

Proper Role of Inspectors of Election

The Inspector(s) of Election need to be appointed well in advance of any election. For all elections of directors, the association is required to provide three separate notices. Each notice must come at least thirty (30) days before the next notice can be provided. Of particular note, the ***Pre-Ballot Notice***, which is required to be posted at least thirty (30) days prior to the ballots being delivered, must include the date and time by which, and the physical address where, ballots are to be returned by mail or handed to the inspectors of elections. [Civil Code §5115(b).] The appointment of the Inspector(s) of Election needs to take place prior to this notice being posted.

Rules for Appointment. Civil Code §5105(a)(5) requires that election rules specify the method for appointing Inspector(s) of Election. Generally the board appoints them in advance, or they are elected by the members at the election. However, given that the Inspector(s) of Election are now required to determine where the ballots are to be returned well in advance of the meeting, it is impractical to wait until the meeting in order to elect the Inspector(s) of Election.

Who may serve as Inspector(s) of Election. Independent third parties shall serve as Inspector(s) of Election. Civil Code §5110(b) states that an independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the association for any compensable services other than serving as Inspector(s) of Election. What this means is that a current vendor, such as a management company or law firm, who is providing compensable services to the association may not act as Inspector(s) of Election.

Role of Inspector(s) of Election. Inspector(s) of Election shall do all of the following: (a) Determine the number of memberships entitled to vote and the voting power of each; (b) determine the authenticity, validity, and effect of proxies, if any; (c) receive ballots; (d) hear and determine all challenges and questions in any way arising out of or in connection with the right to vote; (e) count and tabulate all votes; (f) determine when the polls shall close, consistent with the governing documents; and (g) determine the tabulated results of the election. Moreover, 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 practical, and in a manner that protects the interest of all members of the association. [Civil Code §5110.]

Election materials. Civil Code §5125 states, "The sealed ballots, signed voter envelopes, voter lists, proxies, and candidate registration list shall at all times be in the custody of the inspector or inspectors of elections ***or at a location designated by the inspector or inspectors.*** . ." [emphasis added] Typically, the inspector of elections designates the management company to serve as the custodian.