

# DECISION PAPER



## Issue:

Adoption of new "Voting and Election Rules" in order to comply with California State Laws.

## Background:

The last time the Association's governing documents were updated was 1992. Since that time, there have been significant revisions of State and Federal laws, resulting in our existing governing documents being outdated, incomplete, or inaccurate concerning important aspects of our operations. Thus, the Board has retained the law office of Berding & Weil to amend Tahoe Donner's Restated Articles of Incorporation, Restated Bylaws, and the Restated Declaration of Covenants, Conditions and Restrictions (CC&Rs) to conform to changes in the law. In amending these documents, legal counsel has proposed that the Board of Directors adopt a new set of Voting and Election Rules that will comply with new Civil Code sections 5100 through 5130 and to conform to the provisions in the Association's amended governing documents.

## Options:

1. Maintain current Voting and Election Rules.
2. Consider approving for 45-day member notification the proposed new Voting and Election Rules.

## Recommendation:

Management and the Election Committee recommend the Board of Directors consider approving for 45-day member notification the proposed new Voting and Election Rules.

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**Prepared By:** Bonnie Watkins, Executive Assistant

**Board Meeting Date:** November 20, 2015

**General Manager Approval to Place on the Agenda:** 

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October 12, 2015

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## VIA ELECTRONIC AND U. S. MAIL

## PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Board of Directors  
Tahoe Donner Association  
Attn: Robb Etnyre, General Manager  
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Truckee, CA 96161

Email address: [retnyre@tahoedonner.com](mailto:retnyre@tahoedonner.com)

Re: Association Voting and Election Rules; Procedures and Guidelines;  
**BOARD ACTION REQUIRED**

Dear Board Members:

We are pleased to enclose the Voting and Election Rules for your Association which we have prepared to comply with *Civil Code* sections 5100 through 5130 and to conform to the provisions in the updated governing documents that we are currently preparing and sending to you).

We are pleased to enclose the Voting and Election Rules for your Association which we have prepared based on your responses to our questionnaire and our review of your existing governing documents as provided to us.

### ***Procedure for Adopting Rules***

To adopt these rules, it is necessary for the Board to go through the procedures described in *Civil Code* sections 4340 through 4370 (i.e., 30 days' prior notice to the Members). Therefore,

(1) You must give the Members at least 30 days' notice of your intention to consider adopting the Voting and Election Rules. A notice to the Members for this purpose is enclosed. Please insert the date of mailing and the date of the Board meeting at which you plan to consider the rules.

(2) The notice must include a copy of the proposed rules (but not the procedures and guidelines).

(3) You must consider the matter at an open Board meeting after the Members have had an opportunity to offer their comments. This can be at the same meeting or at a subsequent open Board meeting.

(4) Within 15 days after adoption of the rules, the Board must provide written notice to the Members of the adoption of the rules. A notice to the Members for this purpose is enclosed. Please insert the date of mailing and the date of the Board meeting at which the rules were adopted.

(5) Within 15 days after adoption, send us a copy of the Board Resolution showing the Voting and Election Rules have been adopted.

### ***Procedures and Guidelines***

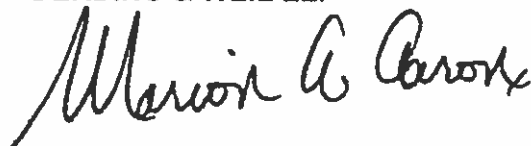
Also enclosed are Procedures and Guidelines for Conducting Membership Votes and Elections. These Procedures and Guidelines are not part of the Voting and Election Rules and are not intended for distribution to all the Members. Rather, they are intended to be an operational tool to provide guidance to the Board, the manager, and the inspector(s) of election concerning how to conduct votes and elections in accordance with the Voting and Election Rules.

### ***Completion of Voting and Election Rules Work***

This completes the voting and election rules work that is included in our flat fee program. If you have further questions or concerns, we will be happy to provide additional assistance at our regular hourly rates.

Very truly yours,

**BERDING & WEIL LLP**



Marion A Aaron  
Partner  
maaron@berdingweil.com

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Enclosures: Voting and Election Rules  
Notice to Members (regarding proposed Rules)  
Notice of Adoption of Voting and Election Rules  
Procedures and Guidelines

## Tahoe Donner Association Voting and Election Rules

These Voting and Election Rules were adopted by the Board of Directors of Tahoe Donner Association on \_\_\_\_\_, 2015 and are intended to comply with the requirements of Civil Code section 5105(a). These Rules shall be effective on the date of adoption, shall supersede any other voting rules of the Association, and shall remain in effect until modified by the Board.

### Article 1                   **MEDIA**

1.1    Access to Association Media – Candidates for the Board. The Board may but is not required to make Association media (i.e., posting on the Association’s official bulletin board/notice board/kiosk, or official website, broadcasting on Association television monitors, or other notices mailed or delivered by the Association to the owners of the Lots or Units) available to qualified candidates running for election to the Board for purposes that are reasonably related to the election in which that candidate is running. If the Board allows any candidate access to Association media, then all qualified candidates shall be allowed equal access to the same media.

1.2    Access to Association Media – Other Matters. If the Board utilizes Association media to advocate a point of view on any matter (other than election of directors) that requires Member approval, or allows any Member access to Association media for that purpose, then all Members advocating a different point of view shall be allowed equal access to the same media. The Board shall not be required to allow access to more than one Member advocating the same point of view.

1.3    “Equal Access”. “Equal access” shall mean, in the case of written statements, publication of written statements not to exceed a predetermined number of words and, in the case of broadcast statements, broadcast statements not to exceed a predetermined length of time. The Board may require that broadcast statements be pre-recorded to comply with time constraints. The Board shall not edit or redact any statement, but shall not be required to publish any statement that exceeds the predetermined length restrictions.

1.4    Responsibility for Content. All statements published in Association media pursuant to the “equal access” rules must identify the author or proponent. No anonymous statements will be permitted. The author and/or proponent of any statement or point of view shall be solely responsible and liable for the content of their statements. The Association shall not be responsible or liable for the content of any statement published pursuant to the “equal access” rules. The content of any candidate statement shall be limited to a statement of the candidate’s qualifications to serve as a director.

Article 2                    **MEETING SPACE**

2.1     Access to Common Area Meeting Space – Campaigning by Candidates for the Board. The Board shall ensure that during a campaign all qualified candidates for election to the Board are given access to common area meeting space, at no cost, for purposes reasonably related to their campaigns.

2.2     Access to Common Area Meeting Space – Other Matters. Whenever the Board places a matter before the Members which requires Member approval, the Board shall ensure that Members advocating a point of view on the matter are given access to common area meeting space, at no cost, for purposes reasonably related to advocating their point of view, whether or not they agree with the point of view advocated by the Board on the matter at issue.

Article 3                    **VOTING BY SECRET BALLOTS**

For a vote on any of the matters specified in Civil Code section 5100(a), voting by the Members shall be conducted by secret ballot using a “double envelope system” as described in Civil Code section 5115(a). Ballots and two envelopes with instructions on how to return ballots shall be mailed by first-class mail or delivered by the Association to all Members entitled to vote in such vote or election. Ballots shall be distributed a minimum of thirty (30) days prior to the deadline for voting. These matters are: (i) elections regarding assessments legally requiring a Member vote, (ii) election and removal of directors, (iii) amendments to the governing documents, and (iv) grants of exclusive use of common area property pursuant to Civil Code section 4600.

For votes on any other matter, votes may be by secret ballot or by written ballot, and ballots may be distributed a reasonable time (which may be less than thirty (30) days) prior to the deadline for voting.

Article 4                    **INSPECTORS OF ELECTION**

4.1     Appointment of Inspectors. Whenever there is a membership vote or election, the Board shall appoint one or three inspectors of election.

4.2     Qualification of Inspectors of Election. Inspectors may be any persons the Board reasonably believes to be independent with respect to the matter or matters being voted on and may include the Association’s manager, accountant, or legal counsel or Members of the Association, but may not be a Member of the Board or a candidate for election to the Board or a family member of a current Member of the Board or of a candidate.

4.3     Indemnification of Inspectors: Liability Insurance. Inspectors of election shall be deemed to be agents of the Association for purposes of Corporations Code section 7237 and shall be entitled to indemnification by the Association to the fullest extent provided by law. As provided in Corporations Code section 7237(i), the Association shall have the power to purchase and maintain insurance on behalf of any agent of the Association against any liability asserted against or incurred by the agent in his or her capacity as an agent of the Association or arising out of the

agent's status as such, whether or not the Association would have the power to indemnify the agent against such liability under the provisions of Corporations Code section 7237.

## Article 5 **CANDIDATES FOR THE BOARD**

5.1 Qualification of Candidates. Candidates for the Board must be Members in good standing and must meet any other qualifications or restrictions set forth in the Bylaws. Co-owners of one or more Lots or Units may not serve on the Board at the same time (Bylaws Article VII, Section 2(iii)). "Member" means a person who holds legal title to the property (i.e., is named in the deed for the property).

5.2 Nominations. The Board shall publish or post a notice recruiting candidates for the Board and stating the deadline for receipt of nominations. Any Member who satisfies the qualifications may place his or her name in nomination for the Board by giving written notice to the Board before the published deadline for receiving nominations. In addition, the Board may recruit qualified candidates and/or may appoint a Nominating Committee to nominate qualified candidates.

5.3 Notice of Known Candidates. After the deadline for nominations of candidates for the Board, nominations shall be closed. The names of all persons who are qualified candidates for election to the Board shall be set forth on the ballots. No "write-in" candidates shall be permitted on the ballots in the election of directors.

## Article 6 **MEMBER VOTING RIGHTS**

6.1 Qualification for Voting. Only Members in good standing shall be allowed to vote. A Member shall be deemed to be in good standing unless, after notice to the Member and an opportunity for hearing, the Board has found the Member to be not in good standing and has so notified the Member in accordance with Civil Code section 5855(a). As long as any co-owner of a Lot or Unit is not in good standing, no vote shall be permitted for the Lot or Unit.

6.2 Voting Power of Each Membership. On each matter before the Members, only one vote shall be cast for each Lot or Unit. Once a ballot is received by the inspector of election, it may not be rescinded. Cumulative voting is not permitted in the election of directors.

6.3 Election by Acclamation. If, as of the published deadline for receiving nominations, the number of qualified candidates for election to the Board is not more than the number of directors to be elected, then the qualified candidates shall be declared elected and shall take office at the first Board meeting following the deadline for nominations or, if later and an annual meeting is held, then at the first Board meeting after the annual meeting. Written notice of the election shall be given to the Members.

6.4 Proxies. In any election or vote of the Members conducted by the Association, only official ballots issued by the Association shall be counted as votes. Proxies are not ballots and are not valid as votes in any election or vote conducted by the Association.