

NORTH SILVERWOOD OWNERS ASSOCIATION
ELECTION RULES

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NORTH SILVERWOOD OWNERS ASSOCIATION
ELECTION RULES
(Effective January 2020)

The Board of Directors of North Silverwood Owners Association, a California nonprofit mutual benefit corporation (the “*Association*”) has adopted the following election rules (“*Election Operating Rules*”) in accordance with California Civil Code section 5105:

Section 1. Under the Davis-Stirling Act, Practically All Member Votes, Consents, or Approvals Must be Conducted by Use of a Mailed Secret Ballot.

In accordance with Civil Code section 5100(a) any elections or Member approvals regarding any of the following matters must be conducted using a double envelope, secret and mailed ballot, voting process which is further described in Civil Code sections 5100 through 5145 and in these Election Operating Rules:

- (i) any Member vote regarding increases in Regular Assessments or the imposition of Special Assessments that require prior Member approval under Civil Code section 5605(b);
- (ii) any Member vote for the election of directors;
- (iii) any Member vote regarding the removal of directors;
- (iv) any Member vote regarding amendments to the Governing Documents of the Association or the Development; or
- (v) any solicitation of Member approval for the grant of exclusive use of common area pursuant to Section 4600 must be conducted by use of the secret ballot voting procedures set forth in Civil Code sections 5115 through 5135.

Among other things, those voting rules require the ballots to be received and tabulated by independent *Inspectors of Elections* (as further described in Section 2, below). Except for the meeting to count the votes cast in a mailed secret ballot vote in accordance with subdivision (a) of Section 5120, an election may be conducted entirely by mail. In an election to approve an amendment of the Governing Documents, the text of the proposed amendment shall be delivered to the Members together with the ballot (Civil Code section 5115(g)).

Section 2. Inspector(s) of Election; Appointment, Roles and Responsibilities.

2.01 Appointment and Term.

- (a) Appointment of Inspectors of Elections. In accordance with Civil Code sections 5105(a)(5) and 5110 the Association Election Operating Rules must specify a method of selecting one or three independent third parties to serve as Inspectors of Elections utilizing one of the following methods: (i) appointment of the inspector or inspectors by the Board of Directors; (ii) election of the Inspector or Inspectors of Elections by the Members of the Association; or (iii) any other method for selecting the inspector or inspectors. For the Association, it is the custom and practice for the Board of Directors to appoint one or three persons to serve as the Inspector(s) of Elections. Those appointees serve at the discretion of the Board, and shall have such powers and duties as the Board shall determine, subject to the limitations and obligations imposed on the designated Inspectors by these Election Operating Rules and the provisions of Civil Code section 5110(c). It is also permissible to permit the Inspector or Inspectors of Election to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the Inspector or Inspectors of Elections deem appropriate, provided that the persons are independent third parties (Civil Code section 5105(a)(6)).
- (b) Term of Office. The Inspector(s) of Election shall serve in their capacity until they resign, are discharged by the Board, or until they submit their completed written report to the Board as required by Section 12.01, below.

2.02 Qualifications for Service as an Inspector of Elections.

- (a) Inspectors of Elections Must be Independent Third Parties; Disqualified Persons. The persons who are appointed to serve as Inspector(s) of Election must be independent third parties. The following individuals are not considered to be independent third parties:
- (i) Any person who is currently a Member of the Board of Directors or a candidate for election to the Board of Directors;
 - (ii) Any person who is related to a Member of the Board of Directors or a candidate for the Board of Directors;
 - (iii) Any person who is currently employed or under contract with the association (other than his or her service as an Inspector of

Elections). Accordingly, an accountant or accounting firm who is the Association's auditor or accountant cannot serve or be appointed as an Inspector of Elections.

- (b) Persons Who Are Identified by the Davis-Stirling Act as Eligible Inspectors of Election. Pursuant to Civil Code section 5110(b), an “independent third party” means and 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 of the Association, but may not be a director or a candidate for election to the Board, related to a director or to a candidate election to the Board. 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.

2.03 Duties and Powers of Inspectors of Election.

- (a) Jurisdiction of the Inspectors of Election Generally. Notwithstanding any provision in the Association's Governing Documents to the contrary, the duly appointed Inspector(s) of Elections shall preside over an election or Member vote dealing with any of the matters set forth in Civil Code Section 5100(a) (See Section 1 above, listing the categories of member votes that must comply with the secret mailed ballot election procedures).

The Inspector(s) of Election shall prepare a written report of their activities undertaken in any election and announce the tabulated results of the election that the Inspector or Inspectors is/are supervising.

- (b) Authority of the Inspectors of Election to Meet and Confer. The Inspector(s) of Elections may meet and discuss election issues among themselves and/or with the Association’s legal counsel.
- (c) General Statement of the Duties and Obligations of the Inspectors of Elections. The duties and obligations of the Inspectors of Election are generally set forth in Civil Code section 5110(c) which provides as follows:
 - (i) The Inspector or Inspectors shall determine the number of memberships entitled to vote and the voting power of each.
 - (ii) The Inspector or Inspectors shall determine the authenticity, validity, and effect of proxies, if any.

- (iii) The Inspector or Inspectors shall receive the ballots.
- (iv) The Inspector or Inspectors shall hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
- (v) The Inspector or Inspectors shall count and tabulate all votes.
- (vi) The Inspector or Inspectors shall determine when the polls shall close, consistent with the Governing Documents and any other details relating to a particular election that are distributed to the Members together with the balloting materials.
- (vii) The Inspector or Inspectors shall determine the tabulated results of the election; and
- (viii) The Inspector or Inspectors shall perform any additional acts as may be proper to conduct the election with fairness to all Members in accordance with Article 4 of the Davis-Stirling Act (“Member Elections”), the Corporations Code, and all applicable rules of the Association regarding the conduct of elections that are not in conflict with the election procedures in the Davis-Stirling Act.
- (ix) In addition to the duties set forth in Civil Code section 5110(c), Civil Code section 5105(g)(4) now requires Inspectors of Election to deliver, or cause to be delivered, to each Member, at least thirty (30) days before an election, both a copy of the ballot or ballots and a copy of the Association’s election Operating Rules. The Election Operating Rules may be delivered either by posting the Rules on the Association’s internet website and including the corresponding internet website address on the ballot together with this statement, in at least 12-point font: “The rules governing this election may be found here” or by some form of Individual Delivery.

(d) Preparation of Ballot and Accompanying Election Materials. Although ensuring the timely delivery of these election materials is an obligation of the Inspectors of Elections the actual preparation of the documents for the election (the form of ballots, envelopes, candidates’ statements (if any), and balloting instructions) shall be the responsibility of the Association and/or its management personnel or legal counsel. Civil Code section 5115(c) requires that the ballots, two readdressed envelopes, and instructions on how to return the ballots must be mailed by first-class mail or delivered by the Association to every Member not less than thirty (30) days prior to the deadline for voting.

(e) Obligation to Perform the Duties of an Inspector of Elections in Good Faith. Civil Code section 5110(d) instructs that the Inspectors shall perform their duties impartially, in good faith, to the best of their abilities, and as expeditiously as is practical, and in a manner that protects the interests of all Members of the Association. If there are three Inspectors of Elections, the decision or act of a majority shall be effective in all respects as the decision of all of the Inspectors.

Section 3. Qualifications for Service on the Board.

3.01 Specification of Qualifications for Candidates; Statement of the Legal Requirements. Civil Code section 5105(a)(3) provides that association Election Operating Rules shall specify the qualifications for candidates for the Board and any other elected position, subject to subdivision (b) of Civil Code section 5105, and procedures for the nomination of candidates, consistent with the Governing Documents. A nomination or election procedure shall not be deemed reasonable if it disallows any Member from nominating himself or herself for election to the Board.

Although Members have the right to self-nominate themselves as candidates for election, subparagraph (b) of Civil Code section 5105 says that Associations shall disqualify a person from nomination as a candidate for election to the Board if that person is not a Member of the Association at the time of his or her nomination.

If a Lot is held by an entity, rather than a natural person, the governing authority of the entity-Owner has the right to appoint a natural person to be the director candidate on behalf of the entity-Owner. Although not specifically required by law, entity owners are encouraged to nominate persons who are in a managerial-decision making capacity in the owner-organization.

3.02 The Association's Policy. As a preliminary matter, any person nominated for election to the Board of Directors must be a Member of the Association as defined in the Declaration of Covenants, Conditions, and Restrictions for North Silverwood (Civil Code section 5100(g)(3)(A)). Consistent with Civil Code section 5105(c), the Association has adopted these additional qualification rules applicable to Members who are interested in becoming a candidate for election to the Board of Directors:

- (a) Nominees must be current in the payment of all duly levied Regular and Special Assessments). Remaining current in the payment of Assessments

shall also be a requirement for continued service on the Board, once elected¹;

- (b) The Association may disqualify a person 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 Lot as announced candidate and the other person is either properly nominated for the current election or an incumbent director. "Joint ownership" includes the holding of title to a Lot as joint tenants, tenants-in-common, community property, in a trust, or in the name of an entity that is owned by the two individuals;
- (c) The Association may disqualify a nominee if that person has been a Member of the Association for less than one year (although that is not the Association's current policy);
- (d) The Association may disqualify a nominee 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 Civil Code section 5806 or terminate the Association's existing fidelity bond coverage.

Section 4. Nomination Procedures.

4.01 Right of Self-Nomination. Notwithstanding any provision contained in the Association's Governing Documents to the contrary, Members may nominate themselves for candidacy in an election of directors (Civil Code section 5105(a)(3)).

4.02 Deadlines For Providing Notice of Nominating Procedures. In accordance with Civil Code section 5115(a), the Association shall provide General Notice of the procedure and the deadline for submitting a nomination for election to the Board at least thirty (30) days prior to the deadline for submitting a nomination. At least thirty (30) days prior to distribution of the ballots, the Association must provide General Notice to the Members of: (i) the date and time by which, and the physical address where, election ballots are to be returned by mail or handed to the Inspector or Inspectors of Elections; (ii) the date, time, and location of the meeting at which ballots will be counted; and (iii) the list of all candidates' names

¹ Although failure to pay Regular or Special Assessments is a ground for disqualification of a candidate, a nominee may not be disqualified for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. It is also not permissible to disqualify a Member as a candidate for election for failure to be current in payment of regular and special assessments if either of the following circumstances is true: (1) The person has paid the regular or special assessment under protest pursuant to Section 5658; (2) The person has entered into a payment plan pursuant to Section 5665. Finally, the Association is not permitted to disqualify a person from nomination for election to the Board if the person has not been provided the opportunity to engage in internal dispute resolution regarding the delinquency pursuant to Article 2 (commencing with Section 5900) of Chapter 10 of the Davis-Stirling Act.

that will appear on the ballot (Civil Code section 5115(b)). Nominations must be submitted to the Association's Secretary through its community manager at least fifteen (15) days before the distribution of ballots to the Members in order for the candidate's name to appear on the pre-printed Secret Ballot.

- 4.03 Disqualification of Certain Members Who Self-Nominate.** If a person nominated is not qualified serve on the Board for any reason stated in Section 3, above, his or her name shall not appear on the ballot and he or she will not be permitted to serve if elected.

Section 5. Access to Association Media and Publications for Election Purposes.

- 5.01 Statement of the Legal Requirements.** Civil Code section 5105(a)(1) requires that owner associations must 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 candidates who are not endorsed by the Board of Directors, for purposes that are reasonably related to the election. An owner association cannot 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.
- 5.02 The Association's Policy:** The following statement shall be published by the Association immediately preceding or following any candidate statement that may be published in any Association media: "The views expressed are those of its author and do not reflect the views of the Association, its directors, managers, employees, or agents. The author is solely responsible for its content. The Association is required by law to publish the communication, without editing or redaction, regardless of its content."

Section 6. Use of Common Area Meeting Space For Campaign Purposes.

- 6.01 Statement of the Legal Requirements:** Civil Code section 5105(a)(2) requires that owner associations ensure access to the Common Area meeting spaces maintained by the Association, if such spaces exist, 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 of Directors, for purposes reasonably related to the election.

6.02 The Association's Policy: If required by the Governing Documents, the Association will schedule a community election forum prior to an election of the Board or a vote subject to these Election Operating Rules, whereby candidates and Members who are advocating a point of view which is the subject matter of the pending election or vote may attend and speak to any Association Members choosing to attend. The community election forum shall be conducted in accordance with the Governing Documents and any procedural rules adopted by the Board.

Any Member desiring to use the Common Area meeting space for such a purpose shall be responsible for leaving the premises in the condition they were found. The Member shall be required to provide a deposit which will be returned when the premises are returned clean and undamaged.

Section 7. Prohibition on Use of Association Funds for Campaign Purposes.

In accordance with Corporations Code section 7526 Association funds shall not be used for campaign purposes in connection with any election of directors, other than to cover the actual expenses incurred by the Association to print and distribute the notices and other balloting materials required by the Davis-Stirling Common Interest Development Act and to compensate any Inspectors of Election who are retained to perform the services required by Civil Code sections 5105(g) and 5110(c) and Section 2.03, above.

Section 8. Qualifications for Exercise of Member Voting Rights.

8.01. Voting Qualifications of Each Member. The Association's Election Operating Rules must also specify the voting power of each membership, the authenticity, validity, and effect of proxies (if proxy voting is permitted), and the voting period for elections, including the times at which polls will open and close, consistent with the Governing Documents. Pursuant to Corporations Code section 5078, the term "voting power" is defined as the power to vote for the election of directors at the time any determination of voting power is made. Accordingly, a Member who is not in Good Standing, as defined in the Bylaws, is not part of the Voting Power. Other than an election regarding election or removal of directors, in which any Member who is a Member at the time ballots are distributed are entitled to vote (Civil Code section 5105(g)(1)), only Members of the Association who are in Good Standing are a part of the Voting Power and therefore shall be entitled to vote.

8.02. Voting Power of Each Member. There is one class of voting membership which is comprised of the owners of Lots in the development, with each Lot having one appurtenant membership, regardless of the number of owners on title to the Lot.

- 8.03. Voting Period for Elections.** Voting periods shall be determined by the Board of Directors and announced to the Members in accordance with Civil Code Section 5115(a) and Sections 8.04 and 10.01, below.
- 8.04. Date of Election.** The date stated as the deadline for the return of ballots to be tabulated by the Inspectors of Elections shall be the date of the election. The materials accompanying the election ballot may reserve the right, in the discretion of the Board, to extend the deadline for the return of ballots so long as the action is announced at a Board Meeting conducted prior to the conclusion of the initially announced deadline for the return of ballots and the meeting is open to attendance by all Members. In accordance with Civil Code section 5115(b), at least thirty (30) days prior to the distribution of ballots, the Association shall provide General Notice to the Members of the following:
- (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) Individual Notice of the information set forth in the above paragraphs shall be delivered pursuant to Section 4040 if delivery of the information by Individual Notice has been requested by a Member.

Section 9. Methods of Voting.

- 9.01. Proxy Voting and Cumulative Voting.** Pursuant the Association Bylaws, voting is permitted in person or by proxy. Cumulative voting shall be permitted in the election of directors in accordance with Sections 3.08 and 4.03 of the Association's Bylaws.
- 9.02. Voting By Secret Mailed Ballot.** Pursuant to Civil Code sections 5100 through 5145 most significant matters requiring the vote, consent or approval of the Members must be conducted via the use of a double-envelope, secret ballot voting process that is administered by the Inspectors of Election in accordance with these Election Operating Rules.
- 9.03. Voting at Membership Meetings.** Members and the Board of Directors are still entitled to convene meetings of the members in accordance with the Association Bylaws and California's Mutual Benefit Corporation law. However due to the secret ballot voting requirements identified in Section 9.02, above, most votes at membership meetings will be confined to procedural matters.

Section 10. Voting Period.

10.01. Determination of the Voting Period. The Board of Directors shall determine the dates upon which polls will open and close. Once appointed to oversee an election, the Inspector(s) of Elections shall determine, in their discretion, the specific days and times when the polls close in accordance with Section 2.03(C)(vi), above.

10.02 Extension of the Voting Period. In the Board of Directors sole discretion, the voting period may be extended if sufficient ballots have not been received by the deadline originally established for the return of ballots. Notice of any extension of the balloting deadline shall be communicated to all Members by some form of General Notice.

Section 11. Ballot and Voting Procedures.

11.01 Distribution of Ballots and Balloting Materials.

- (a) In accordance with Civil Code section 5115(c), ballots and two (2) preaddressed envelopes, addressed to the Inspector or Inspectors of Elections, with instructions on how to return ballots must be mailed by first-class mail or delivered by the Association to every Member not less than thirty (30) days prior to the deadline for voting. In order to preserve voter confidentiality, the identity of voters may not be disclosed by name, address, or Lot number on the ballot.
- (b) The ballot itself is not to be signed by the Member voting, but is to be inserted into an envelope (the "*ballot envelope*") that is sealed by the Member. This envelope is inserted into a second envelope (the "*mailing envelope*") that is sealed by the Member.
- (c) The mailing envelope shall be addressed to the Inspector(s) of Election. In the upper left-hand corner of the mailing envelope shall be spaces where the voter shall print and sign his or her name, address, and Lot number or street address that entitles him or her to vote.
- (d) The ballot in the sealed mailing envelope may be mailed or delivered by hand to a location specified by the Inspector(s) of Election and announced in the accompanying balloting instructions. The Member may request a receipt for delivery of his or her ballot (Civil Code section 5115(c)(2)).
- (e) Once a ballot is cast it cannot be revoked. A ballot is "cast" when it is received by the Inspectors of Elections.

11.02 Procedures for the Tabulation of Ballots by the Inspectors of Election.

- (a) The ballots shall not be opened or otherwise reviewed prior to the time and place at which the ballots are counted and tabulated. In no event shall any ballots be opened if insufficient ballots exist to meet the quorum requirement.
- (b) All votes shall be counted and tabulated by the Inspector(s) of Election, or the duly authorized persons appointed by the Inspector(s) of Election to count and tabulate the votes if allowed under California law, in public at a properly noticed meeting of the Board of Directors open to attendance by all Members.
- (c) If the Inspector(s) of Election determine that insufficient ballots have been received prior to the deadline established for the return of ballots in order to meet any applicable quorum requirement, the Board:
 - (i) Shall extend the voting period for the election to the Board of Directors.
 - (ii) May extend the voting period for any other matter subject to these Election Operating Rules.
- (d) In a Board of Director election, if there is a tie vote between those candidates who receive the lowest number of votes, the tie shall be broken by a random method, as determined by the Inspector(s) of Election.

Section 12. Announcement of the Voting Results, Storage and Retention of Ballots.

12.01. Report by the Inspectors of Election of the Tabulated Election Results.

- (a) In accordance with Civil Code section 5120(b), the Inspector(s) of Elections shall promptly report the tabulated results of the election to the Board of Directors who shall record the results of the election in the minutes of the next Board meeting and make them available to the Members of the Association for Review.
- (b) Also in accordance with Civil Code section 5120(b) within fifteen (15) days of the election the Board shall give General Notice of the tabulated results of the election in a communication directed to all Members.

12.02. Custody, Storage and Retention of Election 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 Inspector until after the tabulation of the vote, and until the time allowed by Civil Code section 5145 for challenging the election has expired [i.e., one year], 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 (Civil Code section 5125).

Section 13. Member Rights and Remedies to Enforce Election Rules.

In accordance with Civil Code section 5145(a), a Member of the Association may bring a civil court action for declaratory or equitable relief for a violation of Article 4 of the Davis-Stirling Act ("*Member Election Rules*") 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 the membership of the election results or the cause of action accrues, whichever is later. If a Member establishes, by a preponderance of the evidence, that the election procedures of Article 4 of the Davis-Sterling Act, or the adoption of and adherence to election rules set forth in by Article 5 of the Davis-Stirling Act (commencing with Civil Code section 4340), were not followed, a court shall void any results of the election unless the Association establishes, by a preponderance of the evidence, that the Association's noncompliance with the Davis-Sterling Act or the Association's Election Operating Rules did not affect the results of the election. The findings of the court shall be stated in writing as part of the record.

In accordance with Civil Code section 5145(b), a Member who prevails in a civil action to enforce the Member's rights pursuant to Article 4 of the Davis-Stirling Act 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. A prevailing Association 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 the small claims court action.

In accordance with Civil Code section 5145(c) a cause of action to enforce the Davis-Sterling Act election rules 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.

Section 14. Prohibition Regarding Modification of Election Rules Within 90 Days of An Election.

These Association Election Operating Rules may not be amended within ninety (90) days prior to an election (Civil Code section 5105(h)) unless a change is needed to conform the

Election Operating Rules to mandated changes in the underlying statutory rules regarding elections as set forth in Article 4 of the Davis-Stirling Act.

Section 15. Capitalized Terms.

The capitalized terms used in these Election Operating Rules shall have the meanings given to those terms in Declaration of CC&Rs for North Silverwood or the Davis-Stirling Act.

Section 16. Severability of Election Rules.

If any provision of these Election Operating Rules are deemed to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect, invalidate, or render unenforceable any other term or provision of these Election Operating Rules. Upon such determination that any provision is invalid, illegal, or unenforceable, the Inspectors of Election, in consultation with the Board of Directors, shall implement such modifications as may be necessary or appropriate to revise the Election Operating Rules so that the Rules accurately reflect the requirements of the Governing Documents and the Davis-Stirling Act.

CERTIFICATE OF ADOPTION

I hereby certify that I am the Secretary of the Association and that the foregoing Election Rules are a true copy of the Election Rules approved by the Board at its meeting held on _____, 2020, at which a quorum of the Directors was present. I further certify that the foregoing Election Rules are in full force and effect; that the same have not been rescinded, nor has it been amended or modified.

Dated: August 12, 2020

By: Gary C. Hoffman
Secretary