

**(FINAL DRAFT - PROPOSED)**  
**TAHOE DONNER ASSOCIATION**  
**ELECTION AND VOTING RULES**

The Tahoe Donner Association is a California Community Association and is governed by the Davis-Stirling Common Interest Development Act, as well as the Corporations Code, and the Association's Governing Documents. California law mandates certain procedures that must be followed in an association election and other member votes that may be required. These statutory provisions supersede any conflicting provisions of the Governing Documents and must be followed during the election and voting process. The purpose of these Election and Voting Rules is therefore to set forth the rules that must be followed to comply with applicable authorities and ensure a fair election and voting process.

**1. MEMBER VOTING GENERALLY**

1.1 **One Ballot per Lot.** On each matter submitted to a vote of the Members, each Member shall be entitled to cast one ballot for each Lot owned by such Member. The term Member is the same as the term Owner. When more than one (1) person owns an interest in a single Lot, any ballot cast by a single Member shall be deemed the authorized ballot for that Lot. If more than one ballot is received for a Lot, the first ballot received shall be counted and no subsequently received ballot shall be recognized. If a Member owns more than one Lot in the Association, the Member should submit a separate ballot for each such property owned.

1.2 **Who Votes.**

- Individual Owners (Members): Individuals in the chain of title may vote.
- Trustee Owners: Trustees named in the chain of title may vote.
- Corporate Owners: Entities (such as corporations or partnerships) must appoint and identify in writing an authorized individual to cast a vote.
- Proxy-Holders: Proxy voting is not permitted except for quorum purposes See Bylaws, Article IV, Section 4(c)).
- Power of Attorney ("POA"): After confirmation of the POA authority and ballot, the appointed POA may 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.

1.3 **No Cumulative Voting.** There shall be no cumulative voting. (See Bylaws, Article IV, Section 4(d)).

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1.4 **Voter List**. The Association shall generate and update a Voter List separate from the general Membership list. The Voter List shall be updated prior to each election and include the following information:

- Member's name;
- Voting power, such as Powers of Attorney or Entity/Owner Representatives (if any);
- Physical address of the voter's separate interest and/or the unit and lot number.
- The mailing address for the ballot if different from the physical address of the separate interest or if only the unit and lot number is used.

1.5 **Ballots and Meetings**. When a question is put to a vote of the Members, if required by law, direct ballots by mail shall be used. The four subjects that require double envelope, 30-day mail in balloting are: Election/Recall of Directors, Assessment decisions, Governing Document amendments, and grants of exclusive use of Common Area (see Civil Code §5100(a)(1)). The ballots should be accompanied by information about the matter, as well as notice of a meeting at which time ballots will be counted. The voting period may be extended by subsequent notice if necessary to ensure member participation. As to voting subjects not covered by law (or these Rules), the Board may use these or other reasonable procedures that best fit the circumstances of that particular vote.

1.6 **Quorums**. The Governing Documents, the 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.

## **2. COMMON TYPES OF VOTES GOVERNED BY THESE RULES**

2.1 **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 for the election of Directors pursuant to the By-Laws, Article V, Section 5.2(a)(ii), is initially 25% of the voting power of the members. If that quorum percentage is not obtained, the meeting to count the ballots may be adjourned to another time and and/or place within 30 days from the initial meeting date, at which reconvened meeting the quorum percentage shall be reduced to 15% of the voting power of the Members. Thereafter, the candidates receiving the largest number of votes will be elected. See also Section 5.1 below regarding uncontested elections and acclamation.

2.1.1 **Nominations**. The Association is always looking for volunteers who are willing to serve on the Board. At least 30 days before the close of nominations, the Association and/or the Elections Committee shall provide Individual Notice of the upcoming Election and the procedure for nominating candidates. A Member may self-nominate. Nominations will close as announced by the Board. Shortly after the close of nominations, ballots with all qualified candidates' names included will be prepared and delivered to Members. There shall be no write-in candidates.

2.1.2 **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. Co-Owners of a Lot cannot serve concurrently on the Board.

2.2 **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. Any or all Directors may be recalled by the approval of at least a majority of all Members.

2.3 **Assessment Decisions**. The approval of a majority of a quorum of Members is required for the Board to raise regular Assessments or impose a Special Assessment above certain prescribed amounts, as set forth in Civil Code §5605, which provides that the approval of a majority of a quorum of the voting power of the Association must approve (i) a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year, and/or (ii) impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year. For purposes of this section, a quorum is specifically defined as more than fifty percent (50%+) of the Voting Power of the Association.

2.4 **Governing Document Amendments**. Should the Association desire to amend its Articles of Incorporation, Bylaws and/or the Declaration of Covenants and Restrictions ("Declaration"), 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. For example, amendment of the Bylaws requires the approval of a majority of a quorum in most cases, and amendment of the Declaration requires the approval of a majority of the total Voting Power.

2.5 **Grant of Common Area Exclusive Use**. Tahoe Donner subdivision maps and Governing Documents identify areas of ownership and control. If approval of Members is required for the Association to delegate control of an area that would otherwise be Common Area, then the voting process in these rules shall be used. Approval requires at least sixty-seven percent (67%) of the voting power favoring the grant of such exclusive use.

2.6 **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 these Rules. 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.

### **3. CAMPAIGNING**

3.1 **Association Media**. In the context of an election or other vote, if Association media or Common Area access is provided to candidates or Members advocating a point of

view, all are to be treated equally with respect to such opportunities to communicate with Members. This would apply to campaign related information that is delivered through Association channels, such as via the website, the magazine, or emails or mailers. Where equal access is required, the Association shall not edit or redact content from these communications but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content. The Association is not required to offer communication opportunities to candidates or Members advocating a point of view; however, if such a benefit is offered to one candidate or Member, the same opportunity must then be offered to all. If the Association does permit Association Media to be used to distribute candidate statements or information, or other advocacy material related to a vote or election, reasonable restrictions on the size, weight and format established by the Association must be followed. For example, a standardized form with a one or two page limit may be required for information about a candidate running for a position on the Board of Directors. Paid advertising in the Tahoe Donner News by candidates or others supporting a candidate or advocating a position shall not be permitted.

**3.2. Campaign Signage.** Signage, flyers, and other campaign related material shall not be posted in or on Association owned or controlled common area or common facilities or property unless expressly authorized by the Association. Campaign signs are permitted on private property (lots owned by a member) within Tahoe Donner with the owner's express permission. Any election related signage must comply with the Town of Truckee regulations that exist at the time of the Election. As of 2020, the regulations provide that temporary political signs may be posted 60 days preceding the election and must be removed within 14 days following the election and may be located within the Town of Truckee right of way as long as they do not create site distance conflicts or other safety hazards (See Town of Truckee website).

**3.3 Disclaimer.** Individual members have the right to personally endorse any candidate of their choice. However, when such endorsements are made in writing, individuals who hold an official position with the association (e.g. board member, committee member, task force member, club leader, members who are Tahoe Donner employees) shall prominently display a disclaimer dissociating their private endorsement from any official Tahoe Donner groups or bodies with which they are affiliated. The Elections Committee provides the following disclaimer language as a model:

***This endorsement does not represent the views or opinions of Tahoe Donner or any official Tahoe Donner groups or bodies.***

**3.4 Electronic Campaigning.** The use of the membership list, personal bulk email or contact lists, or other publicly available member contact information cannot be controlled by the Tahoe Donner Association. However, communications delivered via any bulk electronic method (e.g., emails or text messages) from candidates or candidates' supporters or others advocating a position on a matter submitted to the members for a vote, shall display a prominent OPT OUT link. If a member OPTS OUT, the member's address must be removed from the distribution list and that member must no longer be contacted.

**3.5 Tahoe Donner Member Contact Lists.** Members are entitled to request the official Membership List for communications related to Association business, including elections or votes of the membership. Candidates or their supporters or others advocating a position on a matter submitted or to be submitted for a vote of the members may request and use the Membership List for communication purposes, however, shall not share that list with others. Additionally, while the Association maintains other member contact lists for a variety of purposes, those lists are not available to the members and shall not be shared or harvested and used for campaign purposes.

**3.6 Fair Campaign Guidelines.** The Association publishes Fair Campaign Guidelines, which set forth expectations for candidates, supporters, and members to follow when advocating a position. The Guidelines set forth basic principles of decency, fair play, and honesty, and should be reviewed and followed. While the Association cannot control the manner in which passionate advocates or candidates express their views given the fundamental free speech rights each member possesses, a failure to follow the Guidelines may reflect poorly on a candidate or their supporters and the voting members may take that into account in casting their votes.

#### **4. INSPECTOR OF ELECTION**

4.1 To oversee and monitor the logistics of balloting and other voting matters, the Board is required to appoint one or three individuals to serve as Inspectors of Election. The role of an Inspector of Election is to process and count ballots, monitor the tabulation to assure confidentiality for voters, and to resolve any uncertainties during the process. Because the most common practice at Tahoe Donner is to use a single Inspector of Elections, the singular is used herein.

4.2 The Inspector of Elections must be an independent third party. Those not qualifying as independent include a member of the Board or a candidate, or an immediate family member or co-owner of a Board member or candidate. Also not qualifying are any persons employed or retained by the Association for any work except for the specific task of serving as an Inspector of Elections. The Inspector may appoint and supervise additional persons to assist with the count and tabulation of ballots, including members of the Elections Committee, provided they too are Independent Third Parties.

4.3 The Inspector of Elections 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 interest 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 of Elections (such as the tabulation of ballots) is prima facie evidence of the facts stated in the report.

4.4 The Inspector of Election is responsible for assuring that the sealed ballots are received and processed properly. Once a ballot is received, it is irrevocable. The Inspector of Elections, or the individual or firm (e.g., independent accountancy firm) designated by the Inspector, shall verify the Member information on the outer envelope prior to or at the meeting

at which ballots are tabulated. The validated sealed 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 Inspector shall direct and control the storage of the Election Materials for a period of 12 months. Thereafter, custody shifts to the Association.

4.5 The Inspector of Elections' responsibilities include:

- Appoint, direct and monitor assistant(s) to help with the balloting and tally process.
- If necessary, review any issues related to the nomination process or compilation of the voter list.
- At least 30 days before ballots are distributed, the Association will ask Members to verify the accuracy of their information on the Voter List. The Inspector will confirm with staff the accuracy of the Voter List and confirm that proper documentation is on file for any Powers of Attorney or Entity/Owner Representatives who will be casting ballots.
- Confirm delivery of the balloting package at least 30 days before the counting of ballots. Unless otherwise specified, the Association is responsible for distribution (by mail and/or hand delivery) of the ballots and accompanying materials. The practice at Tahoe Donner is to have ballot return envelopes addressed and delivered by mail to the Inspector of Elections, or the assistant individual or firm (e.g., independent accountancy firm) designated by the Inspector. Ballots may also be submitted at the meeting at which the votes are tabulated. A secure ballot box may also be used, if designated by the Inspector of Elections, for the receipt of ballots.
- The Inspector shall confirm that a copy of the Voting Rules has either been or will be included with the mailing of the ballots, or in the alternative, a notice shall be included with the ballot material in at least 12-point font that provides: "The rules governing this election may be found here: [web address]".
- 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.
- Determine the number of memberships entitled to vote and the voting power of each.
- Inspect the Voter List and Unopened Ballot Envelopes.
- Count and tabulate ballots.
- The Tahoe Donner Bylaws do not permit Proxy voting, other than for quorum purposes. The Inspector shall have the authority to determine the validity and effect of any proxies that may be submitted.
- Determine the authenticity and validity of Powers of Attorney or entity representative authority, if any.
- Determine or confirm when the voting shall close.
- 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.
- Hear and determine all challenges and questions in any way arising out of or in connection with a member's right to vote.
- Address any other irregularities which may arise during the voting process.
- Determine a method to break tie votes.
- Control custody of the Election Materials for a period of 12 months following the publication of the tallied election results.
- Control and oversee any post-election Member request to review the ballots.
- Take other actions to assure fairness in the election process and compliance with these Rules and any other applicable rule or policy if not in conflict with these Rules.

## 5. VOTING PROCEDURES

5.1 **Timing.** The Association, assisted by the Elections Committee, shall establish a timeline for the election of Directors or other vote of the members. Keep in mind, however, that Voting Rules cannot be amended within 90 days of an election or vote.

5.2 **Appointment of Inspector(s) of Election.** At least 60 days prior to an Election, the Board should appoint the Inspector of Elections.

5.3 **Nominations.** At least 30 days before any deadline for submitting a nomination, the Association shall provide Individual Notice of the procedure and deadline for submitting a nomination.

5.4 **Verification of Voter Information.** At least 30 days before the ballots are distributed, the Association shall permit Members to verify the accuracy of their individual information on a Voter List. The Association or Member shall report any errors or omissions on the List to the Inspector of Elections and/or designated individual assistant, typically staff, who shall make corrections to the Voter List. 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.

5.5 **Voter List Solicitations.** Annually, the Association must solicit Member contact information to keep the Membership List updated. In addition to the Membership List the Association must maintain a Voter List, and verify the accuracy of the Voter List at least 30 days prior to the distribution of ballots. While there may be overlap between the Membership List and the Voter List, they are two distinctly different lists, and an accurate Voter List is critical for each election or vote.

5.6 **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 Inspector of Elections and/or designated individual or firm (e.g., independent accountancy firm);
- The address where ballots are to be returned; and
- The list of all candidate names that will appear on the ballot.

Individual Notice shall be used for any Member who has requested Individual Notice. The Inspector of Elections shall coordinate with the Elections Committee regarding these details.

5.7 **Mail-in Ballots.** Not less than 30 days ahead of the Election, the Association shall deliver (by first class mail or hand delivery) secret ballot voting material, including ballots, voting instructions, explanatory material, candidates statements, etc., to every Member. Prior to opening the received ballots, the Board may reasonably extend the voting period to achieve greater Member participation in reaching quorum requirements (if applicable) or to amend the Declaration or take other actions which may require approval of a significant percentage of Members. Only the Official Ballot form generated by the Association will be counted. The Association Bylaws do not permit Proxy Voting except for quorum purposes. 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 Association shall provide Members with ballot(s) and two pre-printed envelopes along with instructions. The instructions shall specify how ballots are to be returned. Typically, ballots will be returned by first class mail. However, ballots may also be hand-delivered to a secure ballot box.
- The ballot itself is not signed by the voter and the voter may not be identified by name, address, or unit and lot number on the ballot itself.
- After marking the ballot, it is to be inserted into the smaller of the two preprinted envelopes and the envelope is sealed. This envelope is inserted into a second envelope that is also then sealed. In the upper left hand corner of the second, outer envelope, the voter prints and signs his or her name, and verifies the accuracy or otherwise indicates the address and the unit and Lot number that entitles the Member to vote. Note that an outer envelope received without a Member signature will not be counted (unless a signature is added prior to the tally of the ballots).
- The second outer envelope is addressed to the Association to a location to be designated by the Inspector of Elections. The envelope may be mailed and/or delivered by hand to a location specified by the Inspector of Elections. The Member may request a receipt of delivery.
- 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 does not cast a second ballot. If no ballot has been cast / received for that property prior to the final voting deadline, the new Member may cast the ballot.

5.8 **Uncontested Election / Acclamation.** If, at the close of nominations, the number of qualified nominees is equal to or less than the number of Directors to be elected, pursuant to the Association ByLaws, the Association should consult with counsel as to the ability to declare the nominated candidates elected without the need for mail in voting.

## 6. **BALLOT TABULATIONS & ANNOUNCEMENT OF RESULTS**

6.1 The Inspector of Elections or designated individual or firm (e.g., independent accountancy firm) may verify the Member information on the outer envelope prior to or at the meeting at which the ballots are counted. 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.

6.2 The Inspector of Elections shall supervise the counting and tabulating of the ballots at a properly noticed open meeting of the Board or Members. Any candidate or other Member of the Association may witness, but not participate in or interrupt, the counting and tabulation of the ballots.

6.3 The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board. Members have a right to review the results. Within 15 days of the election tally, the Board shall publish by General Notice the tabulated results of



the election in a communication directed to all Members.

## 7. RETENTION OF ELECTION MATERIALS

7.1 For a period of 12 months following publication of the tallied results of the election, the Inspector of Elections is responsible for custody of the Election Materials, and shall determine where the Election Materials shall be stored. After 12 months, the custody of the Election Materials shifts to the Association.

7.2 Upon written request, the Association will coordinate with the Inspector of Elections and/or designated staff to 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 members' vote.

## 8. DEFINED TERMS

8.1 **"Election"** means the date on which the ballots are scheduled to be opened and tallied.

8.2 **"Election Materials"** means and includes returned ballots, signed voter envelopes, the Voter List of names, physical addresses and/or unit and lot number, and voters to whom ballots were to be sent, Inspector(s) of Election Worksheets, and the list of candidates.

8.3 **"General Notice"** means delivery of documents and/or information to a Member by Individual Notice, inclusion in a billing statement or newsletter, or posting the printed document in a prominent place at the Property designated for such notices.

8.4 **"Individual Notice"** means and includes any of the following: first class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier; or electronic mail (if the Member has consented to electronic delivery).

8.5 **"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 name and voting power, physical address of the voter's separate interest and/or unit and lot number, the mailing address for the ballot if different from the physical address, and identification of Powers of Attorney or Entity/Owner Representatives (if any).

## 9. AMENDMENT OF VOTING RULES

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

**END**