

SB 323 and SB 754: Elections as of January 1, 2020

This new law makes many changes to election laws, director qualification and records inspection and affects Civil Code §§ 5100, 5105, 5110, 5115, 5125, 5145, 5200 and 5910. These changes include all of the following:

Timing and Distribution of Materials for Elections:

An election for the board of directors must be held at the end of each director's expiring term and at minimum every four years.

- At Least 90 Days Before the Election: Amend election rules (Section 5105(h))
- 30 Days Before Deadline to Submit Nominees for a Director Seat: Give general notice of procedures and deadline for submitting a nomination for a Director seat (Section 5115(a)).
- 30 Days Before Ballots are Distributed: Give membership general notice of the following (Section 5115(b)(1)-(4)):
 - The date, time and physical address where ballots are to be returned by mail or handed to inspector of elections.
 - The date, time, and location of the meeting at which ballots will be counted.
 - A list of all candidates who will appear on the ballot.
 - Prepare the candidate registration list and voter list and allow members to verify the accuracy of their information on both lists. (Section 5105(a)(7)). Any reported errors on the voter list must be corrected by the Inspector of Election within two business days.
- 30 Days Before Election: Inspector of Election must deliver, or cause to be delivered, the following to each member (Section 5105(g)(4)):
 - The ballot(s).
 - A copy of the election operating rules. Election operating rules may also be delivered by posting them on internet website and providing members the website on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:___."

Association Ability to Disqualify a Nominee for the Board:

An Association's bylaws or election operating rules may only disqualify a nominee for the following reasons:

- Nominee, if elected, would be serving on a Board at the same time as another person who holds a joint ownership interest in the same separate interest as the nominee and the other person is also a nominee for the current election or an incumbent director;

- Nominee has been a member of the Association for less than one (1) year;
- A nominee discloses, or the association is aware or becomes aware of, a past criminal conviction that would, if the nominee was elected, either prevent the association from purchasing the fidelity bond coverage required by Section 5806 or terminate the association's existing fidelity bond coverage;
- Nominee is not current in payment of regular and special assessments (does not include nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party). (If an Association requires a nominee be current in their payments, then it must also require a director be current in their payments.) The nominee may not be disqualified for failure to be current in payment of regular and special assessments if either the following circumstances is true:
 - The person has paid the regular or special assessment under protest pursuant to Section 5658; or
 - The person has entered into a payment plan pursuant to Section 5665.

A nominee *must* be disqualified for not being a member of the Association at the time of the nomination.

An association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution.

If title to a separate interest parcel is held by a legal entity that is not a natural person, the governing authority of that legal entity shall have the power to appoint a natural person to be a member for purposes of being nominated as a candidate.

Election Operating Rules Must Include:

- A prohibition on denying a ballot to a member for any reason other than not being a member at the time when ballots are distributed;
- A prohibition on denying a ballot to a person with general power of attorney for a member; and
- A requirement the inspector or inspectors of elections deliver, or cause to be delivered, at least 30 days before an election, to each member both of the ballot and a copy of the election rules. Delivery of the election operating rules may be accomplished by posting the election operating rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: "The rules governing this election may be found here:" or Individual delivery.

Association Records:

- Membership lists subject to inspection by members now include members' email addresses.
- "Association election materials" has been added to the definition of association records which must be retained by the Association. These materials include the returned ballots, signed voter envelopes (signed voter envelopes may be inspected but may not be copied), the voter list, voters to whom ballots were to be sent, proxies, and the candidate registration list.

- The voter list must include the voter's name, voting power, and either (a) the voter's physical address of their separate interest, (b) the parcel number, or (c) both. The voter's mailing address must also be listed if only the parcel number is used.

Inspector of Elections:

The inspector of elections may not be a person, business entity, or subdivision of a business entity that is employed or under contract to the association for any compensable services. The election rules may no longer make an exception.

Election by Acclamation for Associations of 6,000 or More Units:

When the number of director nominees at the close of the nomination period is not more than the number of vacant director positions on the board, the director nominees may be considered elected by acclamation if all of the following is true:

- The Association includes 6,000 or more units;
- The association provided individual notice of the election and the procedure for nominating candidates at least 30 days before the close of nominations; and
- The association permits all candidates to run if nominated, except those disqualified for not being a member of the association at the time of the nomination and those disqualified for other reasons specified in Civil Code Section 5100.

Legal Actions:

- Existing law authorizes a member of an association to bring a civil action for declaratory or equitable relief for a violation of the election law requirements by the association within one year from the date the cause of action accrues. This new law sets the time limit to file the action at one year from the date that the inspector of elections notifies the board and membership of the election results or the date the cause of action accrues, whichever is later.
- The new law requires the court, if a member establishes by a preponderance of the evidence that election provisions or operating rules were not complied with, to void the election results unless the association establishes, by a preponderance of the evidence, that the association's noncompliance with the election provisions or operating rules did not affect the election results.
- An association may not file a civil action regarding a dispute in which the member has requested dispute resolution unless the association has complied with internal dispute resolution procedures.

*Please also refer to our Election Process Timeline via our website at www.epsten.com.

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