

**KENT WOODLANDS PROPERTY OWNERS ASSOCIATION**  
**VOTING AND ELECTION PROCEDURES POLICY** ©  
[Consistent with the 1995 Bylaws]

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# KENT WOODLANDS PROPERTY OWNERS ASSOCIATION VOTING AND ELECTION PROCEDURES POLICY ©

[Consistent with the 1995 Bylaws]

Community Associations are governed by a variety of authorities including the Corporations Code, portions of the Civil Code called the Davis-Stirling Common Interest Development Act, and the Association's Governing Documents. The legislature has examined voting and election procedures and amended the Davis-Stirling Act to impose a variety of procedures that pre-empt any conflicting provisions in existing Governing Documents and/or the Corporations Code. The purpose of this policy is therefore to integrate the applicable authorities into a single document.

## I. MEMBER VOTING GENERALLY

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**1.A. One Ballot per Lot.** On each matter submitted to a vote of the Members<sup>1</sup>, each Member shall be entitled to cast one ballot for each Lot owned by such Member. When more than one (1) Person owns an interest in a single Lot, any ballot cast by a single Member shall be deemed the authorized ballot for that Lot. If more than one ballot is received for a Lot, the first ballot received shall be counted and no subsequently received ballot shall be recognized. If a Member owns more than one Lot in the Association, the Member should submit a separate ballot for each such property owned.

**1.B. Who Votes.**

- **Individual Owners (Members):** Individuals in the chain of title can vote.
- **Trustee Owners:** Trustees named in the chain of title can vote the same as individual Members.
- **Corporate Owners:** Entities (such as corporations or partnerships) must appoint and identify in writing an authorized individual.
- **Proxy-Holders:** A Member may give a Directed Proxy to another Member to vote on his/her behalf.
- **Power of Attorney ("POA"):** After confirmation of the POA authority and request for ballot, that individual can vote on behalf of the Member. The POA authority stops upon death of the Member.
- **Deceased Owner(s):** Counsel may be consulted to address circumstances related to Estates, Executors, etc.

**1.C. No Cumulative Voting.** There shall be no cumulative voting.

**1.D. Voter List.** The Association shall generate and update a **Voter List** separate from the general Membership list. It is updated prior to each election (see Section 5.A.iii) and includes the following information:

- Member's name;
- Voting power, such as Powers of Attorney or Entity/Owner Representatives (if any);
- Physical address of the voter's separate interest, the parcel number, or both;
- The mailing address for the ballot if different from the physical address or if only the parcel number is used.

The **Voter List** is vital to the tally process.

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<sup>1</sup> The terms Member and Owner are synonymous in this policy.

**1.E. Ballots and Meetings.** When a question is put to a vote of the Members, if required by law<sup>2</sup>, direct ballots by mail will be used. The voting material must include the Board's tally meeting information (or general membership meeting). The meeting time may be extended by subsequent notice. As to voting subjects not covered by law (or this policy), the Board may use these or other reasonable procedures that best fit the circumstances of that particular vote.

**1.F. Quorums.** The Governing Documents, Davis-Stirling Act, or other provisions of law may specify a quorum for Member approvals. If no quorum is so specified, the quorum shall be equal to one-third (1/3) of the total Voting Power. (See specific quorums by subject under **Section II** below.)

## **II. TYPICAL TYPES OF VOTES GOVERNED BY THIS POLICY**

**2.A. Election of Directors.** The Association shall hold an election for a seat on the Board of Directors at the end of the corresponding Director's term. The quorum requirement to elect Directors shall be 10% of the voting power. Thereafter, the candidates receiving the largest number of votes will be elected. See also **Section 5.I** below regarding uncontested elections / acclamation.

**2.A.i. Nominations.** The Association is always looking for volunteers who are willing to serve on the Board. At least 30 days before the close of nominations, the Association shall provide **Individual Notice** of the upcoming **Election** and the procedure for nominating candidates. A Member may self-nominate. Nominations will close as announced by the Board. Shortly after the close of nominations, ballots with all qualified candidates' names included will be prepared and delivered to Members. There shall be no "write-in candidates."

**2.A.ii. Candidate Qualifications.** A candidate must be a natural person and a Member (owner in chain of title) of the Association. If title is held by a Trust, the Trustee(s) named on title is the Member(s) for purposes of candidacy (and voting). If title is held by an entity such as a corporation or partnership, and the entity wants a representative not in the chain of title to be a candidate, counsel should be consulted.

**2.B. Recall of Directors.** The recall of one or more Directors is addressed in the Corporations Code §7222, Bylaws, and/or Civil Code §§5100-5130. In addition to those standards, double-envelope balloting will be used. Any or all Directors may be recalled by the approval of at least a majority of a quorum, with a quorum defined for this purpose as one-third (1/3).

**2.C. Assessment Decisions.** The approval of a majority of a quorum of Members is required for the Board to raise regular Assessments or impose a Special Assessment above certain prescribed amounts, as set forth in Civil Code §5605. For purposes of this section, a quorum is specifically defined as more than fifty percent (50%+) of the Voting Power of the Association. (If there are 570 Lots, this would require participation by the Voting Power of at least 286 Lots and the approval by a majority of those participating in the vote.)

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<sup>2</sup> The four subjects that require double envelope, 30-day mail in balloting are: Election/Recall of Directors, Assessment decisions, Governing Document amendments, and grant of exclusive use of Common Area. [Civil Code §5100(a)(1)]

**2.D. Governing Document Amendments.** Should the Association desire to amend its Articles of Incorporation, Bylaws and/or CC&Rs, the text of the proposed amendment(s) shall be delivered to the Members with the ballot. Quorum participation and/or the number of votes necessary to pass will be indicated on the ballot and/or in the ballot material. Amendment of the Articles requires the approval of a majority; amendment of the Bylaws requires the approval of 25%; and amendment of the CC&Rs requires the approval of 51% of the Voting Power.

**2.E. Grant of Common Area Exclusive Use Easements.** Our subdivision documents and Governing Documents identify areas of ownership and control. If approval of Members is required for the Association to delegate control of an area that would otherwise be Common Area, then the voting process in this policy shall be used. Approval requires at least sixty-seven percent (67%) of the voting power.

**2.F. Other Issues.** At the discretion of the Board, any issue presented to the Members for a vote may be conducted using the double-envelope process described in this policy. If the vote does not involve election or recall of Directors, amendment of Governing Documents, Assessment approval, or grant of exclusive use of Common Area, then the Board may describe alternate voting procedures with the voting material.

### III. CAMPAIGNING

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In the context of an election or other vote, if media or Common Area access is provided to candidates or Members advocating a point of view, all are to be treated equally with respect to such opportunities to communicate with Members (such as by newsletter or website). The Association shall not edit or redact content from these communications but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content. The Association is not required to offer communication opportunities to candidates or Members advocating a point of view; however, if such a benefit is offered to one candidate or Member, the same opportunity must then be offered to all.

If the Board offers to include candidate or other issue information with the Annual Meeting package (or any mailing associated with a Member vote), there may be reasonable restrictions on the size, weight and format of the information. For example, a standardized form may be required to set forth candidate information.

### IV. INSPECTORS OF ELECTION

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To assist in the logistics of balloting and other voting matters, one or three individuals shall be appointed by the Board. These individuals are called "Inspectors of Election." Their job is to process and count ballots, to assure confidentiality in the voting, as well as to make judgment calls if there is a problem in the paperwork. Because the most common practice is to use three Inspectors of Election, most references in this policy will be plural. This should not be construed to eliminate the option of using only one.

An Inspector of Election must be an "independent third party." Those *not* qualifying as independent include a member of the Board, a candidate or a co-Owner with either, or an immediate family member of a Board member or candidate. Also not qualifying are the property manager or other person employed by the Association (except for the specific task of being an Inspector). Typically an Inspector will be one or three Members who are independent of these restrictions. The

Inspectors may appoint and oversee additional persons to assist with the count and tabulation of ballots, provided they too are neutral third parties.

The Inspectors of Election responsibilities include:

- Appoint, direct and supervise assistant(s) to help with the balloting and tally process.
- *(Optional:)* Double Check Advance Work done by the Board and/or administrator regarding the Nominations Process.
- *(Optional:)* Double Check Advance Work done by the Board and/or administrator regarding the **Voter List** Compilation. *At least 30 days before ballots are distributed*, the Association will ask Members to verify the accuracy of their information on the **Voter List**. Confirm with the administrator / Board that appropriate edits/updates will either be made to the List, or that any edits are reported to the Inspectors to make the changes to the List. Inspectors should confirm whether or not there are any Powers of Attorney or Entity/Owner Representatives who will be casting ballots. If there are, be sure this is noted on the **Voter List** and there is proper documentation.
- *At least 30 days before an Election*, confirm delivery of the balloting package. There is overlapping responsibility of the Board and Inspectors to oversee delivery of ballots and voting material. (Civil Code Sections 5100 & 5115) Unless otherwise specified, the Board is responsible for distribution (by mail and/or hand delivery) of the ballots and accompanying materials. Unless the Inspectors direct otherwise, the ballot return envelopes will be addressed to the Inspector(s) of Election in care of the administrator. The Inspectors shall confirm that a copy of the Voting Policy has either been or will be included with the mailing of the ballots, or if the Association has a website, that the following phrase has been included on the ballot, in at least 12-point font: "The rules governing this election may be found here: kwpoa.com."
- After the close of nominations, Inspector(s) may certify the use of acclamation as provided for in the Bylaws.
- Where ownership changes during the voting cycle, determine if the seller voted or, if not, whether or not the buyer's ballot will be accepted.
- When an unsigned ballot envelope is received, utilize discretion as to if and how the Member may be given an opportunity to sign the envelope prior to the start of opening envelopes and counting.
- Determine the number of memberships entitled to vote and the voting power of each.
- Review the **Voter List** and Unopened Ballot Envelopes.
- Count and tabulate ballots.
- Determine the authenticity, validity, and effect of proxies, if any.
- Determine the authenticity and validity, of Powers of Attorney or entity representative authority, if any.
- Determine or confirm when the voting (or polling) shall close.
- Disqualify subsequent ballots received from a Member after receipt of the first ballot from that Member or from a co-Owner.
- Disqualify any ballot that is not an Official Ballot prepared by the Association.
- Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
- Address any other irregularities which may arise during the voting process.
- Determine a method to break tie votes.
- Control custody of the **Election Materials** for a period of 12 months following the publication of the tallied election results.
- Control and oversee any post-election Member request to review the ballots.

The Inspectors of Election may also take other actions to assure fairness in the election process and compliance with this policy and any other applicable rule or policy (which does not conflict with this policy).

Inspectors of Election shall perform their duties impartially, in good faith, to the best of their ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of the Association. 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(s) of Election (such as the tabulation of ballots) is prima facie evidence of the facts stated in the report.

The Inspectors of Election are responsible for the processing of the sealed ballots as they are received. Unless the Inspectors designate otherwise, the mail-in ballots shall be returned to the Inspectors of Election at the address of the administrator. Once a ballot is received, it is irrevocable. The Inspectors or designee may verify the Member information on the outer envelope prior to the meeting at which ballots are tabulated. The envelopes shall not be opened until the meeting at which the tabulation is to occur. After publication of the tabulated results of the election, the Inspectors direct and control the storage of the **Election Materials** for a period of 12 months. Thereafter, custody shifts to the Association.

## **V. VOTING PROCEDURES**

The following procedures apply to those Member decisions identified in **Section II, 2.A-2.E** above.

### **5.A. Timing.**

**5.A.i. Appointment of Inspector(s) of Election.** *At least 60 days prior to an Election*, the Board should appoint inspector(s) of Election.

**5.A.ii. Nominations:** *At least 30 days before any deadline for submitting a nomination*, the Association shall provide **Individual Notice** of the procedure and deadline for submitting a nomination.

**5.A.iii. Verification of Voter Information.** *At least 30 days before the ballots are distributed*, the Association shall permit Members to verify the accuracy of their individual information on a **Voter List**. The Association or Member shall report any errors or omissions on the List to the Inspector of Election (unless otherwise specified, in care of the administrator) who shall make the corrections within two business days. If there are any Powers of Attorney or Entity/Owner Representatives who will be casting ballots, these must be identified on the **Voter List** and appropriate documentation provided to the Association in this time frame.

**5.A.iv. Balloting Information:** *At least 30 days before ballots are distributed*, the Association shall provide **General Notice** of the following:

- The date and time by which ballots are to be returned (by mail or hand delivery) to the Inspectors of Election;
- The address where ballots are to be returned; and
- The list of all candidate names that will appear on the ballot.

**Individual Notice** shall be used for any Member who has requested **Individual Notice**.

Inspectors of Election may coordinate with the Board regarding these details.

**5.A.v. Mail-in Ballots.** *Not less than 30 days ahead of the Election*, the Association shall deliver (by first class mail or hand delivery) voting material, such as ballots, voting instructions, explanatory material, candidates statements, etc., to every Member. Prior to opening the received ballots, the Board may reasonably extend the voting period to achieve greater Member participation in reaching quorum requirements (if applicable) or amending CC&Rs (which require approval of a significant percent of all Members).

**5.B. Official Ballot.** Only the Official Ballot form generated by the Association will be counted.

**5.C. Secret Ballot.** Voting shall be done by secret ballot. The Association shall use procedures (including those described below) to assure such confidentiality.

**5.D. Use of Proxies.** Balloting by mail has largely eliminated the usefulness of proxies. Therefore, proxies will not be distributed by the Association in conjunction with any vote conducted pursuant to this policy. If a proxy is submitted, it must strictly comply with Civil Code §5130. Proxyholders must attend the meeting at which ballots will be tallied to present the proxy and deliver the completed Member ballot. Alternatively, a proxyholder may place the correct proxy authorization page in the outer envelope along with a completed ballot in the secret inner envelope, and sign the outer envelope as proxy-authorized.

**5.E. No Identification On Ballot.** In order to preserve confidentiality, a voter may not be identified by name, address, or Lot or parcel number on the ballot.

**5.F. Voting by Mail.** For this mail-in voting, the Association shall provide Members with ballots and two pre-printed envelopes along with instructions. The instructions shall specify how ballots are to be returned. 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:

- The ballot itself is not signed by the voter. After marking the ballot, it is to be inserted into an envelope that is then sealed. This envelope is inserted into a second envelope that is also then 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 number that entitles him or her to vote. Note that an outer envelope received without a Member signature will not be counted (unless a signature is added prior to the tally of the ballots).
- The second envelope is addressed to the Inspectors of Election, who will be tallying the ballots. The envelope may be mailed or delivered by hand to a location specified by the Inspectors of Election. In the event no location is specified by the Inspectors of Election, it shall be the administrator's address. The Member may request a receipt of delivery.

**5.G. Delivery of Completed Ballots.** Typically, ballots will be returned by first class mail. However, ballots may also be hand-delivered. Additionally, if permitted by law, ballots may be cast electronically.

**5.H. Irrevocable.** Once a ballot is received, it is irrevocable. If a ballot is properly cast and received within the balloting period, and a sale occurs, the new Member does not get to cast a second ballot. If no ballot has been cast / received for that property prior to the final voting deadline, the new Member can cast the ballot.

**5.I. Uncontested Election / Acclamation.** If, at the close of nominations, the number of qualified nominees is equal to or less than the number of Directors to be elected, the Board may extend the nominations period to encourage greater participation in the electoral process. In the alternative, the Board and/or Inspectors may declare that all of the qualified nominees are elected without further action if:

- (1) The Board has made a good faith effort to encourage Members to volunteer as candidates;
- (2) The Board provided **Individual Notice** of the **Election** and the procedure for nominating candidates at least 30 days before the close of nominations;
- (3) All qualified candidates have been permitted to run; and
- (4) Write-in candidates are not permitted.

In that event, the Board shall send notice to Members within 15 days of the close of nominations that the candidates have been elected by "acclamation."

**5.J. Live Voting at a Member Meeting.** If there is a quorum-qualified meeting of Members and the Board opts to conduct voting at the meeting (i.e., in addition to double-envelope balloting), the Board shall use procedures to assure the secrecy of ballots cast. The Inspectors of Election shall have authority over these and all other ballots received.

## **VI. BALLOT TABULATIONS & ANNOUNCEMENT OF RESULTS**

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An Inspector of Election or designated assistant may verify the Member information on the outer envelope prior to the tally meeting. No one is permitted to open the inner envelope containing the ballot prior to the meeting at which the ballots are to be counted and tabulated.

Inspectors of Election shall go about the business of counting and tabulating the ballots at a properly noticed open meeting of the Board or Members. Any candidate or other Member of the Association may witness the counting and tabulation of the ballots.

The tabulated results of the election shall be promptly reported to the Board and shall be recorded in the minutes of the next meeting of the Board. Members have a right to review the results. Within 15 days of the election tally, the Board shall publicize the tabulated results of the election in a communication directed to all Members.

## **VII. RETENTION OF ELECTION MATERIALS**

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For a period of one year following publication of the tallied results of the election, the Inspectors of Election are responsible for custody of the **Election Materials**. Unless the Inspectors determine otherwise, the location for storage of the **Election Materials** will be with the administrator. After 12 months, the custody of the ballots shifts to the Association. In the event of a formal challenge to the election process, Election Material is to be preserved. Upon written request, the Association will coordinate with the Inspectors of Election and make the ballots available for inspection and review by Members or their authorized representatives. Any such review shall be conducted in a manner that preserves the confidentiality of the vote.



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## VIII. DEFINED TERMS

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**8.A. “Election”** as bolded throughout this Policy means the date on which the ballots are scheduled to be opened and tallied.

**8.B. “Election Materials”** means and includes returned ballots, signed voter envelopes, the **Voter List** of names, parcel numbers, and voters to whom ballots were to be sent, proxies (if any), Inspector of Election Worksheet, and the list of candidates.

**8.C. “General Notice”** means delivery of documents and/or information to a Member by Individual Notice, inclusion in a billing statement or newsletter, or posting the printed document in a prominent place at the Property designated for such notices.

**8.D. “Individual Notice”** means and includes any of the following: first class mail; posting in the Common Area; inclusion in newsletter or billing statement; email (if the Member has consented). Additionally, if a Member has requested Individual Notice (i.e., email), then the Association shall provide information to that Member by email.

**8.E. “Voter List”** means the list of membership information generated by the Association, and verified by the Members prior to each election, which includes the following information: Member’s name and voting power, physical address of the voter's separate interest, the mailing address for the ballot if different from the physical address, and identification of Powers of Attorney or Entity/Owner Representatives (if any).

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## IX. AMENDMENT OF VOTING POLICY

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This policy shall not be amended less than 90 days prior to the scheduled meeting at which the ballot tally is to be conducted.

dlr: 2/7/20

Per Civil Code §4360

Distributed to Members: May 1, 2020

Formal Board Adoption: June 25, 2020

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