

**RANCHO SANTA MARGARITA PROPERTY OWNERS ASSOCIATION
VOTING AND ELECTION PROCEDURES POLICY ©**

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RANCHO SANTA MARGARITA PROPERTY OWNERS ASSOCIATION VOTING AND ELECTION PROCEDURES POLICY[®]

Rancho Santa Margarita is a road association. It exists primarily to maintain approximately 2.2 miles of main roadway. Those with parcels bound by the Association CC&Rs are Members of the Association and vote on related Association matters. There are also a few parcels not bound by the CC&Rs. Those Non-Member Owners also participate in some votes coordinated by the Association, but not all. The purpose of this Policy is to provide a summary of voting procedures as provided for in a variety of authorities including the Corporations Code, portions of the Civil Code called the Davis-Stirling Common Interest Development Act and the Association's Governing Documents. Attention is given as to whether the vote involves Members only or Members plus Non-Member Owners.

I. MEMBER VOTING GENERALLY

1(a) **One Ballot per Parcel.**

On each matter submitted to a vote of the Members¹, each Member shall be entitled to cast one ballot for each Parcel owned by such Member. When more than one (1) Person owns an interest in a single Parcel, any ballot cast by a single Member shall be deemed the authorized ballot for that Parcel. If more than one ballot is received for a Parcel, the first ballot received shall be counted and no subsequently received ballot shall be recognized. If a Member owns more than one Parcel in the Association, the Member should submit a separate ballot for each such property owned.

1(b) **Who Votes.**

- **Individual Owners:** Individuals in the chain of title can vote.
- **Trustee Owners:** Trustees named in the chain of title can vote the same as individual Members.
- **Corporate Owners:** Entities (such as corporations or partnerships) must appoint and identify in writing an authorized individual.
- **Proxy-Holders:** If proxies are permitted under the Bylaws, a Member may give a Directed Proxy to another Member to vote on his/her behalf.
- **Power of Attorney ("POA"):** After confirmation of the POA authority and request for ballot, that individual can vote on behalf of the Member. The POA authority stops upon death of the Member.
- **Deceased Owner(s):** Counsel may be consulted to address circumstances related to Estates, Executors, etc.

1(c) **Cumulative Voting Limitation.**

Cumulative voting is not permitted unless provided for in the Bylaws.

1(d) **Voter List.**

The Association shall generate and update a **Voter List**. It is updated prior to each election (see Section 5(a)(3) and includes the following information:

- Member's and Non-Member Owner's names;
- Voting power, such as Powers of Attorney or Entity/Owner Representatives (if any), Member v. Non-Member Owner, Unit 1 / Unit 2;

¹ The term Owner means any person, firm, corporation, or other entity which owns a fee simple interest in any parcel within the Rancho Santa Margarita Subdivision, whether or not a Member of the Association. The term Member means an Owner who has, directly or by a predecessor, agreed that Owner's parcel shall be bound by the Declaration. The term Non-Member Owner means an Owner who is not subject to the Governing Documents, but is subject to the 845 Judgment..

- Physical address of the voter's separate interest, the parcel number, or both;
- The mailing address for the ballot if different from the physical address or if only the parcel number is used.

The **Voter List** is vital to the tally process.

1(e) Ballots and Meetings.

When a question is put to a vote of the Members, if required by law², direct ballots by mail will be used. The voting material must include the Board's tally meeting information (or general membership meeting). The meeting time may be extended by subsequent notice. As to voting subjects not covered by law (or this policy), the Board may use these or other reasonable procedures that best fit the circumstances of that particular vote.

1(f) Quorums.

The Governing Documents, Davis-Stirling Act, or other provisions of law may specify a quorum for Member approvals. If no quorum is so specified, the quorum shall be equal to one-third (1/3) of the total Voting Power. (See specific quorums by subject under **Section II** below.)

II. TYPICAL TYPES OF VOTES GOVERNED BY THIS POLICY

2(a) Election of Directors.

The Association shall hold an election for a seat on the Board of Directors at the end of the corresponding Director's term. The quorum requirement to elect Directors shall be as stated in the Bylaws. If no quorum is listed specifically for election of Directors, quorum shall be that required to convene a Member meeting. Thereafter, the candidates receiving the largest number of votes will be elected. [See also **Section 5(i)** below regarding the option for uncontested elections / acclamation.]

2(a)(1) Nominations.

The Association is always looking for volunteers who are willing to serve on the Board. A Member may self-nominate. Nominations will close as announced by the Board. There shall be no "write-in candidates." Note that there are three (3) Directors from Unit 1 (elected by the Unit 1 Members) and three (3) Directors from Unit 2 (elected by the Unit 2 Members). At least 30 days before the close of nominations, the Association shall provide **General Notice** of the upcoming election (**Preferred Method of Delivery** to those Members who have so requested), the nomination deadline, and the procedure for nominating candidates to run for the Board. [See also **Section 5(i)** below regarding the option for uncontested elections / acclamation.]

2(a)(2) Candidate Qualifications.

A candidate must be a natural person and a Member (owner in chain of title) of the Association. If title is held by a Trust, the Trustee(s) named on title is the Member(s) for purposes of candidacy (and voting). If title is held by an entity such as a corporation or partnership, and the entity wants a representative not in the chain of title to be a candidate, counsel should be consulted.

² The four subjects that require double envelope, 30-day mail in balloting are: Election/Recall of Directors, Assessment decisions, Governing Document amendments, and grant of exclusive use of Common Area. [Civil Code §5100(a)(1)]

2(b) Recall of Directors.

The recall of one or more Directors is addressed in the Corporations Code §7222, Bylaws, and/or Civil Code §§5100-5130. In addition to those standards, double-envelope balloting will be used.

2(c) Assessment Decisions.

There are several categories of Assessments which have differing approval requirements as set forth in the Declaration. Some Assessment decisions include all Owners.

2(d) Governing Document Amendments.

Should the Association desire to amend its Articles of Incorporation, Bylaws and/or CC&Rs, the text of the proposed amendment(s) shall be delivered to the Members with the ballot. Quorum participation and/or the number of votes necessary to pass will be indicated on the ballot and/or in the ballot material.

2(d) Other Issues.

At the discretion of the Board, any issue presented to the Members for a vote may be conducted using the double-envelope process described in this policy. If the vote does not involve election or recall of Directors, amendment of Governing Documents, Assessment approval, or grant of exclusive use of Common Area, then the Board may describe alternate voting procedures with the voting material.

III. CAMPAIGNING

In an election or other vote, the Association is not required to offer communication opportunities to participants; however, if such a benefit is offered to one, the same opportunity must then be offered to all. There may be reasonable restrictions on the size, weight and format of the information. For example, a standardized form may be required to set forth candidate information.

IV. INSPECTORS OF ELECTION

To assist in the logistics of balloting and other voting matters, one or three individuals shall be appointed by the Board. These individuals are called "Inspectors of Election." Their job is to process and count ballots, to assure confidentiality in the voting, as well as to make judgment calls if there is a problem in the paperwork. Because the most common practice is to use three Inspectors of Election, most references in this policy will be plural. This should not be construed to eliminate the option of using only one.

An Inspector of Election must be an "independent third party." Those *not* qualifying as independent include a member of the Board, a candidate or a co-Owner with either, or an immediate family member of a Board member or candidate. Also not qualifying are the property manager, if any, or other person employed by the Association (except for the specific task of being an Inspector). Typically an Inspector will be one or three Members who are independent of these restrictions. The Inspectors may appoint and oversee additional persons to assist with the count and tabulation of ballots, provided they too are neutral third parties.

The Inspectors of Election responsibilities include overseeing the voting process and processing the ballots. In addition to those authorities set forth in Civil Code §§5100-5135, Inspectors of Election may:

- Where ownership changes during the voting cycle, determine if the seller voted or, if not, whether or not the buyer's ballot will be accepted.

- When an unsigned ballot envelope is received, utilize discretion as to if and how the Member may be given an opportunity to sign the envelope prior to the start of opening envelopes and counting.
- Disqualify subsequent ballots received from a Member after receipt of the first ballot from that Member or from a co-Owner.
- Disqualify any ballot that is not an Official Ballot prepared by the Association.
- Address any other irregularities which may arise during the voting process.

The Inspectors of Election may also take other actions to assure fairness in the election process and compliance with this policy and any other applicable rule or policy (which does not conflict with this policy).

Inspectors of Election shall perform their duties impartially, in good faith, to the best of their ability, 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 Election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the Inspector(s) of Election (such as the tabulation of ballots) is prima facie evidence of the facts stated in the report.

The Inspectors of Election are responsible for the processing of the sealed ballots as they are received. Once a ballot is received, it is irrevocable. The Inspectors or designee may verify the Member information on the outer envelope prior to the meeting at which ballots are tabulated. The envelopes shall not be opened until the meeting at which the tabulation is to occur. After publication of the tabulated results of the election, the Inspectors direct and control the storage of the **Election Materials** for a period of 12 months. Thereafter, custody shifts to the Association.

V. VOTING PROCEDURES

The following procedures apply to those Member decisions identified in **Section II, 2(a)-2(e)** above.

5(a) Timing.

5(a)(1) Nominations:

At least 30 days before any deadline for submitting a nomination, the Association shall provide **General Notice** of the upcoming election (**Preferred Method of Delivery** to those Members who have so requested), the nomination deadline, and the procedure for nominating candidates to run for the Board. [See also **Section 5(i)** below regarding the option for uncontested elections / acclamation.]

5(a)(2) Appointment of Inspector(s) of Election.

At least 60 days prior to an Election, the Board should appoint inspector(s) of Election.

5(a)(3) Verification of Voter Information.

At least 30 days before the ballots are distributed, the Association shall permit Members and Non-Member Owners to verify the accuracy of their individual information on a **Voter List**. The Association or Member/Non-Member Owner shall report any errors or omissions on the **List** to the Inspector of Election who shall make the corrections within two business days. If there are any Powers of Attorney or Entity/Owner Representatives who will be casting ballots, these must be identified on the **Voter List** and appropriate documentation provided to the Association in this time frame.

5(a)(4) Balloting Information:

At least 30 days before ballots are distributed, the Association shall provide **General Notice** of the following:

- The date and time by which ballots are to be returned (by mail or hand delivery) to the Inspectors of Election;
- The address where ballots are to be returned;
- The date, time and location of the tally meeting; and
- The list of all candidate names that will appear on the ballot.

Preferred Method of Delivery shall be used for any Member/Non-Member Owner who has requested individual notice.

Inspectors of Election may coordinate with the Board regarding these details.

5(a)(5) Mail-in Ballots.

Not less than 30 days ahead of the Election, the Association shall deliver (by first class mail or hand delivery) voting material, such as ballots, voting instructions, explanatory material, candidate statements, etc., to every Member/Non-Member Owner. Prior to opening the received ballots, the Board may reasonably extend the voting period to achieve greater Member/Non-Member Owner participation in reaching quorum requirements (if applicable). For an election of Directors (unless the acclamation procedures set forth in **Exhibit A** have been followed), ballots must be distributed even if the number of candidates is equal to or less than the number of open positions.

5(b) Official Ballot.

Only the Official Ballot form generated by the Association will be counted.

5(c) Secret Ballot.

Voting shall be done by secret ballot. The Association shall use procedures (including those described below) to assure such confidentiality.

5(d) Use of Proxies.

Balloting by mail has largely eliminated the usefulness of proxies. Therefore, proxies will not be distributed by the Association in conjunction with any vote conducted pursuant to this policy. If a proxy is submitted, it must strictly comply with Civil Code §5130. Proxies are not permitted if so stated in the Bylaws.

5(e) No Identification On Ballot.

In order to preserve confidentiality, a voter may not be identified by name, address, or Parcel or parcel number on the ballot.

5(f) Voting by Mail.

For this mail-in voting, the Association shall provide Member/Non-Member Owner with ballots and two pre-printed envelopes along with instructions. The instructions shall specify how ballots are to be returned. The Association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

- The ballot itself is not signed by the voter. After marking the ballot, it is to be inserted into an envelope that is then sealed. This envelope is inserted into a second envelope that is also then sealed. In the upper left hand corner of the second envelope, the voter prints and signs his or her name, address, and Parcel number that entitles him or her to vote. Note that an outer envelope received without a Member/Non-Member Owner signature will not be counted (unless a signature is added prior to the tally of the ballots).

- The second envelope is addressed to the Inspectors of Election, who will be tallying the ballots. The envelope may be mailed or delivered by hand to a location specified by the Inspectors of Election. The Member/Non-Member Owner may request a receipt of delivery.

5(g) Delivery of Completed Ballots.

Typically, ballots will be returned by first class mail. However, ballots may also be hand-delivered to an address specified.

5(h) Irrevocable.

Once a ballot is received, it is irrevocable. If a ballot is properly cast and received within the balloting period, and a sale occurs, the new Member/Non-Member Owner does not get to cast a second ballot. If no ballot has been cast / received for that property prior to the final voting deadline, the new Member/Non-Member Owner can cast the ballot.

5(i) Option for Uncontested Election / Acclamation.

If the Association has strictly complied with the notice and timing requirements set forth in Civil Code §5103, and at the close of the statutorily required 90 day nominations period, the Inspector(s) of Election confirm that the number of qualified candidates equals or is less than the number of Directors to be elected, the Board may vote to seat the candidates without Member balloting. The Board shall have the option, however, but not the obligation, to extend the time to declare candidacy and increase the number of candidates. Also see **Exhibit A** which includes procedural acclamation requirements.

5(j) Live Voting at a Member Meeting.

If there is a quorum-qualified meeting of Members and the Board opts to conduct voting at the meeting (i.e., in addition to double-envelope balloting), the Board shall use procedures to assure the secrecy of ballots cast. The Inspectors of Election shall have authority over these and all other ballots received.

VI. BALLOT TABULATIONS & ANNOUNCEMENT OF RESULTS

An Inspector of Election or designated assistant may verify the Member/Non-Member Owner information on the outer envelope prior to the tally meeting. No one is permitted to open the inner envelope containing the ballot prior to the meeting at which the ballots are to be counted and tabulated.

Opening, counting and tabulating the ballots can only be done by the Inspector of Elections at a properly noticed open meeting of the Board or Members. Anyone may observe the counting and tabulation of the ballots.

The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the open or next meeting of the Board. Within 15 days of the election tally, the Board shall publicize the tabulated results of the election in a communication directed to all Members.

VII. RETENTION OF ELECTION MATERIALS

For a period of one year following publication of the tallied results of the election, the Inspectors of Election are responsible for custody of the **Election Materials**. After 12 months, the custody of the ballots shifts to the Association. In the event of a formal challenge to the election process, **Election Material** is to be preserved. Upon written request, the Association will coordinate with the

Inspectors of Election and make the ballots available for inspection and review by Members or their authorized representatives. Any such review shall be conducted in a manner that preserves the confidentiality of the vote.

VIII. DEFINED TERMS

8(a) "Election"

as bolded throughout this Policy means the date on which the ballots are scheduled to be opened and tallied.

8(b) "Election Materials"

means and includes returned ballots, signed voter envelopes, the **Voter List** of names, parcel numbers, and voters to whom ballots were to be sent, proxies (if any), Inspector of Election Worksheet, and the list of candidates.

8(c) "General Notice"

describes delivery of communications from the Association to the membership as a group, pursuant to Civil Code §4045. **General Notice** includes methods such as posting the printed document on the Association's website (if any) and/or in a prominent place at the Property designated for such notices. It can also be by inclusion in a billing statement or newsletter. Alternatively, **General Notice** may be by the **Preferred Method of Delivery**, if specifically requested by the Member/Non-Member Owner, or if not, at the Association's option.

8(d) "Preferred Method of Delivery"

describes the transmittal of notices, documents or other communications from the Association to an individual Member/Non-Member Owner pursuant to Civil Code §§4040 and 4041. **Preferred Method of Delivery** means a Member's/Non-Member Owner's preference as relayed to the Association and may include a mailing address and/or valid email address. It may also include secondary mail and/or email addresses. It may include such contact information for the Owner's legal representative.

8(e) "Voter List"

means the list of membership information generated by the Association, and verified by the Members prior to each election, which includes the following information: Member's/Non-Member Owner's name and voting power, physical address of the voter's separate interest, the mailing address for the ballot if different from the physical address, and identification of Powers of Attorney or Entity/Owner Representatives (if any).

IX. AMENDMENT OF VOTING POLICY

This policy shall not be amended less than 90 days prior to the scheduled meeting at which the ballot tally is to be conducted.

Per Civil Code §4360

Distributed to Members: May 26, 2023

Formal Board Adoption: _____

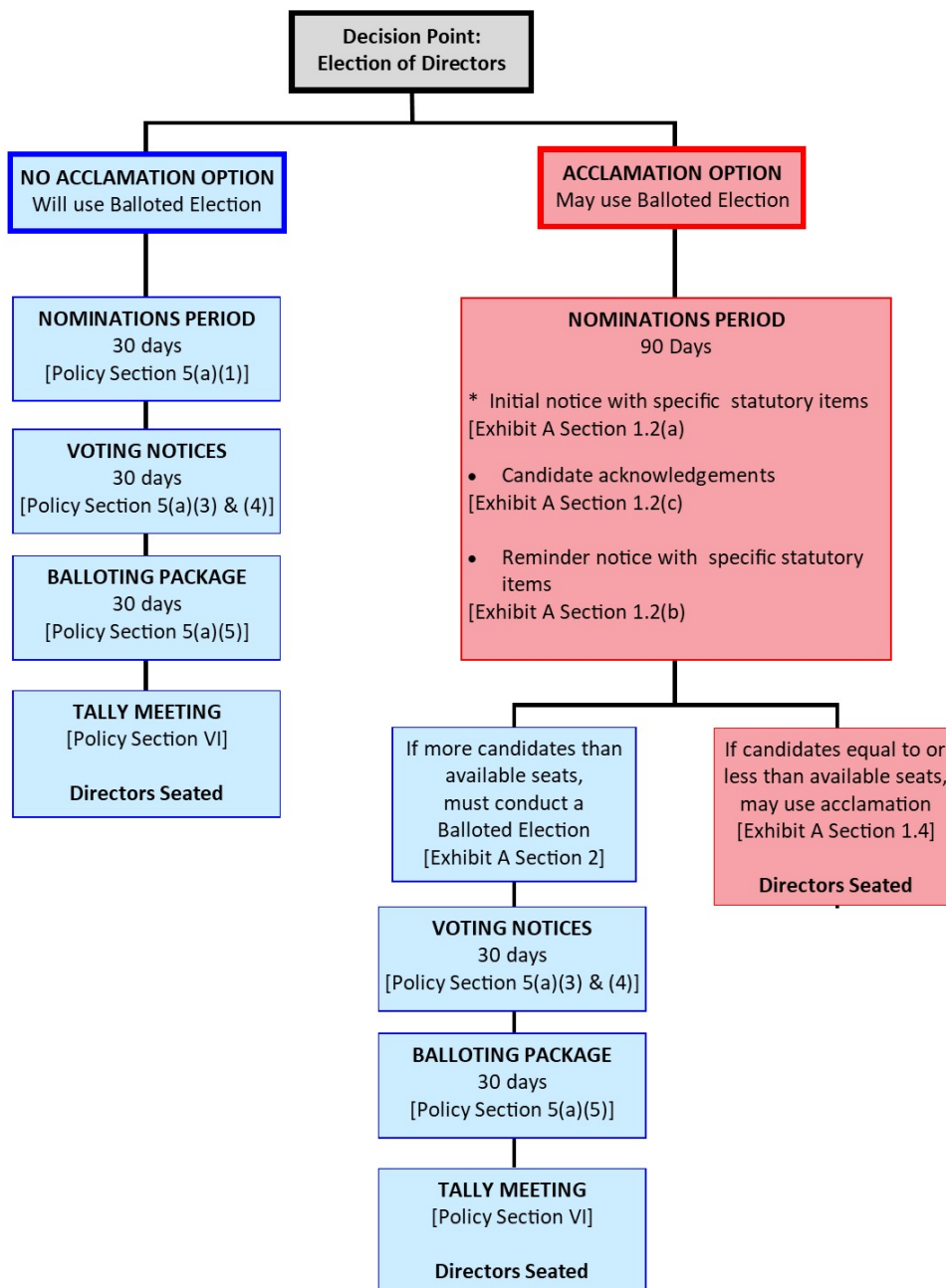
2023.05 RSM Vote Policy v11.wpd

EXHIBIT A

REQUIREMENTS TO PRESERVE THE OPTION FOR ACCLAMATION

Prior to commencing the process of electing Director(s), the Board must decide if they want to pursue the option to utilize acclamation. There are distinctly different notice and timing requirements, under Civil Code §5103, that must be followed in order to use acclamation. These must be implemented before the number of candidates is known. The flow chart below summarizes the two election tracts. Details for a Balloted Election are included in the main Policy above. Details for the Acclamation Option are included in this Exhibit A.

ELECTION OF DIRECTORS
Options under the Statute



1. ACCLAMATION OPTION

1.1 Three Year Election Cycle:

The Association must have held a regular (balloted) election for the Directors within the last three (3) years. This three-year time period is calculated from the date ballots were due in the last election to the start of voting in the proposed election.

Civil Code
§5103(a)

1.2 Nominations:

1.2(a) Opening of Nominations.

At least 90 days before any deadline for submitting a nomination, the Association shall provide the following information by **Preferred Method of Delivery**:

- the number of positions to be filled,
- the procedure and deadline for submitting a nomination.
- a statement that if, by close of nominations, the number of candidates is equal to or less than the number of positions to be filled, the Board may vote to seat the candidates by acclamation.

Civil Code
§5103(b)(1)

1.2(b) Nominations Reminder Notice.

Between seven (7) and thirty (30) days prior to the close of nominations, the Association shall provide by **Preferred Method of Delivery**, a reiteration of each item of information in the original notice, as well as:

- a list of the candidate names received to date.

If the number of candidates exceeds the number of positions to be elected, the statement of acclamation is not required.

Civil Code
§5103(b)(2)

1.2(c) Candidate Acknowledgments.

Within seven (7) business days of receipt of a nomination, the Association shall provide notice, by **Preferred Method of Delivery**, to the Member who submitted the nomination, acknowledging receipt. The Association shall also provide notice, by **Preferred Method of Delivery**, to the nominee confirming candidate eligibility, as well as the procedure for appeal if disqualified.

Civil Code
§5103(c)

1.3 Qualified Candidates Permitted to Run.

The Association must permit all candidates to run, unless they have been properly disqualified under the statute or the Bylaws.

Civil Code
§5103(d)

1.4 Board Confirmation.

At a duly noticed Board meeting for which the agenda item reflects the name of each qualified candidate, the Board may vote to consider those candidates seated by acclamation. The results of acclamation must then be given to Members by **General Notice** within 15 days.

Civil Code
§5103(e)

§5120(b)

2. IF ACCLAMATION FAILS.

If, at the close of nominations, the number of candidates is more than the number of available seats, the Association must conduct a balloted election, starting with the balloting notices as described in Sections 5(a)(3) and 5(a)(4) of this Voting Policy

Civil Code
§5105(a)(7)

§5115(b)