

MEMORANDUM

TO: Legal Sub-team of the Cross-Community Working Group on Enhancing ICANN Accountability

FROM: Sidley Austin LLP and Adler & Colvin

RE: Questions from Samantha Eisner

DATE: June 8, 2015

Overview

This memorandum responds to the questions posed by Samantha Eisner to Sidley Austin LLP and Adler & Colvin, assigned to us on April 29, 2015.

Questions from Samantha Eisner

Are there any statutory rights that are given to individual members in a membership organization that are difficult to constrain? If so, what are those statutory rights and to what extent can they be modified? For example, if an individual has a statutory right to bring a derivative action (file suit) against the organization, can that individual member's statutory right to bring such an action be limited to, for example, areas where the community had already collectively acted and the Board had not followed that action? Or would individual members always be allowed to pursue actions in their own right, even where others in the community might not agree?

Response: Please see the attached chart of member rights under the California Nonprofit Public Benefit Corporation Law, including the explanatory cover pages at the beginning of the chart.

Qualifications

Please note that our legal analysis is provided on a level in keeping with the general level of the questions posed. Our legal analysis is tailored to the questions assigned by the Legal Sub-team, and is provided for the benefit of the Legal Sub-team, to help facilitate its consideration of the governance models discussed to date, and should not be relied upon by any other persons or for any other purpose. These responses reflect Sidley's and Adler & Colvin's preliminary reactions regarding the questions and have not been reviewed by any outside third parties. The legal analysis contained herein is based on California law, and in particular, the laws governing California nonprofit corporations (*California Corporations Code, Title 1, Division 2*). Please note that the qualifications from our prior memoranda to the Legal Sub-team apply to this memorandum as well.

**CHART: MEMBER RIGHTS UNDER
CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION LAW**

Chart

#	Key Rights
1	Elect directors
3	Remove directors “without cause”
5	Approve amendments to bylaws that materially and adversely affect the rights of Members as to voting or transfer
7	Adopt, amend, or repeal bylaw provisions other than those provided in Rights 2, 5, and 6
8	Approve amendments to articles of incorporation
9	Amend governing documents to terminate all memberships or any class of Members
11.a.	Bring suit to remove any director for specified acts (fraud, dishonesty, gross abuse of authority, and breach of fiduciary duties)
11.d.	Bring suit against a third party in the corporation’s name (a “derivative suit”), including an action to remedy a breach of charitable trust or against a director for self-dealing
12	Approve sale or disposition of all or substantially all assets
13	Approve merger
15	Elect to voluntarily dissolve the corporation
19	Receive due process in Member expulsion, suspension, and termination
20	Be protected from liability for the corporation’s debts, liabilities or obligations
22	Call special meetings of Members
30	Approve mortgage or pledge of corporation’s assets
32	Have rights equal to those of all other Members

Chart

#	Additional Rights
2	Set/change board size stated in the bylaws (whether specified as a number, formula or range)
4.a.	Fill board vacancies as a result of director being removed
4.b.	Fill board vacancies caused by reasons other than removal (e.g., resignation, death, incapacity, etc.)
6	Approve any amendments to bylaws that extend or increase the length of directors’ terms
10	Approve indemnification of a corporate agent
11.b.	Bring suit to appoint a provisional director if an even number of directors are deadlocked, thereby preventing proper conduct of corporate affairs or risking impairment/loss of corporate business or property
11.c.	Bring suit to appoint provisional directors or request equitable relief if Members are deadlocked in a vote to elect directors
14	Petition for court-ordered involuntary dissolution of the corporation
16	Receive certain reports
17	Inspection rights
18	Member resignation
21	Attend regular meetings of Members
23	Receive notice of meetings of Members
24.a.	Vote by written ballot without a Member meeting
24.b.	Vote via electronic transmission
24.c.	Revoke written ballot
24.d.	Use of written ballots only instead of voting at a meeting, to elect directors

Chart

#	Additional Rights (continued)
25	Vote by proxy
26	Take action by unanimous written consent of Members, in lieu of acting at Member meeting
27	Request inspectors of election
28	Require use of secret ballots for election of directors at a meeting
29	Avoid liability for member dues, assessments, or fees levied pursuant to governing documents
31	Cumulative voting for directors

Explanation of Columns

Column A - Member Right

This column describes a specific governance right that is or may be granted to members of California nonprofit public benefit corporations under the California Nonprofit Public Benefit Corporation Law.

Column B - Mandatory/Default?

This column indicates whether the right is granted to members in the statute, and if so, whether it is required (mandated), or granted only if there are no provisions to the contrary or the governing documents are silent (default). An unqualified “yes” answer means the right is automatically granted to members, regardless of what the governing documents say. If the right is not mandated, we note whether or not it is granted to members by default. We have also listed in this column any significant qualifications or conditions on members’ exercise of the right.

Column C - Permissive/Variance?

Rights given to members by default in the statute can generally be limited or taken away through provisions in the governing documents. Conversely, some rights that are not automatically given to members under the statute may be granted by provisions in the governing documents. A “Yes” answer in this column indicates that such variance is possible, and explains the options. A “No” answer means that this right cannot be taken away or modified by the governing documents -- except that, unless specifically prohibited and noted in the chart, **the ordinary member voting threshold required to exercise each of the rights may be increased by an express provision in the governing documents.**

Column D - Board Right?

Some of the statutory member rights are vested *exclusively* in the members; other rights are vested in the members and the board *jointly*; still others can be exercised by *either* the board or the members acting alone. If the right does not vest exclusively in the members, then the members’ right is diluted by the board’s power to exercise the same right, or by needing board approval as well. This column describes the board’s rights, if any, as they relate to the members’ exercise of the right.

Column E - Comments

We have listed here whether any other parties have or may be given a right relating to or affecting the members’ governance right, and any other matters we deemed significant to understanding the members’ role in corporate governance with respect to each right.

MEMBER RIGHTS UNDER CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION LAW

- As used in the chart below, the term “governing documents” refers to the corporation’s articles and bylaws.
- A Member must be a “legal person.” Member rights are available whether the Member is an individual or a legal entity, such as an unincorporated nonprofit association.
- The governing documents may confer on non-members rights listed in the chart below, which Members have by statute, such as the right to receive notice of and attend meetings of Members or inspect corporate properties, books, and records. Non-members may *not* be granted rights that constrain or interfere with the governance role of the board and the directors, except where the statute specifically permits it as listed in the chart below. Members, by contrast, may be granted limited rights to overrule the board on specific issues or in specific areas (such as the budget or the strategic plan), so long as these rights do not become so extensive that they negate the ability of the board to govern the corporation, or the directors to fulfill their fiduciary duties. Such extensive rights to overrule the board would expose the Members to the risk of being deemed the *de facto* board, and potentially subject Members to the liabilities of directors.
- Where Members have a statutory right to “bring suit” listed in the chart below, the bylaws and member agreements may be drafted with a broad arbitration clause that requires Members to proceed through the IRP binding arbitration process for disputes arising out of Member status, rather than litigating in court. Some statutory or common law limitations to the binding arbitration process may apply, so that some claims from Members may still reach court (such as a suit for breach of charitable trust arising from misuse of ICANN assets). Nevertheless, mandatory referral to the IRP arbitration process should significantly reduce concerns about the potential for a constant flow of Member recourse to the courts for resolution of claims against ICANN.
- With exceptions not relevant in the current situation, a person who, in the governing documents, has the right to *vote*: for one or more directors (Right 1) (excluding rights as a designator to name directors); on a disposition of assets (Right 12); on a merger (Right 13); *or* on corporate dissolution (Right 15), is deemed a Member by statute, and will have all of the mandatory rights of a Member shown in the chart below. Conferring any one of these rights in the governing documents will trigger Member status. (Statutorily permitted third-party rights to approve/veto any of these transactions, however, will not make the third party a Member.)

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
1.	Elect directors	Not mandated, but default. The right to elect directors need not be given to all Members, nor to all Members or classes of Members equally. If the governing documents provide for statutory Members but do not state how directors are chosen otherwise, then the directors are elected by the Members, with each Member having one vote.	Yes; the right to elect directors may be taken away from Members, or classes of Members, through provisions in the governing documents.	None; as to directors that the governing documents provide are elected by Members (but see Right 4 on filling vacancies).	Governing documents may provide for directors to be selected by non-member “designators,” or by the board itself. The board normally chooses the officers, but the governing documents may provide that Members do so instead. Members who elect directors must be given reasonable, appropriate director nomination procedures.
2.	Set/change board size stated in bylaws (whether specified as a number, formula, or range) § 5151(b)	Yes.	No.	None (although where the bylaws set a range, the board sets the authorized number of directors within that range).	The governing documents may give a third party the right to veto bylaw amendments, whether approved by the board or the Members.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
3.	Remove directors “without cause” ¹	Yes, but Members may only remove those directors elected by the Members, and if a director is elected by a class, unit, or grouping of Members, only such class, unit or grouping may remove that director. ²	No. ³	None.	If a director is designated by a third party, only such party has the right to remove that director “without cause.” The board may remove directors “for cause” ⁴ -- even those elected by Members or designated by a third party.
4. a.	Fill board vacancies as a result of director being removed § 5224(a)	Yes, those Members with the right to remove a specific director may always fill the vacancy created by removal.	Yes, the board may also be given the power to fill a vacancy created by Member removal of a director through a bylaw approved by the Members.	None. Provisions granting the board such powers must be approved by the Members. ⁵	If a director is designated by a third party, such party has the right to fill a vacancy in that position.

¹ As used in the statute, “without cause” is not intended to imply arbitrary action by members; “without cause” means removal for any reason deemed sufficient by the voting members; other than reasons specified in the statute as “for cause.” listed in footnote 4.

² In a corporation with fewer than 50 members, a director elected by the members may be removed by a majority of all members; if a corporation has 50 or more members, the removal must be approved by a majority of the votes cast at a meeting in which a quorum is present. While the statute does not address the issue, for directors elected by a class, these voting requirements would be applied at the class level. If there is only one member in a class that single member’s vote would be sufficient to remove the class director(s).

³ The governing documents may not provide for a higher vote requirement for director removal by members than is described in footnote 1 above (but members of one class may always remove the director elected by that class without approval by other members).

⁴ “Cause” here means unsound mind, felony conviction, court breach-of-duty judgment, missing required number of meetings, failure to meet any required director qualifications.

⁵ The governing documents may give the board the power to fill vacancies created by member removal, in addition to, and not in derogation of, the members’ power to fill such vacancies.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
4.b.	Fill board vacancies caused by reasons other than removal (e.g., resignation, death, incapacity, etc.) § 5224(a)	Yes, unless the board has already filled the vacancy. § 5224(b)	Yes, the governing documents may eliminate the board's power to fill such "other" vacancies, allowing them to be filled only by the Members.	Unless the governing documents state otherwise, the board has the power to fill such "other" vacancies.	If a director is designated by a third party, the governing documents may give such party the right to fill a vacancy in that position.
5.	Approve amendments to bylaws that <i>materially and adversely</i> affect the rights of Members as to voting or transfer ⁶ §§ 5150, 5151(e), 5512, 5613(e), 5616(a)	Yes. In addition, if an amendment would <i>materially and adversely</i> affect voting/transfer rights of a <i>class</i> of Members differently than other classes, that class must also approve the amendment.	No.	None.	The governing documents may also give a third party the right to veto bylaw amendments, whether approved by the board or the Members.
6.	Approve any amendment to bylaws that extends or increases the length of directors' terms. § 5220	Yes.	No.	None.	The governing documents may give a third party the right to veto bylaw amendments, whether approved by the board or the Members.

⁶ The statute states that this includes amendments that would: require the vote of a larger proportion or all of the Members, increase the number necessary for a quorum, create or change proxy rights, or change or repeal cumulative voting rights.

A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
7. Adopt, amend, or repeal bylaw provisions other than as provided in Rights 2, 5 and 6	Yes.	No, but see next column regarding board's default power to amend all bylaw provisions outside Rights 2, 5 and 6.	Except for Rights 2, 5, and 6, the board also has the right to initiate and approve bylaws changes without Member approval. This right can be taken away from the board by the governing documents, thereby giving the Members the exclusive right to approve or reject bylaws changes.	The governing documents may give a third party the right to veto bylaw amendments, whether approved by the board or the Members.
8. Approve amendments to articles of incorporation §§ 5812, 5813	Yes. ⁷	No.	Both Members <i>and</i> board must approve amendments to the articles; neither may act without the other; ⁸ either may initiate.	The governing documents may give a third party the right to veto proposed articles amendments, regardless of approval by the board and the Members.

⁷ In addition, if the amendment would materially and adversely affect the voting/transfer rights of a particular *class* of Members differently, that class must also approve. If the amendment would *terminate* memberships or any class of membership, procedures for Right 9 must be followed.

⁸ The statute allows provisions for governance and the management of corporate affairs that ordinarily appear in the bylaws, to be included instead in the articles of incorporation. Doing so makes them subject to these specific rules regarding approval of articles amendments; i.e., that board approval is required in all cases. Accordingly, where member-only approval power over changes is desired, the provision should appear in the bylaws, and not in the articles.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
9.	Amend governing documents to terminate all memberships or any class of Members § 5342	Yes. The statute sets forth specific notice and procedural requirements for such amendments.	Yes, the statute permits the governing documents to impose additional requirements for terminating all memberships or any class of Members.	None.	The governing documents may give a third party the right to veto proposed article or bylaws amendments, whether approved by the board or the Members.
10.	Approve indemnification of a corporate agent § 5238(e)	Yes. The statute sets forth specific standards of conduct to be met by agents and determinations that Members must make before Members may approve.	No.	The board, acting independently of the Members, also has the power to approve indemnification.	The applicable court also has the power to approve indemnification, independent of approval by either the Members or the board.
11.a.	Bring suit to remove any director for specified acts (fraud, dishonesty, gross abuse of authority, and breach of fiduciary duty) § 5223	Yes. The statute sets the minimum number of Members who must participate in bringing the suit (10% of the voting power or 20 Members, whichever is less). ⁹	The governing documents may not lower the minimum required number of members (although, as noted in the Column C explanation, it could be raised).	None.	Individual directors and the California Attorney General have the right to bring such suits, in addition to the required number of Members.

⁹ The statute requires “twice the authorized number of members or 20 members, whichever is less” to bring suit. For corporations with less than 1,000 votes entitled to be cast, the authorized number of members is 5% of the voting power.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
11.b.	Bring suit to appoint provisional director if an even number of directors are deadlocked, thereby preventing proper conduct of corporate affairs or risking impairment/loss of corporate business or property § 5225(a)	Yes; the statute requires Members holding at least one-third of the voting power to participate in order to bring suit.	No.	None.	Individual directors and the California Attorney General have the right to bring such suits, in addition to the required number of Members.
11.c.	Bring suit to appoint provisional directors or request equitable relief if Members are deadlocked in a vote to elect directors §5225(b)	Yes; the statute requires Members holding at least one-half of the voting power to participate in order to bring suit.	No.	None.	The California Attorney General has the right to bring such suits, in addition to the required number of Members.
11.d.	Bring suit against a third party in the corporation's name (a "derivative suit"), including an action to remedy a breach of charitable trust or against a director for self-dealing §5710	Yes; a Member must notify the corporation, and demonstrate prior efforts to seek board action, or give reasons for not making such efforts; Members may also be required to post a bond to proceed.	No.	The board has the power to cause the corporation to bring suit against third parties directly, so derivative suits are not relevant to board action.	Individual directors, officers, the California Attorney General, anyone granted relator status by the AG, and others with certain contractual or property interests, have the right to bring such derivative suits, in addition to Members.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
12.	Approve sale or disposition of all or substantially all assets	Yes, assuming that the transactions are outside the normal course of corporate activities.	No.	Both board <i>and</i> Member approvals are required; neither may act without the other; either may initiate. However, the board may unilaterally abandon a proposed transaction after Member (and third party) approval.	The articles of incorporation may require that such transactions be approved by third parties in addition to requiring board and Member approval.
	§§ 5056, 5911				
13.	Approve merger	Yes.	No.	Both board <i>and</i> Member approvals are required; neither may act without the other; either may initiate. However, the board may unilaterally abandon a proposed merger after Member (and third party) approval.	If the articles of incorporation require amendments to be approved by third parties, the approval of such persons is required for a merger, in addition to board and Member approval.
	§§ 5056, 6012, 6016				
14.	Petition for court-ordered involuntary dissolution of the corporation	Yes; only on grounds listed in the statute ¹⁰ , and only by Members holding at least one-third of the voting power.	No.	None.	Petitions may also be filed, on the same grounds as required for Members, by one-half or more of the directors, or by the California Attorney General. (Others may file in circumstances not relevant in this case.)
	§ 6510				

¹⁰ Grounds include abandonment of activities for a year, deadlocks preventing conduct of affairs, failure to elect directors for an extended period, pervasive fraud/mismanagement/waste by those in control, and failure to carry out purposes.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
15.	Eject to voluntarily dissolve the corporation	Yes; the Member voting requirement varies depending on whether the board also approves (see Column D), or whether the Members are acting without approval of the board. If the board does not approve, required vote is a majority of all Member votes entitled to be cast.	No, the bylaws may not provide for a greater vote requirement than is provided for in the statute.	If board approves dissolution, the required Member vote is a majority of the votes represented and voting at a duly held meeting at which a quorum is present. Board may not proceed without Member approval, but Members may proceed without board approval.	Third parties have no right to approve or consent to a voluntary dissolution, but notice to the California Attorney General is required. In case of dissolution, assets must be distributed for the charitable purposes for which ICANN holds them, in accordance with provisions in the articles. If articles do not name recipients, board decides within articles limits.
	§ 6610		§ 5151(e)		
16.	Receive certain reports ¹¹	Yes, certain reports must be made available to Members in written (including electronic) form, at the corporation's expense.	No.	None.	Individual directors are also entitled to receive these reports.
	§§ 6313, 6321, 6322, 6324, 6325				

¹¹ Annual reports, statements of insider transactions and indemnifications, reports filed by the corporation under the Supervision of Trustees and Fundraisers for Charitable Purposes Act and results of Member votes.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
17.	Inspection rights ¹²	Yes, Members have the right on request to inspect the governing documents, and other documents on a showing that the request is related to interests as a Member (for example, the ability to exercise Member rights).	No.	None.	Individual directors have unlimited inspection rights.
	§§ 6313, 6330, 6333, 5160				
18.	Member resignation	Yes, each Member may resign unilaterally, but resignation does not relieve the resigning Member of any membership obligations that have already arisen.	No.	None.	
	§ 5340				
19.	Receive due process in Member expulsion, suspension, and termination	Yes. The statute requires the process to be fair and reasonable, and describes a safe harbor procedure, but does not specify substantive grounds for Member sanctions; providing due process will not validate imposing a sanction that violates Member rights.	A reasonable and fair process is required, but the exact procedures may be tailored to a corporation's needs, and the safe harbor procedure is not mandatory.	None.	The board may be responsible to oversee the procedure, hold a hearing, and decide (by the vote specified in the governing documents) the sanction to be imposed on the Member.
	§ 5341				

¹² These apply to: names and addresses of members; accounting books and records; minutes of member, board, and committee meetings; articles; and bylaws.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
20.	Be protected from liability for the corporation's debts, liabilities or obligations	Yes; a Member is not, by virtue of membership, personally liable for the corporate debts, liabilities or obligations. ¹³	No.	None. Note that individual directors are not personally liable by virtue of their directorships for corporate debts, liabilities or obligations, unless they breach their fiduciary duties to the corporation.	A Member's own actions could give rise to liability to third parties for corporate debts, such as where a Member agrees to guaranty a corporate debt.
	§ 5350				
21.	Attend regular meetings of Members	Yes, but only those who are Members on the record date ¹⁴ for a meeting may vote. ¹⁵	No.	Bylaws may give the board the power to fix dates and times of regular meetings of the Members, and set record dates for Members' right to notice of meetings. Board has discretion to permit electronic meetings, unless bylaws prohibit holding meetings electronically.	Unless a Member meeting is closed, third parties may attend at the invitation of board or Members. Bylaws may also confer the right to attend on others, such as non-voting liaisons or observers.
	§§510				

¹³ If members owe amounts to the corporation, the corporation's creditors may seek those amounts in satisfaction of the corporation's debt, but only after obtaining a final judgment against the corporation.

¹⁴ A record date is the date set for the purpose of determining which Members are entitled to notice of a Member meeting, to vote at a Member meeting, to cast a written ballot, or to exercise any other Member right.

¹⁵ If a regular meeting provided for in the bylaws is not held for 60 days after the date provided, any Member or the California Attorney General may obtain a court order to hold the meeting.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
22.	Call special meetings of Members § 5510(e)	Yes, by at least 5% of Members.	No.	Special meetings of the Members may also be called by the board.	Special meetings may also be called by the chair of the board or the president. The bylaws may also give third parties the right to call a special meeting of Members.
23.	Receive notice of meetings of Members § 5511	Yes, but only those who are Members on the record date ¹⁶ for a notice are entitled to notice. The statute specifies methods of giving notice, notice periods, and contents of notices.	No, but lack of (or defects in) notice of a meeting attended by a quorum may be waived by all Members not present, in writing.	None, except that the board may, within a range, set a record date to determine which Members are entitled to notice.	Notice may be given electronically if Member has consented. Governing documents may also give third parties the right to receive meeting notices.
24.a.	Vote by written ballot without a Member meeting § 5513	Not mandated, but default.	Yes, written ballots may be prohibited through a provision in the governing documents.	Unless written ballots are prohibited, board decides whether voting will occur by written ballot.	Board can set record date, ¹⁶ within a range, to determine which Members are entitled to receive a ballot and vote.
24.b.	Vote via electronic transmission § 5513(a)	Not mandated, but default. Each Member must consent to use of electronic transmissions.	Yes, electronic voting may be prohibited through a provision in the governing documents.	Unless electronic voting is prohibited, board decides whether specific communications to/from Members (including written ballots) will be sent electronically.	Corporation must be able to verify the identity of the Member voting electronically.

¹⁶ A record date is the date set for the purpose of determining which Members are entitled to notice of a Member meeting, to vote at a Member meeting, to cast a written ballot, or to exercise any other Member right.

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
24.c.	Revoke written ballot § 5513(d)	Not mandated, and not default.	Yes, the governing documents may grant a Member the power to revoke a written ballot.	None.	
24.d.	Use of written ballots only instead of voting at a meeting, to elect directors § 5513(e)	Not mandated, and not default.	Yes, unless cumulative voting is allowed, the governing documents may provide for voting for directors only by written ballot.	None.	
25.	Vote by proxy § 5613	Not mandated, but default.	Yes, proxy voting may be limited or withdrawn in the governing documents; any amendment affecting Members' proxy rights requires Member approval.	None.	The proxy of a Member must be revocable.
26.	Take action by unanimous written consent of Members, in lieu of acting at Member meeting § 5516	Yes.	No.	None.	
27.	Request inspectors of election § 5615	Yes; any Member may require the chair of Member meeting to appoint election inspectors; majority of Members present decide number of inspectors.	No.	The board may appoint inspectors of election in advance of any meeting or written ballot.	

	A Member Right	B Mandatory/Default?	C Permissive/Variance?	D Board Right?	E Comments
28.	Request use of secret ballots for election of directors at a meeting § 5616(e)	Yes; any Member may demand a vote for directors by secret ballot at any meeting.	No, but bylaws may require election by secret ballot.	None.	
29.	Avoid liability for member dues, assessments, or fees levied pursuant to governing documents § 5351	Yes, a Member may avoid liability by resigning promptly on receiving notice of obligation.	No.	None.	Resignation will not avoid liability if the Member is liable outside the governing documents for the dues/assessments/fees (such as by contract).
30.	Approve mortgage or pledge of corporation's assets § 5910	Not mandated, and not default.	Yes, governing documents may give Members this right.	Board has the power to approve without Member action, unless the governing documents provide otherwise.	Third parties may also be given this right by governing documents or by contract.
31.	Cumulative voting for directors ¹⁷ § 5616(a)	Not mandated, and not default.	Yes, governing documents may give Members this right.	None.	
32.	Have rights equal to those of all other Members §§ 5132(c), 5331	Not mandated, but default; if governing docs are silent, all Members have the same rights.	Yes. The governing documents may give different rights to different Members and classes of Members.	None.	

¹⁷ In any election of directors by cumulative voting, each Member may distribute a number of votes equal to the number of directors to be elected, times the number of votes to which that Member is entitled. The candidates receiving the highest number of votes are elected, subject to any lawful provision specifying election by classes. The bylaws may not provide for a greater vote requirement than is the one stated in the preceding sentence. California Corporations Code Section 5151(e).