

Avoiding Election Missteps: 8 Tips for a Winning Outcome

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If practice makes perfect, association elections should be a breeze. However, overlooking even the smallest parts of the election can cause chaos. California Civil Code Sections 5100-5145 dictate the election process: when to use secret ballots; how to conduct elections; how to select inspectors; how to campaign; and how to conduct the ballot counting and understanding why the Civil Code requires these for fair elections, may help avoid some of those election day challenges.

#1 Have election rules in place FIRST.

All associations are required by Civil Code 5105 to adopt election rules. Without election rules, the owners, inspectors of election and board are all at-risk of mistakes that may result in costly legal challenges. Older CC&Rs and bylaws probably do not even require secret ballots, so it is important that the rules describe how elections are conducted.

Election rules must comply with both Civil Code and your governing documents and should contain:

- Nomination procedures,
- Director qualifications,
- Method of selecting independent third parties as inspectors of election,
- Rules for access to association media during campaigns,
- Rules for access to common area meeting space during campaigns,
- Secret ballot instructions and procedures.

Once you have the basics outlined above, make sure that the board and your owners are comfortable with how it is presented. Some associations will add additional details about candidate statements or “meet the candidate” events. Work with your owners so that the rules represent your community’s preferences regarding elections.

#2 Identify candidate and director qualifications in the candidate nomination forms.

Directors must meet the qualifications both at the time of nomination and during service on the board. Provide a clear list of qualifications in the nomination form to help avoid wasted votes on candidates who are ineligible to run or serve. Send requests for nominations well in advance of the ballot mailing so members can consider whether they are qualified to serve and/or run.

#3 Remember that qualified candidates may nominate themselves.

Although many associations have documents that provide for nomination committees, the Civil Code specifically allows qualified candidates to self-nominate. Associations should give owners

enough time to consider running and to review the completed nomination forms to ensure that they are qualified, consistent with the election rules and bylaws.

#4 Maintain equal access to association resources during an election.

The Civil Code does not allow the association to give special treatment or unequal access to association media, newsletters, or internet sites during campaign time. And courts do not support boards who attempt to use association resources to tip the scales in favor of particular candidates or issues.

Recently, R|O successfully defended a community against an election challenge. A candidate complained that incumbent board members were given a list of member email addresses while new candidates were not. The candidate argued that the association needed to give all candidates equal access to email addresses. The court disagreed, finding that access to an email list did not constitute “association media” as that term was discussed in the leading case of *Wittenberg v Beachwalk*. While that association was not penalized for any election activity, additions to the election rules could reduce future challenges by clarifying what information the association will provide during elections.

#5 Associations that don’t establish a clear policy on media usage during elections might find themselves answering difficult questions after the election.

Remember that the association CANNOT, under Civil Code, prohibit access to common areas and meeting spaces for campaign purposes. Owners may make use of common area meeting space, when available, for election-related purposes. Outline what areas are available for use, and how owners can go about reserving those spots, and make sure owners know that use of these areas for purposes related to the election are at no cost.

#6 Make sure that the inspector of elections is viewed as neutral and remains neutral throughout the election process.

Elections inspectors must understand their duties as outlined in the Civil Code. Inspectors must remain neutral and objective to carry out a fair election and avoid post-election challenges. Do not use an inspector who is a cheerleader for a cause or seen as partial to a certain outcome or candidate.

An inspector is given broad authority including the ability to determine who is eligible to vote and their respective voting power; to determine the validity and authenticity of proxies; to receive ballots; to hear and determine all challenges regarding the right to vote; to count and tabulate votes; to determine when the polls close; and to certify the results of the election. Boards should select someone who understands each of these duties.

Some communities will use tenants, owners without a conflict, or even a vendor hired to act as inspector of election. Whomever the association selects, an inspector must be a credible agent for a fair process.

#7 Keep your owners informed about *what* is happening, *when* it is happening, and *how* they can participate.

Many associations struggle to publicize the election and fail to achieve quorum. This can lead to lengthened poll times, new or cancelled election meetings, or even revised ballots — all of which lead to owner frustration, discouragement, and ultimately apathy. Keeping owners engaged throughout the election process is essential, and the best way to do that is to communicate the existence of any challenges. If an issue arises regarding the timing or outcome of an election or the election process itself, inform owners of the issues and explain the next step and how the issue may affect the process. One sure way to trigger an election controversy is to make decisions or take actions without communicating with the members.

#8 Be Ready For Anything.

Every director, owner and inspector of elections must be prepared to preside over the election at any time which requires a confident understanding of the election process before it starts. If there is any doubt about the process or the outcome, the inspector should bring in a neutral third party (a professional election inspector) to preside over the entire balloting and elections process and to assist with the ballot counting. In the end, an election seen by the community as fair, regardless of the outcome, will be money well-spent.