

BIRCH BEND NEIGHBORHOOD ASSOCIATION

ELECTION RULES

These Rules are intended to comply with Civil Code section 5105.

Vote by Secret Ballot for Specified Matters

Notwithstanding any other law or provision of the governing documents, the following matters require a vote by secret ballot in accordance with the procedures set forth herein, however, the Board may elect to conduct the vote on any matter by the procedures set forth herein:

1. Assessments;
2. Election and removal of members of the Board of Directors;
3. Amendments to the governing documents; or
4. The grant of exclusive use of common area property pursuant to California Civil Code Section 4600.

Fairness in Elections

1. The Association shall ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet websites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election. The Association shall 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.
2. There shall be equal access afforded to common area meeting spaces during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.
3. The qualifications for candidates for the Board of Directors shall be as specified in the Bylaws.
4. **Nomination Procedure for Board of Directors.**
 - 4.1 Nomination By Board. The Board of Directors may nominate candidates for the Board of Directors.
 - 4.2 Nomination By Nominating Committee. The Nominating Committee may nominate candidates for the Board of Directors.
 - 4.3 Self-Nomination. Qualified Members may nominate themselves as candidates for election to the Board of Directors by the following procedure:
 - 4.3.1 Not later than 90 days before an election of Directors, the Association shall send to all members by mail or electronic transmission, and post in a prominent place in the Common Area, a notice soliciting members to become a candidate for the Board of Directors;

- 4.3.2 Not later than 45 days before the pending election of Directors (“the Nomination Period”), interested qualified members must inform the Association’s managing agent or the Board of Directors, *in writing*, of their declaration of being a candidate for the Board of Directors if they wish to be included on the mailed ballots. Members submitting such a writing shall be entitled to a written receipt of such notice. An election shall not be valid if a qualified member has submitted such a written declaration of candidacy, received a written receipt therefore and his or her name does not appear on the mailed ballot.
- 4.4 No write-in candidates are permitted. Votes for write-in candidates shall not be counted in any election.
- 4.5 Nominations other than self-nominations are valid only if the candidate accepts the nomination prior to the expiration of the Nomination Period, and meet the qualifications of a director.
- 4.6 Candidate Statement. Nominated candidates for the Board of Directors pursuant to section 4.3.2 above may provide a “candidate statement” which the Association shall enclose with the voting packet mailed to each Association member. The statement shall not exceed 250 words, and shall be delivered to the Association’s managing agent in final form at least 45 days before the scheduled conclusion of the election.

5. Inspector(s) of Election

- 5.1 The Board shall appoint one or three Inspectors of Election who shall perform all functions required by Civil Code section 5110 including:
 - 5.1.1 Determine the number of memberships entitled to vote and the voting power of each;
 - 5.1.2 Determine the authenticity, validity and effect of proxies, if any;
 - 5.1.3 Receive and be the custodian of ballots, and direct the location to which ballots shall be sent until tabulated by the Inspectors of Election;
 - 5.1.4 Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;
 - 5.1.5 Count and tabulate all votes;
 - 5.1.6 Determine when the election shall close, with the discretion to extend the deadline for voting as necessary;
 - 5.1.7 Determine the results of the election; and
 - 5.1.8 Report the results of the election to the Board of Directors.

- 5.2 Eligible Inspectors of Election may include:
 - 5.2.1 The Association manager(s);
 - 5.2.2 The Association attorney or CPA;
 - 5.2.3 Any Association members who are not members of the Board of Directors or candidates for the Board of Directors nor relatives of members the Board of Directors or candidates for the Board of Directors; and
 - 5.2.4 Any individuals with a contractual relationship or with no relationship to the Association.
- 5.3 The Association may, at the discretion of the Board of Directors, provide reasonable compensation to any Inspector(s) of Election.
- 5.4 The Association shall indemnify and defend any non-compensated Inspector(s) of Election from any claim or action arising out of or the good faith actions of the Inspector(s) in connection with the election.
- 5.5 The Inspectors of Election shall have the sole authority to determine whether to issue a replacement ballot to a member if requested by the member.

6. Voting Procedures

- 6.1 Mailing of voting packets. No later than 30 days before the election, the Association shall send, by first class U.S. mail, one voting packet to each Association member. Each packet shall contain the following:
 - 6.1.1 One official ballot;
 - 6.1.2 Copies of all candidates' statements timely received by the Association as specified herein;
 - 6.1.3 Two sealable envelopes. The smaller (inner) envelope shall have no visible markings. The larger (outer) envelope shall be pre-addressed to the Inspector(s) of Election. The upper left corner of the larger envelope shall contain, or provide a space for the owner to insert, the owner's name and unit number and provide a place for the owner's signature.
 - 6.1.4 Instructions on how to use the two-envelope system; and
 - 6.1.5 Notice of the date of the membership meeting at which the votes will be counted.
- 6.2 Ballot content. Each ballot shall contain the following:

- 6.2.1 In an election of Directors, each candidate's name listed alphabetically or as drawn by lot.
 - 6.2.2 The identification of any other matter that is the subject of a pending member vote;
 - 6.2.3 A statement of the required quorum;
 - 6.2.4 A statement that ballots must be received by mail no later than 5:00 p.m. on the business day prior to the day of the scheduled conclusion of election (the day of the membership meeting); and
 - 6.2.5 A statement that ballots may be returned personally no later than the time specified in the notice of the start of the membership meeting at which the ballots are to be counted (notwithstanding the foregoing, the Inspector, in his or her discretion, may accept ballots up to the time that counting of the ballots begins).
- 6.3 Receipt of ballots
- 6.3.1 All ballots shall be received by the Inspectors of Election at locations as specified by the Inspectors of Election.
 - 6.3.2 If so directed by the Inspectors of Election, the Association's management staff shall maintain a log of all ballot envelopes received, noting whether the envelopes were signed or unsigned. "Signed" shall have the meaning set forth in California Civil Code section 5130(a)(2). The Inspectors of Election may communicate with any member who has neglected to sign the outer envelope, if the envelope can otherwise be identified as being submitted by the member, and provide an opportunity for the member to sign.
 - 6.3.3 Once a ballot has been received by the Inspectors of Election, it may not be revoked.
 - 6.3.4 All ballots shall remain in the possession of the Inspectors of Election (at a location designated by the Inspectors of Election) until tabulated by the Inspectors.

7. Tabulation of Ballots

- 7.1 The voting packets shall be opened by the Inspectors of Election after the close of the polls as determined by the Inspectors. The Inspectors shall separately retain the outer envelopes and each ballot.
- 7.2 The voting packet envelopes shall be opened and the ballots tabulated by the Inspectors of Election in public at a properly noticed open meeting of the members (which may be held in conjunction with a meeting of the Board of Directors).

- 7.3 Any candidate or other member of the Association may witness the counting and tabulation of the votes. However, no Association member or candidate shall communicate with the Inspectors during the tabulation process. The Inspectors of Election may cause the removal of any observer who interferes with or disrupts the counting or tabulation process.
- 7.4 Upon conclusion of the counting of ballots, the Inspectors of Election may announce to the membership the unofficial tabulation of results.
- 7.5 The official results of the election shall be promptly reported to the Board of Directors, shall be recorded in the minutes of the next meeting of the Board of Directors, and shall be available for review by the members of the Association.

8. Post-Election Procedures

- 8.1 The results of the election 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 The Board of Directors shall publicize the results of the election within 15 days by a communication directed to all members.
- 8.3 The sealed ballots at all times shall be in the custody of the inspector(s) of election or at a location designated by the Inspector(s) until after the tabulation of the vote, and once opened until the time for challenging the election has expired, at which time custody shall be transferred to the Association.
- 8.4 In the event of a recount or other challenge to the election process, the Inspector(s) shall, upon written request, make the ballots available for inspection and review by Association members or their authorized representatives. Any recount shall be conducted in a manner that shall preserve the confidentiality of the vote.
- 8.5 After transfer of the election ballots to the Association, election ballots shall be stored by the Association in a secure place for no less than one year after the date of the election.