the disqualification, and the procedure for internal dispute resolution (Civil Code Sections 5900 *et seq.*) by which the nominee may appeal the disqualification.
- (3) If a Member nominated him/herself, these two notices may be combined into one.

E. Disqualifying Candidates. The Association shall permit all candidates to run if nominated, except for nominees disqualified in accordance with these Membership Voting Rules.

E. Disqualified Candidates - Contesting Disqualification. Nominees who are members of the Association may contest their disqualification as a candidate by requesting that the Board participate in an internal dispute resolution (“IDR” or “meet and confer”) with the nominee.

- F. **Election by Acclamation.**
 - (1) If, as of the deadline for submitting nominations, the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector of election, the Board may, but is not required to, consider the qualified candidates elected by acclamation.
 - (2) The Board shall vote to consider the qualified candidates elected by acclamation at an open Board meeting for which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved.
14. **Call for Nominations.** For the election of directors, the procedures for the nomination of candidates, consistent with the governing documents, are as follows:
- A. At least 30 days before the deadline for submitting a nomination, the Association shall provide General Delivery of the procedure and deadline for submitting a nomination. If any member asks for Individual Delivery of the procedure, the Association shall provide it.
 - B. Nominations must be submitted in writing.
 - C. Members may nominate themselves for election to the Board. Only members may nominate candidates.
 - D. Write-in candidates are not allowed on ballots for the election of directors.
15. **Uncontested Election.** The election may be canceled for any year in which both of the following occur, even if the Board has not followed the procedure for declaring an election by acclamation. However, the Association must hold an election at least once every four years:
- A. At the close of nominations there are not more candidates than there are Board positions to be filled, and
 - B. At least 30 days later, as of the date by which ballots were to be mailed out, the Board consists of the same directors as if the nominees were all elected.
16. **Candidate Registration List; Voter List.** The Association shall prepare election materials consisting of:
- A. If the vote is a Board election, a candidate registration list containing the names and addresses of all candidates nominated for election to the Board.
 - B. A voter list that includes:
 - (1) The members' names;
 - (2) The members' voting power, which is one vote per membership;

- (3) Either the Unit's physical address, its parcel number, or both; and
- (4) The members' mailing address for the ballot, if it differs from the physical address of the Unit or if only the parcel number is used.

17. **Voting Information.** At least 30 days before the ballots are distributed, the Association shall provide notice of all of the following by General Delivery except notice shall be provided by Individual Delivery to any member on request:

- A. The due date and time for return of the ballots;
- B. The physical address where ballots are to be returned by mail or handed to the inspector(s) of election;
- C. The date, time, and location of the meeting at which ballots will be counted; and
- D. The candidate registration list and a notice that the members may verify the accuracy of their individual information on the candidate registration list.
- E. A notice that the members may request their individual information as shown on the voter list in order to verify its accuracy.

The Voting Process - All Membership Votes

18. **Ballot Package.** At least 30 days before the ballots are due, the inspector of election must deliver, or cause to be delivered, to each member the following documents by overnight delivery service or first-class U.S. mail:

- A. The ballot package, delivered by Individual Delivery. The package shall contain:
 - (1) A ballot.
 - (2) The following information, which may be included in the ballot or in a separate notice:
 - The due date and time for returning the ballot.
 - The number of responses needed to satisfy the quorum requirement.
 - For actions other than Board elections, the percentage of members required to pass the proposal.
 - (3) Two envelopes, as follows:
 - An inner envelope containing no information to identify the member using it. The member is to fill in the secret ballot, put it in this blank inner envelope, seal the envelope, and place it in the outer envelope.

- An outer envelope containing in the upper left-hand corner the following information, or a place for the member to fill in the following:
 - Signature line;
 - Member's printed name; and
 - The address of the member's Unit.

This outer envelope is to be returned to an address designated by the inspector of election.

- (4) In any vote of the members to approve an amendment to the Bylaws, CC&Rs, or any other governing document, the text of the proposed amendment shall be included with the secret ballot delivered to the members.

- B. A copy of the Association's Membership Voting Rules. Alternatively, the Membership Voting Rules may be delivered by posting them on an internet website and including the website's address on the secret ballot with the phrase in at least 12-point font: "The rules governing this election may be found here." Or the Membership Voting Rules may be delivered to the members by Individual Delivery at least 30 days before the ballot due date.

19. **The Ballot.**

- A. **Ballot Contents.** The ballot shall not include any place for members to sign or to write their names, addresses, or other identification. It shall include each proposed action and a space to specify approval or disapproval of it.

- B. **Ballot Due Date.** The voting period for membership votes, including the times at which polls will open and close, is at least 30 days from the date the ballot is distributed until the due date and time. Polls close at 5:00 p.m. on the due date for return of the ballots. If the meeting to count the ballots is held on the same date as the ballots are due, members may also hand deliver their ballots to the inspector at that meeting and the polls for ballots delivered in this way will close 15 minutes after the meeting starts.

C. **Cumulative Voting - Director Elections Only.**

- (1) Cumulative voting is allowed for any election of directors, but only if a member has notified the Board before the close of nominations that he or she intends to vote cumulatively.
- a. If that notice is given so that cumulative voting is allowed, then each member may cast more than one vote for any candidate. However, they may not cast more votes than there are Board positions to be filled.
 - b. If no member gives such a notice, then cumulative voting is not allowed and the members may not place more than one vote for any candidate.

- (2) If the Bylaws are amended to delete cumulative voting, it shall not be allowed in any election of directors, which means that members may not place more than one vote on any one candidate.
20. **Distribution of Ballots.** Persons may only be denied ballots if they are not a member at the time the ballots are distributed. A person holding a general power of attorney for a member is entitled to receive a ballot and to vote the ballot on behalf of the member.
21. **Secret Ballots are Irrevocable.** Once a secret ballot has been received by the inspector of election, it cannot be revoked. Any subsequent ballots received for the same Unit shall be deemed invalid.
22. **Quorum.** The quorum requirement for membership votes taken by secret ballot is a majority of the members.
23. **Lack of Response.** The Board may (but is not obligated to) extend the deadline for return of secret ballots if there is a lack of response. If it chooses to do so, the Board shall distribute to all members notice of the deadline extension before the original deadline has expired, using the same delivery method as was used to distribute the secret ballots.
24. **After the Balloting Deadline.** If a quorum of secret ballots was not returned by the deadline, at the Board meeting where the secret ballots were to be counted, the Board may (but is not obligated to) table the ballot counting until a future Board meeting scheduled between five and 30 days after the original Board meeting. At the subsequent Board meeting, quorum for the vote(s) contained on the secret ballots shall be reduced to 25%. However, the quorum shall not be reduced for any membership vote on an increase to the regular assessments or the imposition of a special assessment.
25. **Meeting to Count the Ballots.** The inspector of election shall open the envelopes and count the secret ballots at either a membership meeting or an open Board meeting, in a public location where the members can observe the counting process. The inspector of election can mark off a small area where members cannot enter to keep the secret ballots out of reach of the public, as long as the members can see and hear the counting process.
26. **Approval Requirement.**
- A. Unless a different percentage of approval is required by law or the governing documents, approval by secret ballot shall be valid only when (i) the number of secret ballots returned by the deadline equals or exceeds the quorum requirement, and (ii) over half of the secret ballots cast votes in favor of the measure voted on. In an election of directors, those candidates receiving the largest number of votes shall be elected to the Board.
- B. If cumulative voting is allowed in the Bylaws, then in any vote of the members to remove one or more directors but less than the entire Board, the vote will fail if the votes cast against removing each director, plus the number of ballots not returned, total enough votes to elect that director at an election where (1) the same number of

directors were being elected as at that director's most recent election, (2) cumulative voting was allowed, and (3) all members voted.

Post-Voting Procedures

27. **Voting Results.** The results of every member vote by secret ballot shall be recorded in the minutes of the meeting where the ballots were counted. In addition, within 15 days after the votes have been counted, the Board shall notify the members of the vote results by General Delivery.

28. **Storage and Access to Election Materials.**
 - A. Secret ballots, signed envelopes, the voter list, and the candidate registration list ("election materials") shall remain in the custody of the inspector of election, or at a location designated by the inspector, for one year after the election. After one year, the election materials shall be delivered to the Association. The Association may destroy the election materials at any time after one year from the subject vote.

 - B. For one year after the secret ballots are counted, in the event of a recount or other challenge to the voting process, the election materials shall be made available for inspection and review by a member or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

29. **Termination of Inspector's Duties.** The inspector of election's authority terminates when the inspector reports to the Board, or should have reported to the Board, the election results. Except for storage and access to the election documents, the inspector of election's duties and obligations terminate when the inspector actually reports the election results to the Board. The inspector's duties relating to storage and access to election documents shall terminate when the inspector delivers, or should have delivered, the election documents to the Association.