

Sample Election Operating Rule: Electronic Secret Ballot Voting

A starting point for the association's attorney, not a finished rule. It tracks the contents Civil Code §5105(i)(1) requires. Replace the bracketed items and conform it to the association's existing election rules before the §4360 notice of the proposed rule goes out.

Section [X]. Electronic Secret Ballot Voting

(a) Authorization. Pursuant to Civil Code §5105(i), the Association may conduct any election or membership vote by electronic secret ballot through its inspector(s) of elections, except a vote on a regular or special assessment, which shall be conducted by written secret ballot.

(b) Default method; opt-out. Members shall vote by electronic secret ballot unless the member opts out. A member may opt out and instead vote by written secret ballot by delivering a written request to the Association at [mailing address] or [email address] no later than 90 days before the election. A member who has opted out may resume voting by electronic secret ballot by delivering a written request to the Association by the same deadline. A request received after the deadline applies to the next election. A member's voting method remains in effect for subsequent elections until the member changes it in writing.

[Opt-in alternative: Members shall vote by written secret ballot unless the member opts in to electronic secret ballot voting by delivering a written request to the Association at [mailing address] or [email address] no later than 90 days before the election. A member who has opted in may resume voting by written secret ballot by delivering a written request by the same deadline.]

(c) Email address. A member who votes by electronic secret ballot shall provide the Association a valid email address and shall keep it current. A member for whom the Association has no valid email address on file when ballots are distributed shall receive a written secret ballot.

(d) Voting-method notice. At least 30 days before the opt-out deadline, the Association shall deliver individual notice to each member stating: (1) the member's current voting method; (2) the email address on file for electronic voting, if any; (3) that the member must opt out to vote by written secret ballot; (4) how to opt out; and (5) the deadline to opt out.

(e) Voting list. The Association shall maintain a voting list identifying which members vote by electronic secret ballot and which by written secret ballot, and shall describe the opt-out procedure in the annual policy statement. Members may verify the accuracy of their own entry on the voting list at least 30 days before ballots are distributed, and the inspector(s) shall correct any reported error within two business days.

(f) Ballots. The electronic secret ballot and the written secret ballot shall contain the same list of items. Written ballots shall be mailed only to members who have opted out and to members for whom the Association has no valid email address.

(g) Electronic ballot notice. At least 30 days before the election, the inspector(s) shall deliver individual notice of the electronic secret ballot to each member voting electronically, including instructions on how to access the internet-based voting system and how to vote. The notice may be delivered electronically to the address designated by the member.

(h) Nominations. Nominations from the floor of a membership meeting are not permitted.

(i) Effect of vote. An electronic secret ballot is effective when transmitted to the system designated by the inspector(s) and may not be revoked. A member who votes by electronic secret ballot is counted as present for purposes of quorum. Once a quorum is established, no substantive vote of the members shall be taken on any matter other than the matters identified on the electronic secret ballot.

(j) System requirements. The inspector(s) shall ensure the internet-based voting system meets the requirements of Civil Code §5110(c)(4).

(k) Effective date. This rule takes effect upon adoption under Civil Code §4360 and applies to any election or membership vote held more than 90 days after the date of adoption.

Fill-in checklist for the board

- ☐ Section number [X] that fits the existing election rules
- ☐ Opt-out (default electronic) or opt-in (default paper): keep one version of (b) and delete the other
- ☐ Mailing address and email address where written requests are delivered
- ☐ Update the annual policy statement (Civil Code §5310) to describe the opt-out or opt-in procedure
- ☐ Calendar: 28-day general notice of the proposed rule, open-meeting vote, notice of adoption within 15 days (Civil Code §4360)