

Bannockburn Homeowners Association
P.O. Box 211, Franktown, Colorado 80116

Dear Bannockburn Resident Homeowners,

Enclosed you will find the 2012 Bannockburn Homeowners Association Ballot. This ballot is the result of hundreds of volunteer hours by the Covenant Committee and the Board of Directors in researching, analyzing, reviewing the survey 2011 results and finally determining items that may assist our community, not only for the present, but for the future as well.

All Bannockburn Resident Owners are asked to vote. Who may vote is determined under the Bannockburn Protective Covenants and the Bannockburn Bylaws. According to Mr. James Bull, the Bannockburn Homeowners Association attorney, "...Someone who can vote on Amendments to Covenants has to be an Owner in Bannockburn, a Resident Member meaning that the owner has their Bannockburn property as their principal place of residence, and a person who is also paid in full in current dues."

In order for any question to pass, and amend the Bannockburn Protective Covenants, the voting forms must be returned and each question must receive a positive vote of 66 and 2/3% by all Resident Owners in Good Standing. The voting forms must be postmarked by April 20, 2012 after which time the votes will be counted and reviewed for proper and timely execution. Therefore, your vote is very important, so please take the time to review the ballot and respond to each question.

The BHA 2012 Ballot is divided into three separate sections and typed on three different colors of paper: Architectural Section is on blue paper, the Animals Section is on yellow paper, and the Covenant Voting Requirements Section is on green paper. Each section also contains a separate voting form. ***After reviewing each section and each question, please vote on the appropriate colored voting form, by filling in either "Yes" or "No" in the circle at each question, using a dark blue or black pen. Then, please print your name, lot number, street address, and sign and date each of the three separate voting forms, and mail back the three voting forms in the postage paid envelope by April 20, 2012. Please only mail back the three voting forms, not the entire ballot, since the prepaid postage will only cover the cost of the three separate sheets of paper.***

If you have any questions, please call any of the Board of Directors: Kim Starley, Vice President & Environmental Chairman, 303 840-1167, Amy Maier, Social Chairman, 303 660-8600, Mark Huston, Treasurer, 303 798-8196, Mark Bebout, Secretary, Steve Nickerson, 303 688-9284, Tammy Edwards, 303 688-5089, or visit our website, www.BannockburnHOA.com, for a list of email addresses.

Sincerely,

The Bannockburn Homeowner's Association Board of Directors

The Bannockburn Covenant Committee

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January 11, 2017 ²

Amy C. Maier
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Re: Voting in Bannockburn HOA

Dear Amy,

In our telephone discussion and your email you asked:

We need to know who can vote, so here is a copy of the BHA Covenants. For definitions of Resident Owner, please look at Article II, Number 3 and Number 4, Article III, Number 1 and Number 2, and for who can vote, Article 10, Number 4.

For the BHA Bylaws, for definitions, please look at Article 1, Number 4, 5, 6 & 7. For who can vote, Article II, Section 4 and 5, and to Amend the Bylaws, Article XI, Number 1.

I looked at those specific provisions. Some general questions came up in my examination so I looked at other provisions as well. To answer the question, we have to understand a general concept that varies between HOA organizations that is relevant to this answer.

Sometimes the Covenants have voting standards that are not integrated with the HOA. Some are integrated. Your Association "integrates" the definition of Membership for voting purposes with Membership in the HOA in the Covenants.

QuickTime™ and a
decompressor
are needed to see this picture.

What this means is that the Covenants have delegated the definition of the term "member" to the HOA to define who a member is i.e. to vote a person has to be a member of the HOA-not just an owner of property in Bannockburn. The starter is person who buys a lot in Bannockburn, by virtue of that ownership becomes a "member" of the HOA. Bylaws Art. I, 4, 5 & 6. The Covenants also narrow the voting requirement to "Resident Owners" meaning someone who makes their principal place of residence

the property in Bannockburn. But the Covenants don't mention the concept of Member in Good Standing. Since the Covenants delegated this issue to the HOA, the HOA, can by Bylaw further define who constitutes a Member. The Bannockburn Bylaws say someone who is current in the mandated dues can vote. A member who is not current has breached the contract he or she made with their co-owners (the Covenants are a contract among property owners in the subdivision). So it is not an unreasonable request to mandate, that as a condition of voting, you have to be current in your dues.

Colorado Non-Profit corporate laws (available on request) provide that a non-profit like Bannockburn can establish Bylaws. The Member in Good Standing concept has been in Bannockburn Bylaws for many years.

CCIOA does not apply to Bannockburn absent a specific vote to make it apply. If it does apply, it does not conflict with this opinion.

See, 38-33.3-118. Procedure to elect treatment under the "Colorado Common Interest Ownership Act".

"(1) Any organization created prior to July 1, 1992, may elect to have the common interest community be treated as if it were created after June 30, 1992, and thereby subject the common interest community to all of the provisions contained in this article, in the following manner:
(a) If there are members or stockholders entitled to vote thereon, the board of directors may adopt a resolution recommending that such association accept this article and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders entitled to vote thereon, which may be either an annual or special meeting."

The Bannockburn HOA, as a corporation (non-profit), is entitled to define who its members are and voting rights per the Colorado Non-profit Act by setting this forth in its By Laws, which dictate the result and the requirements i.e. who is "entitled to vote". Cites under this act are available on request.

So, since the Bannock Covenants have delegated "membership" to the HOA, and the HOA has further defined a Member to be one who has paid dues up to date and is therefore in good standing, the Bannock Bylaw in this case dictates the result and is not in conflict with the Covenants or CCIOA-even if CCIOA were applicable.

Consequently, it is my opinion that someone who can vote on Amendments to Covenants has to be an Owner in Bannockburn, a Resident Member meaning that the owner has their Bannockburn property as their principal place of residence, and a person who is also paid in full in current dues. Dues, by the way, can be paid, anytime before the vote as I see nothing to prohibit this practice of paying immediately before voting unless you amend your Bylaws to add such a provision.

Very truly yours,

BUCHOLTZ & BULL, P.C.

S/ James C. Bull