

Election Rules

As required by California Civil Code (“CCC”) §5105, Elan Condominium Association (“Elan”) adopts the following Election Rules related to elections at Elan.

A. General.

1. These Election Rules, as provided in CCC §5100, are applicable to the election of directors, removal of directors, special assessments, amendments/restatements to the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements (“CC&Rs”) and Bylaws, grants of exclusive use common areas, and such other votes Elan’s Board of Directors (“Board”) determine should be conducted by secret ballot.

2. Pursuant to CCC §4160, and Elan’s governing documents, Members are Owners.

3. The Board, in its discretion, may modify, delay and/or repeal these Election Rules, in whole or in part, should new laws be enacted by a federal, state, city, or local legislative body that would affect the Election Rules. Effective January 1, 2020, election rules shall not be amended less than ninety (90) days before an election.

4. At least thirty (30) days before ballots are distributed, Elan shall provide general notice, and individual notice pursuant to CCC §4040 if requested by a Member, of the following: (a) the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector(s) of election; (b) the date, time, and location of the meeting at which ballots will be counted; and (c) the list of all candidates’ names that will appear on the ballot.

5. Ballots shall be provided to every Member, or person with general power of attorney for a Member, unless the person was not a Member at the time when ballots were distributed.

6. Elan shall retain association election materials, as defined in CCC §5200(c), for the time prescribed by California law. It shall include both a candidate registration list and a voter list. The voter list shall include name, voting power, and either the physical address of the voter’s separate interest, the parcel number, or both. The mailing address for the ballot shall be listed on the voter list if it differs from the physical address of the voter’s separate interest or if only the parcel number is used. Elan shall permit Members to verify the accuracy of their individual information on both lists at least thirty (30) days before the ballots are distributed. Elan or the Member shall report any errors or omissions to either list to the inspector(s) of election, who shall make the corrections within two (2) business days.

B. Association Media / Funds / Access to Common Area.

1. "Association Media" means Elan's newsletter, internet website, other written communication, and/or television channel(s) from Elan. Association Media does not include, within its definition, the official ballot materials sent to the Membership inclusive, for Board election, any biographical description and/or photographs of nominees that are running for the Board.

2. To the extent that Elan permits any other access to Association Media by a nominee (or a Member/resident advocating a point of view) for purposes that are reasonably related to an election, equal access shall be provided to all other nominees (or Members/Residents advocating a point of view) that are reasonably related to the election at issue. No nominee and/or Member shall be charged a fee for access to common area meeting space for purposes related to an election. Elan will not edit or redact any content from a nominee or Member/resident communication related to an election, provided, that the nominee or Member/resident offering a statement or commentary is responsible for the content and any published comment or comments made. Elan may include a disclaimer specifying that the nominee or Member/resident, and not Elan, is solely responsible for the content of the communication.

3. Elan funds should not be used for campaign purposes in connection with any Association election or vote, except to the extent necessary to comply with the duties of Elan imposed by law. Elan can use its funds to have corporate counsel (or other Board-designated individuals) prepare and review appropriate ballots as well as the copying, printing and mailing costs necessary to provide the ballots to the Membership consistent with Elan's governing documents and California law. Elan can also add background information and explanation of ballot material. Elan may use funds to distribute, for election of Board, a biographical description and photograph of the nominees within said election materials. The Board shall not advocate the election or defeat of any nominee that is on a Elan election ballot for the Board.

4. Elan shall permit all candidates for election to the Board and those Members advocating a point of view, access to common area meeting space during a campaign, at no cost to the Member for purposes reasonably related to the election.

C. Nominee Qualifications / Nomination Procedures.

1. To be eligible for nomination and election to the Board, a nominee, at the time his or her name is placed in nomination, as of the time of the election date, and during the term as a Board member, shall be a Member of Elan, unless otherwise permitted by CCC §5105(b).

2. Elan may disqualify a nominee for election to the Board if any of the following circumstances apply: (a) the nominee has been a Member of Elan for less than one (1) year; (b) the nominee discloses, or if Elan is aware or becomes aware of, a past criminal conviction that would, if the nominee was elected, either prevent Elan from purchasing the fidelity bond coverage required by CCC §5806 or terminate Elan's existing fidelity bond coverage; (c) the nominee would be serving on the Board at the same time as another person who holds a joint ownership interest in the same separate interest parcel as the nominee and the other person is either properly nominated for the current election or an incumbent director; or (d) the nominee is delinquent in the payment of regular and special assessments, or if delinquent in the payment of regular and special assessments either paid under protest pursuant to CCC §5658 or entered into a payment plan agreement with Elan pursuant to CCC §5665.

3. No nominee for election to the Board shall be disqualified until Elan has provided the nominee with the opportunity to participate in internal dispute resolution pursuant to CCC

§5900. In addition, no nominee for the Board shall be disqualified for nonpayment of fines, fines renamed as assessments, collection charges, late charges, or costs levied by a third party.

4. At least thirty (30) days before any deadline for submitting a nomination for election to the Board, Elan shall provide general notice, and individual notice pursuant to CCC §4040 if requested by a Member, of the procedure and deadline for submitting a nomination for election to the Board.

5. Nominations may be made from the floor during the annual meeting of Members. Nominations may also be made by write-in on the election ballot. The nomination process may be by any of the following: (a) a Nominating Committee may be appointed by the Board. The Nominating Committee may, in its discretion, make as many nominations for election to the Board as necessary, but not less than the number of vacancies that are to be filled, and forward to the Board its nomination(s); or (b) a Member may submit the name(s) of Members, including himself or herself, to be a nominee for election to the Board; or (c) the Board may make nominations for election to the Board.

D. Inspector(s) of Election.

1. The Board shall appoint one (1) or three (3) inspector(s) of election. If there are three (3) inspectors of election, the decision or act of a majority shall be effective in all respects as the decision or act of all inspectors of election.

2. The inspector(s) of election shall be anyone of the following, as determined by the Board at an open Board meeting prior to the distribution of the ballot material: (1) a Member or Members of Elan; (2) a volunteer poll worker with the county registrar of voters; (3) a licensee of the California Board of Accountancy; (4) a notary public; or (5) any independent third party not currently employed or under contract with Elan for any compensable services other than serving as an inspector of election. Inspector(s) of election may not be a member of the Board, a nominee for the Board, related to a member of the Board and/or related to a nominee for the Board.

3. The inspector(s) of election shall perform all duties impartially, in good faith, to the best of the inspector(s) of election's ability, as expeditiously as is practical, and in a manner that protects the interest of all Members of Elan. The inspector(s) of election shall also: (a) determine the number of Memberships entitled to vote; (b) determine the voting power of each Membership; (c) determine the authenticity, validity, and effect of proxies, if any; (d) receive the ballots; (e) hear and determine all challenges and questions in any way arising out of or in connection with the right to vote; (f) count and tabulate all votes; (g) determine when the polls shall close, consistent with the governing documents; (h) determine the results of the election; and (i) perform any acts which may be proper to conduct the election with fairness to all Members in accordance with California law and Elan's governing documents.

4. The inspector(s) of election may also appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector(s) of election deem appropriate, provided that the additional persons are independent third parties (e.g. not be a member of the

Board, a nominee for the Board, related to a member of the Board and/or related to a nominee for the Board).

5. The Board shall have the authority to remove and/or replace an inspector(s) of election at any time if an inspector(s) of election resigns or whenever the Board determines that an inspector(s) of election will not perform his or her duties impartially and in good faith, or if the inspector(s) of election ceases to meet the qualifications to serve as an inspector(s) of election.

6. The Board shall provide the inspector(s) of election with a membership list accurate as of the record date established by the Board for voting eligibility and such other documents as may be necessary for the inspector(s) of election to verify the results of the election or votes.

7. The inspector(s) of election shall have the authority to consult with Elan's Corporate Counsel in the event of uncertainties in the interpretation or application of CCC §5100 et seq., these Election Rules, Elan's governing documents or as might otherwise be necessary to ensure a fair election that complies with the law and Elan's governing documents. All such consultations shall be protected by the attorney-client privilege and shall be kept confidential from all persons other than the Board. Neither the inspector(s) of election nor Elan's Corporate Counsel shall disclose to others, including the Board, how a particular ballot or proxy is to be voted.

E. Voting, Including Secret Ballot Voting.

1. The record date for Members entitled to receive a ballot shall be the date the first election ballot material is sent to the Membership by Elan.

2. As more fully described in these Election Rules, votes may be cast by Members either in person, by proxy, or by mail-in ballot. In accordance with Elan's governing documents, Members shall be entitled to 1 vote per separate interest parcel.

3. Notwithstanding any other law or provision of Elan's governing documents, Board election and other elections required to be submitted to the Membership pursuant to CCC §5115 shall be conducted by a secret written ballot submitted to the Members without a meeting.

4. The inspector(s) of election shall deliver, or cause to be delivered, to Members at least thirty (30) days before an election, the ballot and a copy of these Election Rules. Delivery shall be made by one of the following methods: (a) individual delivery; or (b) posting to an internet website and including the internet website address on the ballot with the phrase in at least 12-point font: "The rules governing this election may be found here:"

5. Ballots and two pre-addressed envelopes with instructions on how to return ballots, must be mailed by first class mail or delivered by Elan to every Member not less than thirty (30) days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be identified by name, address or separate interest parcel on the ballot itself. The balloting process shall include all of the following:

a. The ballot shall identify all the nominees or, as it relates to any other election, the proposed action and include the opportunity to specify approval or disapproval of the proposed action.

b. The ballot itself is not signed by the voter, but is placed into a ballot envelope, which is then sealed ("Ballot Envelope"). The Ballot Envelope is then inserted into the second pre-addressed envelope ("Second Envelope") that is then sealed. In the upper left-hand corner of the Second Envelope, the voter prints and signs his/her name and separate interest identifier (street address) that entitles him/her to vote.

c. The Second Envelope is addressed to the inspector(s) of election. The Second Envelope can be mailed by the Member to the inspector(s) of election or delivered by hand to a location specified by the inspector(s) of election. Any Member can request a receipt for delivery of their ballot. Failure to sign the Second Envelope shall invalidate the ballot.

6. The balloting process for amendments to governing documents shall be submitted to the Membership in a similar manner as the election for the Board, except that the ballots could be disseminated to the Membership at any time and not in conjunction with the timing of any meeting.

7. Voting by proxy shall be permitted in accordance with Elan's Bylaws and California law, although Elan may elect not to prepare and distribute proxies in any election or vote covered by CCC §5100, et seq. The responsibility to prepare and submit a proxy shall then rest with the Member seeking to authorize another to vote by proxy. Proxies must be received by Elan's Secretary, through the management company, at least five (5) business days before the meeting wherein the proxy holder intends to vote. Proxies are not secret ballots in that they will be reviewed by management or other designated representative prior to the meeting. Voting by proxy shall not be permitted in elections or votes submitted to the Membership without a meeting, except if necessary to establish a quorum for any Membership meeting. Voting by proxy shall be permitted in elections or votes where a membership meeting will be held and voting will be allowed or tallied at the meeting. The proxy holder shall be present at the meeting in order to vote.

8. Voting can begin upon receipt of the ballot materials. The voting instructions included in the ballot materials will show the date and time by which ballots must be returned, at which time the polls will close and no further ballots will be accepted. The date will be as specified in the instructions, provided that at least thirty (30) days must be given to return the ballots to the inspector(s) of election. All ballots must be delivered to the location designated by the inspector(s) of election.

9. Written ballots may not be revoked once they are submitted to the inspector(s) of election. If a Member loses his/her ballot, he/she may request another ballot, along with the appropriate envelopes from the inspector(s) of election, but the Member must sign a statement, under penalty of perjury that the original ballot was either lost, destroyed or never received. The inspector(s) of election shall maintain a record of each such request and, if it is determined that the Member voted twice, even by mistake, neither ballot would be counted.

10. All votes shall be counted by the inspector(s) of election at the start of a properly noticed meeting. The counting process will be followed by the regular business portion of the meeting, if any, by the Board. Any nominee or other Member of Elan may witness the counting and tabulation of the votes. Anyone who is not an inspector(s) of election must remain at least ten feet (10') away from the counting table(s). No person may interfere with, harass or otherwise communicate with the inspector(s) of election while the count and tabulation is taking place, other than Elan's Corporate Counsel as deemed necessary by the inspector(s) of election. The inspector(s) of election can cause the removal of any observer who causes interference with or disrupts the counting or tabulation process. Once the inspector(s) of election have finished counting, the inspector(s) of election will thereafter announce the results of the election at the meeting. No person, including any Member of Elan or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated by the inspector(s) of election.

11. The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall be kept in the custody of the inspector(s) of election or at a location designated by the inspector(s) of election until after tabulation of the vote and until the time allowed by CCC §5145 for challenging the election has expired. Thereafter, the inspector(s) of election shall transfer association election materials, as defined in CCC §5200(c), to Elan, who shall store them in a secure place for no less than one (1) year after transfer from the inspector(s) of election.

12. The results of any election or vote shall be promptly reported to the Board and shall be recorded in the minutes of the next Board meeting and shall be available for review by Members of Elan. Within fifteen (15) days of the election or vote, the Board shall publicize the results of the election or vote in a communication directed to all Members.