

# BENSON PLACE HOMEOWNERS ASSOCIATION

## Rules for Voting by Secret Ballot

Pursuant to California Civil Code Section 5105, the following rules and procedures shall apply for the election of Directors, voting on assessments, amendments to the governing documents and the granting of the exclusive right to use common area:

### 1. Meeting at Which Secret Ballots Shall Be Tabulated

1.1 The inspectors of election shall tabulate the ballots for the election of directors at the annual meeting of the owners or at a special meeting of the Board of Directors duly noticed for the same date, time and place, as the annual meeting called for the purpose of counting ballots. The Board of Directors shall determine the date, time and place of said annual meeting of the owners and the concurrent special meeting of the Board in accordance with the Association's Bylaws.

### 2. Nomination of Candidates

2.1 At least sixty (60) days before the date of the meeting at which the ballots for the election of directors are to be counted, the Association shall mail to each owner a Candidate Nomination Form.

2.2 According to the Association's Bylaws, there are to be three (3) directors, who need not be Members of the Association.

2.3 Owners may nominate themselves or another person as long as they are qualified to serve on the Board.

2.4 Any candidate nominated by another person will be contacted to confirm that such candidate consents to having his or her name placed in nomination for election to the Board.

2.5 All candidates who meet the qualifications to serve on the Board and, if appropriate, have confirmed their willingness to run for election to the Board, shall be listed on the secret ballot.

2.6 The Candidate Nomination Form must be returned to the Association at the address provided on, and by the deadline stated on, such form, which deadline must be at least forty-five (45) days before the date the ballots for the election of directors are scheduled to be counted.

### 3. Inspectors of Election

3.1 The Board shall appoint one (1) or three (3) independent third parties as inspectors of election after the close of candidate nominations, but before the secret ballots are mailed to all of the owners. An independent third party includes, but is not limited to:

- 3.1.1 a volunteer poll worker with the county registrar of voters;
- 3.1.2 a licensee of the California Board of Accountancy;
- 3.1.3 a notary public;
- 3.1.4 a member of the Association provided such member is not a member of the Board of Directors or a candidate for the Board of Directors or related to a member of the Board of Directors or a candidate for the Board of Directors; and,
- 3.1.5 a person who is currently employed or under contract to the Association for any compensable services.

3.2 The secret ballots shall be returned to the Association's Management Company, which is hereby deemed to be the Ballot Collector.

3.3 The inspectors of election shall also do all of the following:

- 3.3.1 determine the number of memberships entitled to vote and the voting power of each.
- 3.3.2 determine the authenticity, validity, and effect of proxies, if any;
- 3.3.3 receive ballots from the Ballot Collector;
- 3.3.4 hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
- 3.3.5 count and tabulate all votes;
- 3.3.6 determine when the polls shall close;
- 3.3.7 determine the election results;

3.3.8 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.

3.4 An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. The decision or act of a majority shall be effective in all respects as the decision or act of all.

3.5 Any report made by the inspector or inspectors of election is prima facie evidence of the facts stated in the report.

3.6 The Board may remove and replace any inspector of election prior to the tabulation of ballots if an inspector of election resigns or if the Board reasonably determines that an inspector of election will not be able to perform his or her duties impartially and in good faith.

#### 4. Secret Ballot Procedure: Record Date

4.1 Ballots and two pre-addressed envelopes with instructions on how ballots shall be mailed by first-class mail or delivered by the Association to every member not less than 30 days prior to the deadline for voting.

4.2 Ballots must ensure the confidentiality of the voters.

4.2.1 A voter may not be identified by name, address, or lot, parcel, or unit number on the ballot;

4.2.2 The ballot may not require the signature of the voter;

4.2.3 The ballot itself is inserted into an envelope that is sealed. This envelope is inserted into a second envelope that is sealed. In the upper left hand corner of the second envelope, the voter prints and signs his or her name, address, and lot, or parcel, or unit number that entitles him or her to vote. The second envelope is addressed to the inspectors of election, who will be tallying the votes. Failure to do so will invalidate the ballot or member's vote.

4.3 Owners may return their secret ballot by mail, hand deliver it to the meeting, or complete the ballot at the meeting; provided, only those ballots

which are delivered to the inspectors of election prior to the polls closing shall be counted.

4.4 A member may request a receipt for delivery.

4.5 The record date for purposes of voting shall be the date the ballots are mailed to all of the owners.

4.6 If the election is an uncontested there is no need for a vote and ballots will not be distributed. The election is decided by acclamation. However, if the counting of the ballots affects the outcome in some fashion then ballots must be mailed and counted to determine who receives which seat.

## 5. Campaigning

5.1 All candidates or members advocating a point of view during a campaign, including those not endorsed by the Board, shall be provided equal access to Association media, newsletters, or Internet Web sites (if any) for purposes that are reasonably related to the election. The Association may not edit or redact any content from these communications, but may include a statement specifying that the candidate or member, and not the Association, is responsible for that content.

5.2 All candidates, including those who are not incumbents, and all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election, shall be provided equal access to any common area meeting space, if any exists, during a campaign at no cost.

## 6. Handling of Ballots

6.1 As secret ballots are returned to the Ballot Collector, the Ballot Collector will mark off on a sign-in sheet that a ballot has been received for such unit. The first secret ballot received for any unit shall be the ballot that is counted. Any subsequent ballots for the same unit that are received shall be ruled invalid and shall be discarded.

6.2 The sealed ballots shall at all times be in the custody of the Ballot Collector as designated by the inspectors of election until delivered to the inspectors at the meeting for the opening of the ballots and the tabulation of the vote. After the counting of the ballots and the certification of the election results by the inspectors of election, the ballots shall be transferred to the Association.

6.3 After tabulation, the Association shall store election ballots in a secure place for no less than one year after the date of the election. In the event of a recount or other challenge to the election process, the Association shall, upon written request, make the ballots available for inspection and review by members

or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.

#### 7. Tabulation of Votes: Quorum Requirement

7.1 All votes shall be counted and tabulated by the inspectors of election in public and at a properly noticed open meeting of the members or of the Board, at which a quorum of members is present or a quorum of Board members, as the case may be, must be present. For purposes of this section, Article IV, Section 6 of the Bylaws defines a quorum for purposes of a membership meeting as the presence in person or by proxy of members entitled to cast at least thirty-five percent (35%) of the total voting power of the Association.

7.2 The inspectors of election shall confirm that no more than one ballot was returned for each unit.

7.3 Any candidate or other member of the Association may witness the counting and tabulation of votes.

7.4 In order for the vote for the election of directors to be valid, ballots must be returned by at least a quorum of the owners.

#### 8. Announcement of Results

8.1 The results of the election shall be promptly reported to the Board of Directors 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.

8.2 Upon certification of the election results by the inspectors of election, the newly elected Board members shall be deemed to have taken office.

8.3 Within 15 days of the election, the Board shall publicize the result of the election in a communication directed to all members.

#### 9. Other Voting/Campaign Issues

9.1 Owners will be permitted to vote except for those whose rights have been suspended in accordance with the Association's governing documents and Civil Code § 5855 after notice and hearing in instances of violation of the governing documents.

9.2 Cumulative voting is permitted pursuant to Article V, Section 4 of the Bylaws.

9.3 Association funds may not be used for “campaign purposes” in connection with any board election. The term “campaign purposes” is defined to include, without limitation, (1) “expressly advocating the election or defeat” of any candidate that is on the ballot; or (2) “including the photograph or prominently featuring the name of a candidate on a communication” from the association (except the ballot and voting materials and equal access communications sent pursuant to the Section, above, entitled “Campaigning”).

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## VOTING INSTRUCTIONS

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### BENSON PLACE HOMEOWNERS ASSOCIATION

There are two envelopes included in this package for your use. Recent changes to California law require that all Directors be elected by Secret Ballot. The ballot must be filled out by the owner, placed in the ballot envelope, and sealed. We cannot accept unmarked ballots, as they will be voided. The ballot envelope will not be opened until the meeting referenced above and then in public. Please follow the directions below to ensure that your vote is counted:

#### First Envelope:

Please fill out your Secret Ballot and then place it inside the smaller of the two envelopes and seal the envelope. These envelopes will be opened by the inspectors of election at the public meeting. Make no marks on this envelope that would identify your vote in any way.

#### Second Envelope:

Place the ballot envelope into the envelope addressed to the Association. Print and sign your name and property address on the outside of the envelope in the space provided (unless a label with your address was already affixed). If your address is not on this envelope, the inspectors of election cannot count it and will show it as voided. The Ballot Collector (as defined in the Association's Election Rules) will mark off the secret ballots that it has received prior to the meeting on the sign-in sheet. If you have sent your vote by mail, you will not receive another ballot at the meeting.

Please feel free to contact the Association with any questions regarding this process as it is important that you vote and that your vote counts! A quorum of members must return ballots in order for the election to be valid.