



Civil Code §1363.03

Effective July 1, 2006

(formerly SB 61 and SB 1560 [chaptered into law 9/18/06])

Voting Procedures

Rules shall include:

1363.03(a) An association shall adopt rules, in accordance with the procedures prescribed by Article 4 (commencing with Section 1357.100) of Chapter 2, that do all of the following:

Equal Access to HOA Communications

1363.03(a)(1) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election. The association shall 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.

Equal Access to Common Area Meeting space

1363.03(a)(2) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.

Candidate qualifications & reasonable nomination procedures

1363.03(a)(3) Specify the qualifications for candidates for the board of directors and any other elected position, and procedures for the nomination of candidates consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member of the association from nominating himself or herself for election to the board of directors.

Voting qualifications, proxy information, polling times

1363.03(a)(4) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close consistent with the governing documents.

**Independent
third party
Inspector(s) of
Election**

1363.03(a)(5) Specify a method of selecting one or three independent third parties as inspector, or inspectors, of election utilizing one of the following methods:

1363.03(a)(5)(A) Appointment of the inspector or inspectors by the board.

1363.03(a)(5)(B) Election of the inspector or inspectors by the members of the association.

1363.03(a)(5)(C) Any other method for selecting the inspector or inspectors.

1363.03(a)(6) Allow the inspector, or inspectors, to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties.

**Issues Requiring
Secret Ballot**

1363.03(b) Notwithstanding any other law or provision of the governing documents, elections regarding assessments legally requiring a vote, election and removal of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property pursuant to Section 1363.07 shall be held by secret ballot in accordance with the procedures set forth in this section.

Quorums

A quorum shall be required only if so stated in the governing documents of the association or other provisions of law. If a quorum is required by the governing documents, each ballot received by the inspector of elections shall be treated as a member present at a meeting for purposes of establishing a quorum. An association shall allow for cumulative voting using the secret ballot procedures provided in this section, if cumulative voting is provided for in the governing documents.

**Who can be an
Inspector of
Election**

1363.03(c)(1) The association shall select an independent third party or parties as an inspector of election. The number of inspectors of election shall be one or three.

1363.03(c)(2) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public. An independent third party may be a member of the association, but may not be 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 or a candidate for the board of directors. An independent third party may 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 unless expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a).

**Duties of
Inspector(s) of
Election**

1363.03(c)(3) The inspector or inspectors of election shall do all of the following:

1363.03(c)(3)(A) Determine the number of memberships entitled to vote and the voting power of each.

1363.03(c)(3)(B) Determine the authenticity, validity, and effect of proxies, if any.

1363.03(c)(3)(C) Receive ballots.

1363.03(c)(3)(D) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.

1363.03(c)(3)(E) Count and tabulate all votes.

1363.03(c)(3)(F) Determine when the polls shall close consistent with the governing documents.

1363.03(c)(3)(G) Determine the tabulated results of the election.

1363.03(c)(3)(H) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section, the Corporations Code, and all applicable rules of the association regarding the conduct of the election that are not in conflict with this section.

Validity of Inspector(s) of Election

1363.03(c)(4) An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. 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. Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

1363.03(d)(1) For purposes of this section, the following definitions shall apply:

1363.03(d)(1)(A) “Proxy” means a written authorization signed by a member or the authorized representative of a member that gives another member or members the power to vote on behalf of that member.

1363.03(d)(1)(B) “Sign” 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.

Instructions on Proxy

1363.03(d)(2) Proxies shall not be construed or used in lieu of a ballot. An association may use proxies if permitted or required by the bylaws of the association and if those proxies meet the requirements of this article, other laws, and the association’s governing documents, but the association shall not be required to prepare or distribute proxies pursuant to this section.

1363.03(d)(3) Any instruction given in a proxy issued for an election that directs the manner in which the proxy holder is to cast the vote shall be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain. The proxy holder shall cast the member's vote by secret ballot. The proxy may be revoked by the member prior to the receipt of the ballot by the inspector of elections as described in Section 7613 of the Corporations Code.

- Ballots:**
- **delivered 30 days prior to deadline**
- **two envelopes with instructions**
- No signature on Ballot, insert into envelopes**

1363.03(e) Ballots and two preaddressed 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. In order to preserve confidentiality, a voter may not be identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use as a model those procedures used by California counties for ensuring confidentiality of voter absentee ballots, including all of the following:

1363.03(e)(1) The ballot itself is not signed by the voter, but 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.

**Deliver to
Inspector(s) of
Election**

1363.03(e)(2) The second envelope is addressed to the inspector or inspectors of election, who will be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by the inspector or inspectors of election. The member may request a receipt for delivery.

**Votes counted at
noticed meeting**

1363.03(f) All votes shall be counted and tabulated by the inspector or inspectors of election or his or her designee in public at a properly noticed open meeting of the board of directors or members.

**Candidates
and/or members
may witness vote
count**

Any candidate or other member of the association may witness the counting and tabulation of the votes. 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. Once a secret ballot is received by the inspector of elections it shall be irrevocable.

**Election results
publicized within
15 days**

1363.03(g) 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 next meeting of the board of directors and shall be available for review by members of the association. Within 15 days of the election, the board shall publicize the tabulated results of the election in a communication directed to all members.

**Custody of sealed
ballots**

1363.03(h) The sealed ballots at all times shall be in the custody of the inspector or inspectors of election or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed by Section 7527 of the Corporations Code for challenging the election 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 or 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.

**Confidentiality to
be preserved**

**Ballots
maintained for at
least one year**

1363.03(i) After the transfer of the ballots to the association, the ballots shall be stored by the association in a secure place for no less than one year after the date of the election.

**Nominations from
Floor**

1363.03(j) Notwithstanding any other provision of law, the rules adopted pursuant to this section may provide for the nomination of candidates from the floor of membership meetings or nomination by any other manner. Those rules may permit write-in candidates for ballots.

**Election entirely
by mail**

1363.03(k) Except for the meeting to count the votes required in subdivision (f), an election may be conducted entirely by mail unless otherwise specified by the governing documents.

**All Associations to
comply**

1363.03(l) The provisions of this section apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents.

**Member votes
only**

1363.03(m) The procedures set forth in this section shall apply to votes cast directly by the membership, but do not apply to votes cast by delegates or other elected representatives.

If conflict

1363.03(n) In the event of a conflict between this section and the provisions of the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) relating to elections, the provisions of this section shall prevail.

Effective 7/1/06

1363.03(o) The amendments made to this section the act adding this subdivision shall become operative on July 1, 2006.

Also Effective July 1, 2006:

§1363.09. Civil Action for Violation of Election Procedures.

Court Challenge

1363.09(a) A member of an association may bring a civil action for declaratory or equitable relief for a violation of this article by an association of which he or she is a member, including, but not limited to, injunctive relief, restitution, or a combination thereof, within one year of the date the cause of action accrues. Upon a finding that the election procedures of this article, or the adoption of and adherence to rules provided by Article 4 (commencing with Section 1357.100) of Chapter 2, were not followed, a court may void any results of the election.

**Member can
recover fees,
costs & penalties**

1363.09(b) A member who prevails in a civil action to enforce his or her rights pursuant to this article shall be entitled to reasonable attorney's fees and court costs, and the court may impose a civil penalty of up to five hundred dollars (\$500) for each violation, except that each identical violation shall be subject to only one penalty if the violation affects each member of the association equally. A prevailing association shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

**Small Claims
Court**

1363.09(c) A cause of action under Section 1363.03 with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation, or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court.

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