

ISSUE #1

Section 3.3. Eligibility To Vote. Only Members in Good Standing shall be entitled to vote on any issue or matter presented to the Members for approval. A Member who owns more than one Lot shall be ineligible to cast any vote whatsoever if that Member is delinquent with respect to any such Lot.

Section 3.4. Manner of Casting, Collecting and Tabulating Votes by Mailed Written Ballot.

(a) Definition of Written Ballot. A "written ballot" for purposes of this section is a ballot that is mailed or otherwise distributed to every Member entitled to vote on the matter and that complies with the requirements of this Section and California Civil Code Section 1363.03 or comparable superceding statute.

(b) Election by Written Ballots Only. For so long as Civil Code Section 1363.03 or a comparable superceding statute remains in effect, all elections for selection or removal of Directors, assessments, amendments to the Governing Documents or the grant of exclusive use of Common Area property to a person or entity shall be conducted by means of secret written ballots mailed to the Members, collected and tabulated pursuant to this Section 3.4. An election on any other matter may, at the discretion of the Board, be conducted pursuant to this section or at a meeting of the Members. If laws passed after the adoption of these Bylaws by the Members should require that elections be conducted in a manner other than described in this Section 3.4, the Board shall adopt an amendment to these Bylaws that incorporates the required procedure and, pursuant to Section 12.1(a) below, such amendment shall not require a vote of the Members.

(c) Balloting Time Requirements. In the case of any matter or issue submitted to the Members for approval by written ballot, the Board shall distribute the written ballot to every Member entitled to vote on the matter at least thirty (30) days prior to the final date the written ballots are to be received to be counted. The time fixed for the return of written ballots may be extended if the Board so notifies the Members in the balloting materials originally sent to Members.

(d) Content of Written Ballots.

(i) Written Ballots in General. Any written ballot distributed to the Members to vote on any issue shall set forth the proposed action and provide an opportunity to specify approval or disapproval of the proposed action. For election of Directors, the ballots shall set forth the names of all candidates whose names have been placed in nomination at the time the ballot is issued. The ballot form shall also provide a space where the Member can designate a vote for another (*i.e.*, write-in) candidate; however, such a write-in candidate may only be elected as a Director if he or she meets the qualifications for Director stated in these Bylaws.

(ii) Specification of Time for Return of Written Ballot. All written ballots shall state the time by which the ballot must be received in order to be counted (*See* Subsection (c), above).

(e) Identification of Member Casting Ballot. The ballot shall not on its face provide any method for identifying the Member voting. Instead, a double envelope system shall be used in which the completed ballot is placed in an sealed envelope, which is then placed in another sealed envelope. The Member voting shall sign the outside envelope and indicate the address of the unit for which the ballot is being cast.

(f) Cumulative Voting. Cumulative voting for elections of Directors is not permitted.

(g) Proxies. Proxies shall not be used for any election under this Section 3.4.

(h) Requirements for Valid Member Action by Written Ballot. There shall be no minimum number of votes required for election of Directors; the candidates receiving the most votes shall be deemed

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH MANDATORY STATE STATUTE

BOARD & COUNSEL REVIEW

Sec. 3.3. (p. 7): Unlawful Voting Suspension or "Good Standing" Disqualification: Clause strips member voting rights without statutory authority/due process or conditions records inspection/meeting notice on assessment "Good Standing" in violation of CA law.

Statutory / Legal Reference: Cal. Civ. Code § 5105(g)(1)

Statutory Comparison: Under Cal. Civ. Code § 5105(g)(1), associations may not strip member voting rights (prohibited outright in TX, CA, and NJ elections, and subject to strict statutory delinquency floors and prior written notice/hearing in FL, GA, and other states), and may never condition statutory records inspection or meeting notices on assessment "Good Standing."

CURRENT WORDING IN DOCUMENT:

Eligibility To Vote. Only Members in Good Standing shall be entitled to vote on any issue or matter presented to the Members for approval. A Member who owns more than one Lot shall be ineligible to cast any vote whatsoever if that Member is delinquent with respect to any such Lot.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Amend Section 3.3. to preserve member voting rights, meeting notices, and records inspection rights in compliance with Cal. Civ. Code § 5105(g)(1).