



# FRANCISCAN OWNERS' ASSOCIATION



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## Election Rules and Procedures

Established by Board of Directors Action  
June 3, 2016

**Purpose:** As required by California Civil Code, Part 5, Chapter 6, The Franciscan Owners' Association (FOA) is required to adopt election rules, in accordance with the procedures prescribed by Article 5 California Civil Code, Part 5, effective January 1, 2014, Chapter 6, Article 4 "Member Elections." The following election rules and procedures are designed to clarify the election procedures for the FOA.

**Authority:** These election rules and procedures use:

1. *Revised Davis-Steirling Common Interest Development Act*, California Civil Code, Part 5, effective January 1, 2014, Chapter 6, Article 4 "Member Elections." (FOA By-Laws: *The Association shall adopt and follow rules governing elections in accordance with Civil Code §1363.03 [Article 4, §5100]*).
2. The current governing documents of the Franciscan Owners' Association. (CC&RD and By-Laws)
3. Any additional procedures adopted by the Board of Directors of the Franciscan Owners' Association.

**Conflict:** In the event of a conflict between the provisions of the above stated procedures relating to elections, the provisions of the *Revised Davis-Steirling Common Interest Development Act* (Civil Code Article 4, §5100-5145) shall prevail.

### Election Rules

**General.** Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites 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. (Civil Code §5105,a,1)

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. (Civil Code §5105,a,2)

**Qualifications for candidates** The affairs of this Association shall be managed by a Board of five (5) directors, all of whom must be Members of the Association, or an officer, director, employee or agent of a

Member. Directors shall be elected to hold office until their successors are elected. (By-Laws 4.2)

**Qualifications for voting** Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in good standing, a Member must be current in the payment of all Assessments levied against the Member's Unit and not subject to any suspension of voting privileges as a result of any disciplinary proceeding conducted in accordance with the Declaration. A Member's good standing shall be determined as of the record date established in accordance with section 3.8. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of the nonpayment of Assessments, although a delinquent Member shall be entitled to request such a hearing. A Member shall maintain good standing if said standing has not been suspended by the provisions of these Bylaws and the Member has maintained a current filing with the Association of the following: (i) the signature or signatures of the Owner(s) authorized to vote on behalf of the Member's Condominium; and (ii) address where all notices shall be sent; or, alternatively, (iii) a proxy that names the Owner's representative and lists said representative's address. (By-Laws 3.7)

**Voting power of each membership.** The Association shall have one (1) class of voting membership. Members shall be all Owners (as defined in the Declaration) and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium. (By-Laws 3.6)

**Proxies.** "Proxy" means a written authorization signed by a member or the authorized representative of the member that gives another member or members the power to vote on behalf of that member. (Civil Code §5130)

At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Unit, or upon receipt of written notice by the Secretary of the Board of the death or judicially declared incompetence of a Member prior to the counting of the vote, or upon the expiration of eleven (11) months from the date of the proxy. Any form of proxy distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon. The proxy shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy also shall identify the person or persons authorized to exercise the proxy and the length of time it will be valid. In addition, voting by proxy shall comply with any other applicable requirements of California Corporations Code, and of Civil Code §1363.03(d) [§5130]. (By-Laws 3.5)

Proxies shall not be construed or used in lieu of a ballot. An association may use proxies if permitted or required by the bylaws of the association and if those proxies meet the requirements of this article, other laws, and the governing documents, but the association shall not be required to prepare or distribute proxies pursuant to this article. (Civil Code §5130, 2b)

Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the member's vote by secret ballot. The proxy may be revoked by the member prior to the receipt of the ballot by the inspector of elections as described in Section 7613 of the Corporations Code. (Civil Code §5130, 2c)

**Nominations.** Nomination for election to the Board shall be made by a Nominating Committee. Notice to the Members of the meeting shall include the names of all those who are nominees at the time the notice is sent. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to the mailing of notice of each annual meeting of the Members, to serve until the close of such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes. Nominations may also be made by Members representing at least five percent (5%) of the total voting power of the Members or from the floor, by a member in person or by proxy, at the meeting at which the vote is to be held. (By-Laws 5.1)

A member may nominate himself or herself for election to the board. (Civil Code §5105, a, 3)

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. (Civil Code §5105, b)

Members nominating persons for the board of directors encouraged to communicate such with the Nominating Committee, Board of Directors or the management not less than thirty (30) days prior to the mailing of notice of each annual meeting of the Members.

**Elections:**

Elections of directors. Directors shall serve staggered terms. The Members shall elect three (3) directors at the annual meeting when the term of the persons holding those director seats expires and two (2) directors the following year, with all directors serving for a term of two (2) years. Unless vacated sooner, each director shall hold office until the director's term expires and a successor is elected. (By-Laws 4.3)

Elections of directors shall be conducted at the annual meeting of the Association. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Members shall not be entitled to cumulate their votes for any candidate for the Board. Voting for directors shall be by secret written ballot. (By-Laws 5.2)

Action (Elections) without Meeting. Any action that may be taken at any annual or special meeting of Members (except the election of directors) may be taken without a meeting in accordance with the provisions of California Corporations Code §§ 7513 and 7516. Any form of written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the written ballot. The written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. (By-Laws 3.9)

**Inspectors of elections:** The inspector or inspectors shall be appointed by the board. Inspectors of elections shall be independent third party or parties. The number of inspectors of elections shall be one or three. 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. (Civil Code §5110)

The inspector or inspectors may 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. (Civil Code §5105, a, 6)

The inspector or inspectors of elections shall do all of the following: (1) Determine the number of memberships entitled to vote and the voting power of each. (2) Determine the authenticity, validity, and effect of proxies, if any. (3) Receive ballots. (4) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote. (5) Count and tabulate all votes. (6) Determine when the polls shall close, consistent with the governing documents. (7) Determine the tabulated results of the election. (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. (Civil Code §5110)

**Voting Procedure:** 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. (Civil Code §5115 a)

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. (Civil Code §5115 a, 1)

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. (Civil Code §5115 a, 2)

A quorum is required by the governing documents of the FOA to conduct business at the annual meeting. (By-Laws 3.4) But, Civil Code §5115, b, states that each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum. Therefore, if the inspector of elections reports that there are at least 51% of the total voting power of the Association represented in ballots and members present, a quorum will have been established.

Except for the meeting to count the votes required in subdivision (a) of Section 5120, an election may be conducted entirely by mail unless otherwise specified in the governing documents. (e) 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. (Civil Code §5115 d)

**Counting Ballots** 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. (Civil Code §5120 a)

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 of the tabulated results of the election. (Civil Code §5120 b)

**Ballot Retention** The sealed ballots 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 for challenging the election has expired (one year), 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. (Civil Code §5125)