

CALIFORNIA CODES

CIVIL CODE

SECTION 1363.03-1363.09

1363.03. (a) An **association** shall adopt rules, in accordance with the procedures prescribed by Article 4 (commencing with Section 1357.100) of Chapter 2, that do all of the following:

(1) Ensure that if any candidate or member advocating a point of view is provided access to **association** media, newsletters, or Internet Web sites 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.

(2) Ensure access to the common area meeting space, if any exists, 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, for purposes reasonably related to the election.

(3) Specify the qualifications for candidates for the board of directors and any other elected position, 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 of the **association** from nominating himself or herself for election to the board of directors.

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

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

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

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

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

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

(b) Notwithstanding any other law or provision of the governing documents, **elections** regarding assessments legally requiring a vote, election and removal of members of the **association** board of directors, amendments to the governing documents, or the grant of exclusive use of common area property pursuant to Section 1363.07 shall be held by secret ballot in accordance with the procedures set forth in this section. A quorum shall be required only if so stated in the governing documents of the **association** or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of **elections** shall be treated as a member present at a meeting for purposes of establishing a quorum. An **association** shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

(c) (1) The **association** shall select an independent third party or parties as an inspector of election. The number of inspectors of election shall be one or three.

(2) For the purposes of this section, an independent third party 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 member of the board of directors or a candidate for the board of directors or related to a member of the board of directors or a candidate for the board of directors. 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 unless expressly authorized by rules of the **association** adopted pursuant to paragraph (5) of subdivision (a).

(3) The inspector or inspectors of election shall do all of the following:

(A) Determine the number of memberships entitled to vote and the voting power of each.

(B) Determine the authenticity, validity, and effect of proxies, if any.

(C) Receive ballots.

(D) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

(E) Count and tabulate all votes.

(F) Determine when the polls shall close, consistent with the governing documents.

(G) Determine the tabulated results of the election.

(H) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section, the **Corporations Code**, and all applicable rules of the **association** regarding the conduct of the election that are not in conflict with this section.

(4) An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. 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 or inspectors of election is prima facie evidence of the facts stated in the report.

(d) (1) For purposes of this section, the following definitions shall apply:

(A) "Proxy" means a written authorization signed by a member or the authorized representative of the member that gives another member or members the power to vote on behalf of that member.

(B) "Signed" means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the member or authorized representative of the member.

(2) Proxies shall not be construed or used in lieu of a ballot. An **association** may use proxies if permitted or required by the bylaws of the **association** and if those proxies meet the requirements of this article, other laws, and the **association's** governing documents, but the **association** shall not be required to prepare or distribute proxies pursuant to this section.

(3) Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder shall cast the member's vote by secret ballot. The proxy may be revoked by the member prior to the receipt of the ballot by the inspector of **elections** as described in Section 7613 of the **Corporations Code**.

(e) Ballots and two preaddressed envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the **association** to every member not less than 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. 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:

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

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

(f) All votes shall be counted and tabulated by the inspector or inspectors of election or his or her designee in public at a properly noticed open meeting of the board of directors or members. Any candidate or other member of the **association** may witness the counting and tabulation of the votes. No person, including a member of the **association** or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. The inspector of election, or his or her designee, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspector of **elections**, it shall be irrevocable.

(g) The tabulated results of the election shall be promptly reported to the board of directors of the **association** and shall be recorded in the minutes of the next meeting of the board of directors and shall be available for review by members of the **association**. Within 15 days of the election, the board shall publicize the tabulated results of the election in a communication directed to all members.

(h) The sealed ballots at all times shall be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 7527 of the **Corporations Code** for challenging the election has expired, 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 election shall, upon written request, make the ballots available for inspection and review by an **association** member or his or her authorized representative. Any recount shall be conducted in a manner

that preserves the confidentiality of the vote.

(i) After the transfer of the ballots to the **association**, the ballots shall be stored by the **association** in a secure place for no less than one year after the date of the election.

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

(k) Except for the meeting to count the votes required in subdivision (f), an election may be conducted entirely by mail unless otherwise specified in the governing documents.

(l) The provisions of this section apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

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

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

(o) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2006.

1363.04. (a) **Association** funds shall not be used for campaign purposes in connection with any **association** board election. Funds of the **association** shall not be used for campaign purposes in connection with any other **association** election except to the extent necessary to comply with duties of the **association** imposed by law.

(b) For the purposes of this section, "campaign purposes" includes, but is not limited to, the following:

(1) Expressly advocating the election or defeat of any candidate that is on the **association** election ballot.

(2) 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. This is not a campaign purpose if the communication is one for which subdivision (a) of Section 1363.03 requires that equal access be provided to another candidate or advocate.

1363.05. (a) This section shall be known and may be cited as the Common Interest Development Open Meeting Act.

(b) Any member of the **association** may attend meetings of the board of directors of the **association**, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments, as specified in Section 1367 or 1367.1. The board of directors of the **association** shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.

(c) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

(d) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the board of directors of an **association**, other than an executive session, shall be available to members within 30 days of the meeting.

The minutes, proposed minutes, or summary minutes shall be distributed to any member of the **association** upon request and upon reimbursement of the **association's** costs for making that distribution.

(e) Members of the **association** shall be notified in writing at the time that the pro forma budget required in Section 1365 is distributed, or at the time of any general mailing to the entire membership of the **association**, of their right to have copies of the minutes of meetings of the board of directors, and how and where those minutes may be obtained.

(f) As used in this section, "meeting" includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.

(g) Unless the time and place of meeting is fixed by the bylaws, or unless the bylaws provide for a longer period of notice, members shall be given notice of the time and place of a meeting as defined in subdivision (f), except for an emergency meeting, at least four days prior to the meeting. Notice shall be given by posting the notice in a prominent place or places within the common area and by

mail to any owner who had requested notification of board meetings by mail, at the address requested by the owner. Notice may also be given, by mail or delivery of the notice to each unit in the development or by newsletter or similar means of communication.

(h) An emergency meeting of the board may be called by the president of the **association**, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section.

(i) The board of directors of the **association** shall permit any member of the **association** to speak at any meeting of the **association** or the board of directors, except for meetings of the board held in executive session. A reasonable time limit for all members of the **association** to speak to the board of directors or before a meeting of the **association** shall be established by the board of directors.

1363.07. (a) After an **association** acquires fee title to, or any easement right over, a common area, unless the **association's** governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board of directors may grant exclusive use of any portion of that common area to any member, except for any of the following:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in

construction of any improvements.

(C) To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the **association**.

(F) Any grant in connection with an expressly zoned industrial or commercial development, or any grant within a subdivision of the type defined in Section 1373.

(b) Any measure placed before the members requesting that the board of directors grant exclusive use of any portion of the common area shall specify whether the **association** will receive any monetary consideration for the grant and whether the **association** or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.1363.09. (a) A member of an **association** may bring a **civil** action for declaratory or equitable relief for a violation of this article by an **association** of which he or she is a member, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues. Upon a finding that the election procedures of this article, or the adoption of and adherence to rules provided by Article 4 (commencing with Section 1357.100) of Chapter 2, were not followed, a court may void any results of the election.

(b) A member who prevails in a **civil** action to enforce his or her rights pursuant to this article 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.

(c) A cause of action under Section 1363.03 with respect to access to **association** resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.