



#292 HOA Homefront – Eleven Sure-Fire Ways to Frustrate HOA Elections

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Most associations have member voting at least annually, and the process required by statute applies to all HOAs, whether 2 units in Redondo Beach or 3,000 units in Oakland.

Avoid these mistakes which can doom HOA elections:

1. Ignore the procedure. Civil Code Sections 5100-5135 provide a process which must be followed on member votes regarding major assessments, governing document amendments, grants of exclusive use rights, and board elections. Many smaller HOAs either intentionally or ignorantly do not follow the process, leaving their elections open to challenge.
2. Don't have election rules. Civil Code 5105 requires HOAs have written election rules in place. These rules help answer questions in advance, making for more organized and fairer elections.
3. Forget to appoint an inspector of elections. When setting an election, associations occasionally fail to appoint or hire an inspector to conduct the process. This appointment must occur in an open board meeting. Inspectors may be paid professional vendors or may be homeowner volunteers.
4. Allow proxies. Most developer-supplied original HOA bylaws allow for the use of proxies, by which members give to another member the right to vote on their behalf. California statutes provide little guidance as to what is a valid proxy, and proxy disputes (and sometimes chicanery) are a common problem in HOA elections. Proxies are unnecessary, since on most important HOA votes members receive ballots 30 days ahead of the election. HOAs are better served by, through member vote, amending governing documents to ban proxies except for the narrow purpose of achieving quorum.
5. Skip vote counting in uncontested elections. It may make no sense to go through the process of opening and counting ballots when only three candidates are running for three open seats, but that is what the law presently requires. The Community Associations Institute has for years recommended amending the statute and currently sponsors AB 1426, which would allow associations to dispense with vote counting if the number of candidates matches the number of seats to be filled.

6. Allow the inspector of election to make legal decisions. The inspector's role under Civil Code 5110 is to determine the validity of proxies, voting eligibility, and other specified issues. However, most inspectors are not lawyers, and may need legal input. Inspectors who will not rely upon HOA legal counsel should have their own lawyers.
7. Don't include a full copy of a proposed CC&Rs or bylaw amendment with the ballot. Civil Code 5115(e), added in 2014 to the Davis-Stirling Act, requires the verbatim proposed CC&Rs or bylaw amendment be sent with the ballot to all members.
8. Ask the manager to be inspector. Civil Code 5110(b) prohibits a regular HOA vendor from serving as inspector unless the election rules authorize it.
9. Allow manager or vendors to support (or oppose) board candidates. Managers and HOA vendors (including the HOA's attorney) must be neutral on elections, and any violation of that neutrality is a violation of their ethics. Insist your manager and vendors avoid endorsing, helping, or opposing any candidates.
10. Don't announce the election results. Civil Code 5120(b) requires that results be announced in writing within 15 days.
11. Don't participate. Healthy HOAs need their members to participate, at least by voting. Failed quorums will defeat elections every time.