

FONG & FONG
A PROFESSIONAL CORPORATION

2161 HARBOR BAY PARKWAY
ALAMEDA, CALIFORNIA 94502-3019
Telephone: (510) 748-6800
Facsimile: (510) 748-6822

RICHARD FONG, JR.

Direct Dial: (510) 748-6800 Ext.
Email: rfong@fonglaw.com

February 13, 2020

Board of Directors
Bayview Harbor Homes Homeowners Association
c/o Suzanne Ashby, CCAM-PM, CMCA, AMS, PCAM
Association Manager
Community of Harbor Bay Isle
3195 Mecartney Road
Alameda, California 94502

Re: SB 323 Election Rules and Additional Notice and Mailing Requirements

Dear Board of Directors:

On October 12, 2019, Senate Bill 323 was approved by Governor Newsom and filed with the Secretary of State. The bill is effective on January 1, 2020, just two months from now. This bundle of new laws **REQUIRES** your Association to adopt Election and Voting Rules ("Rules") in compliance with the SB 323 amendments to Civil Code Sections 5100, 5105, 5110, 5115, 5125, 5145 and 5200.

This letter is in response to your Association's request for assistance in adopting complying Rules. You should review, approve and distribute the enclosed Rules as soon as possible. Membership approval will **NOT REQUIRED** because the Rules are mandated by statutory law.

An Association is no longer permitted to appoint its manager, CPA or law firm as its Election Inspector. A member of the Association may be appointed if the member is not a candidate or related to a candidate for the board. However, appointment of a member willing to serve as the Election Inspector may be problematic for the appointed member because of the scope of duties imposed on the Election Inspector, e.g. maintaining physical possession of the balloting material after the election for the period of time in which another member may challenge the election; overseeing the inspection of the election material by challenging members; etc. In all likelihood Associations will now have to hire an independent inspector who is not a current employee or vendor of the Association.

SB 323 also imposes several new Election deadlines. Beginning about 100 days before the meeting to count the election ballots associations are now required to annually transmit:

1. At least 30 days before the deadline for submitting nominations, a Notice containing the nomination procedure and the deadline for submitting nominations;

2. At least 60 days before the meeting to count the ballots a General Notice containing the following information must be mailed to the members (this is a new mailing);
 - a. A list of candidates who will be placed on the ballot;
 - b. Date, time and address where ballots may be mailed or delivered to the Election Inspector; and,
 - c. Date, time and location of the meeting to count the ballots.
3. At least 30 days after the General Notice in paragraph 2 is mailed, the Election ballots must be mailed to the members at least 30 days before the meeting to count the ballots.

In some cases, the minimum time requirements will need to be increased to allow time for drafting the next mailing based upon information from the previous mailing (e.g. the list of candidates who will be on the ballot), printing and processing the mailing. Calculating the new deadlines is accomplished by establishing the date for the annual or alternative director meeting to count the ballots and working backward. For example, assume a meeting date to count the ballots of **June 1**:

1. Ballots must be mailed to the members no later than May 2 to meet the minimum 30-day requirement of mailing the ballots to the members before the meeting;
2. The General Notice containing the list of candidates, where to deliver ballots and the date time and place of the meeting to count the ballots must be mailed to the members by April 2 to meet the minimum 60-day requirement of mailing the Notice to the Members before the meeting;
3. Advising members of the nomination procedure and the deadline for submitting nominations must be mailed to the members at least 30 days before the date when the General Notice to the members is mailed. A few extra days, e.g. a week should be added to allow time for drafting the General Notice. The General Notice must list the nominated candidates, and this will not be known until the nomination deadline. Assuming an extra seven days is added to the deadline for transmitting the call for nominations, the date of mailing would be February 24.

Please review and approve the enclosed proposed SB 323 compliant Election and Voting Rules. Once approved copies must be transmitted to the members as soon as possible. Once approved the enclosed resolution should be dated, signed and retained by board secretary. If you have any questions or would like assistance in calculating the deadlines for the new notice requirements, please do not hesitate to contact me.

Board of Directors
February 13, 2020
Page 3

Very truly yours,

FONG & FONG

By: 
Richard Fong, Jr.

RFJ: bc
Enclosures

**ELECTION & VOTING RULES
BAYVIEW HARBOR HOMES HOMEOWNERS ASSOCIATION
IN COMPLIANCE WITH SB 323 1/1/20**

Election Communications.

1. All candidates and members have equal access to the Association's media outlets (e.g. newsletter, website etc.) to express their point of view or make representations about themselves as candidates and for other purposes reasonably related to an 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.
2. All candidates or members will be given equal access to common area meeting space during an election campaign at no cost.

Candidate Qualifications, Nominations and Disqualification

1. All candidates for the Board of Directors or any other elected position must be members of the Association at the time of their nomination and in good standing. In good standing shall mean all assessments are paid in full at the time of nomination/election; and, the member's right to vote and run for office has not been suspended due to violation of the Association's operating rules, Declaration of Covenants, Conditions and Restrictions, By-Laws or Articles of Incorporation (Collectively the "Governing Documents"). Once elected, a director shall also be required to remain current in the payment of regular and special assessments; and, not suspended due to violations of the Association's Governing Documents.
2. Any member can nominate any other member, including themselves, as a candidate for the Board of Directors by submitting a written statement that they are nominating the person named as a candidate and including their address and telephone number to the Board of Directors or the Association's manager. Nominations shall begin at least three (3) months seven (7) days prior to the meeting scheduled to count and tabulate the election ballots.
3. The Association shall disqualify a person from a nomination as a candidate for not being a member of the Association at the time of the nomination; or at such time as the Association learns the member is not a member. The Association may also disqualify a candidate:
 - (A) If another person who holds a joint ownership in the same separate interest parcel and the other person is nominated or currently serving on the board.
 - (B) If that person has been a member for less than one year;
 - (C) If the person has a criminal conviction preventing the association from purchasing a Civil Code Section 5806 Fidelity Bond, or if such conviction would cause the existing bond coverage to terminate should the person be elected;
 - (D) If the person is not current in the payment of regular or special assessments, unless:
 - a. The assessment was paid under protest;
 - b. The person has entered a payment plan to repay the assessments; or,

- c. The person has not been provided the opportunity to engage in internal dispute resolution;
- (E) If the person is currently in violation of the Association's Governing Documents.

Voting.

1. All Members of the Association as of the record date, if any, or if none, on the date ballots are counted, shall be qualified to vote in that election.
2. All Members shall have the voting power assigned them in the Association's Governing Documents.
3. Members may use proxies in voting pursuant to the power granted them to use proxies in the Association's Governing Documents. However, all proxies issued for an election that directs the way 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 then cast the member's vote by secret ballot.

If a person is the holder of a general or specific power of attorney for a member, the ballot may be issued to the holder of the power unless the power of attorney or the member directs otherwise. The holder of the power of attorney must return the ballot in a timely manner, i.e. before the ballots are counted and tabulated, or the ballot will not be counted

Members shall not be denied a ballot for any reason other than as set forth in these Election and Voting Rules.

4. The voting period for an election shall be set for a time period beginning at least 30 days before the deadline for voting, i.e. the meeting to count the ballots); and, ballots must be distributed at the commencement of the voting period. The voting poll shall close at the commencement of the Election Inspector's tabulation and counting of ballots on the date of the meeting for counting and tabulating the ballots. However, the Election Inspector, at his or her sole discretion, may accept ballots after the commencement of the counting and up to the final tabulation and count, but in no event may ballots be accepted after the Election Inspector has announced the final tabulation and count.
5. All elections regarding assessments, selection of member of the Board of Directors, amendments to the governing documents, or granting of exclusive use of the common area shall be held by secret ballot in accordance with the procedures set forth in this section.

Notice Requirements.

The Association shall comply with the following Notice Requirements:

- (A) At least 30 days before the deadline for submitting Nominations, the Association shall provide notice of the procedure and deadline for submitting nominations.

- (B) The deadline for submitting Nominations shall be at least 7 days before the date (60 days before the meeting to count and tabulate the ballots) when the following general notice, containing the following information, is distributed to the members:
 - a. A list of the candidates who will be placed on the ballot;
 - b. Date, time and address where ballots may be mailed or delivered to the Election Inspector;
 - c. Date, time and location of the meeting to count the ballots.
- (C) The deadline for the distribution of ballots shall be at least 30 days after the General Notice in (B) above is distributed; and, at least 30 days before the scheduled meeting to count and tabulate the ballots.

Ballots.

1. 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 before the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address, lot, parcel, or unit number on the ballot. The association shall use the following procedures for ensuring confidentiality of ballots:

(A) The ballot itself is not signed by the voter but is inserted into a provided 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 prints and signs his or her name, address, and lot or parcel, or unit number that entitles him or her to vote.

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

Independent Election Inspector.

1. The Board of Directors shall appoint one independent third party as an inspector of election. An inspector 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 service other than serving as an inspector of elections. The inspector shall do all the following:

- (A) Determine the number of memberships entitled to vote and the voting power of each.
- (B) At least 30 days before the election, deliver, or cause to be delivered, to each member of the Association, the following documents:
 - a. The Ballot and return envelopes;
 - b. A copy of these Election & Voting Rules (which may not be amended within 90 days of an election); and,

- c. The Notice of the meeting to count and tabulate the ballots.
 - (C) Correct, within two business days, any member or candidate reported errors in the candidate registration or voter list.
 - (D) Determine the authenticity, validity, and effect of proxies, if any.
 - (E) Receive ballots.
 - (F) Hear and determine all challenges and questions in any way arising out of or in connection with right to vote.
 - (G) Count and tabulate all votes. Counting and tabulation shall occur at a properly noticed open meeting of the Board of Directors or members. 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 Election Inspector may appoint independent third parties to assist in the counting and tabulation of votes.
 - (H) Determine when the polls shall close.
 - (I) Determine the result of the election. 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.
 - (J) Perform any acts as 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 the conduct of the election that are not in conflict with this section.
2. 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 practical, and in a manner that protects the interest of all members of the association. Any report made by the inspector of elections is prima facie evidence of the facts stated in the report.
3. The sealed ballots, signed voter envelopes, candidates, voter, proxies, voter list (Which shall include the member's name, their Association complex address, and, if applicable, their mailing address; [member's may verify their information at any time prior to 30 days before the ballots are distributed]) and candidate registration list shall at all times be in the custody of the inspector of election or at a location designated by the inspector until the date scheduled for the tabulation of the vote; and, until the time allowed by Section 5145 for challenging the election has expired, at which time the custody shall be transferred to the Association. If there is a demand to inspect the ballots or a challenge to the election, the Election Inspector shall make the ballots available to the requesting member or the member's authorized representative. On the date of the tabulation and counting the sealed ballots may be transported to the location of the

meeting to count and tabulate the ballots. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

Election Results and Procedures.

1. The results of the election shall be promptly reported to the Board of Directors of the association by the elections inspector 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.
2. Within fifteen (15) days of the election, the Board of Directors shall notify the membership, in writing, of the results of the election in a communication to all members.
3. After tabulation, all election material, including ballots shall be stored by the Election Inspector in a secure place for no less than the time period set forth in Civil Code Section 5145 for challenging the election. In the event of a recount or other challenge to the election process, the Election Inspector shall, upon written request, make the election material available for inspection and review by association members or their authorized representatives.

**BAYVIEW HARBOR HOMES HOMEOWNERS ASSOCIATION BOARD OF DIRECTOR'S RESOLUTION
ADOPTING ELECTION AND VOTING RULES IN COMPLIANCE WITH SENATE BILL 323**

Whereas, on October 12, 2019, Senate Bill 323 was signed into law and becomes effective on January 1, 2020;

Whereas, this Bill amends several provisions of the Davis-Stirling Common Interest Development Act with respect to a Common Interest Developments Election and Voting Rules;

Whereas, our current Election and Voting Rules are not in compliance with the new requirements of the Bill;

Whereas, these changes to the Election and Voting Rules are mandated by statute and the approval of the membership is therefore not required;

Resolved, the Board of Directors hereby adopts the attached Senate Bill 323 compliant Election and Voting Rules;

Resolved further, these Election and Voting Rules shall become effective upon receipt by the membership.

Dated: _____

Secretary