
2020 Changes to Civil Code §§5100-5145 & §5200 (SB 323)

5100 Subjects for Member Elections.

**Secret Ballots
required for these
subjects**

5100(a)(1) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, or the grant of exclusive use of common area pursuant to Section 4600 (*Grant of Exclusive Use of Common Area*) shall be held by secret ballot in accordance with the procedures set forth in this article.

**Term Cycles &
Maximums**

5100(a)(2) An association shall hold an election for a seat on the board of directors in accordance with the procedures set forth in this article at the expiration of the corresponding director's term and at least once every four years.

5100(b) This article also governs an election on any topic that is expressly identified in the operating rules as being governed by this article.

5100(c) The provisions of this article apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

5100(d) The procedures set forth in this article shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

**Civil Code
overrides Corp
Code**

5100(e) In the event of a conflict between this article 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 article shall prevail.

5100(f) Directors shall not be required to be elected pursuant to this article if the governing documents provide that one member from each separate interest is a director.

**Acclamation for
large HOAs**

5100(g) Notwithstanding the secret balloting requirement in subdivision (a), when, as of the close of nominations for directors on the board, the number of director nominees is not more than the number of vacancies to be elected, as determined by the inspector or inspectors of the elections, the director nominees shall be considered elected by acclamation if all of the following are true:

5100(g)(1) The association includes 6,000 or more units.

**30 DAY
NOMINATIONS
NOTICE**

**Candidate
qualifications &
options**

5100(g)(2) The association provided individual notice of the election and the procedure for nominating candidates at least 30 days before the close of nominations.

5100(g)(3) The association permits all candidates to run if nominated, except as follows:

5100(g)(3)(A) An association shall disqualify a person from nomination as a candidate if the person is not a member of the association at the time of the nomination. This subdivision does not restrict a developer from making a nomination of a nonmember candidate consistent with the voting power of the developer, as set forth in the regulations of the Department of Real Estate and the association's governing documents.

5100(g)(3)(B) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of Section 5105 only, an association may disqualify a person from nomination as a candidate based on any of the following:

5100(g)(3)(B)(i) An association may disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would either prevent the association from purchasing the fidelity bond coverage required by Section 5806 should the person be elected or terminate the association's existing fidelity bond coverage as to that person should the person be elected.

5100(g)(3)(B)(ii) Failure to be current in the payment of regular and special assessments, which are consumer debts subject to validation. If an association requires a nominee to be current in the payment of regular and special assessments, it shall also require a director to be current in the payment of regular and special assessments. An association may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. An association shall not disqualify a nominee for failure to be current in payment of regular and special assessments if any of the following circumstances are true:

5100(g)(3)(B)(ii)(I) The nominee has paid the regular assessment or special assessment under protest pursuant to Section 5658.

5100(g)(3)(B)(ii)(II) The nominee has entered into a payment plan pursuant to Section 5665.

5100(g)(3)(B)(ii)(III) The nominee has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.

5100(g)(3)(B)(iii) If the person, if elected, would be serving on the board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.

5100(g)(3)(B)(iv) If that person has been a member of the association for less than one year.

**Voting Policy
required &
content**

5105 Election Rules.

5105(a) An association shall adopt **operating** rules in accordance with the procedures prescribed by Article 5 (commencing with Section 4340) of Chapter 3 (*Operating Rules*), that do all of the following:

**-equal access to
HOA media**

5105(a)(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or internet websites 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.

**- equal access to
HOA meeting
space**

5105(a)(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.

**- candidate
qualifications**

5105(a)(3) Specify the qualifications for candidates for the board and any other elected position, **subject to subdivision (b)**, 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 from nominating ~~himself or herself~~ **themselves** for election to the board.

**- voting power,
proxies, etc**

5105(a)(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.

**- Inspector(s) of
Election**

5105(a)(5) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections utilizing one of the following methods:

-Selection

5105(a)(5)(A) Appointment of the inspector or inspectors by the board.

5105(a)(5)(B) Election of the inspector or inspectors by the members of the association.

5105(a)(5)(C) Any other method for selecting the inspector or inspectors.

**- Inspector
Assistant(s)**

5105(a)(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.

**-retention of
Election Materials**

5105(a)(7) Require retention of, as association election materials, both a candidate registration list and a voter list. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used. The association shall permit members to verify the accuracy of their individual information on both lists at least 30 days before the ballots are distributed. The association or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two business days.

**VOTER LIST
VERIFICATION 30
DAYS BEFORE
BALLOTS SENT**

**Candidate must
be Member**

5105(b) An association shall disqualify a person from a nomination as a candidate for not being a member of the association at the time of the nomination.

If Developer

5105(b)(1) This subdivision does not restrict a developer from making a nomination of a nonmember candidate consistent with the voting power of the developer as set forth in the regulations of the Department of Real Estate and the association's governing documents.

Entity designated voter rep	5105(b)(2) If title to a separate interest parcel 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 this article.
Bylaws/Rules MAY disqualify candidate:	5105(c) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of Section 5105 only, an association may disqualify a person from nomination as a candidate pursuant to any of the following:
- if delinquent	5105(c)(1) Subject to paragraph (2) of subdivision (d), an association may require a nominee for a board seat, and a director during their board tenure, to be current in the payment of regular and special assessments, which are consumer debts subject to validation. If an association requires a nominee to be current in the payment of regular and special assessments, it shall also require a director to be current in the payment of regular and special assessments.
- if co-owner already on Board	5105(c)(2) An association may disqualify a person from nomination as a candidate if the person, if elected, would be serving on the board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the person and the other person is either properly nominated for the current election or an incumbent director.
-if member less than 1 year	5105(c)(3) An association may disqualify a nominee if that person has been a member of the association for less than one year.
- if criminal conviction & bond problem	5105(c)(4) An association may disqualify a nominee if that person discloses, or if the association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the association from purchasing the fidelity bond coverage required by Section 5806 or terminate the association's existing fidelity bond coverage.
May not disqualify - for unpaid fines -if assessment paid under protest -if in payment plan - if no IDR yet	5105(d) An association may disqualify a person from nomination for nonpayment of regular and special assessments, but may not disqualify a nominee for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party. The person shall not be disqualified for failure to be current in payment of regular and special assessments if either of the following circumstances is true: 5105(d)(1) The person has paid the regular or special assessment under protest pursuant to Section 5658. 5105(d)(2) The person has entered into a payment plan pursuant to Section 5665.
Rules can provide for nominations from floor	5105(e) An association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10.
Rules SHALL address:	5100(f) Notwithstanding any other 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.
Must issue ballot to Members	5105(g) Notwithstanding any other law, the rules adopted pursuant to this section shall do all of the following: 5105(g)(1) Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.

&
Power of Atty rep

**DELIVERY OF
BALLOTS & RULES
30 DAYS BEFORE
ELECTION**

Rules may be
posted on
website or
delivered

Voting rules
cannot be
amended within
90 days prior to
election

1 or 3 Inspectors
of Election

Independent 3rd
Party

Can no longer be
employed by
HOA (not
manager)

Inspector Duties

5105(g)(2) Prohibit the denial of a ballot to a person with general power of attorney for a member.

5105(g)(3) Require the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner.

5105(g)(4) Require the inspector or inspectors of elections to deliver, or cause to be delivered, at least 30 days before an election, to each member both of the following documents:

5105(g)(4)(A) The ballot or ballots.

5105(g)(4)(B) A copy of the election operating rules. Delivery of the election operating rules may be accomplished by either of the following methods:

5105(g)(4)(B)(i) Posting the election operating rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:"

5105(g)(4)(B)(ii) Individual delivery.

5105(h) Election operating rules adopted pursuant to this section shall not be amended less than 90 days prior to an election.

~~5105(b) 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.~~

5110 Inspector(s) of Election.

5110(a) The association shall select an independent third party or parties as an inspector of elections. The number of inspectors of elections shall be one or three.

5110(b) 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, but may not be a director or a candidate for director or be related to a director or to a candidate for director. 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) of Section 5105 (Election Rules)~~ **other than serving as an inspector of elections.**

5110(c) The inspector or inspectors of elections shall do all of the following:

5110(c)(1) Determine the number of memberships entitled to vote and the voting power of each.

5110(c)(2) Determine the authenticity, validity, and effect of proxies, if any.

5110(c)(3) Receive ballots.

5110(c)(4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

5110(c)(5) Count and tabulate all votes.

5110(c)(6) Determine when the polls shall close, consistent with the governing documents.

5110(c)(7) Determine the tabulated results of the election.

5110(c)(8) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this article, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this article.

5110(d) An inspector of elections shall perform all duties impartially, in good faith, to the best of the inspector of election's ability, ~~and~~ 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 elections, 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 elections is prima facie evidence of the facts stated in the report.

**NOMINATIONS
PROCEDURE &
DEADLINE MUST BE
PROVIDED 30
DAYS IN
ADVANCE**

5115 Voting Procedure.

5115(a) An association shall provide general notice of the procedure and deadline for submitting a nomination at least 30 days before any deadline for submitting a nomination. Individual notice shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

**INFO TO BE
PROVIDED 30
DAYS BEFORE
BALLOTS SENT:
DISTRIBUTED:
- RETURN INFO
-TALLY MEETING
INFO
-LIST OF
CANDIDATES**

5115(b) An association shall provide general notice of all of the following at least 30 days before the ballots are distributed:

5115(b)(1) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector or inspectors of elections.

5115(b)(2) The date, time, and location of the meeting at which ballots will be counted.

5115(b)(3) The list of all candidates' names that will appear on the ballot.

5115(b)(4) Individual notice of the above paragraphs shall be delivered pursuant to Section 4040 if individual notice is requested by a member.

**BALLOTS MAILED
30 DAYS BEFORE
VOTING DEADLINE**

5115(c) 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 vote by mail ballots, including all of the following:

Inner envelope

5115(c)(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 the voter's name, indicate the voter's name, and indicate the address or separate interest identifier that entitles the voter to vote.

Outer return envelope

5115(c)(2) The second envelope is addressed to the inspector or inspectors of elections, 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 elections. The member may request a receipt for delivery.

**Quorum if
required by Gov
Docs**

5115(bd) A quorum shall be required only if so stated in the governing documents 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.

**Cumulative
Voting if in Gov
Docs**

5115(ee) 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.

**Gov Doc
Amendments to
include text**

5115(df) Except for the meeting to count the votes required in subdivision (a) of Section 5120 (*Counting Ballots*), an election may be conducted entirely by mail unless otherwise specified in the governing documents.

5115(eg) In an election to approve an amendment of the governing documents, the text of the proposed amendment shall be delivered to the members with the ballot.

**Ballots tallied by
Inspector(s) at
duly noticed
open meeting**

5120 Counting Ballots.

5120(a) All votes shall be counted and tabulated by the inspector or inspectors of elections, or the designee of the inspector of elections, in public at a properly noticed open meeting of the board 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 elections, or the designee of the inspector of elections, 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.

**REPORTING OF
TABULATED
RESULTS WITHIN 15
DAYS**

5120(b) 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 and shall be available for review by members of the association. Within 15 days of the election, the board shall give general notice pursuant to Section 4045 (*General Notice*) of the tabulated results of the election.

**Inspector controls
ballot material,
voter & candidate
list for 1 year, then
to HOA custody**

5125 Ballot Custody and Inspection. The sealed ballots, **signed voter envelopes, voter list, proxies, and candidate registration list shall** at all times ~~shall~~ be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 5145 (*Judicial Enforcement*) 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 elections shall, upon written request, make the ballots available for inspection and review by an association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

5145 Judicial Enforcement.

5145(a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by the association, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date **that the inspector or inspectors of elections notifies the board and membership of the election results or** the cause of action accrues, **whichever is**

**Court can
overturn election
results for statute
and/or rule non-
compliance**

**Reasonable
attorney fees to
prevailing
Member
(not to prevailing
HOA)**

**Action in Superior
Court or Small
Claims**

later. If a member establishes, by a preponderance of the evidence, ~~Upon a finding~~ that the election procedures of this article, or the adoption of and adherence to rules provided by Article 5 (commencing with Section 4340) of Chapter 3 (*Operating Rules*), were not followed, a court ~~may~~ **shall** void any results of the election **unless the association establishes, by a preponderance of the evidence, that the association's noncompliance with this article or the election operating rules did not affect the results of the election. The findings of the court shall be stated in writing as part of the record.**

5145(b) A member who prevails in a civil action to enforce the member's 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. **If a member prevails in a civil action brought in small claims court, the member shall be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action.**

5145(c) A cause of action under Sections 5100 to 5130 (*Member Election*), inclusive, 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~~ **subdivision (a) may be brought in either the superior court or, if the amount of the demand does not exceed the jurisdiction-jurisdictional amount of that the small claims court, in small claims court.**

Article 5. Record Inspection

5200 Definitions. For the purposes of this article, the following definitions shall apply:

5200(a) "association records" means all of the following:

**Email address
now part of
Membership list;
opt out option**

...
5200(a)(9) Membership lists, including name, property address, mailing address, **and email address**, but not including information for members who have opted out pursuant to Section 5220 (*Membership List Opt Out*).

...
5200(a)(14) "Association election materials" as defined in subdivision (c).

5200(b) "Enhanced association records" means invoices, receipts and canceled checks for payments made by the association, purchase orders approved by the association, credit card statements for credit cards issued in the name of the association, statements for services rendered, and reimbursement requests submitted to the association.

**Election Materials
defined & to be
retained**

5200(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. Signed voter envelopes may be inspected but may not be copied.