



# **Elections and Voting, Rules and Procedures**

Tri Palm Estates and Country Club  
A Community for Senior Citizens

Updated May 13, 2016

APPROVED BY BOARD OF DIRECTORS

# **TRI PALM UNIFIED OWNERS ASSOCIATION GENERAL RULES AND PROCEDURES FOR ELECTIONS AND VOTING**

## **GENERAL**

1. These rules, policies and procedures shall apply to all items legally requiring a vote of the membership as required by Civil Code section 5100, and any amendments thereto, including but not limited to, elections of directors, votes to remove one or more directors, votes on assessments that legally require a vote, amendments of the governing documents, grants of exclusive use of common areas, and such other votes as the Board determines should be conducted by secret ballot (collectively "Covered Election").
2. As described in these Rules and Procedures, votes may be cast by Members<sup>1</sup> in good standing either in person or by mail-in ballot.

## **SUSPENSION OF VOTING RIGHTS AND RIGHT TO RUN FOR DIRECTOR**

3. A Member may be declared to be not in good standing and will be ineligible to vote or to be a candidate for election during the period of time where a Member's membership privileges, including voting rights, have been suspended. A Member's membership privileges may be suspended during any period of time a Member is in violation of the Governing Documents and/or during any period of time a Member is delinquent in the payment of any Association assessments, fines or maintenance fees for use of the recreational facilities. A finding of a Member to be "not in good standing" can only be made following a "show cause" hearing, pursuant to Civil Code section 5855, where the Member has been given fifteen (15) days prior notice setting forth the reasons for the suspension and the Member has been given an opportunity to be heard not less than five (5) days before the effective date of the suspension of membership privileges.

## **QUALIFICATION AND NOMINATION OF DIRECTORS**

4. The affairs of the Association shall be managed by a Board of eleven (11) directors who must be Members of the Association who are in good standing. No Members of the same household or two Members related by blood or marriage may serve on the Board at the same time. If any two such Members run for the Board and both get enough votes to be elected, only the Member receiving the most votes will be elected to the Board.
5. Prior to any election of director(s), the Association shall seek nominations for candidates for election by making available a "Candidate Nomination Form". All Members desiring to run for a position on the Board of Directors or Members who wish to nominate other Members must complete the Candidate Nomination Form and return the completed Candidate Nomination Form and any accompanying materials to the Association within the time prescribed on the Candidate Nomination Form. If nominating another Member

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<sup>1</sup> A "Member" is defined as a Lot Owner owning a Lot within the Association community. Lot Owners shall automatically be a Member of the Association and shall remain a Member until his/her ownership ceases for any reason at which time his/her membership in the Association shall also cease. Ownership of Lot, in other words having one's name listed as an owner on the deed to a Lot within the Association, shall be the sole qualification for membership in the Association. (Article 1, Section M and Article 3, Section B of the Restated and Amended Declaration.)

besides one's self that nominee's written consent is required and must be returned with the Candidate Nomination Form. Members who wish to nominate themselves or Members who wish to nominate another Member, but fail to submit a Candidate Nomination Form, and nominee's written consent if applicable, by the deadline date will not have their names/nominee's name(s) placed on the ballot.

6. The candidate statements from the Candidate Nomination Forms may be posted by the Association on the Association's website. The Candidate Nomination Form submitted by each candidate will be enclosed with the ballot for the election and mailed at least thirty (30) days prior to the meeting. Candidate Nomination Forms and accompanying materials that are received after the time prescribed on the Candidate Nomination Form will not be enclosed with the ballot for election nor will late candidate statements from the Candidate Nomination Forms be posted on the Association's website. The Association will not edit the content of these forms, but will publish a general statement of non-responsibility for the content of all published forms. Any candidate can request in writing that his/her form not be published as provided herein and the Association will honor any such request received prior to the date of publication of all forms.
7. Except as provided in Paragraph 6, no Candidate Nomination Form or other editorial or campaign material will be published in the Association's newsletter or other Association media.
8. To help ensure that there is at least one (1) candidate willing to serve for each opening on the Board of Directors, the Board of Directors will appoint a Member of the Association to serve as Nominating Chairperson. The Board of Directors may also appoint a Board Director to serve as Nominating Co-Chairperson. The Nominating Chairperson may appoint at least two other Members to assist him or her in performing the duties of the Nominating Chairperson. The Nominating Chairperson will perform his or her duties as outlined in the Bylaws and/or Association published Rules and Regulations. Note, however, that a Member may nominate himself or herself as set forth in Paragraph 5, above.
9. Nominations for election to the Board of Directors may not be made from the floor during the meeting of the membership or the Board. Write-in votes are also prohibited and will not be counted.

#### **USE OF COMMON AREA FACILITIES FOR CAMPAIGN PURPOSES**

9. In each election of Directors, the Board may hold a candidate's forum in the Clubhouse at the December membership meeting prior to the election where Members will be provided an opportunity to meet and ask questions of the candidates. All candidates known to be standing for election will be invited to attend the forum. Attendance by the candidates is optional.
10. All candidates for election and other Members may reserve the Clubhouse to conduct campaign activities or advocate a point of view on an election or balloting issue pending before the membership. All candidates and Members will be provided an equal opportunity to reserve the Association's facilities for these purposes. Reservations can be made by contacting the Tri Palm Estates Country Club office in the Clubhouse. The candidate or Member advocating a point of view must also notify the Association. No fees will be charged to any candidate or Member for reservation of the Clubhouse to conduct campaign activities or advocate a point of view on an election or balloting issue pending before the membership. All candidates or Members reserving the Clubhouse are asked to leave the facility in a clean and undamaged condition.

## VOTING BY SECRET BALLOT

11. Pursuant to Civil Code section 5100, elections regarding the following topics must be conducted by double envelope secret ballots pursuant to Civil Code section 5115: Assessments legally requiring a vote, election and removal of directors, amendments to the governing documents, the grant of exclusive use of common area, or any other topic expressly identified in the Association's operating rules. However, if the number of candidates equals or is less than the number of director positions to be filled at the election, Members may election the directors by acclamation. The Board has the right to determine whether other topics requiring a membership vote will be conducted using double envelope secret ballots.
12. Ballots may be submitted at any time from the Members' receipt of the ballot until the announced deadline or any extension thereof as set by the Inspector of Elections. Ballots returned by mail are to be returned to the Association's office or other address as specified by the Association unless otherwise specified by the Inspector of Elections and so noted in the balloting materials.
  - a. The Inspector of Elections shall have the right to verify the Member's information and signature on the outer envelope and to review the number of ballots collected prior to the deadline for voting and inform the Board of Directors of the number of ballots received. The Inspector of Elections shall have the right to extend the voting deadline if there is an insufficient or possibly an insufficient number of ballots received. Voting envelopes shall not be opened as part of this review; only a review of unopened envelopes is allowed to verify the Member's information and determine the total number of ballots returned.
  - b. Once cast, ballots cannot be revoked or changed, even if a Member attends the meeting and seeks to change or withdraw his or her vote before the polls close.
  - c. The Board of Directors shall set a record date establishing those Members entitled to vote on any ballot. Should the Board fail to set a specific record date, the record date shall be the date the ballot was posted in the United States mail.
  - d. In accordance with the governing documents of the Association, Members shall be entitled to one vote per Lot. Cumulative voting for directors shall not be permitted in any secret ballot for the election of directors.
13. Ballots and two pre-addressed 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 30 days prior to the deadline for voting. The Association shall generally use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including the following:
  - a. The ballot itself will not be signed by the voter, but will be inserted into an envelope that is to be sealed by the voter. This envelope is to be inserted into a second (outer) envelope that is sealed by the voter. In the upper left hand corner of the second envelope, the voter must print and sign his or her name, address (either address within the community or mailing address), and lot, or parcel, or unit number that entitles him or her to vote. Pursuant to Section 4.12.6 of the Bylaws, ballots without the written signature of a Member in good standing shall not be counted. The Inspector of Election shall decide the genuineness of the signature or the right of the Member to cast a ballot.

- b. The second (outer) envelope is to be addressed to the Inspector of Elections, who will be tallying the votes. The envelopes are to be mailed or delivered by hand to the address specified by the Inspector of Elections.
  - c. Balloting materials not completed in accordance with the instructions on or accompanying the balloting materials may result in the ballot being declared invalid, as determined by the Inspector of Elections. The Inspector of Elections shall have the right to count ballots submitted by owners failing to complete all of the above requirements so long as all ballots with similar defects are treated equally and so long as the Inspector are able to verify that only one ballot per voting Member has been submitted.
  - d. Only the official ballots distributed by the Association will be counted. Unofficial ballots will not be counted.
  - e. If a candidate whose name is on the ballot withdraws before the ballots are counted, the election will continue to go forward. However, the votes cast for a withdrawn candidate will not be counted.
- 14. Ballots shall be counted at a membership meeting of the Board or open Board meeting. Subject to reasonable restrictions established by the Inspector of Elections to prevent interference with or intimidation of the Inspector during the tabulation of the ballots, any candidate or other Member of the Association may witness the counting and tabulation of the votes. No person observing the tabulation of the ballots may communicate with, interfere with, or in any way attempt to intimidate, harass or abuse the Inspector or other person counting the ballots or assisting the Inspector.
  - 15. Except as provided above, 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.
  - 16. The candidate(s) receiving the highest number of votes shall be elected. In the event of a tie vote between candidates for the last position on the Board, the candidates subject to the tie vote shall agree to some other means of determining the winner of the vote, such as a coin toss or high card draw.
  - 17. The results of the election shall be promptly reported to the Board of Directors of the Association and shall be recorded in the minutes of the meeting and shall be available for review by Members of the Association. Within fifteen (15) days of the election, the Board shall publicize the results of the election in a communication directed to all Members or by posting it in the Common Area.
  - 18. Ballots will be retained by the Inspector of Elections or the Inspector's designee for one (1) year following the vote count. Thereafter, the Inspector of Elections shall turn over all ballots to the Association, or its designated agent. At the conclusion of the one-year period, the ballots may, at the option of the Board of Directors, be destroyed.
  - 19. The mailed secret ballots described in these Rules, once received by the Inspector of Elections, will serve to establish a quorum at any meeting of Members.

### **PROXIES**

- 20. The Board of Directors will not prepare or distribute proxy forms with the election or voting materials. Voting by proxy is prohibited and submitted proxies will not be honored.

## INSPECTORS OF ELECTIONS

21. The Inspector of Elections may not be Board members or a candidate for election or related to or reside with Board members or the candidates for election. The Inspector of Elections is to faithfully perform his/her responsibilities so as to ensure that the announced results of the voting and/or election represent the true and honest votes of the Members casting ballots.
22. The Board of Directors will appoint one Inspector of Elections to oversee and certify the results of the voting. The Inspector of Elections may be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the Association for compensable services, including but not limited to, Association's managing agent. Any other qualified person or persons may also be appointed. If not a Member of the Association, the Inspector of Elections may be compensated for his or her services. Members of the Association shall not be compensated for serving as an Inspector of Elections.
23. The Inspector of Elections shall be responsible to:
  - a. Determine the number of memberships entitled to vote and the voting power of each;
  - b. Receive the ballots and determine the location to which all ballots are to be returned;
  - c. Hear and determine all challenges and questions to the balloting or election;
  - d. Count and tabulate all ballots;
  - e. Determine when the polls shall close;
  - f. Determine the results of the election or balloting;
  - g. Report the tabulated results of the election or balloting promptly to the Board of Directors;
  - h. Perform such other acts as may be necessary to conduct the election or balloting in fairness to all Members and in accordance with all rules of the Association.
24. The Inspector of Elections may appoint additional persons to assist in performing any of the above duties. Any such persons shall meet the qualifications for appointment as an Inspector of Elections.
25. The Board of Directors shall have the authority to remove and/or replace an Inspector of Elections at any time if an Inspector resigns or whenever the Board determines that an Inspector will not be able to perform his or her duties impartially and in good faith or if the Inspector ceases to meet the qualifications to serve as described above.
26. The Inspector of Elections shall have the authority to consult with the Association's legal counsel in the event of uncertainties in the interpretation or application of Civil Code section 5100, *et seq.*, these Rules, the Association's governing documents or as might otherwise be necessary to ensure a fair election that complies with the law and the governing documents. All such consultations shall be protected by the Association's attorney-client privilege and shall be kept confidential from all persons other than the Board of Directors. Note, however, that neither the Inspector of Elections nor the

attorney shall disclose to others, including the Board, how a particular ballot is to be voted.

### **RECALL ELECTIONS**

27. To initiate the recall of one or more directors or the entire Board, the Board must receive a recall petition petitioning for a special meeting to be scheduled for a recall election and signed by at least 5% of the Association's total voting power calling for a special meeting. A majority of a quorum of the Board or the President of the Board may also call for a special meeting to be scheduled for a recall election. A special meeting for a recall election may also be called and scheduled as otherwise provided in an Association's governing documents. The recall petition signed by at least 5% of the Association's total voting power must also include the Members' printed names and the addresses of their Lot, and Lot number for verification purposes. Any recall petition must set forth the reason(s) why the targeted Board member(s) or Board should be recalled. The special meeting to be scheduled is the meeting at which the recall election, i.e. opening the ballots, will occur.
28. Upon receipt of a valid recall petition, the Board will promptly appoint an Inspector of Elections.
29. Within 20 days of the Board's receipt of a valid recall petition, the Board will schedule and notice the Members of and will set the time, date, and location for the special meeting to hold the recall election. The special meeting must be held between 35 and 90 days of the Board's receipt of the petition. The "20-day notice" will be the official notice of the special meeting. If the Board does not set the date, time and place of the special meeting for the recall election and/or send out notice of the special meeting within 20 days of receiving the petition, the Members or Board member(s) calling the special meeting for the recall election may independently set a date, time and place of the special meeting and send out the notice.
30. Any recall election as well as any election for the replacement directors must be conducted by secret ballot according to Paragraph 13. The election for replacement directors will be held at the same time as the recall vote at the special meeting. As such, the Members will vote on two issues on the same ballot. The first issue will be to vote on whether or not to recall all or some of the directors. The second issue will be to vote on the replacement directors. The Inspector of Elections will tabulate the votes on the replacement of directors immediately following the counting of the first vote regarding the recall if, and only if, the Members vote in favor of the recall.
31. In order to curb a potential superfluous use of Association funds, a recall election may not be initiated against a Board member(s) if the targeted Board member(s)'s term expires within 100 days from the date the Board received the recall petition unless the recall petition is petitioning to recall the entire Board.
32. The Association will facilitate the production of and pay for the cost of all recall election materials and the mailing of the same. If, however, a legitimate recall petition is received by the Board within twelve (12) months from the date of a prior recall election, whether the prior recall election was successful or not, the Association will again facilitate the production of all recall election materials and the mailing of same, but the cost of the recall election will be borne by the petitioning party.

## **MISCELLANEOUS**

33. Other than the time frames set forth in Civil Code section 5100, *et seq.*, the time frames stated in these rules are guidelines, generally setting forth fair and reasonable procedures for the conduct of voting and elections. However, the failure of the Board or Inspectors to strictly adhere to these time frames will not invalidate any election or vote so long as the procedures used allow all Members an equal opportunity to participate in the election or voting process.
  
34. At the discretion of the Board of Directors, the above Rules may be modified, delayed or repealed by the Board, in whole or in part, if the California State Legislature takes any action to change the content of Civil Code section 5100, *et seq.*, which would affect said Rules.