

(FINAL DRAFT – 12.30.2020)
[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.**

1. Individual Owners (Members)
2. Trustee Owners: Only one of the Trustees of a Trust that owns a Lot may vote.
3. Corporate Owners: Entities (such as corporations or partnerships) must appoint and identify in writing an

SB 323 took effect January 1, 2020, and made significant changes to the Davis Stirling Act (DSA), Civil Code §§5100-5145 & §5200, relating to elections. All California common interest developments must adopt Election Rules that comply with the DSA.

Because the DSA does supersede existing governing documents, the rules set forth herein, to the extent they may conflict with the Bylaws or CC&Rs, will control.

This Section 1 is not totally new. Article 6 of the existing Election and Voting Rules includes provisions on Member Voting Rights, but they are outdated. Thus this new Section 1 has been modified to comply with current Davis Stirling Act Requirements. For example, the law has changed in terms of the Board's ability to declare a member not in good standing and how acclamation is addressed. Additional detail has been added as to entity ownership that you do not currently have.

Section 1.2 clarifies the individual person who may vote.

authorized individual to cast a vote.

4. Proxy-Holders: Proxy voting is not permitted except for quorum purposes (See Bylaws, Article IV, Section 4(c)).

5. 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.

6. 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)).

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:

- (1) Member’s name;
- (2) Voting power, such as Powers of Attorney or Entity/Owner Representatives (if any);
- (3) Physical address of the voter's separate interest and/or the **unit and lot** number.
- (4) 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

Where the DSA does not control, such as permitting Proxy Voting, it is noted in the Rules.

This is new, and in part reflects new Davis Stirling Changes.

Incorporation of the existing Bylaws prohibition against cumulative voting is another example of the Bylaws not being superseded by the DSA.

This is new and required by DSA. TDA must maintain a member voter list. New Civil Code §5105(a)(7) requires the Association to verify this Voter List at least 30 days prior to the distribution of ballots. The statute is silent as to how best to solicit information for the Voter List. In Section 5 below I have included a process that is intended to reflect current practice and required deadlines.

Section 1.5 describes the member votes that must be by double secret envelope This is not new, see Article 3 of current Election and Voting Rules.

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, but must require written ballots for matters where required as set out in Article IX, section 2(a) of the By Laws.

1.6 **Quorums.** The Governing Documents, the Davis-Stirling Act, or other provisions of law may specify a quorum for Member approvals.

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.

In addition to the votes that must be by secret written ballot per DSA, the ByLaws also specify additional written ballot requirements, so that is referenced here.

Statement of applicable law

This Section Two simply addresses the most common votes covered by the rules, and Section 2.1 reflects existing Bylaw provisions.

2.1.1 **Nominations**. 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.

TDA has a “Candidates for the Board” section in the existing Election and Voting Rules at Article 5. However, as noted below, it is outdated as to the new limitations on what might disqualify a member from running for the Board, and as to the timeline for seeking nominations.

Per DSA Section 5100(g)(2), a notice seeking nominations for open director seats must be delivered at least 30 days before the close of the nomination period.

Per Section 5100(f), you may choose to permit write-in candidates for ballots. We included a prohibition on write in candidates as the recommended process for TDA.

2.1.2 Candidate Qualifications. A candidate must be a natural person and a Member of the Association for at least one year. 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. A candidate must also not be a co-owner of a Lot with a concurrently serving director, cannot have a criminal conviction that prevents the Association from obtaining a fidelity bond, and cannot be delinquent in assessment payments unless the member has either paid under protest or agreed to a payment plan.

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.

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

While TDA has candidate qualifications in the existing Election and Voting Rules, they are outdated and need to be changed.

Candidate qualifications is one of the major changes that was enacted with SB 323. There are now very limited grounds to refuse to allow a member to run for the Board. Section 5100(g) and 5105(c) expressly permits "all candidates" to run if nominated, with limited exceptions. Those exceptions are set forth in this Section 2.1.2.

In the event of entity ownership, such as an LLC or corporation, while entities may appoint a representative to be a candidate, we recommend dealing with that on a case by case basis and consulting counsel.

This Section 2.2 simply states the authorities to consult for a recall.

The remaining Sections 2.3-2.5 are not new (See Article 3 of existing Election and Voting Rules) and reflect DSA legal requirements.

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 secret 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 that comply with Article IX, section 2 of the By-Laws, which include a requirement of a written ballot for the matters specified. For all matters requiring a vote, the quorum and voting requirements are set out in the Governing Documents and/or in Davis-Stirling Act, and those requirements will be included in the voting materials sent to members.

This is new, and simply provides discretion if the Board decides to put any other issue to the members using the same double envelope system. Also includes a reference to the Bylaw provision that calls for written ballots in certain specified situations.

3. CAMPAIGNING

3.1 **Association Media and Common Area.** In the context of an election or other vote, if Association media 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.

This Section 3 is not entirely new, and the current TDA Voting and Election Rules in Section 1, "Media", covers the same general subject matter, that is, Equal Access to Association Media for all candidates or points of view.

This Section reflects the Davis Stirling Act requirements for Election Rules, Section 5105, et. Seq. Access to Association Media must be equally provided if it is provided at all.

We also incorporated some of the detail from the preexisting election procedures and campaign guidelines, such as the prohibition on paid advertising in this Section 3.1, and the Sections below, based on past practices.

This Section 3.2 is not in the existing Election Rules but it is not new – the signage rules are in the existing "Fair Campaign Guidelines" (Paras. 1-4). They were included here in order to make it clear that a violation may be enforced as a violation of an operating rule. Town of Truckee ordinances must also be followed, which in 2020 provided 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 a Town of Truckee right of way as long as they do not create a hazard.

3.3 Tahoe Donner Member Contact Lists.

Members are entitled to request the official Membership List for communications reasonably related to the requestor’s interests as a member, including elections or votes of the membership. 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.

3.4 Common Areas. In accordance with Civil Code §4515, as it may be amended from time to time, members and residents may peacefully assemble and freely communicate with one another and with others with respect to common interest development living or for social, political, or educational purposes, including an election or vote governed by these Election Rules. This right includes the right to use the common area, including the clubhouse, for such assembly when the facilities are not otherwise in use. The Association shall not require payment of a fee or a deposit, or require that liability insurance be provided by the member, as a condition of such use.

Every member may request the membership list and use it to communicate relating to an election. Added to this is a clear rule that does not permit the Association, or the membership, to use other member contact lists maintained by TDA (for marketing purposes, for example) to contact members about an election.

This is a legal requirement.

NOTE: We have moved to the Fair Campaign Guidelines (i) the requirement that a TDA director of volunteer include an express disclaimer that an endorsement of a candidate is a personal view only, and not an endorsement by TDA, and (ii) the requirement for an “Opt Out” option for any electronic communication, and related campaign related best practices, based on input received.

While requiring a disclaimer that a TDA volunteer is speaking in an official TDA capacity I feel is enforceable, the consensus was that it is best left as a guideline for now. e it clear their endorsements are not the view of the Association.

Similarly, as to the Opt Out provision, while the Association has limited ability to control free

speech rights, if a member has assembled a large personal mailing list and is sending out campaign related communications, I believe that it does not violate a member's free speech rights to require an Opt Out link or to remove a member from such communications upon the member's request. The Opt Out requirement is existing, but again the consensus was to leave it as a guideline, not an enforceable operating rule.

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

This is not totally new, see Article 4 of existing Election and Voting Rules. It has been updated and modified to comply with current law and we added additional detail from the Election Procedures document to reflect the practices followed at TDA, as those practices overlap with Davis Stirling Act Requirements.

The law has changed as to who is eligible to be an Inspector, so this has changed.

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 shall do all of the following:

- Determine the number of memberships entitled to vote and the voting power of each.
- Determine the authenticity, validity, and effect of proxies, if any.
- Receive ballots.
- Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote, consistent with the Rules and applicable law, including the discretion to determine that a challenge is not within the Inspector's duties, and therefore will not be heard.
- Determine when the polls shall close, consistent with the governing documents.
- Take such other actions that are consistent with law and these Rules to ensure fairness in the election process.

This reflects the practice of having an independent accountancy firm serve as an assistant to the Inspector, and the legal requirement that the Inspector maintain overall control and responsibility for the process and the storage of ballot materials.

This reflects the broad duties of the Inspector of Elections. While prior drafts did include additional detail, that detail is not required to be part of the Election Rules, and can be incorporated as needed into the timeline and procedures developed for each election.

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 these 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.
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Individual Notice shall be used for any Member who has

This Section reflects new legal requirements, and existing election procedures (see current Voting and Election Rules at Article 6(3)) have been updated to ensure compliance with the changes in the Davis Stirling Act.

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:

- (1) 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.
- (2) 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.
- (3) 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).
- (4) 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.
- (5) 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

TDA is one of the few Associations that is expressly covered by the SB323 change that expressly permits using acclamation if certain qualifications are met, one of them being that the “association includes 6,000 or more Units.” We left this open and believe the best practice in the rare case where this may occur is to seek an opinion of counsel.

Section 6 is not new, but has been updated to comply with DSA and to integrate TDA practice with regard to how an Inspector and an independent accountancy firm is used in an election.

Because historically the accounting firm assists with the count and stores the ballots, we make it clear that the Inspector may determine where the election materials are stored.

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).

8.6 **"Member List"** or **"Membership List"** includes a member's name, property address, mailing address and email address, but not including information for members who have opted out pursuant to Civil Code §5220.

Definitions are included for clarity.

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

This is required by the DSA.

As noted above, this is a new SB323 requirement.