

# *Chardonnay Hills Homeowners Association*

## **MEMBERSHIP MEETING AND VOTING RULES**

(Civil Code Section 1363.03)

Effective November 2, 2006

1. **Secret Ballots.** The Association will utilize a secret ballot process, as described in these rules and as required by Civil Code Section 1363.03, for:
  - a. Election and removal of the Association's Board of Directors.
  - b. A vote of the membership regarding assessments as may be required by Civil Code Section 1366.
  - c. Amendments to the governing documents that require membership approval.
  - d. Prior to granting exclusive use of common area property where required by Civil Code Section 1363.07.
  - e. Any other matters where a secret ballot vote is required by law.
  
2. **Membership Meetings, Annual Meeting and Election of Directors.**
  - a. The Association will hold an Annual Meeting of the members to elect Directors and to conduct Association business. The Annual Meeting is generally held in February.
  - b. The Board of Directors consists of seven Directors. Directors are elected for two-year terms. The terms are staggered with four Directors elected in odd years, and three Directors elected in even years. Directors must be elected by secret ballot and cannot be elected by voice vote or show of hands at the Annual Meeting. The Bylaws require that Directors be Members in good standing with the Association.
  - c. Prior to the Annual Meeting, the Nominating Committee will distribute a request-for-candidates form, seeking candidates for the Board. The form must be completed by the candidate or nominating member and received by the Nominating Committee by the deadline stated in the form in order to ensure the candidate's name appears on the ballot. Regardless of whether a candidacy form was completed, any candidate may still be nominated by himself, herself or by someone else from the floor of the Annual Meeting.
  - d. The candidacy form may include the opportunity for each candidate to submit a 150-word written statement reasonably related to the election, including advocating a point of view. Candidate statements received on a timely basis will be included with the Association's mailing of the notice and ballot materials. (The statements may also be posted on the Association's web site.) The Association will not edit or redact these statements but may include a statement specifying that the candidate is responsible for that content.

- e. Meet the Candidates Night - The Association may hold an informal gathering prior to the Annual Meeting. All candidates may participate, including those who did not submit a candidate's form but who have advised the Association of their intention to be nominated from the floor of the Annual Meeting. The Association may establish a neutral agenda and guidelines for the event. A property manager, Board member not up for election, or an election inspector may moderate the event.
- f. The Association will send out a Notice of Annual Meeting with information on when polls will open and when the members and candidates may attend the Annual Meeting and/or Board meeting to witness the review, count and tabulation of ballots by the inspector(s) of election.
- g. Other meetings of the members may be noticed and held by the Association to vote on matters which are proper for member vote. For member votes that are to be conducted pursuant to the secret ballot process described herein, the meeting notice sent by the Association will include information on when polls will open and when the members may attend a membership or Board meeting to witness the review, count and tabulation of ballots by the inspector(s) of election.
- h. Other business at the Annual or other membership meeting, such as approval of minutes, motions to adjourn and other parliamentary procedures required by a recognized system of parliamentary procedure, may be conducted by a show of hands, voice vote or other method.
- i. All membership meetings and votes will be conducted in accordance with the Association's governing documents and California Corporations and Civil Codes, as appropriate.
- j. Members will have one vote per unit/lot/parcel owned.
- k. For election of Directors, cumulative voting will be used, pursuant to Article V, Section 3 of the Bylaws. Each member, for each unit owned, shall have the number of votes equal to the number of Directors to be elected and the member may cast all votes for one candidate or divide up the votes among the candidates. No fractional votes are permitted.
- l. If allowed by law, any vote (except for a vote on election of Directors) to be conducted pursuant to the secret ballot process described herein may be conducted by mail only without holding a membership meeting for voting purposes. A membership meeting must be held for election of Directors. Further, the counting and tabulation of votes may only be performed by inspector(s) of election in the open at a properly noticed open meeting of the members or Board.

### 3. **Inspector(s) of Election.**

- a. One or three inspector(s) of election ("Inspectors") will be selected and appointed by the Board of Directors at an open Board meeting approximately 90 to 120 days prior to the date of the Annual Meeting and approximately 60 to 90 days prior to any other membership vote to be conducted by the secret ballot process described in these rules.

- b. The Board may, but is not required to, select non-member third parties as the Inspectors, which may include, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public.
- c. The Board will not select a member of the Board of Directors, a candidate for the Board of Directors, a relative of a member of the Board or of a candidate, or a person or business entity currently employed by or under contract to the Association for other compensable services, except the Board may hire a CPA or accounting firm to act as Inspectors even though the CPA or accounting firm is employed for audit, tax or other Association accounting work.
- d. The Board may determine to pay compensation to the Inspectors.
- e. Inspectors' Duties:
  - i) Determine number of memberships entitled to vote and the voting power of each.
  - ii) Determine the authenticity, validity and effect of proxies, if any.
  - iii) Receive ballots.
  - iv) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote, including verification of signatures.
  - v) Count and tabulate all votes.
  - vi) Determine when the polls shall close, consistent with the governing documents.
  - vii) Determine the results of the election.
  - viii) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with Civil Code Section 1363.03 and these rules.
  - ix) Determine, prior to the mailing of the ballots by the Association, the location where the sealed ballots will be mailed or delivered and where the Inspectors will maintain custody of the sealed ballots until after the tabulation of the vote by the Inspectors. Unless the Inspectors select otherwise, the Association's management office will be the default choice to receive the sealed ballots on behalf of the Inspectors. Management will not open, review or count the ballots.
  - x) All duties must be performed in good faith, to the best of the Inspector's ability and as expeditiously as practical.
- f. The Inspectors may appoint additional personnel to assist them in their duties, including registration, counting, tabulating, and verifying signatures, but the Inspectors will oversee and be responsible for all actions of such personnel and such personnel must not be in the category of persons or entities, in subsection c above, that the Board may not select.

- g. If there are three Inspectors, the decision to act must be by a majority of the Inspectors and is effective, in all respects, as the decision of all.

4. **Secret Ballot Procedures.**

- a. At least 30 days prior to the Annual Meeting or other deadline for voting, the Association will mail to members in good standing, by first-class mail, the ballots, along with two preaddressed envelopes. A notice will also be sent with instructions on and deadlines for the return of ballots.
- b. The ballot will not identify the voter by name, address, lot, parcel number or unit number.
- c. For election of Directors the ballot will contain the names of any candidates known to the Association at the time the ballot is mailed and blank lines for candidates nominated from the floor.
- d. The ballot itself is not signed by the voter but is inserted into a sealed, preaddressed (to the Inspectors) envelope (Envelope #1).
- e. The sealed Envelope #1 is then inserted by the voter into a second preaddressed (to the Inspectors) envelope (Envelope #2) which should then be sealed. In the upper left-hand corner of Envelope #2, the voter shall sign his or her name, indicate his or her name, and indicate the address or other identifying account/unit/lot number that entitles him or her to vote. Envelope #2 may be mailed or delivered by hand to the preaddressed address specified on the envelope.
- f. The owners of multiple properties must submit separate sealed ballot envelopes (#1 and #2) for each property.
- g. The member may request a receipt for hand delivery of the sealed Envelope #2 to the location selected by the Inspectors. Any member desiring a receipt for mail delivery should send the ballot by certified mail, return receipt requested, to the location selected by the Inspectors.
- h. Only the Association's ballots in the form which are sent out to the membership by the Association or are provided by the Association at the membership meeting will be accepted by the Inspectors.

5. **Proxies.**

- a. Proxies will be accepted only if Inspectors determine the proxies meet the requirements of the Bylaws, California Corporations Code and California Civil Code.
- b. Any instruction given in a proxy that directs the manner in which the proxy holder is to cast the vote must be set forth on a separate page of the proxy that can be detached and given to the proxy holder to retain.

- c. The proxy holder must be present in person at the meeting and shall cast the member's vote by secret Ballot.
- d. Any member who gives another person his/her proxy does so with the full understanding that the Association and Inspectors will not be responsible for ensuring that any proxy holder votes the proxy in accordance with the proxy holder's direction.
- e. A member may revoke his or her proxy by casting a secret ballot by mail or delivery to the Inspectors or as otherwise provided in Corporations Code Section 7613, provided the revocation is completed prior to the Inspector's receipt of a ballot from the proxy holder and not later than the time that the polls are closed by the Inspector.

6. **Effect of Submitting a Ballot.**

- a. Once a member mails or delivers his/her ballot that ballot can not be changed or revoked.
- b. Only one ballot may be submitted for each address. Once a member submits a ballot with regard to a particular address, no other ballot or proxy may be submitted for that property. Should more than one ballot be received for any property, the first ballot received will be the one counted. If it cannot be determined which ballot was the earliest received, no ballot will be counted for that property except one ballot for quorum purposes only.

7. **Registration of Secret Ballots at the Meeting.**

- a. The Association will have the membership registration list at the meeting.
- b. Management will not register any of the ballots or proxies received by the Association. Registration will be performed by the Inspectors.
- c. All ballots must be sealed in the two sealed, preaddressed envelopes and Envelope #2 must contain all required information on the upper left-hand corner.
- d. If a member brings ballots for other members to the membership meeting, the ballots must be sealed in separate individual Envelopes #1 and #2 as required above. The Inspectors will register and make all necessary determinations regarding those sealed ballot envelopes.
- e. The Inspectors will review the information provided on the upper left-hand corner of Envelope #2. The Inspectors will require, at a minimum, the following:
  - i) The name of the member must be legible and must match the name of at least one of the record owners of the property as shown on the Association's membership list.
  - ii) The member's signature must be on the Envelope #2.
  - iii) The address or property identifier shown on Envelope #2 must correspond to the member's address or property identifier on the Association's membership list.

8. **Registration of Members in Person.**

- a. Members wishing to vote in person at the membership meeting must present themselves at the registration table.
- b. A member may not revoke any previously mailed or delivered ballot; if the Inspectors confirm that a ballot was received by the Inspectors the member may attend the meeting but will not be given a new ballot to vote at the meeting. If the Inspectors confirm that a ballot was not received the member will be given a ballot and two envelopes to mark, seal and complete and cast in secret at the meeting.
- c. Members voting in person at the meeting must still use the Association provided ballot and Envelopes #1 and #2, and Envelope #2 must be filled out, sealed and signed. Failure to use the two envelope system at the meeting may lead to invalidation of the ballot cast at the meeting and shall prevent the ballot from being counted at any adjourned date if the meeting is adjourned for lack of a quorum.

9. **Registration of Proxies/Determination of Quorum.**

- a. If a person brings proxies to the membership meeting, the Inspectors will review and make all necessary determinations regarding those proxies, including the validity of those proxies.
- b. The Inspectors will determine based upon the count of the number of members voting (as appropriate) in person, by proxy, or by mail, as shown on the registration list, that quorum has been obtained.
- c. If a member has cast a ballot by mail or delivery to the Inspectors, that ballot will supersede and control over any proxy submitted, regardless of date.
- d. Upon determination that a quorum has been obtained, the Inspectors may close registration at the polls.

10. **Adjourned for Lack of Quorum/Recessed Meeting.**

- a. If any membership meeting is adjourned to another date due to lack of quorum, ballots already received by the Inspectors in properly completed, sealed Envelopes #1 and #2 will be valid for adjourned meetings.
- b. The ballots will be counted during a properly noticed open meeting of the Board or during a membership meeting. The Inspectors may request that any meeting be recessed to allow the Inspectors to continue the counting and tabulation of the ballots at another time. Notice of the recessed meeting will be given as required by law. The Inspectors will continue to maintain custody of all ballots until the counting and tabulation is complete.

11. **Observation/Custody of Ballots, Etc.**

- a. Any candidate or other member of the Association may witness the counting and the tabulation of the votes.
- b. No person, including any member of the Association, any employee or manager, may open any ballot envelope prior to the time and place at which the ballots are counted and tabulated.
- c. The sealed ballots at all times will be in the custody of the Inspectors until after the tabulation of the votes, and for nine months following conclusion of the vote (Corp. Code § 7527), at which time custody of the ballots, envelopes, and registration list shall be transferred to the Association. After the transfer to the Association, the ballots, envelopes and registration list shall be stored by the Association in a secure place for no less than one year after the date of the election.

12. **Privilege Suspensions.** Management will provide the Inspectors with a list of those members whose rights and privileges have been duly suspended after notice and hearing and who are not entitled to vote at the membership meeting. The Inspectors will take appropriate steps, including making notations or otherwise marking the membership registration list and/or sealed ballot envelopes, to not allow suspended members to vote at the membership meeting or in other membership votes.

13. **Consultation With Association Counsel.** The Inspectors will have the authority to confer with Association legal counsel in advance or at the meeting. Legal counsel represents the Association and does not represent the members, Inspectors, Board members, management or any other person. By the adoption of these rules, Association legal counsel has been authorized by the Board of Directors to provide advice to and to waive the attorney-client confidential communication privilege as determined necessary or prudent by the attorney to inform and advise the Inspectors regarding issues related to the Inspectors performing their duties for the Association. The Inspectors may confer with Association legal counsel outside the presence of the members.

14. **Nominating/Balloting.** Once registration for the polls has been closed, if a quorum is present, the membership meeting may proceed with nominations from the floor (if applicable), followed by balloting, etc.

15. **Tabulation, Counting, Inspectors' Conduct, Etc.**

- a. Once the balloting has been closed by the Inspectors, the Inspectors may then open the sealed envelopes and begin the count and tabulation of the ballots. All (sealed) inner (#1) envelopes will be set aside upon opening the duly registered Envelopes #2; Envelopes #1 will then be opened and the ballots tabulated.
- b. All votes shall be counted and tabulated by the Inspectors in public, at a properly noticed open meeting of the Board or of the members, after verification of a quorum of the membership.

- c. If the Inspectors open the envelopes and determine that there is no ballot in the envelopes, then the Inspectors will indicate on the registration list next to that owner's name that no ballot was received.
- d. Members and candidates may witness the counting and tabulation from a distance of no less than six feet from any Inspector.
- e. The Inspectors will not provide members or candidates with information, will not answer questions, engage in discussion and will not provide any interim counts or tabulations. Inspectors will only provide the members or Inspectors with a final count and tabulation.
- f. Members and candidates may not communicate with the Inspectors during the inspection, registration, count or tabulation process.
- g. Ballots must be legible and clearly marked. If the ballot is marked to cast more votes than the maximum number of votes for that election, no votes will be counted, and the ballot will be used for quorum purposes only.
- h. Inspectors will certify the results of the membership election by completing a report.

16. **After Tabulation.**

- a. Results of the election shall be announced and be promptly reported to the Board of Directors and recorded in the minutes of the next meeting of the Board.
- b. Results shall be available for review by all members after the certification of the membership meeting by the Inspectors.
- c. Tie Votes: For election of Directors, in the event of a tie vote among any number of the candidates, the Association will notice a special membership meeting and send out ballots to all members for a vote to break the tie. Said vote shall be conducted in accordance with the procedures herein, to the extent they are applicable to a run-off vote. No previously cast ballots or proxies will be used at the meeting to break the tie.
- d. Within 15 days of the election, the Board shall publicize the results of the election in a communication directed to all the members.
- e. In the event of an election challenge and upon receipt of a written request from a member, the Association will make the ballots available for inspection and review by Association members or their authorized representatives. In order to protect the security of the ballots, one or more Association representatives must be present during such review. The Association will not make proxies available for review or inspection.
- f. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.



**17. Access to Association Facilities and Communications/Use of Association Funds.**

- a. If any candidate or member advocating a point of view is provided access to any Association media, including newsletters, Internet web sites, other Association publications during any campaign, for purposes that are reasonably related to that election, then all candidates and members advocating a point of view shall be provided with equal access for purposes reasonably related to that election.
- b. The Association shall not edit or redact any content from these communications but will provide a statement specifying that the candidate or member, not the Association, is responsible for that content.
- c. Access to common area meeting space will be made available to all candidates and members advocating a point of view, for purposes reasonably related to the election, at no charge, on a first-come first-served basis. Reservations for Recreational Parks #1 and #2 use will be accepted following mailing of the meeting notice.

