

January 15, 2020

**ATTORNEY-CLIENT PRIVILEGED**

Board of Directors  
Woodbridge Chateaux Maintenance Association  
c/o Powerstone Property Management

**VIA ELECTRONIC MAIL**

**Attn: Melissa Pease**  
9060 Irvine Center Drive, Suite 200  
Irvine, CA 92618

**Re: Woodbridge Chateaux Maintenance Association**

**Subject: Election Rules and Related Documents**

Members of the Board:

Please find enclosed the Woodbridge Chateaux Maintenance Association's Election Rules which have been drafted as required by Senate Bill 323 (effective January 1, 2020) and with the Board's input regarding director qualifications. In addition to the Election Rules, we have also included a table which includes the new documents that must be distributed or posted, as well as the following templates for your use:

1. Notice of Nomination Procedure and Deadline
2. Notice of Balloting Procedure
3. Resolution of Inspectors, which is intended to be used to appoint the Inspector(s) of Election at an open meeting approximately four (4) months before the election and should be included with the minutes<sup>1</sup>.

The Election Rules include optional qualifications for nominees. One of the options allowed under the law is the option to disqualify a nominee who is not current in the payment of regular and special assessments. This option is conditioned on a number of factors. Importantly, the Bylaws or Articles must make sitting directors ineligible to serve using the same criteria. In other words, sitting directors must be subject to removal for delinquencies as part of the existing Bylaws or Articles of Incorporation. Because the existing governing documents do not include this requirement for sitting directors, we are unable to include that qualification for nominees. However, if this qualification is important to the Board, we can certainly discuss a Bylaw amendment.

The enclosed rules include three (3) optional qualifications, which have been highlighted. The Board will need to choose which qualifications it would like to use and delete those that will

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<sup>1</sup> Note, this is not a required form, but one that we feel may be helpful. You may also find it helpful to provide a copy of the resolution to the inspector(s), but again, this is optional.

not be used. One optional qualification is related to criminal convictions and fidelity bonds. A nominee would be disqualified because of a past criminal conviction that may prevent an association from obtaining fidelity bond coverage. We have contacted insurance agents and have determined that, for the most part, it is difficult to be unbondable, even for criminal convictions. We believe that this qualification may put the Board in a difficult position in the event that someone is disqualified but the Board later learns that it was in fact possible to get the fidelity bond. Thus, we do not recommend this optional qualification.

The Election Rules are considered an adoption of operating rules, requiring certain procedures. The law requires that the Board of Directors provide written notice to the membership of proposed rules, at least twenty-eight (28) days prior to adopting the rules. The notice to the members must include the text of the proposed rules and a description of the purpose behind the rules and its effect.<sup>2</sup> Subsequent to providing the notice to the members, the proposed rules can only be adopted at an open meeting of the Board, and only after the Board has considered comments which may be made by the membership. No later than fifteen (15) days following the adoption of the rules, the Board must deliver notice of the new rules to every member. Please also note that as of January 1, 2020, election rules may not be adopted within ninety (90) days of an election.

When drafting the enclosed rules we spent a significant amount of time attempting to determine the meaning of poorly-written laws. While we believe our interpretations are accurate, we expect that additional changes to the law will be enacted in the future to clear up the many ambiguities. If and when this happens, we will apprise you as to any changes that need to be made.

Should the Board have any questions or comments concerning the above, or desire to discuss this issue in further detail, please do not hesitate to contact me.

Very truly yours,

IGER WANKEL & BONKOWSKI, LLP



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Denise D. Iger, Esq.

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Enclosures (Election Rules, Timeline, Notices, Resolution)

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<sup>2</sup> The notice may be posted in the location set forth in your Annual Policy Statement for general notice or may be mailed to the membership.

## WOODBRIIDGE CHATEAUX ASSOCIATION

Powerstone Property Management  
9060 Irvine Center Drive, Suite 200  
Irvine, CA 92618

### Notice of Nomination Procedure and Deadline

Your Board of Directors is providing this written notice of nomination procedure and submission deadline pursuant to *Civil Code* section 5115.

The deadline to submit a nomination is \_\_\_\_\_, 20 \_\_. The procedure for submitting a nomination is as follows:

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*Notes (not to be included on the notice): This notice must be provided at least 30 days the deadline for submitting a nomination for candidacy, by general notice. Individual notice must be delivered pursuant to §4040 only if individual notice is requested.*

*Individual notice - First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the recipient at the address last shown on the books of the association. Or, email, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery.*

*General notice - Any method provided for delivery of an individual notice; described above; inclusion in a billing statement, newsletter, or other document; posting in the prominent, accessible location designated for the posting in the annual policy statement.*

## **WOODBRIIDGE CHATEAUX MAINTENANCE ASSOCIATION ELECTION RULES AND PROCEDURES**

### **Campaigning**

If any candidate or member advocating a point of view is provided access to Woodbridge Chateaux Maintenance Association (“Association”) media, newsletters, or websites during a campaign, for purposes that are reasonably related to that election, then all candidates and members advocating a point of view will be provided equal access.

Any views, comments or opinions set forth in any communication from a candidate or member are those solely of the candidate or member, and the Association is not responsible or liable for such content. The candidate or member, and not the Association, is solely responsible for the content of all materials and/or communications presented by the candidate or member.

Access to the common area meeting space will be provided during a campaign, at no cost, to all candidates and members advocating a point of view for purposes reasonably related to the election. Members and residents shall not be prevented from peacefully assembling or meeting with members, residents, and their invitees or guests during reasonable hours and in a reasonable manner for purposes relating to association elections. Residents may use the common area and homes for an assembly when the common area is not otherwise in use. Canvassing, petitioning, and circulating materials to the members in connection with an election is permitted if done in a reasonable manner, and during reasonable hours, and is not otherwise prohibited by law, municipal or otherwise.

Association funds will not be used for campaign purposes in connection with any Association Board election. Association funds shall not be used for campaign purposes in connection with any other Association election except to the extent necessary to comply with duties of the Association imposed by law. For the purposes of this section, "campaign purposes" include, but are not limited to, (1) expressly advocating the election or defeat of any candidate who is on the Association election ballot; or (2) including the photograph or prominently featuring the name of any candidate on a communication from the Association or the Board, excepting the ballot and ballot materials, within thirty (30) days of election, provided that this is not a campaign purpose if the communication is one for which the law requires that equal access be provided to another candidate or advocate.

### **Nominee Qualifications**

The Association is required by law to disqualify a person from nomination if the person is not a member of the Association at the time of the nomination. To be a “member” of the Association a person or entity must be a record owner of fee simple title to a Condominium.

Additionally, the Association may disqualify a person from nomination based on any of the following:

1. If the nominee discloses, or if the Association is aware or becomes aware of, a past criminal conviction that would either prevent the Association from purchasing the fidelity bond coverage required by *Civil Code* section 5806 should the person be elected or terminate the Association's existing fidelity bond coverage as to that person should the person be elected.
2. If the person, if elected, 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 person and the other person has already been properly nominated for the current election or is an incumbent director.
3. If that person has not been a member of the Association for at least one (1) year.

However, the foregoing option to disqualify a member shall not apply if the member has not been provided the opportunity to engage in IDR.

### **Voting Qualifications**

Every person who is a member at the time the ballots are distributed is entitled to receive a ballot. Persons with a general power of attorney for a member shall be entitled to obtain a ballot and vote after providing a copy of the signed general power of attorney to the Association. Those with specific powers of attorney are generally not entitled to a ballot. Members shall be entitled to cast one (1) ballot for each Unit owned. In any election of the Board every member entitled to vote shall have the right to accumulate his/her votes and give one (1) candidate, or divide among any number of candidates, a number of votes equal to the number of Directors to be elected.

If a record date for voting is not fixed by the Board of Directors, those who are members on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting of the Association.

### **Joint Owner Disputes**

When more than one (1) person or entity owns the Condominium, they shall all be members and the vote for the Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Condominium. The Association shall not be required to recognize the vote of any such co-owner except the vote of a co-owner designated in a writing executed by all such co-owners and delivered to the Association.

### **Voter List**

The Association shall maintain a voter list to include the name, voting power, and either the physical address of the voter's Condominium, 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 Condominium or if only the parcel number is used. Members may verify the accuracy of their individual information on the voter list at least thirty (30) days before the ballots are distributed. The Association or member shall report any errors or omissions to the list to the Inspector(s) who shall make the corrections within two (2) business days. The member should simultaneously convey this information to the management company.

### **Nomination Procedures**

The Association will provide general notice, as defined by *Civil Code* section 4045, of the procedure and deadline for submitting a nomination at least thirty (30) days before any deadline for submitting a nomination.

An Election Committee shall be appointed annually to supervise nominations and voting procedures. The Election Committee shall consist of a Chairman, who shall be a member of the Board, and two (2) other persons. The Nominating Committee shall be appointed by the Board of Directors to serve for one (1) year and vacancies shall be filled by the Board of Directors. The Election Committee shall make as many nominations for election to the Board as it may in its discretion, determine, but not less than the number of vacancies that are to be filled. Nominations may also be made from the floor at the Annual Meeting. Self-nominations are permitted.

### **Candidate List**

Members may verify the accuracy of their individual information on the candidate list at least thirty (30) days before the ballots are distributed. The Association or member shall report any errors or omissions to the list to the Inspector(s) who shall make the corrections within two (2) business days.

### **Pre-Election Notice**

The Association shall provide general notice, as defined by *Civil Code* section 4045, at least thirty (30) days before the ballots are distributed of (1) the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspector(s); (2) the date, time, and location of the meeting at which ballots will be counted; and (3) the list of all candidates' names that will appear on the ballot.

## Voting Procedures

Secret ballots will be provided to all members for their use. Elections will be conducted in accordance with the following balloting procedures:

1. The Inspector(s) shall cause the ballots and two pre-addressed envelopes (with instructions) to be delivered or mailed by first-class mail to every member not less than thirty (30) days prior to the election;
2. The Inspector(s) shall cause these Election Rules to be “delivered” to the members not less than thirty (30) days prior to the election. Delivery may be accomplished by posting these Election Rules to an internet website and including the corresponding internet website address on the ballot together with the phrase, in at least 12-point font: “The rules governing this election may be found here: \_\_\_\_\_” or by personal delivery or first-class mail.
3. Ballots are *not* to be signed by the voter and a member who places any identifying marks or signature on his or her ballot will waive his or her right to secrecy;
4. Completed ballots must be placed into an inner envelope that has no identifying information on it (*e.g.*, no member name, no property address, no signature, etc.), and the inner envelope is then sealed by the member;
5. The inner envelope is then inserted into the outer envelope that is pre-addressed to the Inspector(s) of Election and then sealed by the member;
6. In the upper left-hand corner of the outer envelope, the member must indicate his or her name and the address of the property within the Association and then the member must sign his or her name in the upper left-hand corner of the outer envelope. Ballots received in improperly completed envelopes (*e.g.*, not signed or without identifying information) may not be counted by the Inspector(s);
7. The envelope may be mailed or delivered by hand to the management office, unless another place is designated by the Inspector(s). The member may request a receipt for delivery;
8. Once a ballot is received by the Association, in the place designated by the Inspector(s), it is deemed irrevocable, even if it is unopened;
9. The sealed ballots shall be in the custody of the Inspector(s) or in the place designated by the Inspector(s) at all times;

10. No person may open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated; and
11. The voting period for member meetings shall commence when the first ballot is mailed or delivered to a member of the Association and shall end at such time as the Inspector(s) determine the polls close.

### **Use of Proxies**

If a member chooses to use a proxy, the proxy must be filed with the Secretary of the Association. No such proxy shall be valid after the expiration of eleven (11) months from the date of execution unless otherwise provided in the proxy, except that the maximum term of any proxy shall be three (3) years from the date of execution.

A proxy must (1) identify a proxyholder (who must physically attend the meeting for which the proxy is being exercised), (2) contain voting instructions, and (3) be signed by the member giving the proxy. Any instruction given in a proxy issued for an election that directs the manner in which the proxyholder is to cast the vote must be set forth on a separate page of the proxy that can be detached and given to the proxyholder to retain. The proxyholder must cast the member's vote by secret ballot. A proxy that does not satisfy these requirements may not be counted.

### **Inspectors of Election**

Inspector(s) of Election ("Inspector(s)") will be appointed by the Board of Directors at a board meeting held prior to the election and will serve as Inspectors until such time that their successors are appointed by the Board of Directors. There shall be one (1) or three (3) Inspectors for the Association. If there are three (3) Inspectors, the decision or act of a majority shall be effective in all respects as the decision or act of all. Inspector(s) may be a member of the Association, but may not be a member of the Board, a candidate for the Board, or related to a member of the Board or candidate for the Board. An Inspector may not be a person or entity who or which is currently employed or under contract to the Association for any compensable services, other than inspection services.

### **Role of Inspectors of Elections**

Inspector(s) will determine the number of memberships entitled to vote and the voting power of each in accordance with the Association's governing documents. Inspector(s) will determine the authenticity, validity, and effect of proxies, if any. Inspector(s) will hear and determine all challenges and questions in any way arising out of or in connection with the right to vote. Ballots will be returned to the Association's managing office, unless another location is designated by the Inspectors. Inspector(s) will determine when the polls shall close. Inspector(s) will determine and announce the tabulated results of the election.



The Inspector(s) may appoint and oversee additional persons to verify signatures, count and tabulate votes as the Inspector(s) deem appropriate, provided that the persons are independent third parties. Inspector(s) may also perform any acts as may be proper to conduct the election with fairness to all members in accordance with all applicable rules of the Association regarding the conduct of the election that are not in conflict with current law. Inspector(s) must perform all duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical, and in a manner that protects the interest of all members of the Association.

### **Tabulation of Votes**

Inspector(s) count and tabulate all votes. All votes shall be counted and tabulated by the Inspector(s) at a duly noticed board or membership meeting. Any candidate or other member of the Association may witness the counting and tabulation of the votes. Members who are not Inspectors or being overseen by an Inspector must remain at least five feet (5') away from the counting area. Members who are not Inspectors may not participate in the counting or tabulation process or any discussions that may arise among the Inspectors or their designated assistants.

Every Inspector(s) must provide an inspection report for the Association's corporate records. After the final tabulation of the votes, custody of all election materials will be transferred to the custody of the Association, unless first retained by the Inspector in a secure place for no less than one (1) year after the date of the election. Once retained by the Association, the election materials shall be stored for a period not less than the current fiscal year, plus two (2) additional fiscal years.

### **Recording and Announcing Election Results**

Inspector(s) must report the results of the election promptly to the Board of Directors, and the results will be recorded in the next regular session board meeting minutes. In addition to recording the election results in the next regular session board meeting minutes, the Association shall keep annual meeting minutes that reflect the election results. The Board of Directors will publicize the results of the election in a communication directed to all members within fifteen (15) days of a successful (quorum achieved) election.

### **Retention and Inspection of Records**

The ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in the custody of the Inspector(s) or at a location designated by the Inspector(s) until after the tabulation of the vote, and until the time allowed by *Civil Code* section 5145 for challenging the election has expired, at which time custody shall be transferred to the Association.

Returned ballots, signed voter envelopes, the voter list of names, parcel numbers, and voters to whom ballots were to be sent, proxies, and the candidate registration list are subject to inspection. Signed voter envelopes may be inspected but may not be copied. If there is a recount or other challenge to the election process, the Inspector(s) shall, upon written request, make the ballots available for inspection and review by an Association member or the member's authorized representative. Any recount shall be conducted in a manner that preserves the confidentiality of the vote.

## WOODBIDGE CHATEAUX ASSOCIATION

Powerstone Property Management  
9060 Irvine Center Drive, Suite 200  
Irvine, CA 92618

### Notice of Balloting Procedure

Your Board of Directors is providing this written notice of balloting procedure pursuant to  
*Civil Code* section 5115.

All ballots must be returned by \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ p.m. [*insert the deadline for return of ballots; if the deadline is at the annual meeting indicate the date and time for the call of order*]to:

The Inspector of Election for Woodbridge Chateaux Association  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, California 92\_\_\_\_\_

[*insert the address for mailing ballots*] either by mail or in-person.

Ballots may also be hand-delivered to the Inspector of Election at the Annual Meeting on \_\_\_\_\_ at \_\_\_\_\_ p.m. [*insert date and time of Annual Meeting*] at [*insert location*], or any adjournment thereof. Upon achieving quorum, the ballots will be counted at the Annual Meeting or the adjournment thereof.

The candidates' names appearing on the ballot are as follows:

[*Insert names here*]

*Notes (not to be included on the notice): This notice must be provided at least 30 days before the ballots are distributed by general notice. Individual notice must be delivered pursuant to §4040 only if individual notice is requested.*

*Individual notice* - *First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the recipient at the address last shown on the books of the association. Or, email, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery.*

*General notice* - *Any method provided for delivery of an individual notice; described above; inclusion in a billing statement, newsletter, or other document; posting in the prominent, accessible location designated for the posting in the annual policy statement.*

**BOARD OF DIRECTORS  
WOODBRIIDGE CHATEAUX ASSOCIATION**

**RESOLUTION RE APPOINTMENT OF INSPECTORS OF ELECTION**

The Board of Directors of the Woodbridge Chateaux Maintenance Association (“Association”) hereby adopts the following resolution:

1. The following persons or entity shall be appointed as Inspectors of Election and shall serve as Inspectors of Election for the Annual Election scheduled for \_\_\_\_\_, 20\_\_:
  - 1.
  - 2.
  - 3.
2. The Board of Directors believes that each of the appointed Inspectors of Election is not a member of the Board, a candidate for the Board, or related to a member of the Board or candidate for the Board. The appointed Inspector is not a person or entity who or which is currently employed or under contract with the Association for any compensable services, other than inspection services.
3. The Inspectors of Election shall do all of the following:
  - (A) Determine the number of memberships entitled to vote and the voting power of each.
  - (B) Must correct or cause to be corrected, within two business days, any reported errors or omissions from the candidate registration list and voter list such as the name, voting power, and address of any member.
  - (C) Must deliver, or cause to be delivered, to each member, at least thirty (30) days before an election, a ballot and copy of the election rules. Delivery of the election rules may be accomplished by individual delivery or posting the rules to an internet website and including the corresponding internet website on the ballot together with the phrase (in 12-point font) “The rules governing this election may be found here: \_\_\_\_\_.”
  - (D) Determine the authenticity, validity, and effect of proxies, if any.
  - (E) Receive ballots at the location determined by the Inspector. If no determination is made, ballots shall be returned to the management company.
  - (F) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
  - (G) Count and tabulate all votes.

- (H) Determine when the polls shall close.
  - (I) Determine the result of the election.
  - (J) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section and all applicable rules of the Association regarding the conduct of the election that are not in conflict with this section.
4. An Inspector of Election shall perform his or her duties impartially, in good faith, to the best of his or her ability, as expeditiously as is practical, and in a manner that protects the interest of all members of the association.
  5. The decision or act of a majority shall be effective in all respects as the decision or act of all.
  6. Envelopes containing the ballots will be mailed or delivered by hand to a location specified by the Inspector or Inspectors of Election. The Board of Directors requests that the Inspectors appoint the management office as the designated location.
  7. All votes shall be counted and tabulated by the Inspectors of Election in public at a properly noticed open meeting of the Board of Directors or members. Any candidate or other member of the Association may witness the counting and tabulation of the votes. No person, including a member of the Association 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.
  8. The results of the election shall be promptly reported to the Board of Directors of the Association and shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for review by members of the Association. Within fifteen (15) days of the election, the Board shall publicize the result of the election in a communication directed to all members.
  9. The sealed ballots, signed voter envelopes, voter list, proxies, and candidate registration list shall at all times be in custody of the Inspectors of Election or at a location designated by the Inspector or Inspectors until after the tabulation of the vote, at which time custody shall be transferred to the Association. The Board of Directors requests that the Inspectors appoint the management office as the location.
  10. The Board of Directors shall cause a copy of this resolution to be delivered to each of the appointed Inspectors.

**CERTIFICATE**

I, \_\_\_\_\_, the Secretary of the Woodbridge Chateaux Maintenance Association, hereby certify that the foregoing Resolution was duly and regularly adopted by the Board of Directors on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Secretary

## INSTRUCTIONS FOR ELECTION OF DIRECTORS

Event	Instructions for Calculating Date of Event	Action Needed	Delivery Method*
Election Date	Date is determined by the board, following any restrictions in the governing documents.	Membership meeting to count ballots. Distribute election results within in 15 days.	Election results by general notice unless requested by individual.
Mailing date for balloting materials	Count 30+ days from election date.	Mail ballot, notice, voting instructions and election rules.	Individual notice by U.S. Mail. The election rules may alternatively be posted to a website, if the following is added to the ballot (in at least 12-point font): "The rules governing this election may be found here: ____."
Posting of Nominations	Count 30+ days from date of mailing of balloting materials.	Provide notice of (1) the date and time where ballots are to be returned; (2) the date, time, and location of the meeting; and (3) candidates' names. (template enclosed) Permit members to verify accuracy of candidate and voter lists and have inspector make corrections within 2 days.	General notice unless requested by individual.
Call for Nominations	Count 30+ days from posting of nominations.	Provide notice of the procedure and deadline for submitting a nomination. (template enclosed)	General notice unless requested by individual.
Appointment of Inspectors / Determine Election Date	Date of board meeting prior to call for nominations.	Appoint inspectors (template enclosed) and set election date, time and location, noting requirements in the governing documents.	Include resolution in the minutes and the resolution may optionally be sent to the inspector after adoption.

*\*Individual Notice - First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier addressed to the recipient at the address last shown on the books of the association; or, email, facsimile, or other electronic means, if the recipient has consented, in writing, to that method of delivery.*

*\*General Notice - Any method provided for delivery of an individual notice; described above; inclusion in a billing statement, newsletter, or other document; posting in the prominent, accessible location designated for the posting in the annual policy statement.*