

SOUTH COAST HOMEOWNERS ASSOCIATION

ANNUAL LEGISLATIVE FORUM

December 10, 2019



The statements set forth below are provided to assist participants in following the program. They should not be interpreted as absolute statements of law. The actual application of any statute or court decision is dependent upon the facts and circumstances presented in each case.

JAMES H. SMITH, Esq.
ROGERS SHEFFIELD & CAMPBELL, LLP
Attorneys at Law
152 East Carrillo Street
Santa Barbara, CA 93101
Telephone: (805) 963-9721
Fax: (805) 845-2356
Email: james@rogerssheffield.com
Website: www.rogerssheffield.com

New Legislation

I. SB 323 & AB 754; Elections Rules & Procedures

Sections Amended

- A. There are 9 Sections in the Civil Code governing HOA Election Rules & Procedures.
- B. HOA Election Rules & Procedures are found in Civil Code sections 5100 through 5145.
- C. Effective January 1, 2020, SB 323 amends 7 of the 9 Sections.

II. Amendments to Civil Code Section 5100

Election Procedures

- A.* Associations must hold an election for a seat of the Board of Directors at least once every 4 years.
- B. If the number of candidates does not exceed the number of vacancies to be elected, the nominees are considered elected by acclamation if; the Association has 6000 or more units.

III. Amendments to Civil Code Section 5105

Adoption of Election Rules

- A. An Association **shall** adopt Election Rules that provide as follows:
 - 1. Election Rules **shall** require retention of Election Materials. Election Materials are defined by Civil Code section 5200 (c) to include: (1) Returned ballots; (2) Signed voter envelopes; (3) The Voter List showing whom ballots were sent to; (4) Proxies and; (5) Candidate Registration List.
 - 2. Election Rules **shall** require preparation of a Voter List. For each Member entitled to vote, the List must include: The voter's name, voting power, and either the physical address of the voter's Unit, the parcel number, or both. The mailing address for the ballot shall be shown on the Voter List if it differs from the physical address of the voter's Unit.
 - 3. Election Rules **shall** provide that Members may verify the accuracy of their individual information on both the Voter List and Candidate Registration List at least 30 days before the ballots are distributed.
 - 4. Election Rules **shall not** prohibit the denial of a ballot to a Member for any reason other than not being a Member at the time the ballots were distributed.

5. Election Rules **shall not** prohibit the denial of a ballot to a person with general power of attorney for a Member.

6. Election Rules **shall** require the ballot held by a person with general power of attorney for a Member to be counted if returned in a timely manner.

Candidate Qualifications

B. * An Association **shall** disqualify a candidate if they are not a Member of the Association when nominated.

C. An Association **may**, through its Bylaws or Election Rules, disqualify a candidate for the following reasons:

1. An Association **may** disqualify a candidate for failure to pay assessments. If an Association requires candidates to be current in assessments, it must also require Directors to stay current in payment of assessments.

(a) Neither a candidate nor a Director may be disqualified if: (1) They have paid under protest; or (2) They have entered into a payment plan.

(b) For purposes of disqualifying a candidate for unpaid assessments, unpaid fines reclassified as assessment, outstanding collection charges and late charges, do not qualify as unpaid assessments.

2. An Association **may** disqualify a candidate who, if elected, would be serving on the Board at the same time as another person who holds a joint ownership interest in a Unit and that other person is either nominated for the current election or an incumbent Director.

3. An Association **may** disqualify a candidate who has been a member of the Association for less than one year.

4. An Association **may** disqualify a candidate if the Association is aware of a past criminal conviction of the candidate that would prevent the Association from acquiring a Fidelity Bond as required by Section 5806.

D.* An Association **shall not** disqualify a candidate if they have not been provided the opportunity to engage in Internal Dispute Resolution.

Nominations

E. An Association **may**, through its Election Rules, provide as follows:

1. An Association **may** provide for the nomination of candidates from the floor at Membership meetings or nomination by any other manner.
2. An Association **may** permit write-in candidates on ballots.

New / Duties of the Inspector of Elections

F.* The Association's Election Rules shall require the Inspector of Elections, at least 30 days before an election, to deliver or cause to be delivered the following documents:

1. The secret ballots and double envelopes.
2. A copy of the Election Rules, which may be distributed in one of the following ways:
 - a. Post the Election Rules to an internet website and include the website address on the ballots together with the phrase, in at least 12 point font: "*The rules governing the election may be found here: -----.*" or
 - b. Send the Election Rules by individual delivery to each Member.

Entity Designations

G. If title to a Unit is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a Member for purposes of exercising the rights as a Member of the Association.

Limitation on Amendments to Election Rules

H.* Election Rules may not be amended less than 90 days prior to an election.

IV. Amendments to Civil Code Section 5110

Qualifications to Serve an Inspector of Elections

A.* An Independent Inspector of Elections must meet one of the following criteria:

1. Be a volunteer poll worker with the County registrar of voters;
2. Be a licensed CPA;
3. Be a Notary Public or;

4. Be a Member of the Association, who is not a Director or candidate for Director or related to a Director or candidate for Director.

5. An Inspector of Elections may not be a business entity currently employed or under contract to the Association, other than serving as an Inspector of Elections.

V. Amendment to Civil Code Section 5115

Candidate Nominations & Distribution of Election Material

A. * At least 30 days before the deadline for submitting Board nominations, the Association shall provide general notice to the Members of the procedure and deadline for submitting nominations.

B. * At least 30 days before the ballots are distributed (which must be distributed at least 30 days before the election), the Association must provide general notice to the Members of the following:

1. Date by which, and physical address where, ballots are to be returned by mail and/or handed to the Inspector of Elections.

2. Date, time and location of the meeting at which the ballots will be counted.

3. The list of all candidate's names that will appear on the ballot.

C. * At least 30 days before the deadline for voting, ballots and double envelopes must be distributed by first-class mail to every Member.

VI. Amendments to Civil Code Section 5125

Retention of Election Material by Inspector of Elections

A. * The following shall be maintained in the custody of the Inspector of Elections, or at a location designated by the Inspector of Elections: (1) Returned ballots; (2) Signed voter envelopes; (3) Voter List, (4) Proxies and; (5) Candidate Registration List.

B. * The above documents must be maintained by the Inspector of Elections until the time for challenging the election has expired, which generally will be one year following the announcement of the election results by the Inspector of Elections.

VII. Amendment to Civil Code Section 5145

Failure to Follow Election Procedures

A. If an Association Member establishes that the election procedures set forth in the Civil Code were not complied with, or the Association failed to adhere to its adopted Election Rules, the court **shall** void the results of the election **unless** the Association can establish that noncompliance did not affect the election results.

B. A Member who prevails in an action challenging the election results shall be entitled to recover their attorney fees, court costs and a civil penalty of up to \$500 for each violation. If the Association prevails in such action, it is not entitled to recover its attorney fees.

Application of Election Rules & Procedures

C. The Election Rules and Procedures set forth in Civil Code sections 5100 through 5145 are only applicable to elections involving the following issues:

1. Election and removal of Directors;
2. Amendment of the Association's Governing Documents (i.e. Articles of Incorporation, Bylaws & CC&R's) and;
3. Grant of Exclusive Use Common Area under Civil Code section 4600.

Compliance

*If your Association has an election within the next 90 days, or you do not have time to revise your Election Rules prior to your next election, you should, at a minimum, comply with the above paragraphs marked *.

VIII. Amendments to Civil Code Section 5200 (a) (9) & (c)

Owner Email Addresses are now to be Included on Membership Lists

A. Membership lists, which owners are entitled to review under Civil Code section 5200 as well as the Corporations Code, shall include owner names, property address, and mailing address. The list **now must also include the owner's email address**.

B. Owners may opt out of providing the foregoing information. However, they are required to provide an alternative means for submittal of Association communications. (Civil Code section 5220).

C. Association Election Materials means returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list.

IX. SB 323 Adds Civil Code section 5910.1

IDR

A. If a Member invokes Internal Dispute Resolution (“IDR”) under Civil Code section 5910 et. seq., an Association is prohibited from filing a civil action regarding the dispute until it has complied with its obligation to participate in IDR.

X. AB 670 Adds Civil Code Section 4751

Accessory Dwelling Units

A. In a **Planned Development**, an Association’s Governing Documents cannot prohibit or unreasonably restrict the construction or use of an Accessory Dwelling Unit (“ADU”) or a Junior Accessory Dwelling Unit (“Junior ADU”).

B. An ADU is a residential structure, which can be freestanding or attached to the primary dwelling, having a total floor space not exceeding 50% of the primary dwelling up to 1,200 ft.².

1. The lot must be zoned for single-family or multifamily use.

2. If the ADU is located within a half a mile of public transit, the ADU is part of the primary residence or if a car share vehicle is located within one block, no additional parking is required.

C. A Junior ADU is a residential structure attached to an existing primary residential structure or incorporated into a residential structure

1. The Junior ADU must have an efficiency kitchen (i.e. sink, cooking facility, food preparation counter and cabinets) and shall not exceed 500 ft.².

2. It must have a separate entrance from the main entrance to the residential structure, with an interior entry into the main living area.

3. It may include separate sanitation facilities or may share sanitation facilities with the existing residential structure.

4. No additional parking needs to be provided.

XI. AB 652 Adds Civil Code sections 1940.45 & 4706

Display of Religious Material

- A. Except as noted below, an Association cannot limit or prohibit the display of one or more religious items on an entry door or door frame to an Owner's Unit.
- B. Exceptions. The item; (1) Threatens the public health or safety; (2) Hinders opening or closing of the door; (3) Violates the law; (4) Contains graphics, language or any display that is obscene or otherwise illegal and; (5) The items cannot, individually or in combination with other religious items, exceed 36 x 12 sq. inches.
- C. Owners may be required to remove and replace religious items as necessary for Association performed maintenance.

2019 LEGISLATIVE VOTES

| | | Assembly - 41 votes to pass | | | | Vote | Senate - 21 votes to pass | | | | | | |
|--------|-------------------------------|-----------------------------|----|------------|---------|--------|---------------------------|-----|--------|-------------|---------|-------|---------|
| | | Limón | SB | Santa Ynez | Ventura | | Cunningham | SLO | Lompoc | Santa Maria | Jackson | SB Co | Monning |
| SB 323 | Elections, inspectors, email | | Y | Y | Y | 41-28* | N | | | Y | | Y | |
| SB 326 | Exterior Elements Inspections | | Y | Y | Y | 64- 6 | Y | | | Y | | Y | |
| SB 652 | Religious displays on doors | | Y | Y | Y | 76-0 | | | | Y | | Y | |
| SB 754 | Election by acclamation | | Y | Y | Y | 77-1 | Y | | | | | Y | |
| AB 670 | Accessory Dwelling Units | | Y | Y | Y | 79-0 | Y | | | Y | | Y | |
| AB 885 | Property Taxation | | Y | Y | Y | 79-0 | Y | | | Y | | Y | |

* 10 members did not vote