

Allen Matkins

Real Estate Alert

Who is affected?

- **Developers** who are in the process of forming owner associations for their common interest developments must follow the current regulations when preparing CC&Rs and Bylaws.
- **Existing Associations** must follow the current regulations by revising nonconforming project documentation.
- **Professional property managers** who manage Associations for developers or Associations who have taken over management from the developer should carefully study the current election rules procedures to ensure compliance in conducting elections.
- Because **residential associations** are typically administered by sophisticated HOA management organizations, it can be expected that the foregoing changes have already been adopted and are being adhered to in practice.
- There are many commercial and **industrial associations** with governing documents which have not yet incorporated the required changes.



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Have you updated your Community Association Election Rules and Procedures?

California Civil Code Section 1363.03, which became effective July 1, 2006, requires community associations to adopt revised election rules and procedures. Many community associations that have been in operation did not take notice of the law and, therefore, have fallen out of compliance.

These requirements are applicable to all residential, commercial and industrial project owner associations. Some of the more noteworthy requirements of the legislation are as follows:

1. Candidates

- a. All candidates or members advocating a point of view are to have equal access to the Association's media, newsletters, and websites during a campaign for purposes reasonably related to an election;
- b. All candidates or members advocating a point of view are required to have equal access, at no cost, to any common area meeting space during a campaign for purposes reasonably related to the election.

2. Independent Inspectors

Prior to any meeting of members, the Association's Board of Directors shall select either one or three "independent third parties", in its discretion, to serve as inspector(s) of the election. The independent inspector(s) are subject to certain qualifications outlined in the legislation. The independent inspector(s)' duties include:

- a. Determining the number of members entitled to vote and the voting power of each;
- b. Determining the authenticity, validity, and effect of proxies, if any;
- c. Receiving ballots;
- d. Hearing and determining all challenges and questions in any way arising out of or in connection with the right to vote;
- e. Counting and tabulating all votes;
- f. Determining when the polls shall close; and
- g. Determining the tabulated results of the election.

3. Special Voting Procedures



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Certain elections, amendments and actions of the Board must be conducted in accordance with current procedures including the following:

- a. Ballots conforming to the statutory requirements shall be delivered or mailed to every member not less than 30 days prior to the deadline for voting;
- b. Specific provisions govern the manner in which ballots are completed, delivered and stored.
- c. All votes are to be counted and tabulated by the independent inspector(s) of election (or the designee of the inspector(s) of election) in public at a properly noticed open meeting of the Association's Board of Directors for members;
- d. Any candidate or other Association member may witness the counting and tabulation of the votes;
- e. The inspector(s) of election shall promptly report the tabulated election results to the Association's Board of Directors, and such tabulated results shall be (i) recorded in the minutes of the next meeting of the Board of Directors, (ii) available for review by the Association's members, and (iii) publicized within 15 days of the election in a communication directed to all members;
- f. In the event of a recount or other challenge to the election process, the inspector(s) of election shall, upon written request, make the ballots available for inspection and review by members or their authorized representatives. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

The California Law Revision Commission will be proposing a number of amendments to the Davis-Sterling Act during calendar year 2008, including proposed amendments to eliminate many of the Act's provisions applicable to commercial and industrial projects. In the meantime, please contact us to insure that your project documents are in compliance with current law.

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