

# NEPENTHE ASSOCIATION

## ELECTION RULES

[Adopted February 5, 2020]

The following Election Rules for Nepenthe Association are adopted pursuant to the Davis-Stirling Common Interest Development Act (Civ. Code, § 4000 et seq.) and in accordance with the Association's authority under its Governing Documents. Unless otherwise indicated, all capitalized terms are as defined in the Act. These Election Rules shall apply to any vote regarding assessments legally requiring a vote, election and removal of Directors, amendments to the Governing Documents and the grant of exclusive use of any portion of the Common Area to a Member. These Election Rules supersede and replace all prior versions.

### ARTICLE I: DIRECTOR NOMINEE AND DIRECTOR QUALIFICATIONS

**1.1 Director Nominee Disqualification.** After providing a Person with the opportunity to engage in internal dispute resolution (Civ. Code, §§ 5910, 5915), the Association may disqualify a nominee when:

- a. **Membership.** The Person is not a Member at the time of his or her nomination.
- b. **Co-Owners Eligible for Only One Position.** The Person, if elected, would be serving on the Board with his or her co-owner of a Separate Interest.
- c. **Current on Assessments.** The Person is delinquent in the payment of any regular or special assessment and has not paid the assessment under protest or entered into a payment plan.
- d. **No Convictions Impacting Fidelity Bond.** The Person has been convicted of a crime that would, if elected, either prevent the Association from purchasing fidelity bond coverage or would cause the termination of the Association's existing fidelity bond coverage.
- e. **Member for at Least One Year.** The Person has not been a Member for at least one year at the time of nomination.

(Civ. Code, §§ 5105(b)-(e), 5658, 5665, 5806.)

**1.2 Director Qualifications.** Directors must meet the qualifications set forth in the bylaws and must not be delinquent in the payment of any assessment, except where the Person has paid the assessment under protest, or where the Person has entered into a payment plan. For purposes of this section, the term "assessment" does not include fines, fines renamed as assessments, collection charges, late charges or costs levied by a third party. (Civ. Code, §§5105(c), 5665, 5658.)

**1.3 Election At Least Every Four Years.** The Association shall conduct an election for the board of directors at the end of each Director's expiring term and at minimum once every four years. (Civ. Code, §5100(a)(2).)

**1.4 Designee of Impersonal Member.** In the event a corporation or other impersonal entity holds title to a Separate Interest, it may designate one Person to stand for election to the Board on its behalf. (Civ. Code, §5105(b)(2).)

**1.5 Candidate Registration List.** The Association shall compile a list of duly nominated and qualified candidates and permit Members to verify the accuracy of their individual information on the list at least thirty (30)

days before ballots are distributed. The Association or Member shall report any requested changes to the inspector. (Civ. Code, §5105(a)(7).)

## ARTICLE II: INSPECTOR OF ELECTIONS

### 2.1 Selection.

- a. **Process.** Prior to the date ballots are first sent out and at an open meeting of the Board, the Board shall select either one (1) or three (3) independent third parties to serve as the inspector of election.
- b. **Eligible Inspector.** The inspector of election must be an independent third party who is not a person, business entity or subdivision of a business entity who is currently employed or under contract with the Association for any compensable services other than serving as an inspector of election, and may include any of the following:
  - i. **Poll Worker.** A volunteer poll worker with the County Registrar of Voters;
  - ii. **Accountant.** A licensee of the California Board of Accountancy;
  - iii. **Notary Public.** A notary public;
  - iv. **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;
  - v. **Independent Third Party Inspector of Election.** An independent third party Person.

(Civ. Code, § 5110(b).)

### 2.2 Duties. Duties of inspector of election shall include the following:

- a. **Deliver Ballots and Rules.** Deliver, or cause to be delivered, at least thirty (30) days before an election, to each Member: (i) the ballot(s) by either prepaid first class mail or personal delivery, and (ii) a copy of these Election Rules by either prepaid first class mail, personal delivery or posting them to an internet website and including the internet website address on the ballot together with “The rules governing this election may be found here: [website address]” in at least 12-point font.
- b. **Membership.** Determine the number of memberships entitled to vote and the voting power of each.
- c. **Voter and Candidate Registration Lists.** Make changes requested by the Association or Members to the voter and candidate registration lists within two (2) days of receipt of documentary evidence demonstrating the inaccuracy of either list. Maintain the final candidate registration list until after the tabulation of the vote and for one (1) year from the date of the election, at which time custody shall be transferred to the Association.
- d. **Validity.** Determine the authenticity, validity and effect of proxies, if any.
- e. **Closing and Reopening of Polls.** Determine when the polls shall close and determine whether to reopen the polls to allow Members to cast a ballot after the polls have been closed.

- f. **Receive Ballots.** Receive all ballots. Once received by an inspector of election, ballots are irrevocable.
- g. **Custody.** Maintain custody of the sealed ballots, signed voter envelopes, voter list, proxies and candidate registration list at all times. The sealed ballots, signed voter envelopes, voter list, proxies and candidate registration list shall be in the custody of the inspector of election or at a location designated by the inspector until after the tabulation of the vote and until the time allowed by Civil Code section 5145 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.
- h. **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 shall make the ballots available for inspection and review upon written request. A 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.
- i. **Count Ballots.** Count and tabulate all votes. All votes shall be counted and tabulated by an inspector of election or his or her designee at a properly noticed open meeting of the Board or Members. Members may witness, but not interfere with, the counting and tabulation of the votes from at least five (5) feet away from the inspector and his or her assistants.
- j. **Appoint Assistants.** Appoint and oversee additional Persons to verify signatures, and to count and tabulate votes as the inspector of election deems appropriate provided that such Persons are independent third parties.
- k. **Results.** Determine the tabulated results of the election.
- l. **Impartiality.** Perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical in a manner that protects the interest of all Members of the Association.
- m. **Miscellaneous.** Perform any acts as may be proper to conduct the election with fairness to all Members in accordance with the Civil Code, the Corporations Code and the Governing Documents. If there are three inspectors, a majority will decide any issues not agreed upon by all. Any report made by the inspector is prima facie evidence of the facts stated therein.

(Civ. Code, §§ 5105(g)(4), 5110(c) and (d), 5120, 5125.)

**2.3 Removal.** The Board has the power to remove any inspector who ceases to meet the required qualifications, is unable or unwilling to perform his or her duties, or for other good reason, and to appoint a new inspector in his or her place.

### **ARTICLE III: NOMINATIONS**

**3.1 Nominations.** The Association may utilize any permissible means authorized by the bylaws to obtain nominations for Directors.

**3.2 Nominating Committee.** If required by the bylaws, the Board shall timely appoint a Nominating Committee to make as many nominations for election to the Board as the Nominating Committee shall in its discretion determine, but not less than the number of vacancies to be filled.

**3.3 Self-Nomination.** Any Member meeting the qualifications set forth in these Rules may nominate himself or herself by fully completing and executing the application contained in the request for nominations. All such Members who return an application on or before the deadline stated in the request for nominations shall be included on the ballot for election of Directors. (Civ. Code, § 5105(b).)

**3.4 Write-Ins/Floor Nominations.** The ballot form may also provide a space where a Member can designate a vote for another (i.e., write-in) nominee. In the absence of such a space in the ballot form, write-in/floor nominations are not allowed.

**3.5 Notice of Procedures and Deadlines.**

**a. Content and Timing of Notice.** At least thirty (30) days before the deadline set for submitting nominations, the Association shall provide notice to the Members of the procedures and deadlines for submitting nominations. Individual notice shall be delivered pursuant to Civil Code section 4040 if individual notice is requested by the Member.

**b. Delivery.** Notice of nomination procedures and deadlines must be given as follows:

**i. General Notice For Members Who Have Not Requested Individual Notice (Email or Mail Notice)**

**a) Method of Delivery.** By either (i) first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, (ii) email, facsimile or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery, (iii) inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in Civil Code section 4045, (iv) posting the printed document in a prominent location that is accessible to all Members, if the location has been designated for the posting of general notices by the Association in the annual policy statement, or (v) if the Association broadcasts television programming for the purposes of providing information on Association business to its Members, then by inclusion in that programming.

**b) Location of Delivery.** If by mail to the Member and the Member has identified a secondary address, then the mailing shall be to the primary and secondary address as provided by the Member. If the Member has failed to provide annual notice of the Member's address, then to the last address provided in writing by the Member. If the Member has not provided an address in writing, then to the Member's Separate Interest. (Civ. Code, § 4040 et seq.)

**ii. For Members Who Have Requested Individual (Email or Mail Notice)**

**a) Method of Delivery.** By either (i) first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, or (ii) email, facsimile or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. (Civ. Code, § 4040.)

**b) Location of Delivery.** If by mail to the Member and the Member has identified a secondary address, then the mailing shall be to the primary and secondary address as provided by the Member. If the Member has failed to provide annual notice of the Member's address, then to the last address provided in writing by the Member. If the Member has not provided an address in writing, then to the Member's Separate Interest. (Civ. Code, § 4040 et seq.)

c. **Notice Deemed Given.** Notice of nomination procedures and deadlines is deemed given when delivered personally, deposited in the mail, or upon completion of electronic transmission to those Members who have consented to the same. (Civ. Code, § 4050.)

(Civ. Code, §§ 5105(b), 5115(a).)

#### **ARTICLE IV: BALLOTS AND PROXIES**

**4.1 Notice.** At least thirty (30) days before ballots are distributed, the Association shall provide, or cause to be provided by the inspector, notice to the Members as follows:

a. **Notice Contents.** (i) The date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector, (ii) the date, time, and location of the meeting at which ballots will be counted, and (iii) the names of all candidates that will appear on the ballot.

b. **Delivery.** The notice provided by this section must be given as follows:

i. **General Notice For Members Who Have Not Requested Individual Notice (Email or Mail Notice)**

a) **Method of Delivery.** By either (i) first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, (ii) email, facsimile or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery, (iii) inclusion in a billing statement, newsletter, or other document that is delivered by one of the methods provided in Civil Code section 4045, (iv) posting the printed document in a prominent location that is accessible to all Members, if the location has been designated for the posting of general notices by the Association in the annual policy statement, or (v) if the Association broadcasts television programming for the purposes of providing information on Association business to its Members, then by inclusion in that programming.

b) **Location of Delivery.** If by mail to the Member and the Member has identified a secondary address, then the mailing shall be to the primary and secondary address as provided by the Member. If the Member has failed to provide annual notice of the Member's address, then to the last address provided in writing by the Member. If the Member has not provided an address in writing, then to the Member's Separate Interest. (Civ. Code, § 4040 et seq.)

ii. **For Members Who Have Requested Individual (Email or Mail Notice)**

a) **Method of Delivery.** By either (i) first-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier, or (ii) by email, facsimile or other electronic means, if the recipient has consented, in writing or by email, to that method of delivery. (Civ. Code, § 4040.)

b) **Location of Delivery.** If by mail to the Member and the Member has identified a secondary address, then the mailing shall be to the primary and secondary address as provided by the Member. If the Member has failed to provide annual notice of the Member's address, then to the last address provided in writing by the Member. If the Member has not provided an address in writing, then to the Member's Separate Interest. (Civ. Code, § 4040 et seq.)

- c. **Notice Deemed Given.** Notice is deemed given when delivered personally, deposited in the mail, or upon completion of electronic transmission to those Members who have consented to the same. (Civ. Code, § 4050.)

#### 4.2 Voting Rights.

- a. **Number of Votes.** Each Member shall be entitled to one (1) vote per Separate Interest owned on all matters presented for a membership vote.
- b. **Denial of Ballot.** No Member shall be denied a ballot for any reason other than not being a Member at the time when ballots are distributed.
- c. **Voter List.** The Association will permit Members to verify the accuracy of their individual information on the voter list at least thirty (30) days before the ballots are distributed. Included on the list are the name, voting power, physical address of the voter's lot, and mailing address if different from physical address. The Association will advise the inspector of any requested changes and maintain the voter list, after return by the inspector, for three (3) years from the election.
- d. **Record Date.** The Board may fix a record date no more than sixty (60) days prior to a meeting for those Members entitled to notice and vote. If the Board does not set a record date, the record date for notice of meetings will be the date before notices are mailed to the Members of a meeting, or for voting, the day written ballots are sent. (Corp. Code, § 7611.)
- e. **Proof of Membership.** Except as provided in subdivision (f) of this section, no Person may exercise the rights of membership without an ownership interest in a Separate Interest. Proof of membership will be a recorded deed or, if the property was transferred within the past thirty (30) days and a copy of the newly recorded deed is unavailable, a completed escrow closing statement.
- f. **General Power of Attorney.** The holder of a general power of attorney for a Member shall not be denied a ballot and may exercise that Member's right to vote consistent with the terms of these rules.
- g. **Cumulative Voting.** Cumulative voting is not permitted.
- h. **Co-Owners.** Where there is more than one (1) owner of a Separate Interest, all such co-owners are Members and may attend any meeting of the Association, but only one co-owner shall be entitled to exercise the vote of the Separate Interest.
- i. **Presumption of Consent.** Unless the inspector of election receives a written objection prior to the close of balloting from a co-owner, it will be presumed that the voting owner is acting with the consent of his or her co-owner when a ballot is submitted.
- j. **Voting for Properly Nominated Candidates.** Members must vote only for those candidate(s) who have been properly nominated prior to the close of nominations.

#### 4.3 Proxy Rules.

- a. **Generally.** Proxies are permitted. (Civil Code §5130(b); Bylaws) A proxy is 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. "Signed" means the placing of the Member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the Member or authorized representative of the Member. (Civ. Code, § 5130; Corp. Code, § 7613.)

- b. **Processing.** Proxies for elections conducted under these rules will not be distributed by the Association and may not be used in place of ballots. A Member wishing to authorize another individual to vote in their place should complete the outer envelope accompanying the ballot with all the required information, then provide the designated individual the ballot for their voting. The designated individual must ensure that the ballot is completed and returned to the inspector of election in the manner set forth in these rules for the ballot to be considered valid.
- c. **Permitted with Restrictions.** Proxies are permitted provided they are in accordance with Governing Documents, applicable laws, and these guidelines:
  - i. A proxy provider must be a Member or the Member's representative and the proxy holder must be a Member.
  - ii. Proxies must (a) state the matter(s) to be voted on and provide an opportunity for the proxy provider to approve or disapprove the matter(s); (b) state that the vote(s) of the proxy holder will vote on according to the choice(s) specified; (c) include the name of the Person to whom the proxy is to be given for the purpose of casting the vote to reflect the proxy provider's vote(s) as specified on the form of proxy; and (d) if in the case of an election of Directors, the proxy must list the name of all candidates that appear on the ballot.
  - iii. Any instruction given in a proxy must be on a separate page of the proxy that can be detached and given to the proxy holder to retain.
  - iv. Proxies are not used in lieu of a ballot.
  - v. The proxy holder will 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.
  - vi. The Association is not required to prepare or distribute proxies.
  - vii. The inspector may invalidate any proxy that does not meet the above requirements.

(Civ. Code, §§ 5105(a)(4), 5130; Corp. Code § 7613.)

**4.4 Secret Ballots.** All secret ballots mailed or otherwise delivered to the membership will include a double-envelope system and voting instructions for returning the ballots and be delivered to every Member entitled to vote at least thirty (30) day before the initial voting deadline for those elections that require such voting methods.

- a. **Content of Ballots.**
  - i. For Director elections, the ballot shall contain the list of candidates, the number of Directors to be elected.
  - ii. For the amendment or restatement of Governing Documents, the ballot shall contain the text of the proposed amendment.
  - iii. For all elections, the ballot shall contain the date and time that the initial balloting period will close, the quorum requirement, and a statement that the balloting period may be extended if sufficient ballots have not been received to establish a quorum.
- b. **Signature.** Ballots do not require a signature; however, ballots signed by Members remain valid.
- c. **Inner Envelope.** The Association will provide two envelopes. To preserve secrecy, the ballot is to be placed within an inner envelope with no identifying information. However, information written

on the inner envelope by a Member will not invalidate the ballot. The inner envelope containing the ballot is to be placed into a second outer envelope containing identifying information.

- d. **Outer Envelope.** In the upper left-hand corner of the outer envelope, the voting Member must sign his or her name and indicate (print, type, etc.) his or her name and the address entitling the voter to vote. The outer envelope must be addressed to the inspector of election.
- e. **Delivery.** The outer envelope may be mailed to the address on the envelope or delivered to a location specified by the inspector of election. The Member may request a receipt for delivery.

**4.5 Quorum by Ballot.** Each ballot received within a properly completed outer envelope from a Member is deemed as a Member present at a meeting for purposes of establishing a quorum. This applies even if the ballot has no markings on it.

## **ARTICLE V: CAMPAIGNING**

### **5.1 Access to Media.**

- a. **Use of Association Resources.**
  - i. **Common Area Bulletin Boards/Kiosks.** Subject to availability and authorization by the Board, each Member may post information about the election in a reasonable size and quantity on a Common Area bulletin board or kiosk, for a reasonable period of time, at no cost to the Member.
  - ii. **Association Media.** If any Member is provided access to Association newsletters, website, or other Association media during an election, or given permission to post campaign material in the Common Area for purposes that are reasonably related to that election, then equal access shall be provided to all Members. The access shall be limited to information relating to that election and shall include those Members advocating a point of view, including those 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 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.
  - iii. **Membership List.** Members have the right to request the Association's membership list for the purposes of distributing, at their own expense, materials which advocate a point of view reasonably related to the election. Members also have the right to contact Members who have opted out of the membership list through the alternate means of communication permitted under Civil Code section 5220 for the purposes of distributing, at their own expense, materials which advocate a point of view reasonably related to the election.

### **5.2 Use of Common Area During Election Campaign.**

- a. **Purpose.** Each Member shall be allowed to use, if any exists, the Association's Common Area meeting space at no cost for purposes relating to an election, including to advocate a point of view reasonably related to the election, as well as for other peaceful assemblies or meetings. (Civ. Code, §§ 5105(a)(2); 4515.)
- b. **Reservation.** Each Member who wants to use the Common Area for the above purposes must make a reservation in advance of the date and time requested. Reservations will be granted on a first-come, first-served basis. To assure fairness, each Member may not reserve or use the Common Area meeting space for more than two (2) hours on any particular date.

- c. **Procedural Rules.** The Board may adopt additional rules to assure the orderly use of any Common Area meeting space.

**5.3 No Use of Association Funds for Campaign Purposes.** Association funds may not be used for campaign purposes in connection with any election except to the extent necessary to comply with applicable 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, ballot materials or communication that is legally required, within thirty (30) days of an election. This restriction does not preclude a Director from personally advocating the election or defeat of any issue or candidate on the ballot, however he or she may not use Association funds to do so. (Civ. Code, § 5135.)

#### **5.4 Improper Electioneering.**

- a. **Prohibited Activities.** In addition to any of the prohibitions in these rules, Members, their families, tenants, employees, agents, visitors, licensees, or servants are prohibited from engaging in any of the following activities:
  - i. Causing any printed campaign or other election related materials to be placed upon or affixed to any portion of the Common Area without prior written authorization from the Board or management;
  - ii. Attempting to solicit either a vote or proxy from another Member through deceit, harassment, intimidation, improper influence, undue coercion, or force;
  - iii. Attempting to prevent a Member from casting a vote or delegating their right to vote via proxy through deceit, harassment, intimidation, improper influence, undue coercion, or force;
  - iv. Interfering with the counting or tallying of votes;
  - v. Inducing other Members to divert ballots away from the inspector of election; or
  - vi. Interfering with any Member's ability to distribute authorized campaign materials.
- b. **Report Violations.** Members are encouraged to report any electioneering violations they witness to the Board or management.
- c. **Fines.** The Board may levy a fine of \$100 for each violation of this section after proper notice and hearing.

### **ARTICLE VI: CANVASSING AND PETITIONING**

**6.1 Generally.** Canvassing and petitioning Members and residents for any election or purposes permitted in Civil Code section 4515 (i.e., peaceful assembly to discuss social, political, or educational matters related to the community or matters of public interest) by telephone and/or personal visits to private residences in the development is limited to the hours of 9:00 a.m. until 6:00 p.m. However, any Member or resident who declines to be contacted must not be contacted by telephone or personal visits thereafter.

**6.2 Impermissible Conduct.** Nothing in this section shall be deemed to permit a Member or resident to contact another Member or resident in a manner that constitutes a breach of the Member's or resident's quiet enjoyment, a nuisance or both.

### **ARTICLE VII: ELECTION RESULTS**

**7.1 Election by Acclamation.** Election by acclamation is not permitted in any Director election, except as otherwise provided by law.

**7.2 Elected Candidates.** The candidates receiving the highest number of votes, up to the number of vacancies to be filled in a Director election, shall be elected as Directors and shall take office immediately following the election.

**7.3 Breaking a Tie.** In the event of a tie leaving the outcome of the election unresolved, the following will apply:

- a. If requested by any Member, the inspector of election will conduct a recount of the ballots. If there is a charge, the Association will bear the expense. Members may observe the recount under the same conditions as the original ballot counting.
- b. Following the recount, if the tie remains, all other newly elected Directors will begin serving their terms. An incumbent Director whose seat was tied shall continue in office until a runoff election determines the winner for his or her seat. Only those candidates who tied for the seat shall be in the runoff.
- c. In lieu of a runoff and if the tied candidates agree, the winner may be decided by a coin toss or the drawing of names by the inspector of elections.

**7.4 Results of an Election.** The tabulated results of the election will be announced immediately after all the ballots have been counted and reported to the Board. The Board shall record the results of the election in the minutes of the next Board meeting. Within fifteen (15) days of the election, the Board will publicize the tabulated results of the election in a communication to all Members.

**7.5 Status of the Ballots after Election.** The sealed ballots will be in the custody of the inspector of election or at a location designated by the inspector until after the tabulation of the vote and until one (1) year for challenging the election has expired, at which time custody will be transferred to the Association.

**7.6 Election Recount.** In the event of a recount or other challenge to the election process, the Association 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 shall preserve the confidentiality of the vote.

## **ARTICLE VIII: CONFLICT WITH GOVERNING DOCUMENTS**

**8.1** To the extent of any conflict between the provisions of these Election Rules and the provisions set forth in other Governing Documents, the provisions of these Election Rules shall control to the extent that they were adopted to comply with the requirements of applicable law.