

HOA Homefront: HOA Election Processes Much More Difficult in 2020 – SB323

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An extensive overhaul of HOA election procedures takes effect in 2020 after passage of the controversial SB 323.

Here is a recap of the many changes:

- The law at Civil Code 5100(g) will finally allow votes by acclamation when, at the close of nominations, there are not more candidates than open seats. Unfortunately it only applies to HOAs of over 6,000 members.
- Associations will be required by a new Civil Code 5100(a) (2) to hold board elections at least every four years. This will affect few HOAs, since most have board terms which are one or two years in length.
- In the past, many HOAs have held hearings to suspend the voting rights of members delinquent in their assessments, and others have bylaws barring such homeowners from voting. The new Civil 5105(g)(1), however, requires HOAs to give ballots to all association members. So, delinquent members may vote on HOA matters, even though they are not paying their share of the HOA expenses.
- Although some HOAs allowed managers to serve as the Inspector of Election, under the new Civil Code 5110(b) this is prohibited.
- Some HOA Bylaws do not require directors to be an association member, but the new Civil 5105(b) disqualifies non-members from serving.
- The new Civil 5105(c) allows associations in bylaws or election rules to disqualify candidates if the member: Is delinquent in assessments (without a payment plan in place); Has not been a member for at least a year; Is co-owner with another director; or Has a felony conviction which would harm the HOA’s ability to obtain fidelity (dishonesty) insurance. The law does not specifically state that these are the only disqualifications allowed.
- One of the strangest parts of the new law is the new 5105(e), requiring that a candidate must be offered Internal Dispute Resolution (Civil 5900) before they can be disqualified. It is unclear how an association could negotiate someone’s ineligibility if they are a felon, or not a member, or a co-owner with a current director, but that is the new requirement.
- The greatest single problem for all HOAs is that the law lengthens the election cycle by at least 60 more days. Civil 5110 has long required ballots to be sent at least 30 days before counting of ballots. The new section 5115(b) requires the HOA announce the upcoming election and nominees at least 30 days before the ballots are distributed, and section 5115(a) requires that a call for nominations must have a deadline of at least 30 days. This means that, if everything is done on the shortest time frame, elections will take 90 days.
- Civil 5125 will require that the Inspector keep not only ballots but also signed voter envelopes, voter list, proxies and the “candidate registration list”. (However, the term “candidate registration list” is undefined.)
- Membership rosters normally include only names and mailing address Under Civil 5200(a)(9), those rosters now will include email addresses. Many members may choose under Civil 5220 to opt out of these lists.
- Lastly, the bill adds a new Civil 5910.1, barring HOAs from suing members if they asked for Internal Dispute Resolution and the HOA did not participate in good faith.

SB323 brings a bewildering (and occasionally nonsensical) set of changes, and associations should consult their attorneys - soon.

Kelly G. Richardson Esq., CCAL, is a Fellow of the College of Community Association Lawyers and a Partner of Richardson | Ober | DeNichilo LLP, a California law firm known for community association advice. Send questions to Kelly@rodllp.com. Past columns at www.HOAHomefront.com. All rights reserved®.