



The Election Law Overhaul (SB 323)

On October 13, 2019, Governor Newsom signed Senate Bill 323 into law. The new provisions will be effective on January 1, 2020. This new law contains numerous changes to existing election laws and will require that all homeowners associations amend their election rules. Further, because the new law does not allow changes to election rules within ninety (90) days of an election, all boards should be reviewing this issue with legal counsel as quickly as possible to avoid potential problems. This applies especially to associations that hold the annual election between January and April.

Pre-Election Notices. Pre-election notice requirements now require that election planning start at least four (4) months prior to the election date, in conjunction with the appointment of the inspector. An association must provide general notice (such as posting or mailing) of the procedure and deadline for submitting a nomination at least thirty (30) days before the nomination deadline. Individual notice is required when requested by a member.

After the candidates are known, and at least thirty (30) days before the ballots are mailed, another general notice (e.g., posting) must be made and include the following:

1. The physical address and deadline for return of ballots.
2. The date, time, and location of the meeting at which ballots will be counted.
3. The list of all candidates' names that will appear on the ballot.

Again, individual notice must be provided if requested by a member.

Changes to Ballots. The inspector of elections is required to “deliver” (or cause to be delivered) to each member a copy of the election rules at least thirty (30) days before an election. The election rules can be mailed with the balloting materials. Alternatively, the election rules can be “delivered” by posting the rules on a website if the website address is placed on the ballot with the phrase, in at least 12-point font: “The rules governing this election may be found here: _____.”

Candidacy Requirements. For those associations that had candidacy requirements imposed by the CC&Rs, Bylaws or election rules, the new law may change those requirements dramatically. The new law makes basic candidacy requirements fairly uniform for all associations. All associations will now have the following qualifications automatically in effect:

1. All candidates must be nominated in accordance with the election rules. Keep in mind, self-nominations must be allowed at every association by law.
2. All candidates must be members of the association at the time of the nomination.

In addition to the above, boards may adopt optional qualifications. These optional qualifications can be included in the election rules, unless in conflict with the existing Bylaws. Optional qualifications for candidates may include:

1. **Past Criminal Convictions.** A candidate could be disqualified if he or she has a past criminal conviction that would either prevent the association from purchasing the fidelity bond coverage or terminate the association's existing fidelity bond coverage.
2. **Delinquent Assessments.** An association can add this qualification, but it is subject to a number of exceptions. Current directors must be subject to the same requirements regarding delinquencies. A candidate cannot be disqualified under any of these circumstances:
 - a. The delinquency has not been validated after a request for a verification of the debt.
 - b. The delinquency consists only of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third-party.
 - c. The nominee has paid the regular assessment or special assessment under protest pursuant to *Civil Code* Section 5658.
 - d. The candidate is under a payment plan pursuant to *Civil Code* Section 5665.
 - e. The candidate has **not** been provided the opportunity to engage in internal dispute resolution (IDR).
3. **Joint Ownership.** Only one owner per home can serve on the board and/or be a candidate.
4. **New Owners.** A candidate can be disqualified if that person has been a member of the association for less than one year.

Voting Rights. Election rules may not prohibit a member from receiving a ballot for any reason, as long as that member was a member at the time the ballots were distributed. The rules may also not prohibit a person with a general power of attorney from a member from receiving a ballot. Note that a "general" power of attorney grants broad authorization to the agent. A "specific" or "limited" power of attorney grants only specific or limited powers. A power of attorney that limits the agent to the right to vote or attend meetings is a specific or limited power of attorney, and similar to a proxy issued to a non-member, is not valid for purposes of voting in an association election.

Inspectors of Elections. Previously it was possible for a management company to serve as an inspector of election *if* the election rules specifically allowed it. This is no longer the case. The inspector needs to be a volunteer or a person or entity contracting solely as an inspector and not providing any other services.



Retained Election Materials. The election rules must be amended to require retention of additional election materials. Both a candidate registration list and a voter list must now also be kept as part of the election materials. The voter list must include the name, voting power, and either the physical address of the voter’s home, the parcel number, or both. The mailing addresses must also be listed on the voter list if different from the physical address within the association or if only the parcel number is used. Note, while “membership lists” must now include email addresses for the owners, email addresses are not required to be included on the “voter list.”

The association must permit members to verify the accuracy of their individual information on both the candidate registration and voter lists at least thirty (30) days before the ballots are distributed. The association or member must report any errors or omissions to either list to the inspector who must make the corrections within two (2) business days.

Document Review. In addition to the returned ballots, members may now inspect, upon request, the signed voter envelopes, voter list of names, parcel numbers, voters to whom ballots were sent, proxies, and the candidate registration list.

A Final Word on the New Law. The new law requires all associations to amend their election rules. Again, even though this law does not go into effect until January 1, 2020, because election rules cannot be amended within ninety (90) days of an election, ***associations should be amending their election rules now.*** Additionally, the planning process for each election will now need to start at least four (4) months prior to the election to ensure compliance with the new laws.