

ELECTION RULES



REAL ESTATE LAW

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July 10, 2008

Bixby Gardens Board Members
c/o Trisha Harmon
307 Cherry Ave., #6
Long Beach, CA 90802

RE: Adoption of Election Rules

Dear Board Members:

Pursuant to recent changes in California law, all common interest associations (including Own-Your-Own Community Apartments) must conduct votes to approve changes to their governing documents and/or elections of Board Members in accordance with new Election Rules set forth in revised California Civil Codes and other government codes. In order to conduct a vote or an election utilizing these new Election Rules, the Board must first adopt the new Election Rules as a part of their existing governing documents and Rules and Regulations.

Your Association will need to adopt these Election Rules in order to vote on approval of the new condominium CC&Rs and Bylaws. To assist you with this adoption process, enclosed is an Election Rules package which includes the Election Rules, instructions on conducting the vote or election, sample ballots, and sample proxies.

Since the adoption of these Election Rules is mandated by law, associations do not have a choice in the matter. This means that Board Members and Owners do not have discretionary approval rights as to the content of the Election Rules or as to whether or not they wish to adopt the Election Rules.

The Board must distribute the Election Rules to all Owners with the Resolution to adopt the rules. Attached is a sample Resolution for this purpose. It is advisable to distribute these new Election Rules at least 30 days prior to starting the voting/election process so that Owners may familiarize themselves with the procedure.

Please contact staff if you have any questions regarding this process.
Thank you.

MURAKAMI LAW OFFICE

**Resolution of the Board of Directors
Approval of Election Rules**

RECITALS:

WHEREAS, the Board is proposing a set of Election Rules for the Association; and

WHEREAS, the Bylaws and documents have been reviewed by legal counsel who drafted the Election Rules and processes for Board consideration; and

WHEREAS, California law requires adoption of Election Rules in Civil Codes Section 1363.03.

NOW, THEREFORE, the Board of Directors approves the Election Rules attached to this Resolution and shall consider all recommendations from legal counsel and management for implementation of the rules, forms, and procedures.

I, the Secretary of _____ association,
hereby declare that the above Resolution was duly adopted on:

_____, 2007.

By: Secretary

Prepared By:

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ELECTION RULES

BIXBY GARDENS

(Civil Code Section 1363.03)

[Master: 07-02-08]
[This Set: 07-10-08]

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OVERVIEW: APPROVING AND ADOPTING CC&RS AND BYLAWS

Step One: The Board shall adopt Election Rules that comply with the new law (Resolution attached) and mail Election Rules and copy of Resolution to each Owner.

Step Two: Sixty (60) days prior to the meeting of Owners to count Secret Ballots for votes ("Meeting"), the Board shall appoint an inspector(s) of election ("Inspector(s)") and schedule the Meeting date. The Inspector can be an employee of the management company, or an Owner who is not a Board Member, related to a Board Member, or married to a Board Member. The Inspector(s) may also be an Inspector of Elections company retained by the Association.

Step Three: At least thirty (30) days prior to the Meeting, the Association shall mail to each Owner a written notice of the meeting, and a Secret Ballot with instructions on how to complete the Secret Ballot and how to return it to the Inspector(s).

Secret Ballots must be mailed to Owners in 2 envelopes as described and outlined in this document.

The documents to be approved (CC&Rs and Bylaws) must be mailed or personally delivered to each Owner not less than fifteen (15) days and not more than sixty (60) days prior to mailing the Secret Ballots to each Owner. (Civil Code 1355)

Step Four: The Secret Ballot may be delivered by hand, or by mail, to the Inspector(s) at any time prior to the Meeting, or may be delivered in person at the Meeting. Owners may also assign their vote by Proxy to another Owner as described and outlined in this document.

Step Five: Hold the Meeting on the prescribed date for Inspector(s) to count the votes. The Inspector(s) shall check off the Secret Ballots received on a list of the Owners. This can be done prior to the Meeting or at the Meeting.

Bring extra Secret Ballots to the Meeting for those who wish to vote at the Meeting, and for those who bring Proxies to exchange for Secret Ballots.

Step Six: At the Meeting the Inspector(s) shall open the envelopes and count the votes. Owners may watch the count but must remain a reasonable distance away from the Inspector(s).

Step Seven: The Inspector(s) must certify in writing the count of the votes (i.e. number of yes votes, number of no votes, etc.).

Step Eight: Within fifteen (15) days after the Meeting the Association shall notify the Owners of the vote results. The results of the vote shall be recorded in the minutes of the next regular meeting of the Board.

Step Nine: The Inspector(s) shall hold the Secret Ballots for a period of nine (9) months in case an Owner challenges the results of the vote. After the nine (9) month challenge period, the Inspector(s) shall turn the Secret Ballots over to the Association. The Association will hold the Secret Ballots for a period of one year in which an Owner may request to see the Secret Ballots.

IMPORTANT NOTE: Please read the entire Election Rules document. It discusses in detail the procedures outlined above. Also, at the end various types of sample notices and ballots are attached to assist you in properly conducting future votes and elections of Board Members.

ELECTION RULES

Pursuant to Civil Code Section 1363.03 (effective July 1, 2006) the Board of Directors of Bixby Gardens "(Association)" hereby adopts the following rules governing elections:

Applicability of Rules

These rules shall apply to elections of the Board of Directors, removal of Members of the Board of Directors, amendments to the governing documents, assessment elections, and votes to allow exclusive use of common area. *Civil Code section 1363.03(b)*.

Access to Association Media

Any candidate or member may have access to Association media for the purpose of stating their point of view for purposes related to any election, even if the Board's point of view is different. Currently, no such media is available to the Members of the Association. In the event that the Association allows candidates to submit or disburse written materials in connection with one's candidacy for the Board, the Association will not edit any written materials submitted by a candidate or member, but may state that the candidate or member, and not the Association, is responsible for the content. *Civil Code Section 1363.03(a)(1)*.

Access to Common Area Facilities

Any candidate or member may have access to the Association common area facilities, if any, for the purpose of stating a point of view reasonably related to any election, at no cost, including candidates who are not incumbents. The access and use of such common area facilities, if any, is subject to any and all rules and regulations that may be adopted by the Board from time to time.

Qualifications for Candidates

Candidates for the Board of Directors must be Owners within Association and in good standing. Bylaws Article III, Section 3.12(b).

Nomination Procedures

Nomination for election to the Board shall be made via a "Candidate Filing" form (included) to be distributed and returned by all owners at least sixty (60) days prior to the Annual meeting (this is necessary to be in compliance with Civil Code 1363.03 so that ballots can be distributed thirty (30) days prior to the meeting). In addition, if the nomination is other than a self-nomination, the form must contain the signature and unit number of the person accepting the nomination. Notwithstanding the foregoing, any member present in person or by proxy at a meeting in which a director or directors are to be elected may place a name in nomination at the meeting prior to the vote.

Inspectors of Election: Selection and Duties

There shall be one or three inspectors of election, which shall be appointed by the Board of Directors. *Civil Code section 1363.03(a)(5)(a)*. The inspector or inspectors of election shall be appointed not less than sixty (60) days prior to the date of the election.

The inspector or inspectors of election shall be an independent party or parties, not a Board Member, and not a candidate. Inspectors may include, but don't have to include, a notary public, a Certified Public Accountant, or a registered poll worker. The inspector or inspectors of election may be a person or persons employed or under contract with the Association for compensation. The inspector or inspectors shall do all of the following:

1. Determine the number of memberships entitled to vote and the voting power of each;
2. Determine the authenticity, validity and effect of any proxies, if any.
3. Receive ballots;
4. Hear and determine all challenges and questions with regard to the right to vote;
5. Count and tabulate the votes;
6. Determine when the polls close;
7. Determine the result of the election;
8. Perform any other acts that are necessary to the election, with fairness to all, and in accordance with any Association rules. *Civil Code section 1363.03(c)*.

Voting and Ballots

Ballots shall be mailed to all owners of record not less than thirty (30) days prior to the election. The polls shall be open from the time of the mailing of the ballots until they are closed by the inspectors at the meeting called to count the ballots. If the Board of Directors establishes a record date for balloting purposes, then only the owners of record as of the date upon which the Association decided who can vote (The Record Date) shall be entitled to a ballot. Anyone who owns a unit as of that date is entitled to vote. If there is no record date, then owners of record as of the date of mailing shall be entitled to a ballot.

Ballots and two envelopes with instructions on how to return the ballots shall be mailed to members as provided above. The ballots will be voted by owners of record in the following manner (*Civil Code section 1363.03(e)*):

1. The ballot will not have information on it that identifies the person voting the ballot.
2. The ballot will be inserted into the blank envelope.
3. The blank envelope will be inserted into the second envelope, which will be addressed to the inspector or inspectors of election to be mailed or delivered to a place specified by the inspector or inspectors of election. If no such selection of place is made, the place shall be the Association's management company or, if none, the address at which the Association receives its mail. The second envelope shall be signed by the owner entitled to vote, together with the owner's printed name, an address, lot, unit or parcel number identifying the right to vote.
4. If any owner marks a ballot in a way that identifies that owner, the owner waives any right of privacy of the ballot. Any ballot marked in an identifying manner is valid and counts toward the election results. A ballot marked by an owner in an identifying manner does not disqualify the ballot.
5. Any owner may request a receipt for his or her ballot.

Proxies

Voting by proxy shall be allowed. Any proxy that directs the manner in which a vote is to be cast shall set forth the instruction on a detachable page that states how the proxy is to be cast and the proxy-holder shall vote the proxy by secret ballot. *Civil Code section 1363.03(d)*.

Counting Ballots

The ballots shall be counted by the inspector or inspectors of election at an open meeting called for that purpose and properly noticed. Candidates and members may watch the count (*Civil Code section 1363.03(f)*), however, they may not interfere with the count and must stand or sit at a distance that is not less than five (5) feet from the counting area. NOTE TO THE BOARD: YOU MAY CHANGE THE DISTANCE FROM THE INSPECTORS FOR PEOPLE WATCHING, SO LONG AS IT IS REASONABLE BUT WE RECOMMEND A DISTANCE NO GREATER THAN 20 FEET.

No person, including a member of the Association or an employee of the management company shall open or review the ballots before they are counted by the inspector or inspectors.

The results of the election shall be communicated to all members not later than fifteen (15) days after the election. The results shall be recorded in the minutes of the next meeting of the Board of Directors and shall be available for inspection upon request of any member, *Civil Code section 1363.03(g)*.

After the Election

Prior to the election, the ballots shall be in the possession of the inspector or inspectors of election. After the election, the inspector or inspectors of election shall hold the ballots for a period of nine (9) months to allow for a challenge of the results of the election (*Civil Code 1603.03(h)* and *Corporations Code 7527*). After the nine (9) month challenge period, the inspector or inspectors of election shall be turned over to the Association, and shall be stored in a secure place for no less than one (1) year. Upon written request, ballots shall be made available to any member or his or her representative for review and inspection. Any recount shall assure the confidentiality of the election. *Civil Code section 1363.03(i)*.

Overview: Election of Board Members

Step One: The Board shall adopt Election Rules that comply with the new law and mail Election Rules and copy of the Resolution to each Owner.

Step Two: Sixty (60) days prior to the election, the Board shall appoint an Inspector(s) of election ("Inspector(s)") and schedule the date of the election. The Inspector can be an employee of the management company, or an Owner who is not a Board Member, related to a Board Member, or married to a Board Member. The Inspector(s) may also be an Inspector of Elections company retained by the Association.

Step Three: Sixty (60) days before the election, follow the nomination procedure set forth in the Election Rules. Normally, this will either require a call for candidates from a nominating committee or a call for candidates without a nominating committee.

Step Four: Forty-five (45) days before the election, receive nominations that will be listed on the Secret Ballot. The Election Rules will ordinarily cut off nominations of candidates that will be listed on the Secret Ballot at this point. Prepare Secret Ballots based on nominations received.

Step Five: At least thirty (30) days prior to the election, the Association shall mail to each Owner a written notice of the Election Meeting, and a Secret Ballot with instructions on how to complete the Secret Ballot and how to return it to the Inspector(s).

Step Six: The unopened Secret Ballots may be delivered by hand, or by mail, to the Inspector(s) at any time prior to the Election Meeting, or may be delivered in person at the Election Meeting. Owners may also assign their vote by Proxy to another Owner.

Step Seven: Hold the election on the prescribed date for Inspector(s) to count the votes. The Inspector(s) shall check off the Secret Ballots received on a list of the Owners. This can be done prior to the Election Meeting or at the Election Meeting.

Bring extra Secret Ballots to the Election Meeting for those who wish to vote at the Election Meeting, and for those who bring Proxies to exchange for Secret Ballots. Run the usual agenda, including nominations from the floor.

Step Eight: At the Meeting the Inspector(s) shall open the envelopes and count the votes. Owners may watch the count but must remain a reasonable distance away from the Inspector(s).

Step Nine: The Inspector(s) must certify in writing detailed results of the election.

Step Ten: Within fifteen (15) days after the election the Association shall notify the Owners of the election results. The results of the election shall be recorded in the minutes of the next regular meeting of the Board.

Step Eleven: After nine (9) month election challenge period wherein the ballots are held by the inspector or inspectors of election, the Association shall maintain the ballots in a safe place for one year, and allow inspections upon written request of any member or member's representative.

Candidate Filing Form (Election of Directors)

Filing Deadline: This form must be submitted to the Association office by no later than 5:00 p.m. on _____ (date).

Qualifications: All candidates for the board are subject to meeting the qualifications set forth in the governing documents.

Candidate Bio: Please include a bio of yourself to be included in the election package that will be mailed to all members. The bio should not exceed 250 words and should may not advocate any particular position, i.e., it cannot be a campaign statement. Campaigning may be done by all candidates separately from the election package mailed to the membership.

Questionnaire. Your answers to the following questions will be included in the election packet to the membership.

	YES	NO
1. Ownership. Are you on title to a unit/lot in the Association?	<input type="checkbox"/>	<input type="checkbox"/>
2. Co-Ownership. Are you a co-owner of a lot/unit in the Association with another candidate or anyone who will be on the board if you are elected? Describe: _____	<input type="checkbox"/>	<input type="checkbox"/>
3. Assessments. Are you current in the payment of all regular and special assessments due and payable to the Association as well as late fees and interest (if any)?	<input type="checkbox"/>	<input type="checkbox"/>
4. CC&R Violations. Do you have any outstanding fines or suspensions for violation of the Association's CC&Rs or Rules and Regulations?	<input type="checkbox"/>	<input type="checkbox"/>
5. Litigation.		
a. Are you currently an opponent in any litigation or administrative proceeding against the Association? Case Name: _____	<input type="checkbox"/>	<input type="checkbox"/>
b. Are you threatening litigation against the Association? Describe: _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Criminal Record. Have you been convicted of a felony within the past ten (10) years?	<input type="checkbox"/>	<input type="checkbox"/>
7. Conflicts of Interest.		
a. Do you have any ownership interest in or serve on the boards of any of the vendors providing services to the Association? Describe: _____	<input type="checkbox"/>	<input type="checkbox"/>
b. Are you an employee of any of the vendors who provide services to the Association? Describe: _____	<input type="checkbox"/>	<input type="checkbox"/>
c. Do you have family members employed by or with ownership interests in any vendors providing services to the Association? Describe: _____	<input type="checkbox"/>	<input type="checkbox"/>
d. Are there any matters pending before the Board in which you have a personal, financial or familial interest? Describe: _____	<input type="checkbox"/>	<input type="checkbox"/>

CONTACT INFORMATION

Name _____
Mailing address _____
City _____ State _____ Zip _____
Home telephone _____ Work _____
E-mail address _____

Truthful Answers. I hereby file as a candidate for the election of directors. I declare that each of the answers above is complete and true to the best of my knowledge.

Signature: _____
Date: _____

Notice to Homeowners for Special Membership Meeting

Notice is hereby given that on _____ (date), at _____ (time), there will be a special meeting of the members of the Association to discuss the following issues:

To approve and adopt the condominium conversion CC&Rs and Bylaws*.

Members who are unable to attend the meeting should execute the enclosed proxy.

The meeting will be held at _____, located at _____, Directions to this location are available from:

The Board of Directors for the Association

Sample Voting Instructions

To All Members of the Association

Together with these instructions you will find the following items:

- Notice of an upcoming election at the Association;
- Your ballot for the purpose of voting in the election;
- Two envelopes, one blank and one preaddressed to the inspectors of the election;
- A copy of the election rules for the Association (if not previously delivered to you).

The owner(s) of each Unit are entitled to cast one vote per Unit owned. Please read the following ballot measure carefully and indicate whether you wish to vote for or against each ballot measure listed. Your vote will be cast in accordance with your choice as set forth on this ballot form.

This measure must be approved by _____% of the homeowners in order to be enacted. Only Owners of record are entitled to vote.

Please follow these steps to vote in this election:

1. Mark your ballot. REMEMBER: Do not sign the ballot or place any identifying information on it as this is a secret ballot.
2. Insert your ballot into the blank envelope.
3. Place the blank envelope into the envelope preaddressed to the inspectors of election.
4. Sign and print your name in the upper left hand corner of the envelope preaddressed to the inspectors of election, and indicate your address or unit in the same space.
5. Stamp and mail the package to the preaddressed location.

You may also deliver your ballot by hand to the address indicated. You are entitled to a receipt for your ballot if you want and request one. Once you have sent in or delivered your ballot, your vote is deemed cast and will be counted by the Inspector(s) of election at the Meeting to count the votes. You cannot change your vote once your ballot is mailed or delivered.

We encourage you to participate in this very important event, and thank you for your participation.

If you have any questions, please contact:

Secret Ballot Instructions

Cast your ballot by indicating your choice and inserting it into the blank envelope. **Do not sign or write your name or unit number on the ballot or blank envelope.** Place the blank envelope containing the ballot into the preaddressed envelope and seal it. On the outside of the preaddressed envelope, print your name, sign your name below your printed name and print your address in the space provided.

Either mail or hand deliver the signed and sealed preaddressed envelope (with the sealed blank envelope inside) to the inspector of elections noted on the preaddress envelope, so that it is actually receive on or before _____ on _____.

Your vote will be invalid if received after _____ on _____, unless the deadline date is extended by a vote of the Board and notice to owners.

Secret Ballot

PROPOSAL:

To approve the condominium conversion *CC&Rs and Bylaws.

I/We, hereby, cast my/our vote for or against the above action as follows:

For []

Against []

Proxy Notes

A separate page of instructions should be provided to the Proxy holder (the person named as Proxy). The voting measures are not on this Proxy because this Proxy cannot be used as a substitute for a ballot under Civil Code Section 1363.03. This Proxy must be turned in along with the ballot package for the Owner who gives the Proxy.

A Proxy can be revoked before the vote is completed unless the ballot package has already been turned in to the inspectors. Thus, the Owner who assigns this proxy can revoke it before the ballots are counted, except that the ballot package is not revocable once it has been turned into the inspectors. So, if an Owner mails in their ballot package and then designates a Proxy, or gives the ballot package to a Proxy and that person turns the ballot package in, it will do no good to revoke the Proxy.

An Owner should, therefore, give explicit instructions to the Proxy that is named, and should grant this Proxy only to someone he or she trusts to follow the instructions.

Proxy for Meeting

I/we, _____
(names of owner(s)), hereby designate _____ (name of
person attending meeting) as my/our proxy holder with full powers to appear, represent and cast
votes upon any matter on my/our behalf at the meeting on _____
200_____.

CHECK ONLY ONE (1) OF THE FOLLOWING CHOICES:

I/we instruct my/our proxy holder to vote as follows (specify issue and the vote):

OR

I/we hereby authorize my/our proxy holder to use his/her best judgment in exercising my/our
vote on any and all matters which may come before the meeting.

The undersigned hereby revokes all prior proxies, if any.

Date:

Owner Signature:

Printed Name:

Date:

Owner Signature:

Printed Name:

Lot/Unit No.:

Street Address:

Please note: Any instruction given in a proxy issued for an election that directs the manner in which
the proxy holder is to cast the vote shall be set forth on a separate page of the proxy that can be
detached and given to the proxy holder to retain. The proxy holder shall cast the member's vote by
secret ballot (Civ. Code § 1363.03)

Proxy Revocation

I/we, _____
(names of owner(s)), hereby revoke our proxy executed on _____ (date of proxy).
_____ (name of person authorized by proxy) is not
authorized to exercise my/our vote at the Board/Membership meeting on
_____ (date) at _____ (location),
California.

I/we understand that if I/we do not execute a new proxy or personally vote at the meeting my/our
vote will not be counted on any matter.

Date:

Owner Signature:
Printed Name:

Date:

Owner Signature:
Printed Name:

Lot/Unit No.:

Street Address:

Secret Ballot for Election of Directors

ELECTION OF DIRECTORS. You may vote for only 3 persons by placing an "X" in the boxes next to their names. If you make a mistake, cross out the error and initial the change. DO NOT vote for more than 3 persons.

Nominees are listed in alphabetical order.

Names of Candidates Nominated for Director:

Notice to Homeowners for Annual Meeting

Date:

Time:

Location:

Notice is hereby given that on _____ (date), at _____ (time), the Annual Meeting of Association will be held to discuss the following issues:

There will be a vote of the Membership on the following issues:

Members who will be unable to attend the meeting should execute the enclosed proxy and return it no later than _____ to:

The meeting will be held at _____, located at _____, Directions to this location are available from:

The Board of Directors for the Association

(INCLUDE ON ANNUAL ELECTION BALLOTS)

REVENUE RULING 70-604. As provided in Revenue Rulings 70-604 and 75-371, any excess membership income at the end of an association's fiscal year must be either applied to next year's reserves or used as an offset against future assessments. This rule requires the vote of the membership.

- ☐ YES, Apply the excess membership income to next year's reserves.
- ☐ No, Do Not apply the excess membership income to next year's reserves (will have potential tax implications for the Association).

Resolution of the Board of Directors for the Association

RECITALS

Whereas,
(state meeting date, time)

Whereas,
(state facts upon which resolution is based)

Whereas,
(state additional facts, as necessary)

RESOLUTION

It is hereby resolved by the Board of Directors for the Association that *(state substance of resolution)*:

Executed this _____ day of _____, 200_____

By:

Secretary
Association

Notice to Homeowners for Regular Board of Directors Meeting

Date:

Time:

Location:

Notice is hereby given that the regular (monthly/quarterly) meeting of the Board of Directors for Association will be held on _____(date), at _____(time) to discuss the following issues:

The meeting will be held at _____, located at _____
_____. Directions to this location are available from:

The Board of Directors for the Association

Notice to Homeowners for Special Board of Directors Meeting

Date:

Time:

Location:

Notice is hereby given that a special meeting of the Board of Directors for Association will be held on _____ (date), at _____ (time) to discuss the following issues:

The meeting will be held at _____, located at _____ . Directions to this location are available from:

The Board of Directors for the Association

Notice to Homeowners for Special Membership Meeting

Date:

Time:

Location:

Notice is hereby given that on _____ (date), at _____ (time), there will be a special meeting of the members of Association to discuss the following issues:

There will be a vote of the Membership on the following issues:

Members who will be unable to attend the meeting should execute the enclosed proxy and return it no later than _____ to:

The meeting will be held at _____, located at _____, Directions to this location are available from:

The Board of Directors of the Association _____

Notice to Homeowners of Executive Session Board Meeting

Date:

Time:

Location:

Notice is hereby given that an executive session of the Board of Directors for Association will be held on _____ (date), at _____ (time) to discuss the following issues:

The meeting will be held at _____, located at _____ . Directions to this location are available from:

The Board of Directors of the Association

Consent to Emergency Action Without Board Meeting

We, the undersigned, being all the directors of * Association, a California non-profit corporation, hereby consent to the following emergency action by the Board of Directors without a meeting
(description of action to be taken):

Dated:

Please note: This document must be filed with the minutes of the Board of Directors meeting.

(Signature of Director)

(Signature of Director)

(Signature of Director)

(Signature of Director)

(Signature of Director)

(Signature of Director)