

# UNIVERSITY TERRACE BERKELEY HOMEOWNERS ASSOCIATION

## UNIVERSITY TERRACE OCCUPANCY AND USE RULES

*These Occupancy and Use Rules (the "Rules") for the University Terrace Berkeley Homeowners Association ("Association") are intended to clarify and supplement the occupancy and use requirements for Owners, family members, and their guests pursuant to Article 13 of the Declaration of Covenants, Conditions & Restrictions for University Terrace Berkeley Homes recorded on October 11, 1994, as Document No. 94-329463, in the Official Records of Alameda County, State of California, as amended from time to time (collectively, "CC&Rs"), and the Sublease of Undivided Interest ("Sublease") entered into by an Owner and the Association (collectively, the "Condominium Instruments").*

1. Housing Program. By means of the CC&Rs, "[t]he Regents and the Association established a plan of ownership of condominium units ... as part of a housing program established for the principal benefit and convenience of the faculty and academic staff of the University of California, Berkeley" (Sublease, Preamble C). The "primary objective" of this Housing Program is to "strengthen the educational program at the University of California, Berkeley, by fostering an academic community at or near the campus, creating and maintaining affordable for-sale housing for members of the University's faculty and academic staff, and assisting in the recruitment and retention of faculty." (Sublease, Preamble D). This purpose is effectuated by Article 13 of the CC&Rs, whose stated purpose is "to create and perpetuate a stock of affordable housing available to the faculty of the University of California at Berkeley ... in order to support and enhance the educational community at UCB" (CC&Rs, Section 13.1).

2. Definitions. The terms used in these Rules shall have the definitions set forth in this Section 2. All other capitalized terms that are not defined in these Rules shall have the meanings ascribed to them in the Association's CC&Rs, unless the context requires otherwise.

(a) Qualified Person. A "Qualified Person" is "a person determined to be eligible either individually or as a member of a class by the Chancellor of UCB in accordance with the employee housing policy and criteria of UCB, as amended from time to time" (CC&Rs, Section 13.5).<sup>1</sup> In current practice, Qualified Persons consist of current and retired faculty and staff of UCB.

(b) Qualified Owner. A "Qualified Owner" is a Qualified Person who is an Owner of a Unit.

(c) Conditionally Qualified Person. "Conditionally Qualified Person"<sup>2</sup> shall mean a person who meets any of the following requirements:

(i) Any Qualified Owner shall continue to be qualified until the expiration of two (2) years following the date on which such person shall cease to have been a Qualified Person (CC&Rs, Section 13.6(a));

(ii) The dependent child of a Qualified Owner who shall possess, occupy and use a Unit as of the date of death of such Qualified Owner shall continue to be a Qualified Person

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<sup>1</sup> The First Amendment to CC&Rs recorded on June 21, 1996, amended the definitions of a Qualified Person pursuant to Section 13.5 of the CC&Rs.

<sup>2</sup> The First Amendment to CC&Rs recorded on June 21, 1996, amended the definitions of a Conditionally Qualified Person pursuant to Sections 13.6(a), (e) and (f) of the CC&Rs.

for three (3) years from such date or, if earlier, until the then current Owner sells or disposes of the Unit or, in the case of a minor dependent child, until such child attains the age of twenty-one (21) years (CC&Rs, Section 13.6(c));

(iii) An heir or legatee (other than a spouse or dependent child) of a Qualified Owner who shall acquire ownership of a Condominium from the estate of such Qualified Owner shall be a Qualified Person for one (1) year from the date such heir or legatee acquires record ownership of such Condominium (CC&Rs, Section 13.6(d));

(iv) A Qualified Owner's spouse who acquires the sole right of occupancy to the Unit pursuant to a marital settlement, proceeding or decree for a period of two (2) years following the date on which such settlement, proceeding, or decree (CC&Rs, Section 13.6(e));

(v) A co-Owner of a 50% or less undivided interest in a Condominium who resides in such Condominium during the lifetime of a Qualified Owner shall be a Qualified Person for a period of two (2) years from the death of such Qualified Owner (CC&Rs, Section 13.6(f)). This means that an Owner of half or a minority interest in the Condominium who occupied the Condominium during the lifetime of the Qualified Owner may continue to reside within the Condominium for two (2) years after the death of such Qualified Owner;

(vi) Any lessee of a Condominium pursuant to Section 14.7 of the CC&Rs during the term of a lease thereunder; and

(vii) Any purchaser of the Condominium on the open market pursuant to Sections 14.1(e) or 14.4(a) of the CC&Rs for so long as such purchaser shall occupy such Condominium as their primary residence.

(d) Qualified User. "Qualified User" shall mean a person who owns a Condominium, and is either a Qualified Person or a Conditionally Qualified Person.

(e) Home Owner. The lessee identified in the first paragraph of a Sublease made and entered into with the University Terrace Berkeley Homeowner's Association.

(f) Roommate. A roommate is a renter, lessee, or tenant of a portion of an Owner-occupied Condominium.

(g) Single Family. "Single Family" means one or more persons, each related to the other by blood, marriage, or adoption, or a group of not more than six (6) persons, not so related, together with his, hers, or their domestic servants, maintaining a common household.

3. Home Owner Must Occupy Condominium as Principal Place of Residence with Limited Exceptions.<sup>3</sup> The Condominium Instruments state that the Unit shall be "used only as the principal place of residence of Home Owner" with three limited exceptions (Sublease, Section 3.6(a)):

(a) If Home Owner, with the consent of the Association in accordance with the requirements of the CC&Rs and Sublease, substantially rehabilitates or demolishes the Unit, the

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<sup>3</sup>As used herein, the term "principal place of residence" shall mean the true, fixed and permanent home and principal establishment to which the owner, whenever absent, intends to return. In-state presence, vehicle registration, voter registration, bank accounts, and state income tax filings are among the matters to be considered in determining residency.

principal place of residence requirement will not be applicable until the renovation or construction of new housing unit is completed.

(b) If Home Owner rents the Unit to a third party in strict compliance with Section 14.7 of the CC&Rs (“Leasing”).

(c) The Unit is subject to foreclosure or transfer by a deed-in-lieu of foreclosure.

4. Qualified Uses. The CC&Rs states that “no Unit shall be used for other than Single Family residential purposes” (with some strictly enumerated exceptions permitted in Section 4.1 of the CC&Rs). During any period in which a Qualified User “uses the Condominium as his or her principal place of abode,” use of the Condominium by any of the following categories of person is considered to be a use by the Qualified User:

(a) a person related by marriage, blood, adoption, guardianship or foster care to a Qualified User;

(b) a co-Owner of a fifty percent (50%) or less undivided interest in a Condominium, the remainder of which is owned by a Qualified User;

(c) an invitee or guest of a Qualified User;

(d) a domestic or nurse employed by a Qualified User;

(e) a person using the Condominium pursuant to a lease approved by the Regents between such person and a Qualified Person; or

(f) a roommate (renter, lessee, or tenant of a portion of a Unit occupied by a Qualified User) for a period of thirty (30) days or more pursuant to a lease pursuant to California Civil Code section 4739.<sup>4</sup>

4. Burden of Proof. All persons claiming status as a Qualified Person or Conditionally Qualified Person have the burden of proving that they meet the qualifications for the applicable status to the satisfaction of the Board.

5. Guests.

(a) Owners who have guests who stay for more than 21 consecutive days must provide the name of the guests to the Association’s management company.

(b) Guests are only allowed to temporarily occupy the Condominium if the Qualified Person and/or a Conditionally Qualified Person of such Condominium is also present in the Condominium during the same time period.

(c) The temporary occupancy of any one such guest may not exceed a maximum of sixty (60) total days in any calendar year.

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<sup>4</sup> California Civil Code Section 4739 (a) states: “an owner of a separate interest in a common interest development shall not be subject to a provision in a governing document, or amendments thereto, that prohibits the rental or leasing of a portion of the owner-occupied separate interest in that common interest development to a renter, lessee, or tenant for a period of more than 30 days.”

6. Continued Occupancy by Conditionally Qualified Person. Written notice shall be provided to the Association by the Owner or Owner's agent within thirty (30) days of the death or dissolution of marriage, or hospitalization or other prolonged absence of the Qualified Person. Notwithstanding the provisions of Section 3 above, upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the Qualified Person, any Conditionally Qualified Person shall be entitled to continue his or her occupancy of the Condominium pursuant to Section 13.6(b) of the CC&Rs.

7. Verification of Occupancy by Qualified Person. Within thirty (30) days of written request from the Association, the Owner or authorized agent of the Owner shall certify to the Association, in writing, that a Qualified Person occupies the Condominium as a principal place of residence and that the Conditionally Qualified Person does in fact meet the definition of "Conditionally Qualified Person" set forth in Section 2(b) above. Such certification shall be supported by reliable documentation acceptable to the Association in its sole discretion, and shall be provided to the Association at such times as may be requested by the Association. See Verification of Occupancy form attached hereto as Exhibit A.

8. Enforcement.

(a) Warning Letter. In the event of a violation, the Association shall send a warning letter by email and regular first-class mail requesting compliance within thirty (30) days or the Association will provide notice of a hearing to levy a fine and/or special assessment for legal fees incurred to obtain compliance.

(b) Hearing to Levy Fines and/or Special Assessment. If the Owner does not correct the violation, the Board will provide notice of a hearing to levy fines and special assessment for legal fees incurred to obtain compliance with the CC&Rs pursuant to the Association's Enforcement Policy and Schedule of Fines, which is distributed annually with the Association's annual budget report.

(c) Suit. In addition to the imposition of fines and special assessment, the Association may elect to file suit seeking an injunction, money damages, and attorneys' fees and costs to enforce the CC&Rs and these Rules.

(d) Termination of Sublease. The Association may terminate the Owner's Sublease of Undivided Interest for failing to occupy the Condominium as a principal place of residence.

*The foregoing Occupancy and Use Rules was adopted by the Board of Directors of University Terrace Berkeley Homeowners Association at an open meeting of the Board held on December 12, 2024, following notice to the Owners, the opportunity for Owner comment, and Board consideration of Owner comments, all as required by Civil Code section 4360.*

**UNIVERSITY TERRACE BERKELEY  
HOMEOWNERS ASSOCIATION**

By:



Andrew Leong, Secretary

Dated: December 16, 2024

**UNIVERSITY TERRACE BERKELEY HOMEOWNERS ASSOCIATION  
VERIFICATION OF OCCUPANCY CERTIFICATION**

Pursuant to the Occupancy and Use Rules (the “Rules”) for the University Terrace Berkeley Homeowners Association (“Association”), all Owners shall annually complete this Verification of Occupancy Certification. Please immediately notify the Association in the event of an Owner’s hospitalization, absence for over nine (9) months each calendar year from the Unit, death or dissolution so that the Association can update its records of persons qualified to reside within the condominium.

**VERIFICATION OF OCCUPANCY CERTIFICATION**

1. Are you a current employee of the University of California at Berkeley (“UCB”)? [Mark one response with an “X”]:

- ☐ Yes  
☐ No

2. If Yes, what is your employee identification number? \_\_\_\_\_

3. Are you a retired employee of UCB? [Mark one response with an “X”]:

- ☐ Yes  
☐ No

4. Who is residing within your condominium with you? [Mark response(s) with an “X”]:

- ☐ a current spouse of a Qualified Owner<sup>5</sup>;  
☐ a former spouse of a Qualified Owner who acquired the sole right of occupancy to the Unit pursuant to a marital settlement, proceeding or decree;  
☐ a domestic partner of a Qualified Owner;  
☐ a dependent child or children of a Qualified Owner;  
☐ an heir or legatee (other than a spouse or dependent child) of a Qualified Owner who acquired ownership of a Condominium from the estate of such Qualified Owner;  
☐ a co-Owner of a 50% or less undivided interest who resides in such Condominium during the lifetime of a Qualified Owner;  
☐ Any lessee of a Condominium pursuant to Section 14.7 of the CC&Rs during the term of a lease thereunder;  
☐ Any purchaser of the Condominium on the open market;  
☐ a person related by marriage, blood, adoption, guardianship or foster care to a Qualified User<sup>6</sup>;  
☐ an invitee or guest of a Qualified User;  
☐ a domestic or nurse employed by a Qualified User, during any period during which such Qualified User uses the Condominium as his or her principal place of abode ; and/or  
☐ a roommate for a period of thirty (30) days or more pursuant to a lease pursuant to California Civil Code section 4739.

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<sup>5</sup> A “Qualified Owner” is a Qualified Person who is an Owner of a Unit.

<sup>6</sup> “Qualified User” shall mean a person who owns a Condominium, and is either a Qualified Person or a Conditionally Qualified Person.

5. Are you residing within the condominium for more than nine (9) months<sup>7</sup> in a calendar year? [Mark one response with an "X"]:

[ ] Yes  
[ ] No

6. If you are not residing with the condominium for more than nine (9) months in a calendar year, please provide a copy of the lease to the Association and complete the Resident Information Form or other information requested by the Board by the deadline established by the Board.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_, AT \_\_\_\_\_, CALIFORNIA.

By: \_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_

Address of Condominium: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**YOUR COOPERATION IS ESSENTIAL TO OUR CONTINUED RIGHT TO OPERATE AS AN EQUITY HOUSING PROJECT FOR UCB EMPLOYEES AND WE THANK YOU.**

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<sup>7</sup> The California Franchise Tax Board's (FTB Publication 1031) Guidelines for Determining Resident Status provides, in relevant part: "You will be presumed to be a California resident for any taxable year in which you spend more than nine months in this state."