

RESOLUTION 14-01-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code sections 5100 and 5105, to read as follows:

1 § 5100

2 (a) (1) Notwithstanding any other law or provision of the governing documents, elections
3 regarding assessments legally requiring a vote, election and removal of directors, amendments to
4 the governing documents, or the grant of exclusive use of common area pursuant to Section 4600
5 shall be held by secret ballot in accordance with the procedures set forth in this article.

6 (2) An association shall hold an election for a seat on the board of directors in accordance
7 with the procedures set forth in this article at the expiration of the corresponding director’s term
8 and at least once every four years.

9 (b) This article also governs an election on any topic that is expressly identified in the
10 operating rules as being governed by this article.

11 (c) The provisions of this article apply to both incorporated and unincorporated
12 associations, notwithstanding any contrary provision of the governing documents.

13 (d) The procedures set forth in this article shall apply to votes cast directly by the
14 membership, but do not apply to votes cast by delegates or other elected representatives.

15 (e) In the event of a conflict between this article and the provisions of the Nonprofit
16 Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title
17 1 of the Corporations Code) relating to elections, the provisions of this article shall prevail.

18 (f) Directors shall not be required to be elected pursuant to this article if the governing
19 documents provide that one member from each separate interest is a director.

20 (g) No Member shall be denied a ballot for any reason other than not being a member at
21 the time when the ballots are distributed.

22
23 § 5105

24 (a) An association shall adopt operating rules in accordance with the procedures
25 prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the
26 following:

27 (1) Ensure that if any candidate or member advocating a point of view is provided access
28 to association media, newsletters, or internet websites during a campaign, for purposes that are
29 reasonably related to that election, equal access shall be provided to all candidates and members
30 advocating a point of view, including those not endorsed by the board, for purposes that are
31 reasonably related to the election. The association shall not edit or redact any content from these
32 communications, but may include a statement specifying that the candidate or member, and not
33 the association, is responsible for that content.

34 (2) Ensure access to the common area meeting space, if any exists, during a campaign, at
35 no cost, to all candidates, including those who are not incumbents, and to all members
36 advocating a point of view, including those not endorsed by the board, for purposes reasonably
37 related to the election.

38 (3) Specify the qualifications for candidates for the board and any other elected position,
39 subject to subdivision (b), and procedures for the nomination of candidates, consistent with the

40 governing documents. A nomination or election procedure shall not be deemed reasonable if it
41 disallows any member from nominating themselves for election to the board.

42 (4) Specify the voting power of each membership, the authenticity, validity, and effect of
43 proxies, and the voting period for elections, including the times at which polls will open and
44 close, consistent with the governing documents.

45 (5) Specify a method of selecting one or three independent third parties as inspector or
46 inspectors of elections utilizing one of the following methods:

47 (A) Appointment of the inspector or inspectors by the board.

48 (B) Election of the inspector or inspectors by the members of the association.

49 (C) Any other method for selecting the inspector or inspectors.

50 (6) Allow the inspector or inspectors to appoint and oversee additional persons to verify
51 signatures and to count and tabulate votes as the inspector or inspectors deem appropriate,
52 provided that the persons are independent third parties.

53 (7) Require retention of, as association election materials, both a candidate registration
54 list and a voter list. The voter list shall include name, voting power, and either the physical
55 address of the voter's separate interest, the parcel number, or both. The mailing address for the
56 ballot shall be listed on the voter list if it differs from the physical address of the voter's separate
57 interest or if only the parcel number is used. The association shall permit members to verify the
58 accuracy of their individual information on both lists at least 30 days before the ballots are
59 distributed. The association or member shall report any errors or omissions to either list to the
60 inspector or inspectors who shall make the corrections within two business days.

61 (b) An association shall disqualify a person from a nomination as a candidate for not
62 being a member of the association at the time of the nomination.

63 (1) This subdivision does not restrict a developer from making a nomination of a
64 nonmember candidate consistent with the voting power of the developer as set forth in the
65 regulations of the Department of Real Estate and the association's governing documents.

66 (2) If title to a separate interest parcel is held by a legal entity that is not a natural person,
67 the governing authority of that legal entity shall have the power to appoint a natural person to be
68 a member for purposes of this article.

69 (c) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of
70 Section 5105 only, an association may disqualify a person from nomination as a candidate
71 pursuant to any of the following:

72 (1) Subject to paragraph (2) of subdivision (d), an association may require a nominee for
73 a board seat, and a director during their board tenure, to be current in the payment of regular and
74 special assessments, which are consumer debts subject to validation. If an association requires a
75 nominee to be current in the payment of regular and special assessments, it shall also require a
76 director to be current in the payment of regular and special assessments.

77 (2) An association may disqualify a person from nomination as a candidate if the person,
78 if elected, would be serving on the board at the same time as another person who holds a joint
79 ownership interest in the same separate interest parcel as the person and the other person is either
80 properly nominated for the current election or an incumbent director.

81 (3) An association may disqualify a nominee if that person has been a member of the
82 association for less than one year.

83 (4) An association may disqualify a nominee if that person discloses, or if the association
84 is aware or becomes aware of, a past criminal conviction that would, if the person was elected,
85 either prevent the association from purchasing the fidelity bond coverage required by Section

86 5806 or terminate the association’s existing fidelity bond coverage.

87 (d) An association may disqualify a person from nomination for nonpayment of regular
88 and special assessments, but may not disqualify a nominee for nonpayment of fines, fines
89 renamed as assessments, collection charges, late charges, or costs levied by a third party. The
90 person shall not be disqualified for failure to be current in payment of regular and special
91 assessments if either of the following circumstances is true:

92 (1) The person has paid the regular or special assessment under protest pursuant to
93 Section 5658.

94 (2) The person has entered into a payment plan pursuant to Section 5665.

95 (e) An association shall not disqualify a person from nomination if the person has not
96 been provided the opportunity to engage in internal dispute resolution pursuant to Article 2
97 (commencing with Section 5900) of Chapter 10.

98 (f) Notwithstanding any other law, the rules adopted pursuant to this section may provide
99 for the nomination of candidates from the floor of membership meetings or nomination by any
100 other manner. Those rules may permit write-in candidates for ballots.

101 (g) Notwithstanding any other law, the rules adopted pursuant to this section shall ~~de~~
102 include all of the following:

103 (1) ~~Prohibit the denial of~~ A rule that states: “The Association shall not deny a ballot to a
104 member for any reason other than not being a member at the time when ballots are distributed.”

105 (2) ~~Prohibit the denial of~~ A rule that states: “The Association shall not deny a ballot to a
106 person with general power of attorney for a member.”

107 (3) ~~Require~~ A rule that states: “The Association shall include the ballot of a person with
108 general power of attorney for a member to be counted if the ballot is returned in a timely
109 manner.”

110 (4) ~~Require~~ A rule that states: “~~The~~ inspector or inspectors of elections ~~to~~ shall deliver,
111 or cause to be delivered, at least 30 days before an election, to each member both of the
112 following documents:

113 (A) The ballot or ballots.

114 (B) A copy of the election operating rules.

115 (C) Delivery of the election operating rules may be accomplished by either of the
116 following methods:

117 (i) Posting the election operating rules to an internet website and including the
118 corresponding internet website address on the ballot together with the phrase, in at least 12-point
119 font: “The rules governing this election may be found here:”

120 (ii) Individual delivery.”

121 (h) Election operating rules adopted pursuant to this section shall not be amended less
122 than 90 days prior to an election.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: Civil Code section 5105 requires all homeowner associations (HOAs) to have
“Election Rules,” which are a type of “Operating Rules.” Section 5105(g) requires four types of

mandatory rules to be included. However, the requirement is passively stated. For example, section 5105(g) does not expressly state what the HOAs are required to do. In addition, 5105(g)(1) & (2) state the double negatives of “prohibit the denial of,” which also causes confusion. Furthermore, although Civil Code section 5115(c) requires ballots to be “delivered by the association to every member...,” this information is obscure and “buried” within subsections (a)-(f). As a result, some HOA Boards may try to exclude members from voting in member elections. For example, HOA Boards may try to exclude members who are not current in paying their assessments, who have not been mowing their lawns, or who have filed litigation against the HOA. So that the members will be properly notified about their voting rights, a statement about those rights should be clearly stated in Section 5100, which is at the beginning of the Article about “Member Election.”

The Solution: The proposed amended language clarifies that at least four (4) election operating rules are mandatory and provides the exact language to be used. In addition, section 5100 should be amended to clearly state that all members have the right to receive ballots – and cannot be excluded. To provide clarity and to prevent confusion, Civil Code sections 5100 and 5105(g)(1)-(4) should be amended as the resolution proposes.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Civil Code section 5100 Amended by Stats. 2021, Ch. 517, Sec. 1. (AB 502) Effective January 1, 2022. Civil Code section 5105 Amended by Stats. 2021, Ch. 642, Sec. 2. (SB 432) Effective January 1, 2022.

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RESPONSIBLE FLOOR DELEGATE

Catherine Rucker

RESOLUTION 14-02-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 4910, to read as follows:

1 § 4910

2 (a) A majority of the members of the board shall not discuss or take action on any item
3 of business outside of a board meeting.

4 (b) Required discussions and actions to occur during a board meeting, open session, shall
5 include, but not be limited to discussing and approving the annual budget report (as required by
6 Section 5300), discussing and approving the annual policy statement (as required by Section
7 5310), approving all contracts with third parties, discussing and approving all non-routine
8 expenses and repairs, discussing and approving all member design change applications, and
9 discussing and approving all formation of or amendments to the governing documents.

10 (c)(1) Notwithstanding Section 7211 of the Corporations Code, a majority of the
11 members of the board shall not, outside a meeting authorized by this article, conduct a meeting
12 via electronic transmissions, including, but not limited to, electronic mail use a series of
13 communications of any kind, directly or through intermediaries, to discuss or take action on any
14 item of business, except as specified in paragraph (2).

15 (2) Electronic transmissions may be used as a method of conducting an emergency board
16 meeting if all directors, individually or collectively, consent in writing to that action, and if the
17 written consent or consents are filed with the minutes of the board meeting. These written
18 consents may be transmitted electronically.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: The purpose of the “Common Interest Development Open Meeting Act” is to require HOA Boards to carry out as much HOA business as possible during open meetings – so that the members will be properly informed. Although section 4910 prohibits HOA Boards from “taking action” outside of board meetings, it does not clearly state the type of actions that must occur during Board meetings in open session. But see section 4935, which lists the types of actions that may occur during Board meetings in executive (closed) session.

The Solution: This resolution would amend the language in section 4910 to list the types of Board “actions” that must occur during Board meetings in open session. In addition, this resolution would use language from the Brown Act (for cities, counties, and other agencies in Government Code section 54952.2) to prohibit serial “communications of any kind” – and not only electronic communications - outside of board meetings.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.) A portion of this resolution is similar to Resolution 12-01-2021, which sought to clarify that Board approval of all contracts must occur during Board meetings in open session – and not during executive (closed) session.

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