

VERANO HOMEOWNERS ASSOCIATION
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December 12, 2006

Dear Homeowner:

Enclosed are new Voting and Election Rules that the board intends to consider and adopt at an open meeting of the board on February 6, 2007, to comply with a new law that went into effect on July 1, 2006. The new law makes major changes in the way membership votes in homeowner associations are to be conducted.

Among other things, the new law creates a new "secret ballot" method of voting in which voting is not conducted at member meetings but is conducted by ballots that are sent to all members. The new law also requires that the ballots in these elections and votes be opened and tabulated by inspector(s) of election at an open member meeting or Board meeting which any member can attend.

The new law requires every Association to adopt voting and election rules. However, the new law is not well written and it contains provisions that are confusing and hard to make sense of in terms of previously existing law or in terms of our association's governing documents. For this reason the board has consulted with the Association's legal counsel to develop rules that comply with the requirements of the new law and which will work in a practical way for our Association.

The new Voting and Election Rules are effective as of July 1, 2006 and you will see changes in how member votes and member meetings are conducted after that date.

Sincerely,

Your Board of Directors

**ELECTION RULES
VERANO HOMEOWNERS ASSOCIATION**

The following election rules are adopted to comply with the requirements of the Davis-Stirling Act and to provide for fair elections, subject to all applicable and enforceable: (a) provisions of law, and (b) Articles of Incorporation, CC&Rs, and Bylaws.

I. MEMBERSHIP MEETINGS

A. Meetings of the Membership.

1. **Annual Meetings.** Regular annual meetings of the members shall be held within thirty (30) days of the same day of the same month of each year as the second annual meeting. If the day for the annual meeting of the members is a legal holiday, the meeting will be held on the first day following, which is not a legal holiday (excluding Saturday and Sunday).

2. **Special Meetings.** Special meetings of the members shall be promptly scheduled at any time by the board in response to the vote of a majority of the board of directors, in response to the request by the chairman of the board, the president, or written request of the members representing five percent (5%) of the total voting power of the association, or as required by law.

3. **Location of Meetings.** Meetings shall be held within the project or at a meeting place within the same county, as close to the project as possible.

B. Notice of Membership Meetings.

1. **Notice by Board.** Written notice of each meeting of the members, annual or special, shall be given by, or at the direction of the secretary, when the meeting has been called pursuant to Section 3.2 of the Bylaws, by mailing a copy of such notice, first class mail, postage prepaid, at least ten (10) but not more than ninety (90) days before such meeting to each first lender requesting notice and to all members, addressed to the member's address last appearing on the books of the association, or supplied by such member to the association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the proposal(s): (a) removing a director without cause; (b) filling vacancies in the board of directors by the members; (c) amending the Articles of Incorporation; (d) approving a contract or transaction in which a director has a material financial interest.

II. NOMINATIONS

A. Number and Qualification of Directors.

The affairs of this association shall be managed by a board of three (3) directors, all of whom must be members of the association, or an officer, director, employee or agent of a member. Members shall elect three (3) directors for a term of one (1) year. Unless vacated sooner, each director shall hold office until the director's term expires and a successor is elected.

B. Nominations.

Nominations for election to the board of directors may be made by the following methods:

1. **Nominating Committee.** Nomination for election to the board of directors may 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. The nominating committee shall consist of a chairman, who shall be a member of the board of directors, and two (2) or more members of the association. The nominating committee shall be appointed by the board of directors not less than thirty (30) days prior to 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 of directors 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.

2. **Self-Nomination.** Any qualified person may nominate himself or herself for election to the board of directors by submitting to the association a written statement signed and dated by the person nominating himself or herself. The self-nomination statement must be received by the association prior to the close of nominations.

3. **Nominations from the Floor.** Nominations may also be made from the floor at the annual meeting.

III. CAMPAIGNING

A. Access to Media.

1. **No Use of Association Resources.** The association's newsletter, website, bulletin board, or other association media may not be used for campaign purposes.

2. **Exception.** If any candidate or member is provided access to association newsletters, website, bulletin board or other association media during an election, for

purposes that are reasonably related to that election, equal access shall be provided to all candidates and members. The access shall be limited to information relating to that election, and shall include those candidates and members not endorsed by the board. 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. The association and its directors, officers, and agents, shall be immune from liability for the content of those communications to the fullest extent provided by law.

B. Use of Common Area During Election Campaign.

1. **No Cost for Use.** During an election campaign, each candidate and each member advocating a point of view reasonably related to the election shall be allowed to use, if available, the association's common area at no cost to the member or candidate.

2. **Reservation.** Each candidate or member who wants to use the common area pursuant to this rule must make a reservation in advance of the date and time requested. Candidates' and members' requests to use the common area shall be granted on a first-come, first-served basis, provided that the area is not already reserved. In order to assure fairness, each candidate may not reserve or use the common area for more than two (2) hours on any particular date. In addition, each candidate and each member shall only be allowed to make one (1) reservation per day to use the common area.

C. No Use of Association Funds for Campaign Purposes.

Association funds may not be used for campaign purposes in connection with any board election and may not be used for campaign purposes in connection with any other association election except to the extent necessary to comply with duties of the association imposed by law. The association shall not include the photograph or prominently feature the name of any candidate on a communication from the association or its board, excepting the ballot and ballot materials, within thirty (30) days of an election. This restriction does not preclude directors from advocating the election or defeat of any issue or candidate on the ballot. However, they may not use association funds to do so.

IV. INSPECTORS OF ELECTION

A. Selection.

1. **Process.** Prior to the date ballots are first sent out, the board of directors shall, at an open meeting of the board, select either one (1) or three (3) persons as Inspectors of Election.

2. **Eligible Inspectors.** The board shall select an Independent Third Party or Parties as Inspectors of Election. An Independent Third Party includes, but is not limited to:

- a. **Poll Worker.** A volunteer poll worker with the County Registrar of Voters,
- b. **Accountant.** A licensee of the California Board of Accountancy, including any such licensee under contract to the association,
- c. **Notary.** A notary public,
- d. **Recording Secretary.** A recording secretary, including any such recording secretary under contract to the association,
- e. **Management Company Representative.** Representatives of any management company, including any such management company under contract to the association,
- f. **Association Members.** Members of the association, but not: (i) members of the board, (ii) candidates for the board, (iii) persons related to a member of the board, or (iv) persons related to a candidate for the board,
- g. **Person or Entity Under Contract to the Association.** An Independent Third Party may 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.

B. Duties.

Duties of Inspectors of Election shall include the following:

1. **Membership.** Determine the number of memberships entitled to vote and the voting power of each.
2. **Validity.** Determine the authenticity, validity and effect of proxies, if any.
3. **Closing of Polls.** Determine when the polls shall close consistent with the governing documents.
4. **Receive Ballots.** Receive all ballots. Once a secret ballot has been received by an Inspector of Election, it shall be irrevocable.
5. **Custody.** Maintain custody of the sealed ballots at all times. The sealed ballots at all times shall be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote and until the time allowed by Section 7527 of the Corporations Code for challenging the election has expired, at which time custody shall be transferred to the association. 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 election or his or her designee may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated.

6. **Challenges.** Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote. If there is a recount or other challenge to the election process, the inspector or inspectors of election shall make the ballots available for inspection and review upon written request. An association member may authorize a representative to review the ballots on his or her behalf. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

7. **Counting.** Count and tabulate all votes. All votes shall be counted and tabulated by an Inspector of Election or his or her designee in public at a properly noticed open meeting of the board of directors or members. Any candidate or other member of the association may witness the counting and tabulation of the votes.

8. **Appoint Assistants.** Appoint and oversee additional independent third parties to verify signatures, and to count and tabulate votes as the inspectors of election deem appropriate provided that such persons are independent third parties.

9. **Results.** Determine the tabulated results of the election.

10. **Impartiality.** Perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical. Any report made by the Inspectors of Election is prima facie evidence of the facts stated in the report.

11. **Miscellaneous.** Perform any acts as may be proper to conduct the election with fairness to all members in accordance with Civil Code section 1363.03, the Corporations Code, the association's governing documents, and all applicable rules of the association regarding the conduct of the election that are not in conflict with Civil Code section 1363.03.

V. BALLOTS AND PROXIES

A. Voting Rights.

1. **Number of Votes.** Members shall be all owners and shall be entitled one (1) vote for each lot owned.

2. **Election of Directors.** All members shall be entitled to cumulate their votes for one (1) or more candidates for the board, if the candidate's name has been placed in nomination prior to the voting.

3. **Co-Owners.** When more than one (1) person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among

themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

B. Proxies.

1. **Proxies.** The association may use and accept proxies as permitted by law and the association's governing documents, provided that the association shall not be required to prepare or distribute proxies. Proxies shall not be construed or used in lieu of a ballot at a meeting.

2. **Proxy Form.** 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. Proxies must meet all requirements of Chapter 4 of Article 2 of the Davis-Stirling Act, other laws, and the association's governing documents.

3. **Vote by Proxy.** The proxy holder shall cast the member's vote by secret ballot unless the proxy is revoked by the member prior to the receipt of the ballot by an inspector of election as described in Section 7613 of the Corporations Code.

C. Ballots.

1. **Non Revocable.** Once a secret ballot has been received by an Inspector of Election, it shall be irrevocable.

2. **Secret Ballot.** All items legally requiring a vote of the membership shall be held by secret ballot, including but not limited to assessments, selection and removal of members of the association's board of directors, amendments to the governing documents, or the grant of exclusive use of common area property.

a. **No Signature.** The ballot should be filled out, but not signed by the voter.

b. **Inner Envelope.** After the unsigned ballot is filled out, it must be inserted into an inner envelope which is then sealed. This sealed inner envelope must be inserted into a second envelope, which is also sealed.

c. **Second Envelope.** In the upper left hand corner of this second envelope, the voter must sign his or her name, indicate his or her name, and indicate the address or separate interest identifier that entitles him or her to vote. The second envelope must be addressed to the Inspector of Election who will be tallying the votes.

d. **Delivery.** The envelope may be mailed to the address on the envelope or delivered by hand to a location specified by the Inspectors of Election. The member may request a receipt for delivery.

3. **Quorum by Ballot.** Each ballot received by an Inspector of Election shall be treated as a member present at a meeting for purposes of establishing a quorum.

4. **Ballot Delivery to Members.** Ballots and two (2) 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 thirty (30) days prior to the deadline for voting. In order to preserve voter confidentiality, a voter may not be identified by name, address, or lot, parcel or unit number on the ballot.

5. **Ballot Markings.**

a. **Symbols.** A ballot which contains any of the following symbols shall be counted and tabulated as if said symbol was the number "1": an "x", a checkmark, or any non-numerical symbolic designation indicating the voter's intent to vote for any particular candidate, issue or ballot measure.

b. **Signatures.** A ballot shall not be invalidated solely due to the inclusion of a signature thereon.

VI. MEETING PROCEDURES

1. **Chair of Meeting.** The president of the board shall call the membership meeting to order and shall chair the meeting unless a majority of the board selects another person to chair the meeting.

2. **Quorum.** The presence whether in person or by proxy, at any meeting, of members entitled to cast fifty-one percent (51%) of the total voting power of the association (excluding the number of votes as to which voting rights are suspended at the time of the subject meeting), shall constitute a quorum for any action except as otherwise provided in the Declaration, or the Bylaws. If however, such quorum shall not be present or represented at any meeting, a majority of the members entitled to vote thereat may, unless otherwise provided by law, adjourn the meeting to a date not less than five (5) days and not more than thirty (30) days from the meeting date, at which meeting the quorum requirements shall be one-third (1/3) of the total voting power (excluding the number of votes as to which voting rights are suspended at the time of the subject meeting). The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, provided that twenty-five percent (25%) of the total voting power of the association remains present in person and/or by proxy, and provided further that any action taken shall be approved by a majority of the members required to constitute a quorum. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

Notwithstanding anything herein to the contrary, a “quorum” for a meeting to obtain membership approval for an increase in the annual assessment or to levy a special assessment pursuant to the requirements for Section 4.4 of the Declaration shall mean fifty percent (50%) of the members of the association.

3. **Counting Ballots.** The Inspectors of Election, or his or her designee, shall count and tabulate all ballots in public at a properly noticed open meeting of the board of directors or members. 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. Any candidate or other member of the association may witness the counting and tabulation of the votes.

VII. POST-ELECTION RESULTS

A. Results of the Election.

The results of the election shall be announced immediately after all the ballots have been counted. Within fifteen (15) days of the election, the board shall publicize the results of the election in a communication directed to all members.

B. Status of the Ballots after Election.

The sealed ballots at all times shall be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote and until the time allowed by Section 7527 of the Corporations Code for challenging the election has expired, at which time custody shall be transferred to the association. After the transfer of the ballots to the association, the ballots shall be stored by the association in a secure place for no less than one (1) year after the date of the election.