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NEW CALIFORNIA STATUTE - BOARD ELECTIONS AND CANDIDATE QUALIFICATIONS

Senate Bill 323 was recently signed into law and will take effect on January 1, 2020. This bill modifies several statutes found in the Davis-Stirling Act (Civil Code Sections 5100-5125, 5145, 5200, and 5910.1) by adding restrictions and requirements on election procedures and on the qualifications for serving on a homeowners association's Board. Most importantly, these statutory revisions require all California homeowners associations to adopt election rules that meet the new 2020 requirements and to distribute them to the owners during their annual Board elections.

Here is a summary of the new laws:

Candidate and Director Qualifications

- Non-owners are disqualified from running as a candidate for the Board.
- Associations, at their option, may adopt any of four other qualifications for running as a candidate for the Board. All other qualifications are now invalid. Candidates can now be disqualified for the four following reasons: (1) delinquency in payment of assessments, but not delinquency in paying fines, late fees, interest, or any other charges, and a candidate cannot be disqualified if they are on a payment plan; (2) co-owning a property with another candidate or with a director who would remain on the Board after the co-owner is elected; (3) being a member of the association for less than one year; or (4) having a criminal conviction that would prevent the association from purchasing or maintaining fidelity insurance coverage.
- The above four candidate qualifications must be listed in either the association's Bylaws or in its election rules.
- The only qualification allowed under the new statutes for serving on the Board after being elected is that the directors must remain current in the payment of assessments. This qualification is optional, but if being current in assessments is a qualification for running as a candidate, then it must also be a qualification for serving on the Board. A director cannot be disqualified from serving if they are on a payment plan.

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- No person can be disqualified as a candidate or director unless they have first been offered a “meet and confer” (internal dispute resolution). This requirement would not apply to non-owners.

Voters

- Owners’ voting rights may not be suspended for any reason.
- Although proxies may only be assigned to owners, persons holding a general power of attorney for an owner cannot be denied a ballot and they must be allowed to vote that ballot for the owner, regardless of whether or not the person holding the power of attorney is an owner.

Election Rules

- The election rules cannot be amended within 90 days of an election.
- The revised statutes add details on election procedures that must now be included in the election rules. The new procedures are included in the election timeline below.

Inspectors of Election

- No existing employee or contractor of an association can serve as the inspector of election, so an association’s property manager is now barred from serving as the inspector. Instead, associations can hire a professional inspector of election service.

Election by Acclamation

- Until now, the law has not been clear whether an association could declare an election by acclamation without sending out ballots where the number of candidates did not exceed the number of positions on the Board to be filled. My position has been that Civil Code Section 5100 does not prohibit acclamation as long as the governing documents do not allow for write-in candidates, since Section 5100 only requires the secret ballot procedure for an “election” and the dictionary definition of “election” involves a choice between two alternatives. In an uncontested election there are no alternatives. However, starting in 2020, Section 5100 will specifically allow election by acclamation, but only for associations with 6,000 or more members. The implication is clear: associations with fewer than 6,000 members must send out ballots and conduct a full election even if there are no contested seats on the Board.

Small Claims

- If an owner wins a small claims action against their association for not following the statutory election procedures, the small claims court is now required to award the owner their court costs and any attorneys’ fees they have incurred in preparing their small claims action. This is in addition to the court’s ability to award the owner \$500 as a penalty against the association.

Candidate List; Voter List

- Associations must now prepare a candidate list and a voter list. The voter list is different from the membership list. It must contain the owners' names, their voting power, and their unit or lot's physical address and/or parcel number. By request, owners are allowed to inspect or receive a copy of these two lists, plus the ballots and proxies. They are also entitled to inspect (but not copy) the signed ballot return envelopes.

Membership Lists

- Under existing law, associations must keep a membership list and members are entitled to inspect or receive a copy of that list unless a particular owner has "opted out" of having their information provided. Starting in 2020, the association's membership list must include the owners' email addresses.

Election Procedures and Timeline

- The following is an abbreviated timeline to show the advance preparation that the Board must undertake in order to conduct an election. Please note that it is a summary, only, of the legal requirements involved.

<i>120 Days Before Election Date</i>	The association must give general notice of the procedure and deadline for submitting nominations. "General notice" includes posting on site, with the same requirements as posting notice of Board meetings and agendas.
<i>118 Days Before Election Date</i>	If election rules are being adopted or amended, general notice with the text of the draft rules or revisions must be given to the owners by this date.
<i>91 Days Before Election Date</i>	Before the instructions for returning ballots are sent out, an inspector of election must be appointed.
<i>90 Days Before Election Date</i>	If election rules are being adopted or amended, the new version must be adopted by this date.
	The nominations deadline must be at least 30 days after general notice of submitting nominations is given.
<i>60 Days Before Election Date</i>	The association must provide general notice that includes the full candidate list, instructions for returning ballots, and notice of the meeting where the ballots will be counted.
	The association must allow owners to verify their information on the voter list. This can be done by notifying the owners of their right to do so.

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<i>30 Days Before Election Date</i>	The association must mail out the ballot package at least 30 days after it has distributed the candidate list, ballot return instructions, notice of meeting, and notification that owners may verify their information on the voter list.
	A copy of the election rules must be distributed to the owners.
<i>Election Date</i>	The ballot due date must be set at least 30 days after the ballot package and election rules have been distributed.
	The inspector of election can open and count the ballots at an open Board meeting or at a membership meeting scheduled on or after the balloting due date.
<i>15 Days After Election Date</i>	The association must distribute to the owners notice of the vote results within 15 days of the ballot counting.
<i>One Year After Election Date</i>	The association can dispose of the election materials (voter list, candidate list, ballots, proxies, signed return envelopes).
	The statute of limitations expires on an owner's ability to sue the association over the election process.

Election Rules; Bylaws

- Election rules must now be distributed to the owners at least 30 days before the ballot return deadline. This can be done by posting to an internet website that is cited on the ballot along with the words "The rules governing this election may be found here" in at least 12-point font, or by delivery to the owners in the same manner as allowed for the ballots.

It is expected that the new election rule requirements will conflict with practically every homeowners associations' Bylaws and election rules. Please contact this office if you are interested in receiving a cost proposal for preparation of new election rules for your association, as well as a cost proposal for new Bylaws.