

# Blue Lake Springs Homeowners Association

## Voting and Election Rules

These Voting and Election Rules were adopted by the board on \_\_\_\_\_, 2008 and are intended to comply with the requirements of Civil Code section 1363.03(a). These Rules shall be effective on the date of adoption, shall supersede any other voting rules of the association, and shall remain in effect until modified by the board.

### Article 1                    MEDIA

1.1 Access to Association Media – Candidates for the Board. The board may but is not required to make association available to qualified candidates running for election to the board for purposes that are reasonably related to the election in which that candidate is running. If the board allows any candidate access to association media, then all qualified candidates shall be allowed equal access to the same media. The term "media" includes posting on the association-maintained bulletin board in the clubhouse, or on an official website, or in the newsletter or newspaper or other notices mailed or delivered by the Association to its members.

1.2 Access to Association Media – Other Matters. If the board utilizes association media to advocate a point of view on any matter (other than election of directors) that requires member approval, or allows any member access to association media for that purpose, then all members advocating a different point of view shall be allowed equal access to the same media. The board shall not be required to allow access to more than one member advocating the same point of view.

1.3 "Equal Access". "Equal access" shall mean publication of written statements not to exceed a predetermined number of words. The board shall not edit or redact any statement, but shall not be required to publish any statement that exceeds the predetermined length restrictions.

1.4 Responsibility for Content. All statements published in association media pursuant to the "equal access" rules must identify the author or proponent. No anonymous statements will be permitted. The author and/or proponent of any statement or point of view shall be solely responsible and liable for the content of their statements. The association shall not be responsible or liable for the content of any statement published pursuant to the "equal access" rules. Statements on behalf of candidates for election to the board shall be limited to personal statements by the candidate concerning the candidate's qualifications to serve on the board.

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Article 2

**MEETING SPACE**

2.1 Access to Common Area Meeting Space — Campaigning by Candidates for the Board. The board shall ensure that during a campaign all qualified candidates for election to the board are given access to common area meeting space, at no cost, for purposes reasonably related to their campaigns.

2.2 Access to Common Area Meeting Space — Other Matters. Whenever the board places a matter before the members which requires member approval, the board shall ensure that members advocating a point of view on the matter are given access to common area meeting space, at no cost, for purposes reasonably related to advocating their point of view, whether or not they agree with the point of view advocated by the board on the matter at issue.

Article 3

**VOTING BY SECRET BALLOTS**

All voting by the members shall be conducted by secret ballot using a "double envelope system" as described in Civil Code section 1363.03(e), provided, however, that in the case of a membership vote on any matter not specified in Civil Code section 1363.03(b), the deadline for returning a secret ballot may be a reasonable time that may be less than thirty (30) days. The ballot and envelopes shall be mailed or delivered to the members entitled to vote in the vote or election.

Article 4

**INSPECTORS OF ELECTION**

4.1 Appointment of Inspector. Whenever there is a membership vote or election, the board shall appoint an Inspector of election.

4.2 Qualification of Inspector of Election. The Inspector may be any persons the board reasonably believes to be independent with respect to the matter or matters being voted on and may include the association's manager, accountant, or legal counsel or members of the association, but may not be a member of the board or a candidate for election to the board or a family member of a current member of the board or of a candidate.

4.3 Indemnification of Inspectors, Liability Insurance. Inspectors of election shall be deemed to be agents of the association for purposes of Corporations Code section 7237 and shall be entitled to indemnification by the association to the fullest extent provided by law. As provided in Corporations Code section 7237(i), the association shall have the power to purchase and maintain insurance on behalf of any agent of the association against any liability asserted against or incurred by the agent in his or her capacity as an agent of the association or arising out of the agent's status as such, whether or not the association would have the power to indemnify the agent against such liability under the provisions of Corporations Code section 7237.

Article 5 **CANDIDATES FOR THE BOARD**

5.1 Qualification of Candidates. Candidates for the board must be members in good standing who have not been declared of unsound mind by a final order of court or been convicted of a felony (Corporations Code section 7221(a)). "Member" means a person who holds legal title to the property (i.e., is named in the deed for the property).

5.2 Nominations. The board shall publish or post a notice recruiting candidates for the board and stating the deadline for receipt of nominations. Any member who satisfies the qualifications may place his or her name in nomination for the board by giving written notice to the board before the published deadline for receiving nominations. In addition, the board may recruit qualified candidates and shall appoint a nominating committee to nominate qualified candidates.

Article 6 **MEMBER VOTING RIGHTS**

6.1 Qualification for Voting. Only members in good standing and who have paid their annual membership dues shall be allowed to vote. A member shall be deemed to be in good standing unless, after notice to the member and an opportunity for hearing, the board has found the member to be not in good standing and has so notified the member in accordance with Civil Code section 1363(h). As long as any co-owner of a lot is not in good standing, no vote shall be permitted for the lot.

6.2 Voting Power of Each Membership. Only one vote shall be cast for each Lot. Once a ballot is received by the inspector of election, it may not be rescinded. Cumulative voting is not permitted in the election of directors.

6.3 Election by Acclamation. If, after the close of nominations from the floor of the annual or a special meeting convened to conduct the election, the number of nominees does not exceed the number of seats up for election, the members may elect the nominees by acclamation.

6.4 Proxies. In any election or vote of the members conducted by the association, only official ballots issued by the association shall be counted as votes. Proxies are not ballots and are not valid as votes in any election or vote conducted by the association.

# **Blue Lake Springs Homeowners Association Procedures and Guidelines for Conducting Membership Votes and Elections**

These checklists, guidelines, forms, etc. are not part of the Voting and Election Rules but are operational guidelines for the use of the board, the manager, and the inspector(s) of election to enable the Association to conduct member votes and elections in a fair and timely fashion and to appropriately document key steps in the process in the case of any challenge to the process or the outcome of a membership vote or election.

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# TIMELINE AND CHECKLIST FOR ELECTION OF DIRECTORS & ANNUAL MEETING

(Approx. 120 days)

INSTRUCTIONS: APPROXIMATELY 4 MONTHS BEFORE PLANNED DATE OF ANNUAL MEETING, PREPARE TIMELINE. AS EACH ITEM IS COMPLETED, MAKE ANY NECESSARY CHANGES TO SHOW ACTUAL DATE, THEN CHECK OFF OR INITIAL.

Month of annual meeting and election of directors: \_\_\_\_\_

1. \_\_\_\_\_ - Appoint nominating committee (if applicable) and/or publish call for volunteers to run for the board, and set Record Date for Voting. (Committee appointment and setting record date should be done at a board meeting held at least 30 days before the deadline for receiving nominations.)
2. \_\_\_\_\_ - Deadline for receiving nominations (date and time).
3. \_\_\_\_\_ - Confirm that nominees for the board meet the qualifications as set forth in the Bylaws and stated in the Voting and Election Rules. Fill out and sign "CERTIFICATE OF NOMINATIONS RECEIVED." Place in minute book of membership meetings and proceedings.
4. \_\_\_\_\_ - Record Date for Voting (can be the same date or shortly after the deadline for nominations). On the Record Date for Voting, print list of all members as shown in the records of the association and line through or otherwise clearly indicate on the list any members who are not in good standing as of the Record Date for Voting.
5. \_\_\_\_\_ - Fill out and sign "CERTIFICATE OF MEMBERS ENTITLED TO VOTE" and attach the list. Place in minute book of membership meetings and proceedings.
6. \_\_\_\_\_ - Mail or deliver ballot packages to members in good standing. Allow enough time (15 to 30 days) after the deadline for receiving nominations and the Record Date for Voting for preparation of ballots, address labels, printing, stuffing envelopes, etc.
7. \_\_\_\_\_ - Fill out and sign "CERTIFICATE OF MAILING OR DELIVERY OF BALLOTS" and attach a copy of all the contents of the ballot package sent to the members. Place in minute book of membership meetings and proceedings.
8. \_\_\_\_\_ - At an open meeting of the board, appoint inspector or inspectors of election. (Can be done any time before the deadline for returning ballots, but make sure inspector(s) will be available when needed to validate and count the ballots.)
9. \_\_\_\_\_ - Provide inspector(s) with a copy of the certified list of Members Entitled to Vote (#5, above).

10. \_\_\_\_\_ - Deadline for returning ballots (date and time). MUST be at least 30 days after mailing. This deadline may be extended by the inspector(s) up to a total of 60 days after the date of mailing if enough ballots have not been received in order for the vote to produce a valid result.
11. \_\_\_\_\_ - Give notice to members of the annual meeting for opening, counting, and tabulating ballots. (Mail the notice to members by first class mail after inspector(s) are satisfied enough ballots have been returned to achieve a valid result.) To satisfy Corporations Code section 7511, the notice must be sent at least 10 days before the date of the annual meeting. [SEE FORM: "NOTICE OF ANNUAL MEETING"]
12. \_\_\_\_\_ - Fill out and sign "CERTIFICATE OF MAILING OR DELIVERY OF NOTICE OF MEETING." Place in minute book of membership meetings.
13. \_\_\_\_\_ - Planned date of annual meeting. Because members may not promptly return ballots, it may not be possible to finally set this date until near the original or extended deadline for returning ballots.
14. \_\_\_\_\_ - At conclusion of tabulation of ballots, inspector(s) fill out and sign "AFFIDAVIT CERTIFYING RESULTS OF VOTE OR ELECTION" and provide it to the board.
15. \_\_\_\_\_ - Inspector(s) place all ballots, return envelopes, and a copy of the list of Members Entitled to Vote in a container, label and seal it, and sign across the seal so that any tampering with the contents will be evident. Inspector(s) retain ballots for nine (9) months, after which time inspector(s) deliver the sealed container to the board or manager to be kept in safekeeping by the association until at least one year after the date the ballots were tabulated.
16. \_\_\_\_\_ - Place the original "Affidavit Certifying Results" in minute book of membership meetings and proceedings.
17. \_\_\_\_\_ - Notify members of results of the election.
18. \_\_\_\_\_ - Record results of vote or election in minutes of next open meeting of the board.
19. \_\_\_\_\_ - One year after election, destroy ballots, envelopes, etc. from the vote or election.

**TIMELINE AND CHECKLIST  
FOR OTHER MEMBERSHIP VOTES**  
(other than annual meeting)

(Approx. 60 to 180 days)

INSTRUCTIONS: AT LEAST 2 MONTHS BEFORE PLANNED DEADLINE FOR VOTING, PREPARE TIMELINE. AS EACH ITEM IS COMPLETED MAKE ANY NECESSARY CHANGES TO SHOW ACTUAL DATE, THEN CHECK OFF OR INITIAL.

1. \_\_\_\_\_ - Record Date for Voting. Should be set by board at an open meeting. On the Record Date for Voting, print list of all members as shown in the records of the association and line through or otherwise clearly indicate on the list any members who are not in good standing as of the Record Date for Voting.
2. \_\_\_\_\_ - Fill out and sign "CERTIFICATE OF MEMBERS ENTITLED TO VOTE" and attach the list. Place in minute book of membership meetings and proceedings.
3. \_\_\_\_\_ - Mail or deliver ballot packages to members in good standing. Allow enough time (15 to 30 days) after the Record Date for Voting for preparation of ballots, address labels, printing, stuffing envelopes, etc.
4. \_\_\_\_\_ - Fill out and sign "CERTIFICATE OF MAILING OR DELIVERY OF BALLOTS" and attach a copy of all the contents of the ballot package sent to the members. Place in minute book of membership meetings and proceedings.
5. \_\_\_\_\_ - Appoint inspector or inspectors of election at an open meeting of the board. (Can be done any time before the deadline for returning ballots, but make sure inspector(s) will be available when needed to validate and count ballots.)
6. \_\_\_\_\_ - Provide inspector(s) with a copy of the certified list of Members Entitled to Vote (#2, above).
7. \_\_\_\_\_ - Deadline for returning ballots (date and time). MUST be at least 30 days after mailing. This deadline may be extended by the inspector(s) up to a total of 180 days after the date of mailing if enough ballots have not been received in order for the vote to produce a valid result.
8. \_\_\_\_\_ - Give notice of a special open meeting of the board at which the ballots will be opened, counted, and tabulated. [SEE FORM: "NOTICE OF BOARD MEETING"] When the inspector(s) are satisfied enough ballots have been returned to achieve a valid result, the president or the secretary or any two board members can authorize giving notice to the members and to the board. To satisfy Civil Code section 1365.05(g), notice must be given to members at least 4 days before the meeting. To satisfy Corporations Code section 7211(a)(2),

notice must be given to directors 4 days before the meeting if sent by first class mail or 48 hours before the meeting if given personally or by telephone or by email.

9. \_\_\_\_\_ - Fill out and sign "CERTIFICATE OF MAILING OR DELIVERY OF NOTICE OF MEETING." Place in minute book of board meetings and proceedings.

10. \_\_\_\_\_ - Planned date of special open meeting of the board to open, count, and tabulate ballots. This date may be postponed if the deadline for returning ballots is extended to get enough ballots for a valid result.

11. \_\_\_\_\_ - At conclusion of tabulation of ballots, inspector(s) fill out and sign "AFFIDAVIT CERTIFYING RESULTS OF VOTE OR ELECTION" and provide it to the board.

12. \_\_\_\_\_ - Inspector(s) place all ballots, return envelopes, a copy of the list of Members Entitled to Vote in a container, label and seal it, and sign across the seal so that any tampering with the contents will be evident. . Inspector(s) retain ballots for nine (9) months, after which time inspector(s) deliver the sealed container to the board or manager to be kept in safekeeping by the association until at least one year after the date the ballots were tabulated.

13. \_\_\_\_\_ - Place the original signed "Affidavit Certifying Results" in minute book of membership meetings and proceedings.

14. \_\_\_\_\_ - Notify members of results of the vote.

15. \_\_\_\_\_ - Record results of vote in minutes of next open meeting of the board.

16. \_\_\_\_\_ - One year after election, destroy ballots, envelopes, etc., from the vote or election.

## INSPECTORS OF ELECTION:

### APPOINTMENT, DUTIES, INDEMNIFICATION

1. Appointment of Inspector. Whenever there is a membership vote or election, the board shall appoint an inspector of election. The inspector shall be appointed at an open meeting of the board occurring before the deadline for returning ballots in the vote or election.
2. Qualification of Inspector of Election. Inspectors may be any persons the board reasonably believes to be independent with respect to the matter or matters being voted on and may include the association's manager, accountant, or legal counsel or members of the association, but may not be a member of the board or a candidate for election to the board or a family member of a current member of the board or of a candidate. Serving as an inspector of election shall not restrict a member's right to vote in that vote or election.
3. Responsibilities of Inspector. As provided in Civil Code section 1363.03(c)(3), the inspector or inspectors of election shall do all of the following:
  - (A) Determine the number of memberships entitled to vote and the voting power of each.
  - (B) Determine the authenticity, validity, and effect of proxies, if any.
  - (C) Receive ballots.
  - (D) Hear and determine all challenges and questions in any way arising out of or in connection with the right to vote.
  - (E) Count and tabulate all votes.
  - (F) Determine when the polls shall close.
  - (G) Determine the tabulated results of the election.
  - (H) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with Civil Code section 1363.03 and the association's Voting and Election Rules.
4. Guidelines. Guidelines for the board and the inspectors of election are at page 10.
5. Replacement of Inspectors. If any inspector is or becomes unable or unwilling for any reason to perform the duties of an inspector of election, the board shall have the power to appoint a replacement inspector to assume the responsibilities of inspector in the vote or election in progress. A replacement inspector shall be entitled to rely on any act or decision of the previous inspector or inspectors with respect to that vote or election.

6. Inspector's Standard of Care. An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability as expeditiously as is practical.
7. Additional Persons. The inspector or inspectors shall be entitled to appoint and oversee additional persons to count and tabulate votes as the inspector or inspectors deem appropriate.
8. Consultation with Legal Counsel. The inspector or inspectors of election shall be entitled to consult legal counsel, including legal counsel for the association, as to any matter relating to the duties of the inspector or inspectors.
9. Decisions of Inspectors. If there are three inspectors, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the inspector or inspectors shall be prima facie evidence of the facts stated therein.
10. Indemnification of Inspectors; Liability Insurance. Inspectors of election shall be deemed to be agents of the association for purposes of Corporations Code section 7237 and shall be entitled to indemnification by the association to the fullest extent provided by law. As provided in Corporations Code section 7237(i), the association shall have the power to purchase and maintain insurance on behalf of any agent of the association against any liability asserted against or incurred by the agent in his or her capacity as an agent of the association or arising out of the agent's status as such, whether or not the association would have the power to indemnify the agent against such liability under the provisions of Corporations Code section 7237.

## **GUIDELINES FOR “DOUBLE ENVELOPE” VOTING SYSTEM**

### Article 1.     Applies to All Member Votes.

All voting by members shall be conducted by secret ballot using a “double envelope system” as described in Civil Code section 1363.03(e).

### Article 2.     Components of the “Double Envelope” Voting System. (SEE EXAMPLE IN SAMPLE FORMS)

2.1     Ballot. The ballot should not ask for any identifying information from the member and is not to be signed by the member.

2.2.     Inside Envelope. The inside envelope should not ask for any identifying information from the member. It may be a plain unmarked envelope, or it may be labeled “ballot” and/or may give voting instructions.

2.3     Return Envelope. The return envelope should be addressed to INSPECTOR OF ELECTION, C/O [NAME OF ASSOCIATION], P.O. OR STREET ADDRESS, CITY, STATE, ZIP. In the upper left corner or left hand side of the face of the return envelope, provide space for member’s name, signature, mailing address, and lot or unit number that entitles the member to vote (or attach duplicate mailing label).

### Article 3.     Voting Instructions; Returning Ballots.

The marked ballot shall be placed in the inside envelope. The inside envelope shall be placed in the return envelope. The ballot may be mailed to the address on the return envelope or delivered by hand to a specified location, which should be identified in the voting instructions. If hand-delivered, the member may request a receipt.

### Article 4.     Members Entitled to Vote.

Once ballots are mailed out, all the members listed on the original list of “Members Entitled to Vote” are entitled to vote and only the members listed on the original list of “Members Entitled to Vote” are entitled to vote. This is true even if the deadline for voting is extended.

### Article 5.     Member Address Labels.

The association guidelines allow for the use of preprinted labels for the member information on the return envelopes. To make it easier to validate ballots, you may make a duplicate set of the member mailing labels and attach the duplicate address label for the member on the return envelope. [IF YOU USE THIS METHOD, THE RETURN ENVELOPES MUST BE MATCHED TO THE MAILING LABELS WHEN THE BALLOTS ARE SENT TO THE MEMBERS.]

Article 6. Replacement Ballots; Reminders; Additional Mailing Labels.

The association guidelines allow for sending replacement ballots and for sending out reminders to members to vote. When you are preparing mailing labels for the members entitled to vote, you may want to print one or more additional sets of mailing labels, or make a photocopy of the mailing label sheets to use to photocopy additional labels if they are later needed in the course of the voting.

## **GUIDELINES FOR BOARD AND INSPECTOR(S) FOR CONDUCTING MEMBERSHIP VOTES AND ELECTIONS**

1. Use of "Double Envelope" System. "Double envelope" balloting materials must be mailed or delivered to the members entitled to vote in any vote or election by the members.
2. Ballots Are Irrevocable. Once a ballot is received by the inspector(s) it cannot be revoked.
3. Storing Ballots Before Opening. All ballots received shall be kept sealed and unopened at a location designated by the inspector or inspectors of election until they are tabulated by the inspector or inspectors. The inspector(s) shall be entitled to designate the association's management company as the location for keeping ballots until they are tabulated. No person, including a member of the association or an employee of a management company, shall open or otherwise review any ballot prior to the time when the ballots are opened and tabulated by the inspector or inspectors of election.
4. Voting Period; Extensions. The voting period for any vote or election by the members shall be at least thirty (30) days, as required by Civil Code section 1363.03(e). The inspector or inspectors of election may extend the voting period and, to enable the resulting vote to determine a valid outcome on the issue or issues being voted on, shall extend the voting period as necessary, up to a total of sixty (60) days after the date of mailing of the ballots in the case of an election of directors or a vote to remove one or more directors, or up to one hundred eighty (180) days after the date of mailing of the ballots in the case of a vote on any other matter.
5. Determining a Valid Outcome. "Enabling a vote to determine a valid outcome" means receiving enough ballots to satisfy the quorum requirement stated in the bylaws or required by law; and for matters that require approval of some percentage of the total voting power of the association or of all owners, it means receiving a number of ballots that exceeds the required number of affirmative votes. For example, if amending the CC&Rs requires approval of a majority of the total voting power of the association, "enabling a vote to determine a valid outcome" on any amendment to the CC&Rs shall mean extending the voting period until the number of validated ballots received is more than a majority of the total voting power.
6. Replacement Ballots; Reminders to Members. Replacement ballots may be sent or delivered to members from whom a ballot has not been received. Reminders to members to vote shall be permitted.
7. Validation of Ballots. As ballots are received, the inspector or inspectors of election may validate the return address information against the list of Members Entitled to Vote, at any time or from time to time prior to the meeting at which the ballots are to be counted. Validation of ballots need not be conducted publicly or at the meeting at which the ballots are opened, counted, and tabulated.

8. Member Signature on Return Envelope. For purposes of validating the authenticity of a ballot, the inspector or inspectors of election shall be entitled to rely on a preprinted label containing the name of the member and sufficient information to identify or infer the lot or unit that entitles the member to vote, whether or not the member manually signs his or her name on the return envelope. The preprinted label may be the association's label or any other printed label.

9. Counting Ballots at an Open Meeting. Ballots shall be opened, counted, and tabulated by the inspector or inspectors of election in public at a properly noticed special open meeting of the board, except that counting ballots for the annual election of directors may be conducted at a properly noticed annual meeting of the members.

10. Identifying Marks on a Ballot. The inspector or inspectors shall be entitled to count a ballot even if the member places identifying information in or on the inside envelope or the ballot.

11. Member Attendance at Meeting. Any candidate (if applicable) or any member may attend the meeting at which the ballots are tabulated.

12. Certification of Results. The inspector or inspectors of election shall certify the results of the voting and shall report the results to the board. (See "AFFIDAVIT CERTIFYING RESULTS OF VOTE OR ELECTION.") The Affidavit Certifying Results shall be placed in the minute book of membership meetings and proceedings and shall be available for review by any member.

13. Storing Ballots after Tabulation. At the meeting and after the inspector(s) certify the results of the vote or election, he/she/they shall place all of the ballots, the return envelopes, and the list of Members Entitled to Vote in a container, label and seal it, and sign their name(s) across the seal so that any tampering with the contents will be evident. The inspector(s) shall retain custody of the ballots for nine (9) months, after which time the inspector(s) shall deliver the sealed container to the board or manager to be kept in safekeeping by the association until at least one year after the date the ballots were tabulated. (See "SAMPLE LABEL FOR STORING BALLOTS.")

14. Recording Results in Board Minutes. The results shall be recorded in the minutes of the next open meeting of the board.

15. Notifying Members of Results. Within 15 days after the inspector or inspectors of election have certified the results of the vote or election, the board shall publish the results by posting a notice in the common area, mailing a notice to all members, or any other means of communication reasonably designed to provide actual notice to the members.

16. Recount or Challenge. In the event of a recount or challenge, the inspector(s), upon written request, shall make the ballots available for inspection by association members or their designated representatives at a reasonable time and at a location that is mutually agreed to by the inspector(s) and any other persons involved. The inspector(s) shall be entitled to request verification of the authority of any person to inspect the ballots.