

## RESOLUTION 02-01-2020

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code sections 5105 and 5115 to read as follows:

1 § 5105

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

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

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

16 (3) Specify the qualifications for candidates for the board and any other elected position,  
17 subject to subdivision (b), and procedures for the nomination of candidates, consistent with the  
18 governing documents. A nomination or election procedure shall not be deemed reasonable if it  
19 disallows any member from nominating themselves for election to the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

61 (4) An association may disqualify a nominee if that person discloses, or if the association  
62 is aware or becomes aware of, a past criminal conviction that would, if the person was elected,  
63 either prevent the association from purchasing the fidelity bond coverage required by Section  
64 5806 or terminate the association's existing fidelity bond coverage.

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

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

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

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

76 (f) Notwithstanding any other law, through its bylaws or election operating rules adopted  
77 pursuant to subdivision (a) of Section 5105 only, an association may provide for the nomination  
78 of candidates from the floor of membership meetings or nomination by any other  
79 manner. ~~Those~~ Such bylaws or election operating rules may permit write-in candidates for  
80 ballots, subject to the requirement that each candidate is qualified at the time of the election,  
81 according to applicable law and the governing documents.

82 (g) Notwithstanding any other law, the rules adopted pursuant to this section shall do all  
83 of the following:

84 (1) Prohibit the denial of a ballot to a member for any reason other than not being a  
85 member at the time when ballots are distributed.

86 (2) Prohibit the denial of a ballot to a person with general power of attorney for a  
87 member.

88 (3) Require the ballot of a person with general power of attorney for a member to be  
89 counted if returned in a timely manner.

90 (4) Require the inspector or inspectors of elections to deliver, or cause to be delivered, at  
91 least 30 days before an election, to each member ~~both~~ all of the following documents:

92 (A) The ballot or ballots.

93 (B) The election notice, as required by section 5115.

94 (C) A copy of the election operating rules. Delivery of the election operating rules may  
95 be accomplished by either of the following methods:

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

99 (ii) Individual delivery.

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

102  
103 § 5115

104 (a) An association shall provide general notice of the procedure and deadline for  
105 submitting a nomination at least 30 days before any deadline for submitting a nomination.  
106 Individual notice shall be delivered pursuant to Section 4040 if individual notice is requested by  
107 a member.

108 ~~(b) An association shall provide general notice of all of the following at least 30 days~~  
109 ~~before the ballots are distributed.~~ A notice with the following information shall be distributed  
110 with each ballot:

111 (1) The date and time by which, and the physical address where, ballots are to be returned  
112 by mail or handed to the inspector or inspectors of elections.

113 (2) The date, time, and location of the meeting at which ballots will be counted.

114 (3) The list of all candidates' names that will appear on the ballot.

115 ~~(4) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040~~  
116 ~~if individual notice is requested by a member.~~

117 (c) Ballots and two preaddressed envelopes with instructions on how to return ballots  
118 shall be mailed by first-class mail or delivered by the association to every member not less than  
119 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be  
120 identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use  
121 as a model those procedures used by California counties for ensuring confidentiality of vote by  
122 mail ballots, including all of the following:

123 (1) The ballot itself is not signed by the voter, but is inserted into an envelope that is  
124 sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand  
125 corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name,  
126 and indicate the address or separate interest identifier that entitles the voter to vote.

127 (2) The second envelope is addressed to the inspector or inspectors of elections, who will  
128 be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by  
129 the inspector or inspectors of elections. The member may request a receipt for delivery.

130 (d) A quorum shall be required only if so stated in the governing documents or other  
131 provisions of law. If a quorum is required by the governing documents, each ballot received by  
132 the inspector of elections shall be treated as a member present at a meeting for purposes of  
133 establishing a quorum.

134 (e) An association shall allow for cumulative voting using the secret ballot procedures  
135 provided in this section, if cumulative voting is provided for in the governing documents.

136 (f) Except for the meeting to count the votes required in subdivision (a) of Section 5120,  
137 an election may be conducted entirely by mail unless otherwise specified in the governing  
138 documents.

139 (g) In an election to approve an amendment of the governing documents, the text of the  
140 proposed amendment shall be delivered to the members with the ballot.

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

**PROPONENT:** San Mateo County Bar Association

### **STATEMENT OF REASONS**

The Problem: This resolution addresses two main issues faced by Common Interest Development Associations, commonly known as “homeowners associations” (HOAs). One issue is the length of time to carry out an election. For example, there are currently three 30-day time blocks. First, there is a “call for candidates” period that lasts at least 30 days. Second, there is an “election notice” period, that must occur at least 30 days before the ballots are distributed. Third, the ballot period must last at least 30 days. The sum of these sequential periods lasts 90 days. A second issue this resolution addresses is about disqualifying candidates for the position of Director. California created a mandatory requirement that all HOAs must disqualify candidates who are not members at the time of their nominations. See Civil Code sections 5100(g)(3)(A)(for associations with 6,000 or more units) and 5105(b). In addition, California created four permissive disqualifications that each HOA may choose to adopt. See Civil Code sections 5100(g)(B)(i-iv)(for associations with 6,000 or more units) and 5105(c)(1-4). However, Civil Code section 5105(f) allows each HOA to allow write-in candidates on the ballots, which could obviate the Association’s ability to verify that each candidate is “qualified” for the position of Director.

The Solution: For the first issue addressed, about shortening the election period, HOAs should be able to carry out elections over relatively short periods of time so that their routine operations will continue to flow. The overall HOA election process can be shortened to just over 60 days if the State of California would consolidate the second and third time periods described above. Somewhere between the initial “call for candidates” period, which must last at least 30 days, and the final 30-day ballot period, the Association can verify whether each candidate is qualified. Because the Association would be reviewing its own records about each candidate, the verification process can be completed quickly. This resolution would allow the entire election process to be carried out in just over 60 days, as opposed to the current 90-day period. This resolution would also allow each HOA to comply with the 90-day requirement in Corporations Code section 7511, for recall elections. For the second issue addressed, about write-in candidates, this resolution would require write-in candidates to be “qualified” candidates.

**CURRENT OR PRIOR RELATED LEGISLATION**

Civil Code sections 5105 & 5115 Amended by Stats. 2019, Ch. 848, Sec. 4 (SB 323) Effective Jan. 1, 2020.

**IMPACT STATEMENT**

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

**AUTHOR AND/OR PERMANENT CONTACT:** Catherine Rucker; 448 Ignacio Blvd., #124, Novato, CA 94949; 415-246-6647; [catherinerucker@me.com](mailto:catherinerucker@me.com)

**RESPONSIBLE FLOOR DELEGATE:** Catherine Rucker

**RESOLUTION 02-02-2020**

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Corporations Code section 7224 to read as follows:

1 § 7224

2 (a) Unless otherwise provided in the articles or bylaws and except for a vacancy created  
3 by the removal of a director, vacancies on the board may be filled by approval of the board  
4 (Section 5032) or, if the number of directors then in office is less than a quorum, by (1) the  
5 unanimous written consent of the directors then in office, (2) the affirmative vote of a majority of  
6 the directors then in office at a meeting held pursuant to notice or waivers of notice complying  
7 with Section 7211, or (3) a sole remaining director. Unless the articles or a bylaw approved by  
8 the members (Section 5034) provide that the board may fill vacancies occurring in the board by  
9 reason of the removal of directors, or unless the corporation has no members pursuant to Section  
10 7310, such vacancies may be filled only by approval of the members (Section 5034).

11 (b) Notwithstanding subdivision (a), for a common interest development subject to this  
12 part, the board shall not approve nor appoint any person as a director to fill a vacancy on a  
13 board unless the person to be approved or appointed is a member and otherwise meets all  
14 qualifications prescribed by law and by the governing documents.

15 ~~(b)~~ (c) The members may elect a director at any time to fill any vacancy not filled by the  
16 directors.

17 ~~(c)~~ (d) Any director may resign effective upon giving written notice to the chairman of  
18 the board, the president, the secretary or the board of directors of the corporation, unless the  
19 notice specifies a later time for the effectiveness of such resignation. If the resignation is  
20 effective at a future time, a successor may be elected to take office when the resignation becomes  
21 effective.

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

**PROPONENT:** San Mateo County Bar Association

**STATEMENT OF REASONS**

The Problem: On January 1, 2020, the State of California amended Civil Code sections 5100 & 5105 to require Common Interest Development Associations, commonly known as “homeowners associations (HOAs),” to disqualify a person from being a candidate for a position of Director if the person was not a member at the time of the nomination. See Civil Code section 5100(g)(1) and section 5105(b). However, there is a loop-hole to this new requirement because HOA Boards of Directors are still able to appoint non-members as Directors. Non-Members do not pay HOA assessments (dues) and they do not have property interests in HOA developments. As a result, non-members should not serve as Directors, by election or by appointment. Although the Davis-Stirling Act has an article about member elections for HOAs in Civil Code sections 5100-5145, HOA Board appointments to fill vacant Director positions are controlled by

Corporations Code section 7224.

The Solution: Corporations Code section 7224 should be amended to require HOA Boards to only appoint members to vacancies for Director positions.

**CURRENT OR PRIOR RELATED LEGISLATION**

Senate Bill No. 323 (2019-2020 Reg. Sess.)(which requires HOAs to eliminate all candidates who are not members at the time of nomination); Senate Bill No. 754 (2019-202 Reg. Sess.)(which added Corporations Code section 7522(e) to allow HOA elections by acclamation).

**IMPACT STATEMENT**

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

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