

# **Mammoth Creek Homeowners Association**

## **Rules for the Election and Removal of Directors by Secret Ballot**

In connection with the election and removal of directors, the following rules and procedures shall apply:

### **1. Meeting at Which Secret Ballots Shall Be Tabulated.**

1.1 The inspectors of election or their designee(s) shall tabulate the ballots for the election of directors at the annual meeting of the owners or at a special meeting of the Board of Directors duly noticed for the purpose of counting ballots. The Board of Directors shall determine the date, time and place of said annual meeting of the owners and/or the special meeting of the Board of Directors in accordance with the Association's Bylaws.

1.2 The qualifications for voting and the voting power of each membership are as stated in the Association's governing documents and as shall be determined in accordance with Section 4.4.1 hereof.

1.3 The voting period for elections shall be at least thirty (30) days. The polls shall open and close as stated on the secret ballot distributed for each election.

### **2. Nomination of Candidates.**

2.1 At least sixty (60) days before the date of the meeting at which the ballots for the election of directors are to be counted, the Association shall mail to each owner a Candidate Nomination Form, which shall include a description of the procedure and deadline for submitting a nomination.

2.2 Owners may nominate themselves or another person; provided, however, all candidates must meet the qualifications set forth in Section 3.

2.3 Any candidate nominated by another person will be contacted to confirm that such candidate consents to having his or her name placed in nomination for election to the Board.

2.4 All candidates who meet the qualifications to serve on the Board of Directors and, if appropriate, have confirmed their willingness to run for election to the Board of Directors, shall be listed on the secret ballot if their candidate nomination form is received by the date stated on the form.

2.5 The Candidate Nomination Form must be returned to the Association at the address provided on, and by the deadline stated on, such form, which deadline must be at least forty-five (45) days before the date the ballots for the election of directors are scheduled to be counted.

### **3. Qualifications of Candidates for Board of Directors.**

3.1 The following persons are disqualified as candidates for the Board of Directors and may not be nominated therefore:

3.1.1 Those who are not members (owners) of the Association, except that 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 (owner) for purposes of this Section 3.1.

3.1.2 Those who are not current in the payment of regular and special assessments, which are consumer debts subject to validation; except that those who have paid regular or special assessments under protest pursuant to Civil Code section 5658, or who have entered into a payment plan pursuant to Civil Code section 5665, shall not be disqualified under this Section 3.2.

3.1.3 Those who, if elected, would be serving on the board of directors at the same time as another person who holds a joint ownership interest in the same separate interest parcel and the other person is either properly nominated for the current election or an incumbent director.

3.1.4 Those who disclose, or if the association is aware or becomes aware of, a past criminal conviction that would, if the person was elected, either prevent the Association from purchasing the fidelity bond coverage required by Civil Code section 5806 or terminate the Association's existing fidelity bond coverage.

3.2 Notwithstanding Section 3.1, the Association shall not disqualify a person from nomination if the person has not been provided the opportunity to engage in internal dispute resolution pursuant to Article 2 (commencing with Section 5900) of Chapter 10 of the Davis-Stirling Act of the Civil Code.

### **4. Inspectors of Election.**

4.1 The Board of Directors shall appoint either one (1) or three (3) independent third parties as inspectors of election after the close of candidate nominations but before the secret ballots are mailed to all of the owners. An independent third party includes, but is not limited to:

4.1.1 a volunteer poll worker with the county registrar of voters;

4.1.2 a licensee of the California Board of Accountancy;

4.1.3 a notary public;

4.1.4 a member of the Association, provided such member is not a member of the Board of Directors or a candidate for the Board of Directors or related to a member of the Board of Directors.

4.2 An independent third party shall not 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, other than serving as an inspector of elections.

4.3 Prior to the secret ballots being mailed to all of the owners, the inspectors of election shall meet to determine to whom the secret ballots shall be returned (the "Ballot Collector"), which may be the Association's property manager, if any.

4.4 The inspectors of election shall also do all of the following:

4.4.1 determine the number of memberships entitled to vote and the voting power of each;

4.4.2 determine the authenticity, validity;

4.4.3 receive ballots;

4.4.4 hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;

4.4.5 count and tabulate all votes;

4.4.6 determine when the polls shall close;

4.4.7 determine the result of the election; and,

4.4.8 perform any acts as may be proper to conduct the election with fairness to all members in accordance with sections 5100-5145 of the Civil Code, pertinent provisions of the Corporations Code and all applicable rules of the Association regarding the conduct of the election that are not in conflict with these codes.

4.5 The following shall be prohibited:

4.5.1 The denial of a ballot to a member (owner) for any reason other than not being a member at the time when ballots are distributed; and

4.5.2 The denial of a ballot to a person with general power of attorney for a member (owner). The ballot of a person with general power of attorney for a member (owner) shall be counted if returned in a timely manner.

4.6 An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, as expeditiously as is practical, and in a manner that protects the interests of all members of the Association. If there are three inspectors of election the decision or act of a majority shall be effective in all respects as the decision or act of all.

4.7 Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

4.8 The Board of Directors may remove and replace any inspector of election prior to the tabulation of ballots if an inspector of election resigns or if the Board of Directors reasonably determines that an inspector of election will not be able to perform his or her duties impartially and in good faith.

4.9 The inspectors of election may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspectors of election deem appropriate, provided that the additional persons are independent third parties as defined herein.

## **5. Secret Ballot Procedure: Record Date.**

5.1 Ballots and two (2) preaddressed envelopes with instructions on how to return ballots, along with a copy of these Election Rules, 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. Alternatively, the Election Rules may be posted on the Association's website, so long as the website address is included on the ballot together with the phrase "The rules governing this election may be found here," in at least twelve point font. The ballot instructions shall include the date and time by which, and the physical address where, ballots are to be returned or mailed or handed to the inspector or inspectors of elections; the date, time and location of the meeting at which ballots will be counted; and the list of all candidates' names that will appear on the ballot.

5.2 Ballots must ensure the confidentiality of the voters.

5.2.1 A voter may not be identified by name or separate interest identifier on the ballot.

5.2.2 The ballot shall not require the signature of the voter.

5.2.3 The ballot itself is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter shall 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 is addressed to the inspectors of election, who will be tallying the votes.

5.3 Owners may return their secret ballot by mail, hand deliver it to the meeting or complete the ballot at the meeting; provided, only those ballots which are delivered to the inspectors of election prior to the polls closing shall be counted.

5.4 A member may request a receipt for delivery of his or her ballot.

5.5 The record date for purposes of voting shall be the date the ballots are mailed to all of the owners.

## **6. Campaigning.**

6.1 All candidates or members advocating a point of view during a campaign, including those not endorsed by the Board of Directors, shall be provided equal access to Association media, newsletters, or Internet Web sites (if any) for purposes that are reasonably related to the election. The Association may 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.

6.2 All candidates, including those who are not incumbents, and all members advocating a point of view, including those not endorsed by the Board of Directors, for purposes reasonably related to the election, shall be provided equal access to any common area meeting space during a campaign, if any exists, at no cost.

6.3 Association funds shall not be used for "campaign purposes" in connection with any board election. The term "campaign purposes" is defined to include, without limitation, (1) expressly advocating the election or defeat of any candidate that is on the ballot; or (2) including the photograph or prominently featuring the name of a candidate on a communication from the association (except the ballot and voting materials and equal access communications sent pursuant to Sections 6.1 and 6.2 above).

## **7. Handling of Ballots.**

7.1 As secret ballots are returned to the Ballot Collector, the Ballot Collector shall check off on a sign-in sheet that a ballot has been received for such unit. The inspectors of election or their designee(s) may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspectors of election, it shall be irrevocable. Any subsequent ballots received for the same unit shall be deemed invalid and shall be discarded.

7.2 The sealed ballots, signed voter envelopes, voter list and candidate registration list shall at all times be in the custody of the inspectors of election or at a location designated by the inspectors until delivered to the inspectors at the meeting for the opening of the ballots and the tabulation of the vote.

7.3 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.

7.4 After the tabulation of the vote and for nine (9) months after the election or removal, election ballots shall be kept in the custody of the inspectors of election. After such time, the custody shall be transferred to the Association and 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 or removal. If there is a recount or other challenge to the election process, the inspectors of election shall, upon written request, make the ballots available for inspection and review by an Association member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

## **8. Tabulation of Votes; Quorum Requirement.**

8.1 All votes shall be counted and tabulated by the inspectors of election or their designee(s) in public at a properly noticed open meeting of the members or of the Board of Directors. A quorum of members or a quorum of Board members, as the case may be, must be present if required by the Association's governing documents. Each ballot received by the inspectors of election shall be treated as a member present at a meeting for purposes of establishing a quorum.

8.2 The inspectors of election shall confirm that no more than one (1) ballot was returned for each unit.

8.3 Any candidate or other member of the Association may witness the counting and tabulation of the votes.

8.4 In order for the vote for the election of directors to be valid, ballots must be returned by at least a quorum of the owners if a quorum is required by the Association's governing documents. If a quorum of ballots is not received, the ballots will not be counted.

## **9. Announcement of Results.**

9.1 The results of the election shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by members of the Association.

9.2 Upon certification of the election results by the inspectors of election, the newly elected Board members shall be deemed to have taken office.

9.3 Within fifteen (15) days of the election, the Board of Directors shall publicize the results of the election in a communication directed to all members.

**10. Retention of Candidate Registration List and Voter List.** The Association shall retain, as association election materials, both a candidate registration list and a voter list. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used. The Association shall permit members to verify the accuracy of their individual information on both lists at least thirty (30) days before the ballots are distributed. The Association

or member shall report any errors or omissions to either list to the inspector or inspectors who shall make the corrections within two (2) business days. These two lists shall be retained for the current fiscal year and for each of the prior two fiscal years in accordance with Sections 5200 and 5210 of the Civil Code.

# **Mammoth Creek Homeowners Association**

## **Rules for Voting Regarding Assessments Legally Requiring a Vote, Amendments to Governing Documents and Granting of Exclusive Right to Use Common Area by Secret Ballot**

Pursuant to Civil Code Sections 5100-5145, when owners are to vote to approve assessments legally requiring a vote, amendments to governing documents and/or granting the exclusive use of common area to a member, the following must occur:

### **1. Meeting at Which Secret Ballots Shall Be Tabulated.**

1.1 Unless the vote is being taken in connection with an annual meeting of the owners, the inspectors of election or their designee(s) shall tabulate the ballots for the vote to approve assessments legally requiring a vote, amendments to governing documents and/or granting the exclusive use of common area to a member at a duly noticed (regular or special) meeting of the Board of Directors, or at a special meeting of the members. The Board of Directors shall determine the date, time and place of said meeting.

1.2 The qualifications for voting and the voting power of each membership are as stated in the Association's governing documents and as shall be determined in accordance with Section 2.4.1 hereof.

1.3 The voting period for elections shall be at least thirty (30) days. The polls shall open and close as stated on the secret ballot distributed for each election.

### **2. Inspectors of Election.**

2.1 The Board of Directors shall appoint either one (1) or three (3) independent third parties as inspectors of election before the secret ballots are mailed to all of the owners. An independent third party includes, but is not limited to:

2.1.1 a volunteer poll worker with the county registrar of voters;

2.1.2 a licensee of the California Board of Accountancy;

2.1.3 a notary public;

2.1.4 a member of the Association provided such member is not a member of the Board of Directors or a candidate for the Board of Directors or related to a member of the Board of Directors.



2.2 An independent third party shall not 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, other than serving as an inspector of elections.

2.3 Prior to the secret ballots being mailed to all of the owners, the inspectors of election shall meet to determine to whom the secret ballots shall be returned (the "Ballot Collector"), which may be the Association's property manager, if any.

2.4 The inspectors of election shall also do all of the following:

2.4.1 determine the number of memberships entitled to vote and the voting power of each;

2.4.2 determine the authenticity, validity;

2.4.3 receive ballots;

2.4.4 hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;

2.4.5 count and tabulate all votes;

2.4.6 determine when the polls shall close;

2.4.7 determine the result of the vote; and,

2.4.8 perform any acts as may be proper to conduct the election with fairness to all members in accordance with sections 5100-5145 of the Civil Code, pertinent provisions of the Corporations Code and all applicable rules of the Association regarding the conduct of the election that are not in conflict with these codes.

2.5 The following shall be prohibited:

2.5.1 The denial of a ballot to a member (owner) for any reason other than not being a member at the time when ballots are distributed; and

2.5.2 The denial of a ballot to a person with general power of attorney for a member (owner). The ballot of a person with general power of attorney for a member (owner) shall be counted if returned in a timely manner.

2.6 An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, as expeditiously as is practical, and in a manner that protects the interests of all members of the Association, if there are three inspectors of election. The decision or act of a majority shall be effective in all respects as the decision or act of all.

2.7 Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

2.8 The Board of Directors may remove and replace any inspector of election prior to the tabulation of ballots if an inspector of election resigns or if the Board of Directors reasonably determines that an inspector of election will not be able to perform his or her duties impartially and in good faith.

2.9 The inspectors of election may appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspectors of election deem appropriate, provided that the additional persons are independent third parties as defined herein.

### **3. Secret Ballot Procedure; Record Date.**

3.1 Ballots and two (2) pre-addressed envelopes with instructions on how to return ballots, along with a copy of these Election Rules, 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. Alternatively, the Election Rules may be posted on the Association's website, so long as the website address is included on the ballot together with the phrase "The rules governing this election may be found here," in at least twelve point font. The ballot instructions shall include the date and time by which, and the physical address where, ballots are to be returned or mailed or handed to the inspector or inspectors of elections; and the date, time and location of the meeting at which ballots will be counted.

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3.3 Owners may return their secret ballot by mail, hand deliver it to the meeting or complete the ballot at the meeting; provided, only those ballots which are delivered to the inspectors of election prior to the polls closing shall be counted.

3.4 A member may request a receipt for delivery of his or her ballot.

3.5 The record date for purposes of voting shall be the date the ballots are mailed to all of the owners.

### **4. Campaigning.**

4.1 All members advocating a point of view during a campaign, including those not endorsed by the Board of Directors, shall be provided equal access to Association media,

newsletters, or Internet Web sites (if any) for purposes that are reasonably related to the vote. The Association may 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.

4.2 All members advocating a point of view, including those not endorsed by the Board of Directors, for purposes reasonably related to the vote, shall be provided equal access to any common area meeting space during a campaign, if any exists, at no cost.

4.3 Funds of the Association shall not be used for campaign purposes in connection with any Association election held in accordance with these rules except to the extent necessary to comply with duties of the Association imposed by law.

## **5. Handling of Ballots.**

5.1 As secret ballots are returned to the Ballot Collector, the Ballot Collector shall check off on a sign-in sheet that a ballot has been received for such unit. The inspectors of election or their designee(s) may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated. Once a secret ballot is received by the inspectors of election, it shall be irrevocable. Any subsequent ballots received for the same unit shall be deemed invalid and shall be discarded.

5.2 The sealed ballots, signed voter envelopes, voter list, shall at all times be in the custody of the inspectors of election or at a location designated by the inspectors until delivered to the inspectors at the meeting for the opening of the ballots and the tabulation of the vote.

5.3 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.

5.4 After the tabulation of the vote and for nine (9) months after the election or removal, the ballots shall be kept in the custody of the inspectors of election. After such time, the custody shall be transferred to the Association and the ballots shall be stored by the Association in a secure place for no less than one (1) year after the date of the vote. If there is a recount or other challenge to the voting process, the inspectors of election shall, upon written request, make the ballots available for inspection and review by an Association member or his or her authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

## **6. Tabulation of Votes; Quorum Requirement.**

6.1 All votes shall be counted and tabulated by the inspectors of election or their designee(s) in public at a properly noticed open meeting of the members or of the Board of Directors. A quorum of members or a quorum of Board members, as the case may be, must be present if required by the Association's governing documents. Each ballot received by the inspectors of election shall be treated as a member present at a meeting for purposes of establishing a quorum.

6.2 The inspectors of election shall confirm that no more than one (1) ballot was returned for each unit.

6.3 Owners who have not previously submitted a ballot may complete one at the meeting and return it to the inspectors of election prior to the polls closing.

6.4 Any member of the Association may witness the counting and tabulation of the votes.

6.5 In order for the vote on the proposal to be valid, ballots must be returned by at least a quorum of the owners if a quorum is required by the Association's governing documents or applicable law and the requisite percentage of owners must vote to approve the proposal. If a quorum of ballots is not received, the ballots will not be counted.

7. **Announcement of Results.**

7.1 The results of the vote shall be promptly reported to the Board of Directors and shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by members of the Association.

7.2 Within fifteen (15) days of the vote on the proposal, the Board of Directors shall publicize the results of the vote in a communication directed to all members.

8. **Retention of Voter List.** The Association shall retain, as association election materials, a voter list. The voter list shall include name, voting power, and either the physical address of the voter's separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used. The Association shall permit members to verify the accuracy of their individual information on the list at least thirty (30) days before the ballots are distributed. The Association or member shall report any errors or omissions to the list to the inspector or inspectors who shall make the corrections within two (2) business days. The list shall be retained for the current fiscal year and for each of the prior two fiscal years in accordance with Sections 5200 and 5210 of the Civil Code.