

**FRIENDLY AMENDMENT TO
RESOLUTION 02-01-2020
BY SDCBA**

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code sections 5105 and 5115 to read as follows:

1 § 5105

2 (a) An association shall adopt operating rules in accordance with the procedures
3 prescribed by Article 5 (commencing with Section 4340) of Chapter 3, that do all of the
4 following:

5 (1) Ensure that if any candidate or member advocating a point of view is provided access
6 to association media, newsletters, or internet websites during a campaign, for purposes that are
7 reasonably related to that election, equal access shall be provided to all candidates and members
8 advocating a point of view, including those not endorsed by the board, for purposes that are
9 reasonably related to the election. The association shall not edit or redact any content from these
10 communications, but may include a statement specifying that the candidate or member, and not
11 the association, is responsible for that content.

12 (2) Ensure access to the common area meeting space, if any exists, during a campaign, at
13 no cost, to all candidates, including those who are not incumbents, and to all members
14 advocating a point of view, including those not endorsed by the board, for purposes reasonably
15 related to the election.

16 (3) Specify the qualifications for candidates for the board and any other elected position,
17 subject to subdivision (b), and procedures for the nomination of candidates, consistent with the
18 governing documents. A nomination or election procedure shall not be deemed reasonable if it
19 disallows any member from nominating themselves for election to the board.

20 (4) Specify the voting power of each membership, the authenticity, validity, and effect of
21 proxies, and the voting period for elections, including the times at which polls will open and
22 close, consistent with the governing documents.

23 (5) Specify a method of selecting one or three independent third parties as inspector or
24 inspectors of elections utilizing one of the following methods:

25 (A) Appointment of the inspector or inspectors by the board.

26 (B) Election of the inspector or inspectors by the members of the association.

27 (C) Any other method for selecting the inspector or inspectors.

28 (6) Allow the inspector or inspectors to appoint and oversee additional persons to verify
29 signatures and to count and tabulate votes as the inspector or inspectors deem appropriate,
30 provided that the persons are independent third parties.

31 (7) Require retention of, as association election materials, both a candidate registration
32 list and a voter list. The voter list shall include name, voting power, and either the physical
33 address of the voter's separate interest, the parcel number, or both. The mailing address for the
34 ballot shall be listed on the voter list if it differs from the physical address of the voter's separate
35 interest or if only the parcel number is used. The association shall permit members to verify the
36 accuracy of their individual information on both lists at least 30 days before the ballots are
37 distributed. The association or member shall report any errors or omissions to either list to the

38 inspector or inspectors who shall make the corrections within two business days.

39 (b) An association shall disqualify a person from a nomination as a candidate for not
40 being a member of the association at the time of the nomination.

41 (1) This subdivision does not restrict a developer from making a nomination of a
42 nonmember candidate consistent with the voting power of the developer as set forth in the
43 regulations of the Department of Real Estate and the association's governing documents.

44 (2) If title to a separate interest parcel is held by a legal entity that is not a natural person,
45 the governing authority of that legal entity shall have the power to appoint a natural person to be
46 a member for purposes of this article.

47 (c) Through its bylaws or election operating rules adopted pursuant to subdivision (a) of
48 Section 5105 only, an association may disqualify a person from nomination as a candidate
49 pursuant to any of the following:

50 (1) Subject to paragraph (2) of subdivision (d), an association may require a nominee for
51 a board seat, and a director during their board tenure, to be current in the payment of regular and
52 special assessments, which are consumer debts subject to validation. If an association requires a
53 nominee to be current in the payment of regular and special assessments, it shall also require a
54 director to be current in the payment of regular and special assessments.

55 (2) An association may disqualify a person from nomination as a candidate if the person,
56 if elected, would be serving on the board at the same time as another person who holds a joint
57 ownership interest in the same separate interest parcel as the person and the other person is either
58 properly nominated for the current election or an incumbent director.

59 (3) An association may disqualify a nominee if that person has been a member of the
60 association for less than one year.

61 (4) An association may disqualify a nominee if that person discloses, or if the association
62 is aware or becomes aware of, a past criminal conviction that would, if the person was elected,
63 either prevent the association from purchasing the fidelity bond coverage required by Section
64 5806 or terminate the association's existing fidelity bond coverage.

65 (d) An association may disqualify a person from nomination for nonpayment of regular
66 and special assessments, but may not disqualify a nominee for nonpayment of fines, fines
67 renamed as assessments, collection charges, late charges, or costs levied by a third party. The
68 person shall not be disqualified for failure to be current in payment of regular and special
69 assessments if either of the following circumstances is true:

70 (1) The person has paid the regular or special assessment under protest pursuant to
71 Section 5658.

72 (2) The person has entered into a payment plan pursuant to Section 5665.

73 (e) An association shall not disqualify a person from nomination if the person has not
74 been provided the opportunity to engage in internal dispute resolution pursuant to Article 2
75 (commencing with Section 5900) of Chapter 10.

76 (f) Notwithstanding any other law, through its bylaws or election rules adopted pursuant
77 to subdivision (a) of Section 5105 *only*, an association may provide for the nomination of
78 candidates from the floor of membership meetings or nomination by any other manner. ~~These~~
79 Such bylaws or election operating rules may permit write-in candidates for ballots, subject to the
80 requirement that each candidate is qualified at the time of the election, according to applicable
81 law and the governing documents.

82 (g) Notwithstanding any other law, the rules adopted pursuant to this section shall do all
83 of the following:

84 (1) Prohibit the denial of a ballot to a member for any reason other than not being a
85 member at the time when ballots are distributed.

86 (2) Prohibit the denial of a ballot to a person with general power of attorney for a
87 member.

88 (3) Require the ballot of a person with general power of attorney for a member to be
89 counted if returned in a timely manner.

90 (4) Require the inspector or inspectors of elections to deliver, or cause to be delivered, at
91 least 30 days before an election, to each member both of the following documents:

92 (A) The ballot or ballots.

93 **(B) The election notice, as required by section 5115.**

94 **(C) ~~(B)~~** A copy of the election operating rules. Delivery of the election operating rules
95 may be accomplished by either of the following methods:

96 (i) Posting the election operating rules to an internet website and including the
97 corresponding internet website address on the ballot together with the phrase, in at least 12-point
98 font: "The rules governing this election may be found here:"

99 (ii) Individual delivery.

100 (h) Election operating rules adopted pursuant to this section shall not be amended less
101 than 90 days prior to an election.

102
103 § 5115

104 (a) An association shall provide general notice of the procedure and deadline for
105 submitting a nomination at least 30 days before any deadline for submitting a nomination.
106 Individual notice shall be delivered pursuant to Section 4040 if individual notice is requested by
107 a member.

108 **(b) An association shall provide general notice of all of the following at least 30 days**
109 **before the ballots are distributed: ~~A notice with the following information shall be~~**
110 **~~distributed with each ballot:~~**

111 (1) The date and time by which, and the physical address where, ballots are to be returned
112 by mail or handed to the inspector or inspectors of elections.

113 (2) The date, time, and location of the meeting at which ballots will be counted.

114 (3) The list of all candidates' names that will appear on the ballot.

115 **(4) Individual notice of the above paragraphs shall be delivered pursuant to Section**
116 **4040 if individual notice is requested by a member.**

117 (c) Ballots and two preaddressed envelopes with instructions on how to return ballots
118 shall be mailed by first-class mail or delivered by the association to every member not less than
119 30 days prior to the deadline for voting. In order to preserve confidentiality, a voter may not be
120 identified by name, address, or lot, parcel, or unit number on the ballot. The association shall use
121 as a model those procedures used by California counties for ensuring confidentiality of vote by
122 mail ballots, including all of the following:

123 (1) The ballot itself is not signed by the voter, but is inserted into an envelope that is
124 sealed. This envelope is inserted into a second envelope that is sealed. In the upper left-hand
125 corner of the second envelope, the voter shall sign the voter's name, indicate the voter's name,
126 and indicate the address or separate interest identifier that entitles the voter to vote.

127 (2) The second envelope is addressed to the inspector or inspectors of elections, who will
128 be tallying the votes. The envelope may be mailed or delivered by hand to a location specified by
129 the inspector or inspectors of elections. The member may request a receipt for delivery.

130 (d) A quorum shall be required only if so stated in the governing documents or other
131 provisions of law. If a quorum is required by the governing documents, each ballot received by
132 the inspector of elections shall be treated as a member present at a meeting for purposes of
133 establishing a quorum.

134 (e) An association shall allow for cumulative voting using the secret ballot procedures
135 provided in this section, if cumulative voting is provided for in the governing documents.

136 (f) Except for the meeting to count the votes required in subdivision (a) of Section 5120,
137 an election may be conducted entirely by mail unless otherwise specified in the governing
138 documents.

139 (g) In an election to approve an amendment of the governing documents, the text of the
140 proposed amendment shall be delivered to the members with the ballot.

(Proposed new language underlined; language to be deleted stricken, amendment in bold, further
amendment to amendment in bold and italics)

**FRIENDLY AMENDMENT TO
RESOLUTION 03-01-2020
BY BALIF**

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Evidence Code sections 1271 and 1280, to read as follows:

1 § 1271

2 Evidence of a writing made as a record of an act, condition, or event is not made
3 inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

4 (a) The writing was made in the regular course of a business, ~~but not including, in a~~
5 ~~criminal case or civil commitment pursuant to the Penal Code or Welfare and Institutions Code~~
6 ~~section 6600 et seq, a police report,~~ **other than by a law enforcement officer if offered against**
7 **a defendant in a criminal or civil commitment proceeding;**

8 (b) The writing was made at or near the time of the act, condition, or event;

9 (c) The custodian or other qualified witness testifies to its identity and the mode of its
10 preparation; and

11 (d) The sources of information and method and time of preparation were such as to
12 indicate its trustworthiness.

13
14 § 1280

15 Evidence of a writing made as a record of an act, condition, or event is not made
16 inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the
17 act, condition, or event if all of the following applies:

18 (a) The writing was made by and within the scope of duty of a public employee, ~~but not~~
19 ~~including, in a criminal case or civil commitment pursuant to the Penal Code or Welfare and~~
20 ~~Institutions Code section 6600 et seq, a police report,~~ **other than by a law enforcement officer**
21 **if offered against a defendant in a criminal or civil commitment proceeding.**

22 (b) The writing was made at or near the time of the act, condition, or event.

23 (c) The sources of information and method and time of preparation were such as to
24 indicate its trustworthiness.

(Proposed new language underlined; language to be deleted stricken, amendment in bold, further amendment to amendment in bold and italics)

**FRIENDLY AMENDMENT TO
RESOLUTION 04-03-20
BY Orange County Bar Association**

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code section 1462.6, to read as follows::

1 § 1462.6
2 Notwithstanding any other law, a court may waive any fine or fee imposed on a defendant upon a
3 finding that the defendant lacks the ability to pay that fine or fee~~**and that the**~~
4 ~~**cost of collection of that fine or fee is likely to outweigh the amount of money recovered**~~
5 ~~**from the defendant. The court shall presume that a homeless defendant lacks the ability to**~~
6 ~~**pay a fine or fee and that the cost of collection is likely to outweigh the amount of money**~~
7 ~~**recovered. The court is not required to hold a hearing before waiving a fine or fee pursuant**~~
8 ~~**to this section and may presume that the defendant lacks the ability to pay when the court**~~
9 ~~**receives reliable information that the defendant is homeless, unemployed, on SSI or other**~~
10 ~~**disability benefits, has been sentenced to serve more than thirty days in jail or state prison,**~~
11 ~~**or for any other reason lacks the ability to pay.**~~

(Proposed new language underlined; language to be deleted stricken, amendment in bold, further amendment to amendment in bold and italics)

**FRIENDLY AMENDMENT TO
RESOLUTION 05-06-2020
BY LACBA**

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 1850 to read as follows:

1 § 1850

2 (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this
3 part shall be reviewed by the court as follows:

4 (1) At the expiration of six months after the initial appointment of the conservator, the
5 court investigator shall visit the conservatee, conduct an investigation in accordance with the
6 provisions of subdivision (a) of Section 1851, and report to the court regarding the
7 appropriateness of the conservatorship and whether the conservator is acting in the best interests
8 of the conservatee regarding the conservatee's placement, quality of care, including physical and
9 mental treatment, and finances. The court may, in response to the investigator's report, take
10 appropriate action including, but not limited to:

11 (A) Ordering a review of the conservatorship pursuant to subdivision (b).

12 (B) Ordering the conservator to submit an accounting pursuant to subdivision (a) of
13 Section 2620.

14 (2) One year after the appointment of the conservator and annually thereafter. However,
15 at the review that occurs one year after the appointment of the conservator, and every subsequent
16 review conducted pursuant to this paragraph, the court may set the next review in two years if the
17 court determines that the conservator is acting in the best interest interests of the conservatee. In
18 these cases, the court shall require the investigator to conduct an investigation pursuant to
19 subdivision (a) of Section 1851 one year before the next review and file a status report in
20 the conservatee's court file regarding whether the conservatorship still appears to be warranted
21 and whether the conservator is acting in the best interests of the conservatee. If the investigator
22 determines pursuant to this investigation that the conservatorship still appears to be warranted
23 and that the conservator is acting in the best interests of the conservatee regarding
24 the conservatee's placement, quality of care, including physical and mental treatment, and
25 finances, no hearing or court action in response to the investigator's report is required.

26 (b) The court may, on its own motion or upon request by any interested person, take
27 appropriate action including, but not limited to, ordering a review of the conservatorship,
28 including at a noticed hearing, and ordering the conservator to present an accounting of the assets
29 of the estate pursuant to Section 2620.

30 (c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed
31 in subdivision (b) of Section 1822 and court appointed counsel for the conservatee **only if the**
32 **court appointed counsel has not been discharged by court order.**

33 (d) This chapter does not apply to either of the following:

34 (1) A conservatorship for an absentee as defined in Section 1403.

35 (2) A conservatorship of the estate for a nonresident of this state where the conservatee is
36 not present in this state.

37 (e) The amendments made to this section by the act adding this subdivision shall become
38 operative on July 1, 2007.

39 (f) A superior court shall not be required to perform any duties imposed pursuant to the
40 amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature
41 makes an appropriation identified for this purpose.

(Proposed new language underlined; language to be deleted stricken, amendment in bold, further
amendment to amendment in bold and italics)