

**Procedure for Election of Directors of the Circle Oaks Homes Association**  
Adopted 04/12/2007.

**Equal Access to COHA Communications**

Any candidate or member advocating a point of view will be provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access will 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 will 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. (1363.03(a)(1)).

**Equal Access to Common Area Meeting space**

All Candidates will be given 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. (1363.03(a)(2)).

**Candidate qualifications & reasonable nomination procedures**

The only qualification necessary for candidates for the COHA Board of Directors is that the individual is a member in good standing of the Circle Oaks Homes Association. A nomination or election procedure will not be deemed reasonable if it disallows any member of the association from nominating himself or herself for election to the board of directors. (1303.03(a)(3)).

**Voting qualifications, proxy information, polling times**

Voting Rights: (As stated in the Bylaws of COHA) Each Lot Owner whose dues are paid current shall be a Member in good standing. On each matter submitted to a vote of the Members, each Member shall be entitled to cast one vote for each Lot owned by such Member. When more than one (1) person holds an interest in a single Lot the vote for each Lot must be cast as a unanimous decision of co-owners whose votes count as one vote for the Lot. Any single vote cast by a Lot owner shall be deemed the authorized vote for that Lot. If conflicting votes are cast by multiple owners for a Lot, no vote shall be counted for that Lot, except a single vote shall be counted for purposes of a quorum. Members not in good standing shall not be entitled to vote. In the case where a vote for a Lot cannot be cast because a Member Owner is not in good standing and not allowed to vote, the Lot(s) shall be reduced from the total number of Lots needed to calculate a quorum, and will also be reduced from the total number of Lots used to calculate a majority of votes. (1303.03(a)(3)).

Polling times: Polling times and/or deadline dates and times will be provided to members as stated in the Bylaws of COHA - "NOTICE OF MEETINGS": Written notice of regular and special meetings (and/or all elections), of the Members shall be given by or at the direction of the Secretary of the Association or other persons authorized to call the meeting by personally delivering a copy of such notice at least ten (10) but not more than ninety (90) days, or by mailing a copy of such notice at least ten (10) but not more than ninety (90) days, before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the Books of the Association. (1363.03(a)(4)).

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

There will be one inspector of elections, an independent third party and they will be appointed by the COHA Board of Directors.(1363.03(a)(5)(A), 1363.03(c)(1)).

### **Who can be an Inspector of Election**

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 who is currently employed or under contract to the association for any compensable services expressly authorized by rules of the association adopted pursuant to paragraph (5) of subdivision (a). (1363.03(c)(2)).

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

The inspector of election shall do all of the following:

- Determine the number of memberships entitled to vote and the voting power of each, using information provided from the Association's Records which describes "members-in-good-standing" (1363.03(c)(3)(A)).
- Determine the authenticity, validity, and effect of proxies, if any.(1363.03(c)(3)(B))
- Receive ballots. (1363.03(c)(3)(C)).
- 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)(D)).
- Count and tabulate all votes. (1363.03(c)(3)(E)).
- Determine when the polls shall close. (1363.03(c)(3)(F)).
- Determine the result of the election. (1363.03(c)(3)(G)).
- 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. (1363.03(c)(3)(H)).

### **Validity of Inspector(s) of Election**

The 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. Any report made by the inspector of election is prima facie evidence of the facts stated in the report. (1363.03(c)(4)).

### **Secret Ballot**

Notwithstanding any other law or provision of the governing documents, an election within COHA, regarding assessments, selection 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. (1363.03(b)).

### **Instructions on Proxy**

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. (1363.03(d)).

As stated in the Bylaws of COHA: **Proxies:** At all meetings of Members (and/or all elections), each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon the conveyance by the Member of the title to his or her Lot, or upon the death or declared incapacity of such Member, if written notice of death or incapacity is received by Association prior to the count of the vote. No proxy will be valid after eleven (11) months from the date of its execution unless otherwise specifically provided in the proxy

This resolution overrides the above Bylaw in stating that: All proxies will be in writing and filed with the **inspector of elections, and NOT the Association Secretary.**

### **Ballots**

- Ballots and two preaddressed envelopes with instructions on how to return ballots will 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 will not be identified by name, address, or lot, parcel, or unit number on the ballot. The association will 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)).
- 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 prints and signs his or her name, address, and lot, or parcel, or unit number that entitles him or her to vote. (1363.03(e)(1))
- 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. (1363.03(e)(2)).
- See Figures A, B, C.

### **Votes counted at noticed meeting**

Candidates and/or members may witness all votes to be counted and tabulated by the inspector or inspectors of election in public 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 any member of the association, the Board of Directors, or the association manager, will open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated. (1363.03(f)).

### **Election results publicized within 15 days**

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

### **Custody of sealed ballots**

All sealed ballots at all times will 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, at which time custody will be transferred to the association. (1363.03(h)).

### **Ballots maintained for at least one year Confidentiality to be preserved**

After tabulation, election ballots will be stored by the association in a secure place for no less than one year after the date of the election. In the event of a recount or other challenge to the election process, the association will, upon written request, make the ballots available for inspection and review by association members or their authorized representatives. Any recount will be conducted in a manner that will preserve the confidentiality of the vote. (1363.03(i)).

### **For Member's Information: Also Effective July 1, 2006:**

#### **All Associations to comply**

The provisions of this section apply to both incorporated and unincorporated associations, notwithstanding any contrary provision of the governing documents. (*Operative on July 1, 2006.*) (1363.03(j)).

#### **Civil Action for Violation of Election Procedures. Court Challenge**

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. (1363.09(a)).

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

A member who prevails in a civil action to enforce his or her rights pursuant to this article will 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 will be subject to only one penalty if the violation affects each member of the association equally. A prevailing association will not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. (1363.09(b)).

#### **Small Claims Court**

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. (*Operative on July 1, 2006.*) (1363.09(c)).

=====[End of original Election Procedure Enacted 04/12/2007](#)=====

#### **Procedure amendment of 03/18/2010:**

The time table dictated by the new election law (1363) reads:

- [90 Days Before Annual Meeting: \(March\)](#)
  - Requests for self-nominated Candidates Declaration sent out.
  - Provide Candidates Forum Notice
- [60-45 Days Before Annual Meeting: \(April Board Meeting\)](#)
  - Candidates' Forum is held – Applicants address the members
  - Nominations can be accepted from the Floor
  - Candidates Statements/Bio and/or handouts
- [45-35 Days Before Annual Meeting: \(April-May\)](#)
  - Mail Notice of Annual Meeting
  - Mail Candidates Information
  - Mail Election Results (if # of candidates is equal to or less than # of open positions)
- [35-30 Days Before Annual \(April-May\) \(if # of nominees exceeds # of positions\):](#)
  - Mail Voting instructions
  - Mail ballot and two envelopes
- [Annual Meeting:](#)
  - Establish a quorum
  - Count Ballots
  - Announce election results
- [15 Days After Meeting](#)
  - Publish Election Results

**WE THEREFORE RESOLVE:** To update the Association's Elections Procedure as follows:

- Members will be invited to apply to board positions in March of the year.
- At the April Board Meeting all applicants will speak at an all member Forum
- Nominations from the floor will be accepted at this meeting (only).
- The ticket will be closed at this April meeting
- If the number of candidates, as of this date, is equal to or more than the number of openings, a full scale, all members secret ballot will be conducted, mailing materials to all members 35-30 days before the Annual Meeting (during late April or early May).

- If the number of candidates, as of this date, is less than the number of open positions, the Board may appoint the candidates by acclamation. The Board will announce the election results 35-45 Days before the Annual Meeting (in April-May), without the expense and effort of a secret ballot process.

Dated: March 18, 2010

=====End of 03/18/2010 Amendment=====