

# **ASHLEY GLEN HOMEOWNERS ASSOCIATION**

## **Rules for Voting by Secret Ballot Regarding Elections**

Pursuant to California Civil Code Section 1363.03, the following rules and procedures shall apply for the Election and Removal of Directors.

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

1.1 The inspector(s) of election shall tabulate the ballots for the election of directors at the annual meeting of the owners or, if no quorum is present, at an adjourned meeting duly noticed. The Board of Directors shall determine the date, time and place of said annual meeting and/or adjourned annual meeting of the owners 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 "The Board shall consist of three (3) members, all of whom shall be owners...." [Bylaws, Article VI, Section 1.] "A new Board shall be elected by the owners at the organizational meeting and at each annual meeting thereafter...." [Bylaws, Article VI, Section 2.]

2.3 Owners may nominate themselves or another person; provided, however, all candidates must meet the qualifications set forth in Section 2.2 hereinabove, and must confirm their willingness to run for election to the board.

2.4 Any candidate nominated by another person, prior to the deadline for nominations by the candidate nomination form, will be contacted to confirm that such candidate consents to having his or her name placed in nomination for election to the Board. Write-in candidates and candidates nominated from the floor, at the meeting, must be present to accept said nomination.

2.5 All candidates who meet the qualifications to serve on the Board, if any, 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. Inspector(s) of Election.**

3.1 The Board shall appoint one or three independent third party(ies) as inspector(s) 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 Prior to the secret ballots being mailed to all of the owners, the inspector(s) of election shall meet to determine to whom the secret ballots shall be returned (the "Ballot Collector"), which may be the Association's property manager, if any.

3.3 The inspector(s) 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 ballots, proxies, etc., if any;

3.3.3 receive ballots;

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 result of the election;

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 The inspector(s) of election may appoint and oversee additional persons to count and tabulate the votes as the inspector(s) deem(s) appropriate.

3.5 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.

3.6 Any report made by the inspector or inspector(s) of election is prima facie evidence of the facts stated in the report.

3.7 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 to return 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 (separate interest identifier) with unit number if any, that entitles him or her to vote. The second envelope is addressed to the inspector(s) of election of the Association, who will be tallying the votes. Failure to do so will invalidate the ballot and 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 inspector(s) of election prior to the polls closing shall be counted.

4.4 A member may submit a written request to the Association for a receipt for delivery of the election materials.

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

4.6 Once cast, secret ballots cannot be revoked; they are irrevocable.

4.7 The polls shall open on the date the ballots are mailed, and close when the voting period is officially closed at the annual membership meeting by the Inspectors of Election.

**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 shall check off on a sign-in sheet that a ballot has been received for such a resident. The first secret ballot received for any residence shall be the ballot which is counted. Any subsequent ballots for the same residence which are received shall be deemed invalid and shall be discarded.

6.2 The sealed ballots at all times shall be in the custody of the inspector(s) of election, Ballot Collector, or at a location designated by the inspector(s) until delivered to the inspector(s) 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 inspector(s) of election, the ballots shall be transferred to the Association.

6.3 No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

6.4 After tabulation, election ballots shall be stored by the Association 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 inspector(s) of election in public at a properly noticed open meeting of the members or of the Board, at which a quorum of members or a quorum of Board members, as the case may be, must be present.

7.2 The inspector(s) of election shall confirm that no more than one ballot was returned for each residence.

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

7.4 The inspector(s) of election may establish a physical boundary or buffer zone around them during the tabulation of ballots.

7.5 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 inspector(s) 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 results of the election in a communication directed to all members.

## **9. Other Voting/Campaign Issues.**

9.1 The total number of memberships entitled to vote equals the total number of residences in the Association. However, owners whose voting rights have been suspended in accordance with the Association's governing documents after notice and hearing shall not be entitled to vote.

9.2 "...Every owner entitled to vote at any election of the board may cumulate his vote (subject to the procedural prerequisites to cumulative voting prescribed in Section 7615(b) of the California Corporations Code) and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which his unit(s) are entitled or may distribute his vote on the same

principle among as many candidates as he desires. Cumulative voting in the election of the Board shall be prescribed for all elections in which more than two (2) positions on the Board are to be filled...." [Bylaws, Article VI, Section 2.]

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").

9.4 The Board of Directors may enact and implement a "Meeting Code of Conduct" to govern the conduct of members at meetings.

# **ASHLEY GLEN HOMEOWNERS ASSOCIATION**

## **Rules for Voting By Secret Ballot Regarding Assessments, Amendments to Governing Documents and Granting of Exclusive Right to Use Common Area**

Pursuant to new Civil Code Section 1363.03(e), when owners are to vote to approve assessments, amendments to governing documents and/or granting the exclusive use of common area to a member, the following must occur:

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

1.1 Unless the vote is being taken in connection with an annual meeting of the owners, the inspector(s) of election shall tabulate the ballots for the vote to approve assessments, amendments to governing documents and/or granting the exclusive use of common area to a member shall be tabulated at a duly noticed (regular or special) meeting of the Board of Directors. The Board of Directors shall determine the date, time and place of said Board meeting.

### **2. Inspector(s) of Election.**

2.1 The Board shall appoint one or three independent third party(ies) as inspector(s) of election before the secret ballots are mailed to all of the owners. An independent third party includes, but is not limited to:

2.1.1 a volunteer poll worker with the county registrar of voters;

2.1.2 a licensee of the California Board of Accountancy;

2.1.3 a notary public;

2.1.4 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,

2.1.5 a person who is currently employed or under contract to the Association for any compensable services.

2.2 Prior to the secret ballots being mailed to all of the owners, the inspector(s) of election shall meet to determine the location to whom the secret ballots shall be returned (the "Ballot Collector"), which may be the Association's property manager, if any.

2.3 The inspector(s) of election shall also do all of the following:

2.3.1 determine the number of memberships entitled to vote and the voting power of each.

2.3.2 determine the authenticity, validity, and effect of ballots, proxies, etc., if any;

2.3.3 receive ballots;

2.3.4 hear and determine all challenges and questions in any way arising out of or in connection with the right to vote;

2.3.5 count and tabulate all votes;

2.3.6 determine when the polls shall close;

2.3.7 determine the result of the vote;

2.3.8 perform any acts as may be proper to conduct the vote with fairness to all members in accordance with this section and all applicable rules of the Association regarding the conduct of the vote that are not in conflict with this section.

2.4 The inspector(s) of election may appoint and oversee additional persons to count and tabulate the votes as the inspector(s) deem(s) appropriate.

2.5 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.

2.6 Any report made by the inspector or inspector(s) of election is prima facie evidence of the facts stated in the report.

2.7 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.

### 3. **Secret Ballot Procedure; Record Date.**

3.1 Ballots and two pre-addressed envelopes with instructions on how to return 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.

3.2 Ballots must ensure the confidentiality of the voters.

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

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

3.2.3 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 (separate interest identifier) with unit number if any, that entitles him or her to vote. The second envelope is addressed to the inspector(s) of election, who will be tallying the votes.

3.3 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 inspector(s) of election prior to the polls closing shall be counted.

3.4 A member may submit a written request to the Association for a receipt for delivery of the election materials.

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

3.6 Once cast, secret ballots cannot be revoked; they are irrevocable.

3.7 The polls shall open on the date the ballots are mailed, and close when the voting period is officially closed at the annual membership meeting.

4. **Campaigning.**

4.1 All 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 vote. 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.

4.2 All members advocating a point of view, including those not endorsed by the Board, for purposes reasonably related to the vote, shall be provided equal access to any common area meeting space, if any exists, during a campaign at no cost.

5. **Handling of Ballots.**

5.1 As secret ballots are returned to the Ballot Collector, the Ballot Collector shall check off on a sign-in sheet that a ballot has been received for such a residence. The first secret ballot received for any residence shall be the ballot which is counted. Any subsequent ballots for the same residence which are received shall be deemed invalid and shall be discarded.

5.2 The sealed ballots at all times shall be in the custody of the inspector(s) of election, Ballot Collector, or at a location designated by the inspector(s) until delivered to the inspector(s) 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 vote results by the inspector(s) of election, the ballots shall be transferred to the Association.

5.3 No person, including a member of the Association or an employee of the management company, shall open or otherwise review any ballot prior to the time and place at which the ballots are counted and tabulated.

5.4 After tabulation, the ballots shall be stored by the Association in a secure place for no less than one year after the date of the vote. In the event of a recount or other challenge to the voting 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.

6. **Tabulation of Votes; Quorum Requirement.**

6.1 All votes shall be counted and tabulated by the inspector(s) of election in public at a properly noticed open meeting of the Board, at which a quorum of Board members must be present.



6.2 The inspector(s) of election shall confirm that no more than one ballot was returned for each residence.

6.3 Owners who have not previously submitted a ballot may complete one at the meeting and return it to the inspector(s) of election prior to the polls closing.

6.4 Any member of the Association may witness the counting and tabulation of the votes.

6.5 The inspector(s) of election may establish a physical boundary or buffer around them during the tabulation of ballots.

6.6 In order for the vote on the proposal to be valid, ballots must be returned by at least a quorum of the owners and the requisite percentage of owners must vote to approve the proposal.

7. **Announcement of Results.**

7.1 The results of the vote 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.

7.2 Within 15 days of the vote on the proposal, the Board shall publicize the results of the vote in a communication directed to all members.

8. **Other Voting Issues.**

8.1 The total number of memberships entitled to vote equals the total number of residences in the association. However, owners whose voting rights have been suspended in accordance with the Association's governing documents after notice and hearing shall not be entitled to vote.

8.2 The Board of Directors may enact and implement a "Meeting Code of Conduct" to govern the conduct of members at meetings.

8.3 Proxies will be accepted so long as they meet the requirements of all applicable laws and the Association's governing documents, and they are consistent with the secret ballot election process. Directed proxies and proxy envelopes are prohibited.