

# ELECTION RULES AND PROCEDURES of POINTE MARIN ASSOCIATION

THESE PROCEDURES SHALL APPLY TO MEMBER MEETINGS FOR ELECTION AND REMOVAL OF DIRECTORS, ASSESSMENTS, AMENDMENTS TO THE GOVERNING DOCUMENTS, THE GRANT OF EXCLUSIVE USE COMMON AREA PROPERTY, AND ANY OTHER APPLICATION AS DETERMINED BY THE BOARD, GOVERNING DOCUMENTS, OR REQUIRED BY CURRENT LAW. THESE PROCEDURES COMPLY WITH CIVIL CODE §§5100 – 5145, 5200, and 5910.1.

## I. EQUAL ACCESS

- A. Ensure that if any candidate or Member advocating a point of view is provided access to association media, newsletters, or internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided.
- B. All candidates shall have equal access to the Association's meeting room during a campaign, at no cost and to all Members advocating a point of view for purposes reasonably related to the election. The Board of Directors shall ensure equal access to the meeting room that the Association uses by scheduling one candidates' forum.

## II. DEFINITIONS

- A. "Association" means the Pointe Marin Association and its agents (e.g. property manager).
- B. "Board" means the Board of Directors for the Pointe Marin Association.
- C. "General Notice" includes the delivery methods set out by Civil Code Section 4045.
- D. "Individual Notice" includes the delivery methods set out by Civil Code Section 4040.
- E. "Member of the Association (or Member)" means a person who owns or the representative of a legal entity that holds title to a Lot within the Pointe Marin Association.
- F. "Owner" means a person whose name is on a recorded deed for a Lot(s) within the Pointe Marin Association.
- G. "Nominee" means an HOA member that is a candidate for the Board of Directors.

## III. ELECTIONS

### A. Required Election

Directors shall be elected at the expiration of a director's term and at least once every two (2) years.

### B. Qualifications for Candidates for the Board of Directors

1. All candidates and Board Members must be a Member of the Association, at the time

of the nomination and throughout the term they hold office.

2. All candidates and Board Members must be current on all regular and special assessments for all Lot(s) they own within the Pointe Marin Association and are on the recorded deed for their Lot(s).
3. All candidates shall have provided satisfactory proof of membership to the Association.

#### C. Disqualification of a Candidate

1. The Association shall verify that each candidate (nominee) is current in paying the regular and special assessments for all Lot(s) they own within Pointe Marin Association. The Association shall disqualify a person from nomination if the person is not current in the payment of regular and special assessments. In addition, the person (nominee) shall not be disqualified as a candidate if the person has made payment under protest, a payment plan has been entered into, or the person (nominee) has not been provided the opportunity to engage in Internal Dispute Resolution.
2. The Association shall disqualify a person from nomination as a candidate if the person (nominee), if elected, would:
  - a. be serving on the Board at the same time as another person who holds a joint ownership interest in the same Lot as the person and the other person is either properly nominated for the current election or an incumbent director;
  - b. prevents the Association from purchasing the fidelity bond coverage required by Section 5806; or
  - c. terminate the Association's existing fidelity bond coverage due to a past criminal conviction.
3. The Association shall verify that each candidate (nominee) is an owner and that their name is on the deed for a lot in Pointe Marin at the time of the nomination.

#### D. Procedures for Nomination of Candidates

1. The Association shall provide general notice of the procedure and deadline for submitting a nomination at least thirty (30) days before any deadline for submitting a nomination. This notice shall include the date, time and location of the Board Meeting at which any Member may nominate a candidate.
2. Nomination of candidates shall be submitted to the Board of Directors at least thirty (30) days before the ballots are distributed;
3. The Association shall screen the potential candidates to confirm their eligibility to be nominated, placed on the ballot and/or to serve on the Pointe Marin Association Board of Directors, if elected; and, submit a list of qualified candidates to the Board of Directors; and

4. The list of qualified candidates shall appear on the ballot with room for write-in candidates.
5. The Association shall provide general notice of the following at least thirty (30) days before ballots are distributed:
  - a. the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector(s) of election;
  - b. the date, time, and location of the meeting at which ballots will be counted;
  - c. the list of all candidates' names that will appear on the ballot; and,
  - d. individual notice shall be delivered, if requested by a Member of the Association.

#### E. Qualifications for Voting

1. Voting can only be by a Member or by a person who holds general power of attorney for a Member.
2. The vote that is attributed to each Lot may not be cast on a fractional basis. Any vote cast by an Owner for any Lot is presumed conclusively to be the vote cast by all the Owners of that Lot.
3. If the Lot has more than one Owner and the Owners are unable to agree as to how the vote shall be cast, the vote shall be forfeited.
4. Per Civil Code section 5105(g), the Association shall not deny a ballot to a Member for any reason other than not being a member at the time when ballots are distributed, and the Association shall not deny a ballot to a person who holds general power of attorney for a Member.
5. If title to a Lot is held by a legal entity that is not a person, that legal entity shall appoint a person to be a Member for Election purposes only.
6. The ballot of a person holding with a general power of attorney for a member shall be counted as the ballot of such member so long as the ballot is returned in a timely manner.

#### F. Election Materials

1. There shall be a candidate registration list and voter list. The voter list shall include name (pursuant to Section E1 above), voting power, and their physical address.
2. The mailing address for the ballot shall be listed in the voter list if it differs from the physical address of the voter's separate interest or if only the parcel number is used.

3. Members may verify the accuracy of their individual information on both lists up to at least thirty (30) days before the ballots are distributed.
4. The Association or Member shall report any errors or omissions to either list to the inspector(s) who shall make corrections within two (2) business days.
5. These Election Rules and Procedures may not be amended ninety (90) days before an election.

#### G. Voting Procedures for Elections

1. The voting timeframes for elections shall be designated by the Board of Directors pursuant to current laws.
2. Elections may be conducted entirely by mail unless otherwise specified by the Governing Documents, except for the counting of ballots.
3. The Inspector(s) of Election shall establish the physical address where ballots are to be returned by mail or handed to the inspector(s), as well as, the date and time when ballots are to be received and/or postmarked, and when and where the ballots will be opened and counted. A Member may request a receipt for delivery of a ballot.

#### H. Election by Acclamation

1. Notwithstanding the secret balloting requirement pursuant to Civil Code Section 5100, or any contrary provision in the governing documents, when, as of the deadline for submitting nominations, the number of qualified candidates is not more than the number of vacancies to be elected, as determined by the inspector(s) of elections, the Association may, but is not required to, consider the qualified candidates elected by acclamation if the Association has met all of the following conditions:
  - a. the association has held a regular election for the directors in the last three years. The three-year time period shall be calculated from the date ballots were due in the last full election to the start of voting for the proposed election.
  - b. The association provided individual notice of the election and the procedure for nominating candidates as follows:
    - i. Initial notice at least 90 days before the deadline for submitting nominations provided for in subdivision (a) of Civil Code Section 5115. The initial notice shall include all of the following:
      1. number of board positions that will be filled at the election,
      2. deadline for submitting nominations,
      3. manner in which nominations can be submitted; and,
      4. a statement informing members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are board positions to be

- filled, then the Board of Directors may, after voting to do so, seat the qualified candidates by acclamation without balloting.
- ii. a reminder notice between 7 and 30 days before the deadline for submitting nominations provided for in subdivision (a) of Civil Code Section 5115. The reminder notice that includes all of the following:
    - 1. number of board positions that will be filled at the election,
    - 2. deadline for submitting nominations,
    - 3. manner in which nominations can be submitted,
    - 4. a list of the names of all of the qualified candidates to fill the board positions as of the date of the reminder notice,
    - 5. statement reminding members that if, at the close of the time period for making nominations, there are the same number or fewer qualified candidates as there are board positions to be filled, then, the Board of Directors may, after voting to do so, seat the qualified candidates by acclamation without balloting. This statement is not required if, at the time the reminder notice will be delivered, the number of qualified candidates already exceeds the number of board positions to be filled;
  - c. the Association provides, within seven (7) business days of receiving a nomination, a written or electronic communication acknowledging the nomination to the member or nominee who submitted the nomination.
  - d. the Association provides, within seven (7) business days of receiving a nomination, a written or electronic communication to the nominee, indicating either of the following:
    - i. the nominee is a qualified candidate for the board of directors; or
    - ii. the nominee is not a qualified candidate for the board of directors, the basis for the disqualification and the procedure, which shall comply with Article 2 (commencing with Civil Code Section 5900) of Chapter 10, by which the nominee may appeal the disqualification.
  - e. the Association may combine the written or electronic communication described in sections (H)(1)(c) and (H)(1)(d) above into a single written or electronic communication if the nominee and the nominator are the same person.
  - f. The Association permits all candidates to run if nominated, except for nominees disqualified for running as discussed in the rules herein.
  - g. the Board of Directors votes to consider the qualified candidates elected by acclamation at a meeting pursuant to Article 2 (commencing with Section 4900) for which the agenda item reflects the name of each qualified candidate that will be seated by acclamation if the item is approved.

## I. Secret Ballots

Any election regarding assessments, elections and removal of Members of the Board of Directors, amendments to the Governing Documents, or the grant of exclusive use common area property and any other application as determined by the Board, Governing Documents, or required by law shall be held by secret ballot. The

procedure for amending or adopting Operating Rules, which are a type of governing document, shall not involve secret ballots.

J. Quorum

If required by the Governing Documents or law, each ballot received by the inspector(s) of election shall be treated as a Member present at a meeting for purposes of establishing a quorum.

K. Inspector(s) of Election

1. An independent third party shall be the inspector(s) of election;
2. The number of inspector(s) shall be one or three;
3. An inspector(s) of election may be a Member of the Association. The inspector(s) are appointed by the Board, but may not be a member of the Board, a candidate for the Board; or, related to a member of the Board and/or a candidate for the Board.
4. An independent third party may not be a person who is currently employed or under contract to the Association for any compensable services.
5. The inspector(s) shall do all of the following:
  - a. Correct the voter list if a Member reports an error, within two (2) days of the report;
  - b. Determine the number of memberships entitled to vote and the voting power of each;
  - c. Determine the authenticity, validity and effect of proxies, if any;
  - d. At least thirty (30) days before an election, deliver or cause to be delivered, the ballot or ballots to those on the voter list (Section E((1) above); a copy of the election rules (which can be by individual delivery or posted on an internet website and includes 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.")
  - e. Receive ballots;
  - f. Hear and determine all challenges and questions arising out of, or in connection with, the right to vote and receive ballots;
  - g. Count and tabulate all votes;
  - h. Determine the results of the election;
  - i. Determine when the ballots are to be received and/or postmarked; and
    - i. Perform any acts that may be proper to conduct the election with fairness to all members in accordance with this section and all applicable rules of the Association regarding conducting the election that are not in conflict with this section.

- ii. Appoint and oversee additional persons to verify signatures and to count and tabulate votes, if necessary, provided that the persons are independent third parties.
6. The inspector(s) of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as practical.
  - a. When 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.
  - b. Any report made by the inspector(s) of election is prima facie evidence of the facts stated in the report.

#### L. Ballots

1. Ballots and two envelopes (one unmarked and the other pre-addressed to the inspector(s) of election) 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;
2. In order to preserve confidentiality, a voter may not be identified by name, address, nor the lot, parcel or unit number on the ballot;
3. The ballot itself is not signed by the voter, but is completed and inserted into the unmarked envelope that is sealed (the sealed ballot).
  - a. This sealed ballot is inserted into the second pre-addressed envelope and sealed.
    - i. In the upper left-hand corner of the pre-addressed envelope the voter prints and signs his or her name, address, and the Lot, parcel or unit number that entitles the person to vote.
    - ii. The pre-addressed envelope is addressed to the inspector(s) of election and may then be mailed or delivered by hand to a location specified by the inspector(s) of election.
    - iii. The Member may request a receipt for delivery.
4. Upon receiving the pre-addressed envelope, the inspector(s) shall record the information from the exterior of the upper left-hand corner of the envelope. During the time when the pre-addressed envelopes are in the custody of the Inspector(s) of Election, up and until the time when the pre-addressed envelopes and the inner ballot envelopes are to be opened at the ballot counting meeting, neither the pre-addressed envelope nor the inner ballot envelopes shall be opened.
5. The Election materials (as defined by California Civil Code Section 5200(c)) shall be stored by the inspector(s) of election and then transferred to the Association pursuant to California Civil Code Section 5125, as stated in Section (N)(5) below.

6. The pre-addressed envelopes are opened at the ballot counting meeting and then the sealed ballot envelopes are removed, opened and the ballots are counted and tabulated at said meeting.

7. Except for the meeting to count votes, an election may be conducted entirely by mail, unless otherwise specified in the Governing Documents.

8. In an election to approve an amendment to the Governing Documents (except for Operating Rules – see above), the text of the proposed amendment shall be delivered to the members with the ballot.

9. The sealed ballots, signed voter envelopes, voter list and candidate registration list shall at all times be in the custody of the inspector(s) of election or at a location designated by the inspector(s) of election until after tabulation of the vote, and until the time allowed for challenging the election allowed by Civil Code Section 5145 has expired at which time custody shall be transferred to the Association. If there is a recount or other challenge to the election process, the inspector(s) of election, shall, upon written request, make the ballots available for inspection and review by an Association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

#### M. Conflicts

In the event of a conflict between the Nonprofit Mutual Benefit Corporations Code relating to elections and Civil Code sections 5100-5145, Civil Code sections 5100-5145 shall apply.

#### N. Counting of Votes, Tabulation, Reporting Results and Retention

1. All votes shall be counted and tabulated by the inspector(s) of election in public at a open meeting, properly noticed for the purpose of counting the ballots. In the event of a declared emergency or determined that in-person meetings are a public safety issue and/or risk by a Federal, State or local emergency, the Board may choose to hold a combined public (with limited personal attendance) combined with a virtual meeting; or entire virtual meeting (e.g. telephone, internet, etc.) provided that the counting and tabulation can be viewed and all deliberations and decisions are held in a fashion that allows the inspector(s) of election, and/or board members to talk to one another contemporaneously and Members can listen and/or participate in real time.

2. Any candidate or other Member of the Association may witness the counting and tabulation of the votes;

3. No other 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 ballots are counted and tabulated;



4. The results of the election shall be:

- a. Promptly reported to the Board of Directors of the Association;
- b. Recorded in the minutes of the meeting of the Board of Directors;
- c. Available for review by Members of the Association;
- d. Publicized by the Board in a communication directed to all members within fifteen (15) days of the election;
- e. The inspector(s) of election or their designee, may verify the member's information and signature on the outer envelope prior to the meeting at which ballots are tabulated; and
- f. Once a secret ballot is received by the inspector(s) of election, it shall be irrevocable.

5. After tabulation:

- a. Election ballots shall be stored by the inspector(s) of election or at a location designated by the inspector(s) in a secure place for no less than twelve (12) months from the date the inspector(s) of election notified the Board and Members of the election results;
- b. In the event of a recount or other challenge to the election process, the inspector(s) shall, upon written request, make the ballots available for inspection and review by an Association member or member(s) or the member's or members' authorized representative;
- c. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote;
- d. After the inspector(s) of election have transferred the Election materials to the Association, the Association shall store the Election materials in a secure place for no less than one (1) year.

O. Use of Association Funds (Civil Code §5135)

1. Association funds shall not be used for campaign purposes in connection with any Association Board election, except to the extent necessary to comply with the law.

- a. Association funds cannot be used for the support and/or defeat of any candidate on the Association ballot;
- b. Association funds cannot be used for campaign purposes including, but not limited to, including the photograph or prominently featuring the name of any candidate of any candidate on a communication from the Association or its Board, excepting ballot and ballot materials, within thirty (30) days of an election. It is not considered a campaign purpose if the communication is one in which equal access must be provided as may be required under Civil Code section 5105(a).

# Certificate of Secretary of Pointe Marin Association

I, the undersigned, the duly elected and acting Secretary of the Pointe Marin Association do hereby certify:

That the attached Election Rules and Procedures were duly adopted at a meeting of its Board of Directors held on the 7<sup>th</sup> day of June 2023. I have hereunto subscribed my name this 15<sup>th</sup> day of July 2023.

 Secretary  
Signature

Michael Christian Secretary  
Printed Name